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OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 4 December 2025 [1]

Case C-528/24 [Boothnesse [i]]

LQ,
NT,
RM
intervening party:
Minister for Justice and Equality

(Request for a preliminary ruling from the Supreme Court (Ireland))

(Reference for a preliminary ruling – 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 – Title VII of Part Three – Surrender of a person to the United Kingdom for criminal prosecution – Article 604(c) and Article 625 – Possible prosecution for other offences – Rule of speciality – Concept of 'offence … other than that for which the person was surrendered' – Contempt of court – Civil contempt – Six months' imprisonment – Deprivation of liberty – Autonomous concept – Possibility to invoke rule of speciality before a court – Charter of Fundamental Rights of the European Union – Article 6, Article 47 and Article 49(1) – Effective judicial protection – Principle of legality and foreseeability of penalties – Additional guarantees to be given by the issuing State)

[1] Original language: English.

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

I. Introduction

1. This request for a preliminary ruling concerns the interpretation 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 [2] ('the TCA'), read in conjunction with Articles 47, 48 and 49 of the Charter of Fundamental Rights of the European Union ('the Charter').

2. The rule of speciality, [3] a basic safeguard of extradition and surrender law, is laid down in Article 625(2) of the TCA, which states that except in certain cases, a person surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to that person's surrender other than that for which the person was surrendered.

3. The present case arises in the course of proceedings for the execution of three arrest warrants issued pursuant to the TCA by a court of the United Kingdom of Great Britain and Northern Ireland. Those warrants seek the surrender of three persons, LQ, NT and RM, to the United Kingdom to face prosecution in respect of fraud-related offences. Those individuals object to their surrender, arguing that it would be in breach of the rule of speciality laid down in Article 625(2) of the TCA, because they would be required to serve a six-month prison sentence for civil contempt of court on the ground that they acted in breach of restraint orders issued by a court of the United Kingdom. Since civil contempt of court does not constitute a criminal offence in the United Kingdom, it is not included within a warrant for the purposes of surrender.

4. Against that background, the case raises an issue of interpretation of the provisions of Title VII of Part Three of the TCA and, in particular, Article 625(2) thereof, where the law of the State requesting surrender ('the issuing State') does not classify the conduct giving rise to a deprivation of liberty as a criminal offence. The Court is called on to decide how whether 'offence … other than that for which the person was surrendered', within the meaning of that provision, is to be interpreted.

5. The present case brings the question of whether the rule of speciality ought to be regarded as an enforceable right of the individual, rather than as an intergovernmental rule between States, sharply into focus. [4]

2 OJ 2021 L 149, p. 10.

3 Also referred to as speciality, principle of speciality or doctrine of speciality.

4 See, to that effect, Tinsley, A., 'Specialty: Arresting an elusive "right" in European extradition law', *New Journal of European Criminal Law*, Vol. 12, Issue 1, 2020, pp. 23 to 35. https://doi.org/10.1177/2032284420976994.

II. Legal framework

A. The TCA

6. Article 4 of the TCA, entitled ‘Public international law’, stipulates, in paragraph 1 thereof:

‘The provisions of this Agreement and any supplementing agreement shall be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969 [(“the VCLT”) [5]].’

7. Article 524 of the TCA, entitled ‘Protection of human rights and fundamental freedoms’, provides:

‘1. The cooperation provided for in this Part is based on the Parties’ and Member States’ long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights [adopted by the General Assembly of the United Nations on 10 December 1948] and in the [Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) [6]], and on the importance of giving effect to the rights and freedoms in that Convention domestically.

2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the [ECHR] and, in the case of the [European] Union and its Member States, in the [Charter].’

8. Article 599 of the TCA, entitled ‘Scope’, provides, in paragraphs 1 and 2 thereof:

‘1. An arrest warrant may be issued for acts punishable by the law of the issuing State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences or detention orders of at least four months.

2. Without prejudice to paragraphs 3 and 4, surrender is subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.’

9. Article 604(c) of the TCA provides:

5 Signed in Vienna on 23 May 1969, *United Nations Treaty Series*, Vol. 1155, p. 331.

6 Signed in Rome on 4 November 1950.

‘The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:

…

(c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person’s surrender before it decides whether to execute the arrest warrant.’

10. Article 611 of the TCA provides:

‘1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, the express renunciation of entitlement to the speciality rule referred to in Article 625(2) must be given before the executing judicial authority, in accordance with the domestic law of the executing State.

2. Each State shall adopt the measures necessary to ensure that the consent and, where appropriate, the renunciation referred to in paragraph 1 are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to a lawyer.

…’

11. Article 613(2) of the TCA provides:

‘If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Article 597, Articles 600 to 602, Article 604 and Article 606, be furnished as a matter of urgency and may fix a time limit for the receipt thereof …’

12. Article 625 of the TCA, entitled ‘Possible prosecution for other offences’, provides:

‘1. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation [(“the Specialised Committee”)] that, in relations with other States to which the same notification applies, consent is presumed to have been given for the prosecution, sentencing or detention of a person with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to the person’s surrender, other than that for which that person was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to that person's surrender other than that for which the person was surrendered.

3. Paragraph 2 of this Article does not apply in the following cases:

…

(b) the offence is not punishable by a custodial sentence or detention order;

…

(d) the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu of a financial penalty, even if the penalty or measure may give rise to a restriction of the person's personal liberty;

(e) the person consented to be surrendered, where appropriate at the same time as the person renounced the speciality rule, in accordance with Article 611;

(f) the person, after the person's surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding the person's surrender; renunciation must be given before the competent judicial authority of the issuing State and be recorded in accordance with that State's domestic law; the renunciation must be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences; to that end, the person shall have the right to a lawyer; and

(g) the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4 of this Article.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information referred to in Article 606(1) and a translation as referred to in Article 606(2). Consent shall be given where the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Title. Consent shall be refused on the grounds referred to in Article 600 and otherwise may be refused only on the grounds referred to in Article 601, or Article 602(2) and Article 603(2). The decision shall be taken no later than 30 days after receipt of the request. For the situations laid down in Article 604 the issuing State must give the guarantees provided for therein.'

B. Irish law

13. The TCA surrender procedure is provided for and given effect in Irish law by the European Arrest Warrant Act 2003, Article 22 of which provides that, subject to this section, the High Court must refuse to surrender a person under this

Act if it is satisfied that the issuing State's law does not provide that a person who is surrendered to it pursuant to a relevant arrest warrant shall not be proceeded against, sentenced or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence, and the person will be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence.

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

14. LQ, NT and RM, the appellants, are the subject of criminal proceedings in the United Kingdom for fraud allegedly committed by them in their capacity as joint owners and directors of a company. The alleged fraudulent activity detailed in the warrant relates to misrepresentation and the carrying out of unnecessary (and frequent) remedial works for which they significantly overcharged the property owners, mostly elderly persons.

15. In March 2021, Reading Crown Court (United Kingdom) issued restraint orders to ensure that the assets of that company and of LQ, NT and RM would be available as compensation for the allegedly injured parties in the event of convictions being returned. [7] On 5 August 2021, that court held that LQ, NT and RM had failed to comply with the restraint orders and, consequently, sentenced each of them in their absence for contempt of court, imposing sentences of six months' imprisonment on each defendant.

16. On 6 December 2022, Portsmouth Magistrates' Court (United Kingdom), the judicial authority, issued three arrest warrants, on the basis of the TCA, seeking the surrender of LQ, NT and RM, with a view to prosecuting them for offences of fraud. In those arrest warrants, that authority stated that, in so far as the infringement of asset-freezing measures does not constitute a criminal offence under English law, the finding of Reading Crown Court that the appellants had infringed the decision to freeze assets and that they were guilty of contempt of court does not mean that such acts constitute offences, with the result that those arrest warrants must be regarded as having been issued exclusively for the purpose of prosecution for fraud. [8]

7 Those restraint orders prohibited disposal of assets related to the company, the bank accounts of LQ, NT and RM and motor vehicles, and obliged them to disclose and to provide the necessary details of all assets in or outside England and Wales.

8 Information about the sentences imposed for contempt of court is contained in Part (f) of each arrest warrant, which states: 'Breach of the Restraint Order is not a criminal offence, thus cannot constitute an extradition offence and is therefore not included within the list of extradition offences. The finding by … [the Reading Crown Court judge] that the defendant breached the Restraint Order and thus committed contempt of court does not constitute conviction, hence this warrant remains an accusation warrant only.'

17. By judgment of 8 April 2024, the High Court (Ireland) rejected the objection to surrender made by LQ, NT and RM and, by orders of the same date, ordered their surrender to the United Kingdom.

18. On 5 June 2024, LQ, NT and RM were granted leave to appeal to the Supreme Court (Ireland), which is the referring court.

