



Council of the  
European Union

Brussels, 31 August 2021  
(OR. en)

11308/21

**LIMITE**

**JUR 473**  
**JAI 918**  
**COPEN 338**

#### **INFORMATION NOTE**

---

From: Legal Service  
To: Permanent Representatives Committee (Part 2)  
Subject: Case before the Court of Justice of the European Union

- Case C-479/21 SN and THE GOVERNOR OF CLOVERHILL PRISON IRELAND
- Urgent preliminary reference from the Supreme Court of Ireland

---

1. As notified to the Council on 4 August 2021, the Supreme Court of Ireland submitted to the Court of Justice of the EU an urgent request for a preliminary ruling pursuant to Article 267 TFEU. The preliminary reference questions submitted seek to clarify whether UK Withdrawal Agreement and the Trade and Cooperation Agreement with the UK are binding on Ireland in the absence of Ireland having exercised an opt-in under Protocol No. 21 annexed to the Treaty on European Union ("TEU") and the Treaty on the Functioning of the European Union ("TFEU").

2. The preliminary reference questions have been formulated in two joint cases before the Supreme Court of Ireland where the defendants are subject of a European Arrest Warrant issued by a judicial authority of the United Kingdom, which seeks their surrender to the United Kingdom to serve prison sentence. Therefore, the questions specifically refer to the provisions included in Title VII of Part Three on "Surrender" of the Trade and Cooperation Agreement and of the UK Withdrawal Agreement. Those provisions contain a detailed framework for the surrender of requested persons between the Union and the United Kingdom, as a third country. They indicate that they "*shall apply in respect of European arrest warrants issued in accordance with Council Framework Decision 2002/584/JHA by a State before the end of the transition period where the requested person has not been arrested for the purpose of its execution before the end of the transition period*".

3. The questions referred by the Supreme Court of Ireland are the following:

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

- (a) Can the provisions of the Withdrawal Agreement, which provide for the continuance of the EAW regime in respect of the United Kingdom, during the transition period provided for in that agreement, be considered binding on Ireland having regard to its significant AFSJ content; and*
- (b) Can the provisions of the Agreement on Trade and Cooperation which provide for the continuance of the EAW regime in respect of the United Kingdom after the relevant transition period, be considered binding on Ireland having regard to its significant AFSJ content?"*

4. In essence, the Supreme Court of Ireland considers that the cases before it raise serious uncertainties affecting fundamental issues of national and Union law, recalling the defendants' arguments that seek to ascertain that Ireland benefits from a "*retention of sovereignty in an area through the means of a protocol*", which could be endangered if the Union were permitted to enter into sufficiently comprehensive agreements with any third country.
  5. Pursuant to Article 23 of the Protocol on the Statute of the Court of Justice, the Council is entitled to submit written observations to the Court in cases where the validity or interpretation of a Council act is in dispute; since this is such a case, the Council intends to exercise that right.
  6. The Director-General of the Council Legal Service has appointed Andrei STEFANUC, Krzysztof PLESNIAK, Jeanette CIANTAR, and Antonios ANTONIADIS, legal advisers in the Council Legal Service, as the Council's agents in this case.
-