19. LQ, NT and RM submit before that court that their surrender to the United Kingdom must be refused, since it constitutes an infringement of the rule of speciality laid down in Article 22(2) of the European Arrest Warrant Act 2003 and Article 625 of the TCA.

20. On appeal, the appellants argued that the term 'offence' in Article 625(2) of the TCA should be given an autonomous meaning, rather than relying on national classifications. While contempt of court is not considered a criminal offence under English law, the appellants contend that the nature of the proceedings and the severity of the sanction rendered them criminal in character. They point to the purpose of Article 625 of the TCA, that is, to safeguard the right to a fair trial under Article 47 of the Charter. They argue that the interpretation of 'offence' must be consistent with the case-law of the European Court of Human Rights (ECtHR), particularly the criteria established in the judgment in *Engel*, [9] which have regard to the classification of the offence in domestic law, its nature and the severity of the penalty imposed. The appellants emphasise that the latter two criteria could independently suffice to characterise proceedings as criminal under the ECHR, and relied on cases such as *Kyprianou v. Cyprus* [10] and *Benham v. the United Kingdom* [11] to argue that, depending on the penalty imposed, contempt proceedings may be covered by the protections provided for under Article 6 ECHR.

21. By contrast, the respondent maintains that the analogy with Article 6 ECHR is misplaced. It argues that the ECHR requires a common standard for determining criminal charges across contracting States, but that the surrender provisions of the TCA and Council Framework Decision 2002/584/JHA [12] serve a different purpose, one rooted in mutual trust and respect for national classifications. According to the respondent, the principle of double criminality and the rule of speciality demonstrate the importance of each State's classification of conduct as criminal or otherwise. Nonetheless, the respondent acknowledges

9 ECtHR, 8 June 1976, *Engel and Others v. the Netherlands* (CE:ECHR:1976:0608JUD000510071).

10 ECtHR, 15 December 2005, *Kyprianou v. Cyprus* (CE:ECHR:2005:1215JUD007379701).

11 ECtHR, 10 June 1996, *Benham v. the United Kingdom* (CE:ECHR:1996:0610JUD001938092).

12 Framework Decision 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) ('Framework Decision 2002/584').

that, if the term 'offence' were to be given an autonomous meaning, the final criterion in the judgment in *Engel*, namely the severity of the penalty, could present difficulties for its position, given that the imposition of a six-month sentence for contempt is likely to result in its classification as a criminal charge under the case-law of the European Court of Human Rights.

22. In that context, the referring court considers that the appeal raises a question of interpretation of Title VII of Part Three of the TCA, specifically Article 625(2) thereof. At the heart of the case is how the rule of speciality applies where the issuing State does not classify the conduct leading to a deprivation of liberty, or the proceedings resulting in it, as criminal in nature. The referring court considers this to be a matter of broader importance, particularly in relation to contempt of court. In many jurisdictions, especially within the common law tradition, individuals may be deprived of liberty for contempt, whether as a coercive measure or as a punitive sanction, without the proceedings being labelled as criminal or the underlying conduct being treated as a criminal offence. The resolution of this issue is therefore crucial in determining how the rule of speciality is to function when cross-border enforcement mechanisms are in operation under the TCA. The referring court notes that the Court of Justice has not yet had occasion to decide that issue.

23. The referring court considers that there is no reason to doubt the United Kingdom authorities' statement that the breach of asset-freezing measures does not constitute a criminal offence under the law of that State. It also points out that, in Ireland, as in the United Kingdom, there may be cases of civil contempt of court where fixed prison terms are imposed for purposes that are not purely coercive. However, it notes that it has not heard sufficient argument to determine whether, in circumstances comparable to those in the United Kingdom, such contempt should be regarded as criminal or civil. The referring court explains that it may not be necessary to resolve this question if, in response to its reference for a preliminary ruling, the Court of Justice decides that the term 'offence' in Article 625(2) of the TCA carries an autonomous meaning.

24. In those circumstances, the Supreme Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of Title VII of [Part Three of the TCA] dealing with "*Surrender*" apply only to criminal prosecutions and/or custodial sentences/detention orders imposed in respect of criminal offences?

(2) In Article 625(2) [of the] TCA, which provides that except for cases covered by para[graph]s 1 and 3 of Article 625 "a person surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to that person's surrender other than that for which the person was surrendered", does "*offence*" mean (1) a criminal offence as defined by the law of the issuing [S]tate or (2) a criminal offence as defined

by the law of the executing [S]tate or (3) does it have an autonomous meaning in European Union law?

(3) If "*offence*" in Article 625(2) [of the] TCA bears such an autonomous meaning, what are the criteria for determining what constitutes such an "*offence*"?

(4) Are Article 47, Article 48, Article 49 and Article 50 of the [Charter] (which refer to "*effective remedy/fair trial*" (Article 47), "*charged*" (Article 48), "*criminal offence*" (Article 49) and "*criminal proceedings for an offence*" (Article 50)) and/or Article 6 and Article 13 [ECHR] (which refers to "*any criminal charge*" and "*effective remedy*") of relevance in that context?

(5) Does Article 625(2) [of the] TCA preclude surrender in a situation where a person has been sentenced to 6 months['] deprivation of liberty for … contempt of court but where surrender has not been sought for the purpose of serving that sentence because the law of the issuing [S]tate classifies the contempt of court as civil contempt and does not consider it to constitute a criminal offence or matter?'

IV. The procedure before the Court of Justice

25. Written observations were submitted by LQ, NT and RM, Ireland and the European Commission. A hearing was held on 11 September 2025, where those parties presented oral argument.

V. Analysis

26. The present Opinion is structured as follows. I shall begin by outlining the sequence and internal logic of the questions referred by the national court (Section A). I will then turn to their substantive examination, beginning with the interpretation of the rule of speciality under Article 625(2) of the TCA and the relevance of fundamental rights in that context (Section B). Lastly, I will address the question whether the specific conduct and sanction at issue – namely, a sentence of imprisonment for contempt of court classified as a civil matter under the law of the issuing State – fall within the scope of Article 625(2) of the TCA (Section C).

A. The sequence and internal logic of the questions referred by the national court

27. In my view, it would assist the analysis to address the first four questions together before turning to the fifth question, as it appears that the first four questions establish the conceptual and legal framework within which the fifth question must be addressed.

28. The first four questions address whether the surrender mechanism applies only to criminal matters (Question 1), how the term ‘offence’ in Article 625(2) of the TCA should be understood (Questions 2 and 3), and whether EU or ECHR fundamental rights norms are relevant in making that determination (Question 4). Therefore, it may be appropriate for the Court to address the first four questions together, especially as they form a coherent block concerned with the interpretation of ‘offence’ and the relevance of fundamental rights in that context.

29. By the fifth question, by contrast, the referring court asks, in essence, whether Article 625(2) of the TCA precludes surrender in a case where the person has been sentenced to six months in prison for contempt of court, but surrender is not sought to enforce that sentence because the issuing State classifies contempt as a civil matter and not as a criminal offence. That question is thus framed around a specific scenario involving a custodial sentence for contempt of court classified as civil by the issuing State and constitutes an application of the interpretive framework addressed by the first four questions.

30. That being said, the application of Article 625(2) of the TCA presupposes that the conduct giving rise to the deprivation of liberty – in this case, civil contempt of court following a failure to comply with restraint orders for which a custodial sentence was imposed – falls within the concept of an ‘offence’ within the meaning of that provision. If, on the other hand, that conduct does not fall within that concept, then the rule of speciality simply does not apply. In that case, there would be no need to consider whether that rule precludes surrender, as the legal preconditions for its application would not be met.

31. Lastly, it is also apparent that the fifth question cannot be addressed in a vacuum, since that question presupposes that the conduct at issue, namely civil contempt of court, has already been classified as an ‘offence’ within the meaning of Article 625(2) of the TCA. The criteria for determining that classification is precisely the subject matter of the first four questions.

32. Accordingly, my analysis is structured in two parts: first, the interpretation of the rule of speciality and of the concept of ‘offence’ within the meaning of Article 625(2) of the TCA; and, second, the consequences of that interpretation where the conduct at issue constitutes contempt of court classified as civil in the issuing State.

B. The first to fourth questions

33. By its first four questions, the referring court seeks, in essence, to ascertain whether Title VII of Part Three of the TCA on ‘Surrender’, and in particular Article 625(2) thereof, is confined in scope to criminal prosecutions and/or to custodial sentences or to detention orders imposed in respect of criminal offences; and, if so, whether the term ‘offence’, for the purposes of the rule of speciality, is to be interpreted (i) by reference to the law of the issuing State, (ii) by reference to the law of the executing State or (iii) autonomously, and, in the latter case,

according to what criteria, having regard to Articles 47 to 50 of the Charter and to Article 6 ECHR.

34. The wording itself of Article 625(2) of the TCA does not expressly state whether the term 'offence' is to be defined in accordance with the law of the issuing State or the law of the executing State, or whether it is to be interpreted autonomously. Thus, the concept of 'offence' is to be interpreted in the light of the broader context of the TCA and the rule of speciality.

1. The general framework for the interpretation of the TCA

(a) An instrument of public international law

35. Since the end of the transition period for the withdrawal of the United Kingdom from the European Union, relations between the European Union and the United Kingdom have been governed by international agreements, most importantly the TCA. The TCA is an association agreement concluded under Article 217 TFEU. It was adopted as an 'EU-only' agreement, not a mixed agreement, meaning that the Member States are themselves not contracting parties. [13]

36. It is widely acknowledged that the TCA must be interpreted as an instrument of public international law. [14] The agreement itself confirms this orientation. Article 4(2) excludes the obligation to interpret the provisions of the TCA in accordance with the domestic law of either party. The interpretive framework is therefore that of public international law and, in particular, the VCLT. [15] Article 4(1) of the TCA makes that explicit, requiring that the agreement be interpreted in good faith, in accordance with the ordinary meaning of its terms in their context and in the light of its object and purpose.

37. Lastly, it should be noted that Article 5(1) of the TCA provides that, as a rule, its provisions do not confer rights or obligations directly on individuals. However, that provision expressly carves out an exception 'with regard to the [European] Union' for Part Three of the TCA. Article 625 of the TCA, which lays down the rule of speciality, forms part of Title VII, 'Surrender', of Part Three. This deliberate drafting choice indicates that, within the EU legal order, the provisions of Part Three may produce direct effect, and thus be relied upon by individuals, provided that they meet the ordinary criteria established in the Court's

13 Opinion of Advocate General Szpunar in *Alchaster* (C-202/24, EU:C:2024:559, point 55).

14 Ibid., point 58; See also Opinion of Advocate General Biondi in *P&O North Sea Ferries and P&O Ferries* (C-413/24, EU:C:2025:490, points 48 and 49).

15 See, to that effect, judgment of 10 January 2006, *IATA and ELFAA* (C-344/04, EU:C:2006:10, paragraph 40 and the case-law cited) where the Court recalled that, according to Article 31 of the VCLT, a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.

case-law for the direct effect of international agreements. [16] In other words, matters falling under Part Three of the TCA and within the European Union are capable of conferring rights on individuals, which are enforceable before national courts, despite the general exclusion of direct effect elsewhere in the TCA.

(b) Reciprocal cooperation subject to safeguards

38. The findings of the Court in the judgment in *Alchaster I* are decisive for understanding the rule of speciality. [17] The Court clarified that, unlike the European Arrest Warrant (EAW) regime, which rests on mutual trust between Member States, the TCA establishes a regime of reciprocal cooperation subject to safeguards.

39. In that respect, the Court noted that the United Kingdom is not part of the system built on mutual trust, by drawing a three-tier typology of cooperation regimes, that is, first, the EU Member States where mutual trust underpins the area of freedom, security and justice; second, third countries, notably certain European Economic Area States, such as Iceland and Norway, which maintain a special relationship with the European Union; and, third, other third countries. With respect to the United Kingdom, the Court stated that 'cooperation is not presented as being based on the preservation of mutual trust between the States concerned which existed before the United Kingdom left the European Union'. [18] In particular, 'the United Kingdom is not part of the European area without internal borders, the construction of which is permitted, inter alia, by the principle of mutual trust'. [19] Furthermore, the arrangements established by the TCA do not establish a relationship 'as special as' that described in earlier case-law concerning those European Economic Area States. [20]

40. This distinction is fundamental to the application of the rule of speciality, whose enforcement under the EAW regime presupposes that both Member States act within a framework of mutual trust. It is on the basis of that mutual trust that the issuing State is permitted to assume responsibility for the prosecution or enforcement of a sentence once surrender has been authorised. [21] Equally, that mutual trust guarantees that the fundamental rights of the persons concerned,

16 See, to that effect, judgments of 30 September 1987, *Demirel* (12/86, EU:C:1987:400, paragraph 14), and of 26 May 2011, *Akdas and Others* (C-485/07, EU:C:2011:346, paragraph 67 and the case-law cited).

17 Judgment of 29 July 2024, *Alchaster* (C-202/24, 'the judgment in *Alchaster I*', EU:C:2024:649).

18 Ibid., paragraph 71.

19 Ibid., paragraph 70.

20 Ibid.

21 Judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)* (C-195/20 PPU, EU:C:2020:749, paragraph 40).

including those enshrined in the Charter, are protected through national legal systems deemed capable of providing equivalent and effective protection within the European Union. [22]

41. Furthermore, in the judgment in *Alchaster I* the Court emphasised that the surrender regime under the TCA incorporates exceptions and individualised human-rights guarantees – including those based on the political nature of the offence, nationality and risks to fundamental rights – which have no equivalent in the EAW. [23] Those exceptions are not contingent on a finding of systemic deficiencies. [24]

42. In particular, the Court emphasised that the TCA contains derogations and additional guarantees, such as those provided for in Article 602, Article 603 and Article 604(c) of the TCA, that are not found in Framework Decision 2002/584. The judgment in *Alchaster I* states that the TCA framework necessitates a case-by-case, *ex ante* examination of the applicable legal safeguards and limits. [25] It follows that the EU Courts must perform an individualised risk assessment in the light of the Charter. The Court concluded that this regime requires an independent assessment by the executing judicial authority, without reliance on a general presumption of trust. [26]

43. That distinction affects how the rule of speciality must be understood: namely, not as an automatic presumption of compliance by the issuing State, but as a safeguard to be actively assessed and secured by the executing authority in fulfilment of its own obligations to ensure respect for fundamental rights. As the Court emphasised in the judgment in *Alchaster I*, Article 604(c) of the TCA expressly empowers the executing authority to seek additional guarantees where there are substantial grounds for believing that the person concerned would face a real risk to the protection of their fundamental rights if surrendered. [27]

22 Judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)* (C-483/20, EU:C:2022:103, paragraph 27).

23 Paragraphs 72 to 74.

24 See paragraph 75.

25 Paragraph 82.

26 Paragraphs 78 to 83.

27 Paragraph 75.

2. Scope of application of the rule of speciality under Article 625(2) of the TCA

44. The rule of speciality is part of the customary law governing extradition between States. [28] Provisions setting out that norm can be found in most, if not all, extradition treaties. [29] In the case of the TCA, Article 625(2) provides that, subject to certain exceptions, 'a person surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to that person's surrender other than that for which the person was surrendered'.

45. That provision, which governs the rule of speciality under that agreement, mirrors the wording and structure of Article 27 of Framework Decision 2002/584. [30] However, as the Court made clear in the judgment in *Polydor and RSO Records*, [31] identical wording in EU law and in international agreements does not entail automatic uniformity of interpretation. This is because provisions appearing in an international agreement may pursue different objectives and operate within a distinct legal and institutional context. Accordingly, the case-law on the rule of speciality developed in respect of the EAW cannot be automatically transposed into the TCA framework, as that framework replaces mutual trust, inherent in an area without internal borders, with a system of cooperation subject to safeguards. [32] Instead, the scope of the rule of speciality under the TCA must be determined through a literal, contextual and teleological interpretation of the agreement itself. [33]

46. While the territorial scope of the rule of speciality laid down in Article 625(2) of the TCA, which applies to surrender relations between the United Kingdom and all EU Member States, is not an issue in the present case, it is necessary, however, to examine the personal, temporal and material scope of that rule, which I shall now address in turn.

28 Schabas, W.A, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd Edition, Oxford University Press, Oxford, 2016, pp. 1362 to 1366.

29 Model Treaty on Extradition, UN Doc. A/RES/45/116, Annex, Article 14, and European Convention on Extradition, ETS No 24, Article 14.

30 Article 625(1) of the TCA corresponds to Article 27(1) of Framework Decision 2002/584. Article 27(2) of Framework Decision 2002/584 and Article 625(2) of the TCA are identical in substance. Article 27(3) of Framework Decision 2002/584 lays down the exception where the rule of speciality does not apply and Article 625(3) of the TCA reproduces almost verbatim the content of that provision. Article 27(4) of Framework Decision 2002/584 is reproduced in essence in Article 625(4) of the TCA, which sets out a procedure for the issuing State to request consent from the executing judicial authority.

31 Judgment of 9 February 1982 (270/80, EU:C:1982:43, paragraphs 14 to 16).

32 See point 41 above.

33 See point 37 above.

(a) Personal scope

47. In the judgment in *Leymann and Pustovarov*, [34] the Court stated that the rule of speciality set out in Article 27(2) of Framework Decision 2002/584 is 'linked to the sovereignty of the executing Member State' and 'confers on the person requested the right not to be prosecuted, sentenced or otherwise deprived of liberty except for the offence for which he or she was surrendered'. [35] Two observations follow. The Court's formulation that the rule is 'linked' *and also* 'confers' demonstrates its dual nature: under the EAW it serves, simultaneously, as a safeguard of State sovereignty and as an individual right of the requested person that is capable of being relied upon, by the person surrendered, under EU law.

48. The question that accordingly arises is whether the dual nature established in the case-law on the EAW also applies to Article 625(2) of the TCA.

49. In that respect, as regards sovereignty, Article 625(2) of the TCA makes clear that prosecution for 'other offences' requires the consent of the executing authority, which ensures that the executing State retains ultimate control over the legal effects of its surrender decision. That function mirrors the sovereignty rationale developed in relation to Framework Decision 2002/584.

50. As regards the rights conferred on the individual, the EAW regime is underpinned by a *high level* of mutual trust between Member States, [36] particularly in a European area without internal borders. [37] As the Court has explained, [38] that trust obliges each Member State, save in exceptional circumstances, to presume that the other Member States are complying with EU law and in particular with fundamental rights. [39] This foundational presumption of compliance allows for

34 See judgment of 1 December 2008 (C-388/08 PPU, EU:C:2008:669, paragraphs 43 and 44).

35 That formulation is repeated in an identical passage in paragraph 39 of the judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)* (C-195/20 PPU, EU:C:2020:749). Paragraph 40 of that judgment explains the jurisdictional dimension, requiring the issuing State to seek the executing State's consent in order to respect its competences, but does not narrow down the dual nature established by the Court in that passage.

36 See judgment of 10 November 2016, *Poltorak* (C-452/16 PPU, EU:C:2016:858, paragraph 25). This regime is underpinned by a high level of mutual trust between Member States, particularly in the context of the area of freedom, security and justice. The presumption is that each Member State adheres to shared standards of fundamental rights protection, which permits streamlined procedures based on institutional cooperation rather than individualised consent.

37 See the judgment in *Alchaster I*, paragraphs 63 and 70.

38 Ibid., paragraphs 24 to 27.

39 See judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 78).

streamlined procedures, rather than relying on individually established safeguards or consent mechanisms.

51. By contrast, the foundation of Part Three of the TCA is cooperation in the field of criminal justice, as the Court made clear in the judgment in *Alchaster I*. It observed that, according to recital 23 and Article 1 of the TCA, that agreement seeks to enhance the security of both the European Union and the United Kingdom by enabling cooperation in the prevention, investigation, detection and prosecution of criminal offences, as well as the execution of criminal penalties. [40] That objective is enshrined in Part Three, as Article 522(1) of the TCA confirms. [41] Moreover, Article 524(1) of the TCA anchors such cooperation in the shared respect of the European Union, the United Kingdom and the Member States for democracy, the rule of law and the protection of fundamental rights, including those guaranteed by the ECHR. [42]

52. However, while the TCA aspires to maintain a high level of guarantees for individuals, comparable to those ensured within the European Union, it operates, as I have already stated, [43] on the basis of reciprocal cooperation subject to safeguards, rather than mutual trust. Ensuring that fundamental rights remain effectively protected therefore requires that the safeguards built into the TCA, in particular those in Article 625(2) of the TCA, be given full effect and applied as operative guarantees within the surrender process.

53. That shows that the rule of speciality, while framed as a procedural guarantee, operates in practice as a tool that must be actively applied by the executing authority in order to ensure that it fulfils its protective function, particularly in the light of fundamental rights obligations. Accordingly, under the TCA, the individual-rights dimension of the rule of speciality is accentuated, because the absence of mutual trust [44] compels the executing judicial authority to verify, before surrender, compliance with that rule and, where necessary, to seek additional guarantees pursuant to Article 604(c) of the TCA.

54. It follows that the rule of speciality set out in Article 625(2) of the TCA should be understood as embodying the same dual nature as that established under Framework Decision 2002/584: it is an expression of the executing State's sovereignty and it also confers, within the European Union, on the person surrendered the right not to be prosecuted, sentenced or otherwise deprived of liberty except for the offence for which he or she was surrendered.

40 The judgment in *Alchaster I*, paragraphs 40 and 41.

41 Ibid., paragraph 41.

42 Ibid., paragraph 42.

43 Point 41 above.

44 Point 42 above.

(b) Temporal scope

55. The process for surrender under the TCA consists of several distinct procedural stages, including the review of the surrender request, the execution of the decision to surrender (or not to surrender) and the consent procedure. The applicable legal safeguards may vary depending on the stage of the process. It is therefore important to clarify the temporal scope of Article 625(2) of the TCA and its relationship to the subsequent consent procedure set out in Article 625(3)(g) and (4).

56. With respect to the temporal scope, Article 625(2) of the TCA operates before, and as a condition of, surrender: it forms part of the legal framework governing whether surrender may lawfully take place. By contrast, the consent procedure in Article 625(3)(g) and (4) of the TCA serves a post-surrender function. It provides the mechanism by which the issuing State may, after surrender, request the executing State's consent to extend the scope of prosecution to other offences.

57. In the light of the Court's reasoning in the judgment in *Alchaster I*, the executing judicial authority must conduct an *ex ante* review to ensure that the anticipated post-surrender treatment will comply with the rule of speciality. Thus, whether the rule of speciality applies to the case at hand is a question that must be invoked pre-surrender as part of the executing judge's assessment in the light of the Charter.

58. It follows that the consent mechanism in Article 625(3)(g) and (4) of the TCA and the assessment in the light of the Charter, as applied to the rule of speciality, are two distinct questions. The procedure in relation to consent takes place after surrender: it is triggered only when the issuing State formally requests an extension of the scope of the surrender in order to prosecute the person surrendered for 'other offences'. [45] By contrast, the executing judicial authority's *ex ante* review takes place before surrender and concerns the baseline guarantee in Article 625(2) of the TCA, namely that the individual will not be prosecuted, sentenced or otherwise deprived of liberty for unauthorised offences, that is to say, offences other than those authorised in the warrant. That is an immediate and *ex ante* form of protection; it is part of what makes the surrender decision lawful in the first place.

59. That reasoning is not called into question by the Court's case-law in the judgments in *Leymann and Pustovarov* [46] and in *Generalbundesanwalt beim*

45 This should not be confused with the separate form of consent under Article 611 of the TCA, whereby the requested person may agree to a speedy surrender by waiving certain procedural guarantees. The two mechanisms are conceptually distinct: the former concerns the scope of prosecution after surrender, whereas the latter concerns the manner in which surrender is effected.

46 Judgment of 1 December 2008 (C-388/08 PPU, EU:C:2008:669).

Bundesgerichtshof (Speciality rule), [47] given that both judgments take as their starting point the fact that surrender had already taken place and the person surrendered was within the jurisdiction of the issuing State. In those cases, the Court analysed the rule of speciality in the context of post-surrender requests: the issuing State had sought consent to prosecute, for additional offences, the person who had already been surrendered.

60. Similarly, in the judgment in *F.*, [48] the issue was not whether the rule of speciality applied – that was undisputed – but rather what procedural safeguards were required on the part of the executing State. The question referred concerned whether national law could provide for an appeal, with suspensory effect, against the executing judicial authority's decision to give consent to further prosecution. In other words, the assessment carried out by the executing judge in *F.* took place only after surrender, within the framework of the consent procedure. The executing authority's role was confined to a subsequent consent decision, once the initial surrender had already been executed.

61. Since those judgments concern a legal situation in which surrender has already taken place, they are not tailored to circumstances where the executing judicial authority is still deciding whether to surrender the person. This distinction confirms that the EAW case-law on post-surrender consent cannot be transposed automatically to the pre-surrender stage under the TCA.

62. In the present case, the executing judicial authority is still determining whether to grant surrender. Where the requested person raises an objection during the pre-surrender proceedings, as in the present case, a crucial temporal and procedural distinction arises. In such pre-surrender objections, the individual's claim is not about extending the scope of surrender *ex post*, but about whether surrender should be authorised at all. Accordingly, when an objection is raised under the TCA that surrender would expose the individual to prosecution or deprivation of liberty for an offence other than that specified in the warrant, the assessment of that objection necessarily takes place *before* surrender and relates to the lawfulness of the surrender decision itself.

63. By ensuring that no prosecution, sentencing or deprivation of liberty may occur beyond the offences authorised by the executing authority, the rule of

47 The legal situation contemplated in the Court's case-law on the rule of speciality under the EAW – where the person has already been surrendered and the issuing State must respect the limits imposed by the executing authority – has not yet arisen in the present case. The reasoning in the judgment of 24 September 2020 (C-195/20 PPU, EU:C:2020:749, paragraph 40), is contingent on a surrender having already taken place. The 'encroachment' referred to by the Court presupposes that the executing State has transferred custody of the person and that the issuing State is now in a position to act in relation to that person within the limits imposed by the surrender decision. By contrast, at the pre-surrender stage, the executing judicial authority must verify whether there is a real risk that the issuing State will disregard those limits once surrender occurs, thereby acting in breach of the rule of speciality.

48 See judgment of 30 May 2013 (C-168/13 PPU, EU:C:2013:358).

speciality under Article 625(2) of the TCA safeguards individuals from arbitrary or unforeseeable deprivation of liberty, which forms an integral part of the rights to liberty and to legality. It thus constitutes an essential procedural safeguard which is closely connected to the rights to liberty and legality.

64. On the one hand, the wording of Article 611(2) of the TCA confirms this character: it requires that any waiver of the rule be given 'voluntarily and in full awareness of the consequences'. Such language is typical of provisions governing the waiver of essential procedural guarantees, such as defence rights or the right to a fair trial. [49]

65. On the other hand, from a systemic perspective, the rule of speciality operates as a procedural shield that gives concrete effect to rights conferred by the Charter, such as the right to liberty (Article 6), [50] the right to effective judicial protection (Article 47) and the principle of legality and foreseeability of penalties (Article 49(1)). [51] Although not an independent right expressly enshrined in the Charter, it is comparable to essential procedural guarantees such as the right to legal assistance or the right to be present at trial.

66. In particular, according to Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, national courts must be able to do what is necessary to secure the full force and effect of directly effective EU rights. [52] Article 625(2) of the TCA, as an essential procedural guarantee forming part of EU law, [53] confers such a right. Consequently, the executing judicial authority must have the jurisdiction and duty to ensure its observance by refusing surrender or by requiring binding assurances where a breach of that guarantee is likely. Any national rule or practice preventing that

49 See, by way of analogy, the waiver of the right to be present at trial, which the Court recognised in the judgment of 26 February 2013, *Melloni* (C-399/11, EU:C:2013:107, paragraph 49), and which is expressly reflected in Article 8(2) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

50 See, for example, order of 24 March 2016 (No 175/16) where the Bundesverfassungsgericht (Federal Constitutional Court, Germany) held that an extradition that does not guarantee compliance with the rule of speciality violates the fundamental right to personal freedom. Furthermore, if an executing judicial authority refuses to examine whether the requirements of the rule of speciality are met, that constitutes a violation of the right to effective legal protection.

51 According to settled case-law, under the principle of the legality of criminal offences and penalties, enshrined in Article 49(1) of the Charter, criminal law provisions must comply with certain requirements of accessibility and predictability as regards both the definition of the offence and the sentencing (see judgment of 11 June 2020, *Prokuratura Rejonowa w Słupsku*, C-634/18, EU:C:2020:455, paragraphs 47 and 48 and the case-law cited).

52 See, to that effect, judgments of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591, paragraph 31), and of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 114).

53 See point 70 below.

authority from exercising that power would impair the effectiveness of EU law and contravene Article 47 of the Charter. [54] Article 47 of the Charter thus presupposes that Article 625(2) of the TCA be judicially enforceable, empowering the executing authority to ensure its compliance.

(c) Material scope

67. In my view, the material scope of the rule of speciality under Article 625(2) of the TCA encompasses two distinct, yet interrelated, dimensions. The first concerns how the term 'offence' is to be defined, which could be according to the law of the issuing State or the law of the executing State, or autonomously under the agreement itself. The second dimension relates to the offences covered by the surrender decision, which delineate the substantive limits of the prosecution that may lawfully follow surrender.

(1) The term 'offence' within the meaning of Article 625(2) of the TCA

68. Ireland and the Commission argue that the ordinary meaning of 'offence' under Article 625 of the TCA is confined to criminal offences classified as such by the issuing State. At the hearing, Ireland stressed the systemic role of the double-criminality rule as the comparative safeguard. According to Ireland, reliance on the case-law of the European Court of Human Rights under Article 6 ECHR would be misplaced, since that case-law develops an autonomous concept of a 'criminal charge' in the fair trial context rather than in surrender proceedings.

69. The Commission adds that the term 'offence' in Article 625 of the TCA must have a single meaning across the entire provision, that is paragraphs 2 and 4, and that it can only refer to criminal offences as defined by the issuing State. Several provisions of Part Three of the TCA expressly refer to 'criminal prosecution' or 'offence under … criminal law', while Article 599 thereof frames the double criminality rule in those terms.

70. In my view, such a narrow reading should not be upheld. First and foremost, the TCA is an integral part of the EU legal order [55] and, therefore, its

[54] See, to that effect, judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraphs 72 to 75).

[55] See, to that effect, judgments of 30 April 1974, *Haegeman* (181/73, EU:C:1974:41, paragraph 5); of 16 June 1998, *Racke* (C-162/96, EU:C:1998:293, paragraph 41); of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91, paragraph 39); and of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118, paragraph 46). Since the TCA was concluded by Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ 2021 L 149, p. 2) under Article 217 TFEU, according to the Court's case-law it constitutes an act of the EU institutions and forms part of EU law.

interpretation must be consistent with the Charter, which applies whenever Member States act within the scope of EU law, including in surrender proceedings under Part Three of the TCA. It follows that the rule of speciality under Article 625(2) of the TCA must be construed in a manner that respects the Charter. In particular, the rights to liberty enshrined in Article 6 of the Charter and to effective judicial protection under Article 47 of the Charter, as well as the principle of legality and foreseeability of penalties under Article 49(1) of the Charter, require that the protection afforded by the rule of speciality not be confined to offences formally labelled as 'criminal' by the issuing State, but that it extend to any conduct or procedure that is criminal in nature or effect.

71. That requires, therefore, that an autonomous interpretation be given to the term 'offence', as established by the Court's case-law in *Bonda*, [56] which mirrors the *Engel* criteria developed by the European Court of Human Rights [57] ('the *Bonda* criteria'), whereby the Court established the three-step test for determining whether a sanction is 'criminal in nature': (i) the legal classification under national law; (ii) the intrinsic nature of the offence; and (iii) the severity of the penalty. That approach ensures that deprivation of liberty cannot be excluded from the protection of the rule of speciality merely because a national system classifies a sanction as 'civil', 'administrative' or 'disciplinary'. In other words, Article 625(2) of the TCA cannot be interpreted in a way that would exclude from its scope conduct and sanctions governed by the rights safeguarded by the Charter. [58]

72. Second, as stated in Article 4(1) of the TCA, under Article 31(1) of the VCLT a treaty must be interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in the light of its object and purpose. The object and purpose of the rule of speciality in Article 625(2) of the TCA is to

56 Judgment of 5 June 2012, C-489/10, EU:C:2012:319, paragraph 37 et seq.

57 The ECtHR's autonomous interpretation of 'criminal charge' exists to prevent arbitrary exclusions from the scope of fundamental guarantees. In the judgment of 8 June 1976, *Engel and Others v. the Netherlands* (CE:ECHR:1976:0608JUD000510071), the ECtHR held that whether proceedings are 'criminal' cannot depend solely on the State's classification; otherwise, States could evade Article 6 ECHR by simply re-labelling punitive measures as 'disciplinary'. It therefore developed the abovementioned three criteria. That logic was confirmed in *Öztürk v. Germany* (21 February 1984, CE:ECHR:1984:0221JUD000854479), where proceedings formally characterised as 'administrative' nonetheless fell within Article 6 ECHR because of their punitive and deterrent purpose.

58 While the foundation of Part Three of the TCA, as clarified by the Court in the judgment in *Alchaster I* (paragraphs 40 to 43), is cooperation in the field of criminal justice and law enforcement, that contextual element does not limit the interpretation of the term 'offence' in Article 625(2) of the TCA to offences formally classified as criminal under domestic law. The overall purpose of Part Three is to define the scope of the mechanism, that is, cooperation in criminal matters, but not the meaning of the protective guarantees it contains. Accordingly, those guarantees may also extend to sanctions that, although not formally defined as criminal under domestic classification, are criminal in nature by virtue of their purpose, severity or deterrent character.

protect the requested person from being prosecuted, sentenced or otherwise deprived of liberty for acts not scrutinised by the executing judicial authority. A restrictive interpretation tied solely to the issuing State's formal classification would deprive this guarantee of much of its effectiveness, [59] particularly in the context of a pre-surrender objection. Since the TCA is expressly based not on mutual trust but on reciprocal cooperation with safeguards, if the executing authority were to apply 'blindly' the issuing State's classification, the individual's protection could be diminished precisely when the consequences of the executing authority's decision are most significant for that person's rights, that is, before surrender, when the executing judicial authority has yet to determine whether those rights will be adequately safeguarded. In other words, the effectiveness of the rule of speciality under Article 625(2) of the TCA requires that the executing judicial authority retain its ability to assess autonomously whether the sanction at issue is criminal in nature, rather than simply relying on the issuing State's classification. In the same vein, an autonomous interpretation would also ensure the effectiveness of Article 524(2) of the TCA. [60]

73. The Commission's submission that its approach protects fundamental rights equally effectively, without requiring an autonomous definition of 'offence', overlooks the fact that the rule of speciality under Article 625(2) of the TCA itself provides an essential procedural guarantee safeguarding fundamental rights, which ensures that the executing judicial authority defines the precise legal boundaries of the potential deprivation of liberty it authorises, thereby upholding the right to liberty, effective judicial protection and the principles of legality and foreseeability of penalties. If the interpretation of 'offence' were left to national classification, the executing authority would lose control over the boundaries of the protection afforded, thereby exposing the requested person to potential

59 This is in line with the Court's broader case-law. In the judgment of 14 November 2013, *Baláž* (C-60/12, EU:C:2013:733, paragraph 35), the Court held that, to safeguard the effectiveness of Framework Decision 2002/584, the classification of offences by Member States is not conclusive when interpreting provisions on jurisdiction in criminal matters. Likewise, in the judgment of 27 May 2014, *Spasic* (C-129/14 PPU, EU:C:2014:586, paragraph 77), the Court emphasised that, although EU law has not harmonised substantive or procedural criminal law, the principle *ne bis in idem* in Article 54 of the Schengen acquis – Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19) prevents impunity and promotes legal certainty. It pointed out that, in the absence of harmonisation, EU law provisions not expressly referring to domestic law must be interpreted autonomously and uniformly, in the light of their context and objectives.

60 Article 524(2) of the TCA provides that nothing in Part Three modifies the obligation to respect fundamental rights as reflected in the ECHR and, in the case of the European Union, in the Charter. That requires the interpretation of Article 625(2) of the TCA to be consistent with those instruments. Accordingly, if the issuing State could classify a sanction as civil, even where it is criminal in nature according to the standards of the ECHR and the Charter, the effectiveness of Article 524(2) of the TCA would be undermined. To avoid such a result, the term 'offence' in Article 625(2) of the TCA must be given an autonomous interpretation, consistent with the *Bonda* criteria, which ensures that all conduct giving rise to a charge that is criminal in substance falls within the protection of the rule of speciality.

deprivation of liberty or punishment in respect of conduct not covered by its surrender decision. An autonomous definition of the concept of 'offence', guided by the *Bonda* criteria and focusing on whether the sanction it carries is criminal in nature, is therefore indispensable for safeguarding those fundamental rights. [61]

74. As to the argument that the drafting of the TCA itself supports a broader reading, it should be noted that, on the one hand, other provisions in Part Three, such as Article 598(a), Article 600(a) and Article 601(d), expressly refer to 'criminal prosecution' or 'offence … under criminal law', and Article 599 thereof frames the double-criminality rule in those terms. On the other hand, Article 625(2) of the TCA uses the unqualified term 'offence'. The omission of the word 'criminal' suggests a deliberate choice to use the broader term 'offence', signalling a wider protective scope for the rule of speciality. However, some other non-English language versions do not confirm that the term 'offence' in Article 625(2) of the TCA is intended to encompass only criminal offences or also other forms of wrongful conduct. [62] The linguistic versions are thus not conclusive on this point, and the meaning of 'offence' cannot be determined by reference to a linguistic inference alone.

75. The term 'offence' under Article 625(2) of the TCA must be therefore construed in light of the context and purpose of that provision, which may justify a differentiated application of the concept of 'offence' within the agreement. Under the TCA, that concept may accordingly operate differently in two phases of the surrender system: it may be classified according to domestic law for the purpose of issuing a TCA arrest warrant, but interpreted autonomously when applying the rule of speciality in Article 625(2) of the TCA. Article 625(2) of the TCA thus functions as a protective guarantee shielding the person surrendered from prosecution, sentencing or otherwise deprivation of liberty for 'other offences'. That protective goal supports an autonomous interpretation of 'offence', in line with the *Bonda* criteria, so as to prevent the safeguard from being undermined by national legal classifications and to preserve the coherence and protective purpose of the TCA's surrender regime. [63]

61 On autonomous concepts of the ECHR, see Letsas, G, 'Autonomous concepts, conventionalism, and judicial discretion', in *A Theory of Interpretation of the European Convention on Human Rights*, online edition, Oxford Academic, Oxford, 2007, pp. 37 to 57).

62 For example, in the Italian version, the relevant provisions use the term *reato*, which ordinarily denotes a criminal offence in that legal system.

63 I should note that reliance on the issuing State's classification under Article 625(3)(g) and (4) of the TCA may prove problematic. Where certain conduct, such as contempt of court in the United Kingdom, is not regarded as a 'criminal offence' under domestic law, no post-surrender consent could be sought, even though the resulting sanction might, under an autonomous reading of Article 625(2), have precluded surrender. Because those provisions refer to 'offences' subject to surrender within Title VII of Part Three of the TCA, the consent mechanism may not extend to enforcement measures that are civil in form but criminal in nature, leaving the executing authority unable to authorise the resulting potential deprivation of liberty. Whether this structural gap can be closed through a purposive interpretation of 'offence'

76. The same logic applies with respect to the argument concerning the rule of double criminality. Ireland argues that the requirement of double criminality, set out in Article 599(2) of the TCA, shows that it is necessary to refer to the domestic law of both the issuing and the executing State in order to determine whether the conduct in question constitutes a criminal offence for the purposes of the agreement. In its view, Title VII of Part Three of the TCA thus proceeds on the assumption that only conduct classified as 'criminal' in the territory of the two States involved in the surrender procedure can be the subject of a warrant.

77. In that respect, I observe that Article 599(2) and Article 625(2) of the TCA regulate different stages of the surrender process and serve different purposes. Article 599(2) of the TCA, applying the rule of double criminality, concerns the admissibility of surrender for the conduct that forms the basis of the request for surrender. By contrast, Article 625(2) is a protective safeguard, preventing prosecution or otherwise deprivation of liberty for 'other offences' committed before surrender. In order to guarantee the protections granted by the Charter and to be effective, the rule of speciality requires an autonomous interpretation of 'offence', following the *Bonda* criteria. [64]

(2) The offences covered by the warrant

78. The rule of speciality, set out in Article 625(2) of the TCA, guarantees the right not to be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to surrender other than that for which the person was surrendered. Under the offence-based formulation of that provision, [65] civil contempt of court would ordinarily constitute an offence distinct from fraud, as it involves a separate legal characterisation and protects different interests. Accordingly, prosecuting, sentencing or detaining a person for contempt, without the consent of the requested State, would prima facie engage the rule of speciality. Conversely, there would be no breach of the rule of speciality where the alleged civil contempt is closely connected with, and implicit in, the course of conduct constituting the alleged fraud for which the arrest warrant was issued.

in Article 625(4) of the TCA, consistent with the rights-protection approach required by Article 625(2) of the TCA, remains open to interpretation.

64 As to the Commission's argument that there is no 'imperative need' for a teleological interpretation of 'offence' because the Charter applies in any event, it should be pointed out that the Charter's applicability and the scope of its procedural enforcement are distinct questions. Whereas the Charter ensures rights, the rule of speciality guarantees them procedurally. Only through an autonomous interpretation of 'offence', in Article 625(2) of the TCA, can the executing authority determine whether post-surrender prosecution, sentencing or deprivation of liberty falls outside the scope of the authorised deprivation of liberty – a determination essential for the effectiveness of Article 47 and Article 49(1) of the Charter. The Charter cannot itself replace the procedural safeguard designed to make its guarantees concrete and enforceable.

65 Article 625(2) of the TCA retains the traditional offence-based formulation (rather than a conduct-based one), focusing on whether a person is prosecuted, sentenced or deprived of liberty for an offence other than that for which surrender was granted.

3. The rule of speciality in practice

(a) Invocation as a pre-surrender objection

79. As clarified in the judgment in *Alchaster I*, the executing judicial authority must conduct an *ex ante* assessment of the compatibility of surrender with fundamental rights under Article 604(c) of the TCA. It follows that, where there is a substantiated risk of breach of the rule of speciality, the executing judicial authority cannot simply disregard that concern on the basis that the consent procedure under Article 625(4) of the TCA operates only after surrender.

80. If the executing judicial authority's assessment reveals a genuine risk that the person will be prosecuted, sentenced or otherwise deprived of liberty for offences other than those forming the basis of the surrender, there may be a breach of the person's essential procedural guarantees. Even in cases of potential rather than actual breaches of those guarantees, Article 625(2) of the TCA obliges the executing judicial authority to ensure that the person is not exposed to arbitrary prosecution or deprivation of liberty. Therefore, the executing judicial authority must take steps to eliminate that risk before authorising surrender.

81. This is precisely where Article 604(c) of the TCA, read in conjunction with Article 613(2) thereof, becomes relevant. That provision empowers the executing judicial authority to require adequate guarantees from the issuing State as a condition of surrender. In that way, the rule of speciality under Article 625(2) of the TCA and the possibility of requesting supplementary information under Article 604(c) of the TCA operate in combination. The former defines the substantive protection, while the latter provides the procedural mechanism by which the executing judicial authority is able to secure that protection in advance.

(b) The individual's right to rely on the rule of speciality

82. It may be observed that the rule of speciality under Article 625(2) of the TCA produces distinct legal effects for each actor. For the executing State, that rule secures the retention of control over the scope of the conduct in respect of which it authorises surrender by giving its judicial authority the power to withhold consent in individual cases, thereby safeguarding its sovereignty. For the issuing State, the rule imposes the obligation to respect the limits of the surrender decision: unless the requested person has waived that protection, the issuing State must either refrain from prosecuting, sentencing or detaining a person for 'other offences', seek the executing State's consent to do so or issue a new warrant. For the surrendered individual, the rule guarantees the right not to be prosecuted, sentenced or otherwise deprived of liberty in respect of conduct outside the scope of that for which surrender was authorised, ensuring legal certainty and protection against arbitrary deprivation of liberty.

83. It should be observed that the rule of speciality is drafted in clear, strict and prohibitive terms ('a person surrendered may not be prosecuted, sentenced or

otherwise deprived of liberty'). Therefore, in my view, Article 625(2) of the TCA establishes a clear guarantee (albeit one which is subject to certain exceptions [66]) that the person surrendered will not be prosecuted, sentenced or otherwise deprived of liberty by the issuing State for an offence committed prior to surrender other than that for which surrender was granted. [67]

84. Given the clear and precise terms in which Article 625(2) of the TCA is drafted, together with those limited and expressly defined exceptions, and its express recognition of the rights of the person surrendered, there is a strong argument that it meets the threshold to establish protection as a matter of EU fundamental rights.

85. Consequently, the legal effects of that provision are not confined to inter-State obligations but extend to establishing enforceable rights that have direct effect within the EU legal order, which are directly justiciable before the courts.

86. However, while Article 625(2) of the TCA may, as a matter of EU law, be invoked before the courts of Member States, as stated above, [68] it has no direct effect within the United Kingdom. That does not mean that the person surrendered is without judicial protection in that State, but rather that such protection is dependent on domestic law and cannot be based directly on the TCA. It follows that, at the surrender stage, the EU Courts themselves must ensure that the rule of speciality is respected and, where appropriate, require additional guarantees under Article 604(c) of the TCA, since that is the point at which compliance with Article 625(2) of the TCA can be guaranteed within the EU legal order itself.

(c) Substantive and procedural enforcement

87. A procedural breach of an individual's rights' occurs where that individual lacks an effective means to invoke the rule of speciality or to challenge a breach thereof. For instance, if the person must rely solely on diplomatic protection by the executing State, without having standing to bring an action before the courts of the issuing State, the protection of fundamental rights becomes purely theoretical. A brief comparative look at national legal systems illustrates, moreover, that the possibility to invoke the rule of speciality by the person concerned is generally verified by national courts, confirming its character as a guarantee enforceable by

66 See points 37 and 47 to 54 above.

67 Those exceptions include (i) the consent of the executing judicial authority, (ii) the waiver of the rule by the person surrendered, under Article 611(1) and (2) of the TCA, provided it is given voluntarily and in full awareness of the consequences, and (iii) the possibility of presumed consent through notifications under Article 625(1) of the TCA, unless the executing authority expressly excludes it in a particular case.

68 See point 37 above. It was established before the Court that individuals cannot invoke that provision as a treaty norm in the courts of the United Kingdom. Instead, Ireland pointed out that the rule of speciality only applies in the United Kingdom through national legislation, that is, the Extradition Act 2003.

individuals. [69] Hence, where a person would be able to invoke an alleged breach of the rule of speciality by the issuing State, the executing judicial authority may proceed with the surrender, as the individual's fundamental rights would remain effectively protected within that legal system. [70]

88. In the same vein, it should be considered that, under the TCA, both the content of the rule of speciality (substantive observance) and the ability to enforce it (procedural access to justice) are indispensable for ensuring compatibility with the fundamental rights standards arising from the Charter. Where either dimension is uncertain, the executing judicial authority cannot proceed with surrender. It has a duty to assess the foreseeable situation of the requested person in the United Kingdom.

89. In practice, it follows from the judgment in *Alchaster I* that, although Article 604(c) of the TCA does not expressly refer to refusal of surrender where guarantees are insufficient, the safeguard would be deprived of its effectiveness if a warrant were executed in circumstances where guarantees are not provided. Therefore, under that provision, the executing judicial authority, 'before [deciding] whether to execute the arrest warrant', retains the power – and the duty – [71] to withhold surrender where fundamental rights risks persist. [72]

90. Following that judgment, the executing judicial authority must take into account both the general legal framework and practice in the United Kingdom concerning respect for the rule of speciality, and the individual circumstances of the case – including any indication that the person might face prosecution,

69 See the order of the Bundesverfassungsgericht cited in footnote 50 above, where that court added in paragraph 60 that denying individual judicial protection contravenes Article 19(4) of the Grundgesetz (Basic Law), which guarantees access to an effective remedy, in circumstances where an extradited person cannot themselves invoke the rule of speciality, as is the case in the United States of America, following the decision in United States *v.* Suarez (U.S. Court of Appeals, Second Circuit, No 14-2378-cr, 30 June 2015). Similarly, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) limits its assessment as to the admissibility of an extradition from the Netherlands to another country only to cases where: (a) it appears that the person concerned would be exposed to a 'flagrant violation' of his or her rights; *and* (b) it has been sufficiently substantiated that, after the surrender, the person will not have a 'legal remedy' at his or her disposal in respect of that violation (Hoge Raad der Nederlanden (Supreme Court of the Netherlands), judgment of 7 September 2004 (00760/04 U, NL:HR:2004:AP1534)).

70 See, to that effect, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), judgment of 26 September 2023 (23/01346 U, NL:HR:2023:1315).

71 See Article 625(4), final sentence, of the TCA, that uses the term 'must', which infers that the executing judicial authority cannot proceed without the guarantees provided for in Article 604 of the TCA;

72 See, to that effect, paragraphs 76 and 77 of the judgment in *Alchaster I*. This interpretation is reinforced by the wording of that provision, which, as stated in paragraph 74, requires the executing judicial authority to obtain 'additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant', thereby confirming that it must assess – and, where necessary, decline – execution where those guarantees are inadequate.

sentencing or otherwise deprivation of liberty for offences other than those authorised by the surrender decision. If, after that examination, there remain substantial grounds on which belief that a breach of the rule of speciality is likely can be based, that authority must, before authorising surrender, either seek adequate guarantees from the issuing State or, where those guarantees are lacking or insufficient, refuse surrender altogether. [73] In particular, in paragraph 78 of the judgment in *Alchaster I*, the Court points out that the executing judicial authority called upon to rule on an arrest warrant issued on the basis of the TCA cannot order the surrender of the requested person if it considers, following a specific and precise examination of that person's situation, that there are valid reasons for believing that, if that person were surrendered to the United Kingdom, there would be a real risk that that person's fundamental rights would not be protected.

(d) Limits and conditions of invocation of the rule of speciality

91. The right to rely on the rule of speciality in pre-surrender proceedings is not unlimited. Article 625 of the TCA itself establishes certain conditions that shape the scope of its invocation. First, as mentioned above, [74] the right may be waived under Article 611(1) and (2) of the TCA. Second, Article 625(1) of the TCA allows the parties to notify the Specialised Committee that consent to prosecution for other offences will be presumed, subject to the executing judicial authority stating otherwise in a particular case. That mechanism requires the executing judicial authority to exercise vigilance when an individual invokes the rule of speciality, since presumed consent cannot operate automatically in the face of substantiated objections. Third, its invocation must be grounded in a substantiated risk: the executing judicial authority is not required to engage with hypothetical or speculative claims, but only with credible indications that the individual may be prosecuted, sentenced or otherwise deprived of liberty for offences in respect of which surrender was not authorised.

92. Together, those conditions ensure that the rule of speciality is not applied beyond its intended scope, while preserving the effectiveness of Article 625(2) of the TCA as an essential procedural guarantee. They ensure that its invocation remains a balanced mechanism: accessible to the individual where liberty is genuinely at stake, but structured in a way that respects the surrender mechanism under the TCA.

4. Interim conclusion

93. The rule of speciality under Article 625(2) of the TCA constitutes an essential procedural guarantee ensuring that the person surrendered is not prosecuted, sentenced or otherwise deprived of liberty for offences other than

73 The judgment in *Alchaster I*, paragraphs 78, 83 to 91 and 98.

74 See point 82 above.

those for which surrender is authorised by the executing judicial authority. The TCA forms part of EU law, which means that its interpretation must be consistent with the Charter, in particular Article 6, Article 47 and Article 49(1) thereof, which safeguard the right to liberty, effective judicial protection and the legality and foreseeability of penalties. Accordingly, the term 'offence' in Article 625(2) of the TCA cannot be interpreted solely according to the classification used by the issuing State, but must be given an autonomous interpretation, determined by reference to the *Bonda* criteria; in particular, the nature of the offence, its intrinsic character and the severity of the penalty. Since Article 625(2) of the TCA constitutes an enforceable right within the EU legal order, an individual must be able to rely on it as an objection to surrender being authorised. In case of a substantive or procedural breach of the rule of speciality, the executing judicial authority must intervene pursuant to Article 604(c) of the TCA to suspend or prevent surrender, as the absence of substantive observance or procedural enforceability of the rule of speciality would render the surrender incompatible with the Charter.

94. Accordingly, I propose that in response to the first four questions the Court should decide that Article 604(c) and Article 625(2) of the TCA, read in conjunction with Article 6, Article 47 and Article 49(1) of the Charter, must be interpreted as meaning that the rule of speciality constitutes an enforceable essential procedural guarantee, the breach or likely breach of which, assessed by reference to a concept of 'offence' that is autonomously defined, taking into account the legal classification under national law, the intrinsic nature of the offence, and the severity of the penalty, requires the executing judicial authority to make surrender conditional upon adequate guarantees from the issuing State that the person surrendered will not be prosecuted, sentenced or otherwise deprived of liberty for offences other than those for which that person was surrendered.

C. The fifth question

95. By its fifth question, the referring court asks whether Article 625(2) of the TCA must be interpreted as precluding the surrender of a requested person who has been sentenced to six months' deprivation of liberty for contempt of court, when surrender has not been sought for the purpose of serving that sentence, due to the issuing State classifying the contempt as civil and not criminal.

96. First, when considering the pre-surrender objection raised by the appellants, the executing judicial authority must determine whether the conduct or sanction in question, for example contempt of court, falls within the scope of Article 625(2) of the TCA. That requires an independent evaluation based on the *Bonda* criteria. [75] The fact that the sanction in respect of such conduct involves the deprivation of liberty, for example in the form of a six-month detention order,

[75] See points 71 to 77 above.

strongly suggests that it is criminal in nature for the purposes of Article 625(2) of the TCA, regardless of how it is classified by the issuing State.

97. Second, if the executing judicial authority determines that a conduct or a sanction is criminal in nature, that authority must then determine, on the basis of objective, reliable and specific information, whether there are substantial grounds for believing that the person would face prosecution, sentencing or otherwise deprivation of liberty for that conduct after surrender, in breach of Article 625(2) of the TCA.

98. If the rule of speciality is absent, ineffective or cannot be relied on by individuals – as may occur where the issuing State treats certain conduct (such as civil contempt) as being outside the criminal sphere – that factor already indicates a structural risk of infringement of Article 625(2) and Article 604(c) of the TCA, read in conjunction with Article 6, Article 47 and Article 49(1) of the Charter. Where the issuing State's law expressly excludes such conduct and the related sanctions from the protection of the rule of speciality, the risk becomes certain rather than hypothetical.

99. Third, if such a risk is identified, before authorising surrender, the authority must formally request adequate guarantees from the issuing State under Article 604(c) of the TCA. The executing judicial authority must then assess whether the guarantees offered are sufficient, to the effect that they rule out the risk of deprivation of liberty for conduct not set out in the warrant. If the guarantees eliminate the risk, surrender may be authorised. If the guarantees are absent, unclear or insufficient, the executing authority must suspend the surrender until satisfactory guarantees are provided. As a last resort, it must refuse the surrender where such guarantees continue to be lacking or insufficient. [76]

100. In that respect, under the TCA surrender regime, cooperation between the executing judicial authority and the issuing State's authorities is essential. In practice, such cooperation may take the form of judicial dialogue and the exchange of information under Article 604(c), enabling the executing judicial authority to request clarification or guarantees from the issuing State as to the scope of the offences, the applicable procedural safeguards or the respect of the rule of speciality. Where doubts persist, the issuing State may provide formal assurances addressing specific concerns, such as the limits of prosecution or the availability of effective remedies. That process allows both authorities to balance the individual's rights with the public interest in the effective administration of justice, ensuring that surrender proceeds only once adequate guarantees are in place. Subsequently, the executing judicial authority may need to assess whether

[76] See point 90 above.

the additional guarantees satisfy the requirements of Article 47 of the Charter, while also taking into account the victims' right to justice. [77]

101. That approach ensures that Article 625(2) of the TCA operates as an effective, enforceable safeguard against unauthorised prosecution or deprivation of liberty. It is consistent with Article 47 and Article 49(1) of the Charter, which require that surrender proceedings under the TCA be lawful and foreseeable, and provide effective judicial protection.

102. Lastly, I should point out that the referring court has stated that it is satisfied that the appellants, in being dealt with by the issuing State's court in respect of the restraint orders, received the full range of procedural protections guaranteed by Articles 6 and 13 ECHR. They appeared before an independent and impartial tribunal, were notified of the charges, were informed of the time and place of the hearing, were legally represented and had a right of appeal. Furthermore, the appellants had access to an effective remedy within the issuing State, as they were entitled to challenge the sentence through the appellate process. However, it appears from the file that the appellants were sentenced for contempt of court in their absence. This circumstance, which is for the referring court to verify, may be material, as it raises a distinct issue concerning their right to be present and to defend themselves. Even where the earlier proceedings satisfied the guarantees under Articles 6 and 13 ECHR, the imposition of a sentence *in absentia* necessitates consideration of whether the appellants were effectively informed of the hearing and whether they retain, upon surrender, the right to a retrial or an equivalent remedy in the issuing State.

103. In the light of the foregoing, I take the view that Article 604(c) and Article 625(2) of the TCA, read in conjunction with Article 6, Article 47 and Article 49(1) of the Charter, must be interpreted as meaning that the surrender of a requested person who has been sentenced to six months' deprivation of liberty for contempt of court, where such surrender has not been sought for the purpose of serving that sentence on the ground that such contempt is classified as civil under the law of the issuing State, is incompatible with EU law if, according to the executing judicial authority, that contempt is, in essence, criminal in nature and there are substantial grounds for believing that, after surrender, there would be substantial or procedural breach of the rule of speciality, insofar as the person

[77] See on the issue of duty to cooperate and rights of victims, by way of example, judgment *Güzelyurtlu and Others v. Cyprus and Turkey* (CE:ECHR:2019:0129JUD003692507, §§ 232-236) where the ECtHR stated that Article 2 ECHR (right to life) may create a two-way duty of cooperation between States when investigating unlawful killings, in order to elucidate the circumstances of a killing and bring the perpetrators to justice. Since that duty is an obligation of means, not of result, States must take all reasonable steps available under existing cooperation instruments. Relying on that judgment, in its judgment of 9 July 2019, *Romeo Castaño v. Belgium* (CE:ECHR:2019:0709JUD000835117, §§ 79-92), the ECtHR analyses, in essence, whether Belgium's refusal to cooperate unjustifiably undermined the applicants' procedural rights under Article 2 ECHR. The ECtHR accepts that a risk of Article 3 ECHR (the prohibition of inhuman or degrading treatment) violation can constitute a grounds for refusal to surrender, but stresses that such a risk must have a sufficient individualised, factual basis.

would be deprived of liberty in breach of the rule of speciality or that the person cannot invoke the rule of speciality; the executing judicial authority being required, before authorising the surrender, to obtain adequate additional guarantees from the issuing State that the person will not be prosecuted, sentenced or otherwise deprived of liberty for that contempt, failing which surrender must be refused.

VI. Conclusion

104. In view of all of the foregoing, I propose that the Court answer the questions referred by the Supreme Court (Ireland) as follows:

Article 604(c) and Article 625(2) 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, read in conjunction with Article 6, Article 47 and Article 49(1) of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that:

(1) The rule of speciality constitutes an enforceable essential procedural guarantee, the breach or likely breach of which, assessed by reference to a concept of 'offence' that is autonomously defined, taking into account the legal classification under national law, the intrinsic nature of the offence, and the severity of the penalty, requires the executing judicial authority to make surrender conditional upon adequate guarantees from the issuing State that the person surrendered will not be prosecuted, sentenced or otherwise deprived of liberty for offences other than those for which the person was surrendered.

(2) The surrender of a requested person who has been sentenced to six months' deprivation of liberty for contempt of court, where such surrender has not been sought for the purpose of serving that sentence on the ground that such contempt is classified as civil under the law of the issuing State, is incompatible with EU law if, according to the executing judicial authority, that contempt is, in essence, criminal in nature and there are substantial grounds for believing that, after surrender, there would be substantial or procedural breach of the rule of speciality, insofar as that person would be deprived of liberty in breach of the rule of speciality; the executing judicial authority being required, before authorising the surrender, to obtain adequate additional guarantees from the issuing State that the person will not be prosecuted, sentenced or otherwise deprived of liberty for that contempt, failing which surrender must be refused.