Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

24 June 2019*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — European arrest warrant — Framework Decisions — No direct effect — Primacy of EU law — Consequences — Framework Decision 2002/584/JHA — Article 4(6) — Framework Decision 2008/909/JHA — Article 28(2) — Declaration by a Member State allowing it to continue to apply existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011 — Late declaration — Consequences)

In Case C-573/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 28 September 2017, received at the Court on 28 September 2017, in the proceedings relating to the execution of the European arrest warrant issued against

Daniel Adam Popławski,

other parties:

Openbaar Ministerie

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, M. Vilaras and C. Lycourgos (Rapporteur), Presidents of Chambers, M. Ilešič, J. Malenovský, L. Bay Larsen, C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 October 2018,

after considering the observations submitted on behalf of:

– Openbaar Ministerie, by K. van der Schaft and U.E.A. Weitzel, acting as Agents,

– Mr Popławski, by P.J. Verbeek and T.O.M. Dieben, advocaten,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

– the Spanish Government, by M. J. García-Valdecasas Dorrego, acting as Agent,

* Language of the case: Dutch.

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by R. Troosters, H. Krämer and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the principle of the primacy of EU law and of Article 28(2) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

2 The request has been made in connection with the execution in the Netherlands of a European arrest warrant ('EAW') issued by the Sąd Rejonowy w Poznaniu (District Court, Poznań, Poland) against Mr Daniel Adam Popławski with a view to enforcing a custodial sentence in Poland.

Legal context

EU law

Framework Decision 2002/584/JHA

3 Recitals 5, 7 and 11 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) state:

'(5) The objective set for the [European] Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

…

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition[, signed in Paris on 13 December 1957,] cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council [of the European Union] may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [TEU] and Article 5 [EC Treaty]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

…

(11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the 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, signed in Schengen on 19 June 1990 and entered into force on 26 March 1995 (OJ 2000 L 239, p. 19] which concern extradition.'

4 Article 1 of that Framework Decision provides:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

…'

5 Article 4 of that Framework Decision provides:

'The executing judicial authority may refuse to execute the European arrest warrant:

…

(6) if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.

…'

Framework Decision 2008/909

6 Article 3(1) of Framework Decision 2008/909 reads as follows:

'The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.'

7 Article 4(5) and (7) of that framework decision states:

'5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

…

7. Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

(a) if the sentenced person lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or

(b) if the sentenced person is a national of the executing State in cases other than those provided for in paragraph 1(a) and (b).

…'

8 Article 7(4) of that framework decision provides:

'Each Member State may, on adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.'

9 Article 25 of that framework decision provides:

'Without prejudice to Framework Decision [2002/584], provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.'

10 Under Article 26(1) of Framework Decision 2008/909:

'Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

– The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;

– The European Convention on the International Validity of Criminal Judgments of 28 May 1970;

– Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;

– The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.'

11 Article 28 of that framework decision provides:

'1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.'

Netherlands law

12 The Overleveringswet (Law on surrender) of 29 April 2004 (Stb. 2004, No 195, 'the OLW'), which transposes into Netherlands law Framework Decision 2002/584, provides in Article 6:

'1. The surrender of a Netherlands national may be permitted provided that he is sought for the purposes of a criminal investigation against him and that, in the view of the executing judicial authority, it is guaranteed that, if he receives an unconditional custodial sentence in the issuing Member State in relation to acts for which surrender may be permitted, he may serve that sentence in the Netherlands.

2. The surrender of a Netherlands national shall not be permitted if that surrender is sought for the purposes of execution of a custodial sentence imposed on him by final judicial decision.

…

4. The public prosecutor shall immediately inform our minister of … any refusal to surrender communicated with the declaration, referred to in paragraph 3, to the effect that the Kingdom of the Netherlands is willing to assume responsibility for executing the foreign judgment.

5. Paragraphs 1 to 4 shall also apply to a foreign national in possession of a residence permit of indefinite duration, in so far as he may be prosecuted in the Netherlands for the offences on which the EAW is based and in so far as he can be expected not to forfeit his right of residence in the Netherlands as a result of any sentence or measure which may be imposed on him after surrender.'

13 Article 6(3) of the OLW, in the version applicable until the entry into force of the Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties (Law on the mutual recognition and enforcement of custodial and suspended sentences) of 12 July 2012 (Stb. 2012, No 333, 'the WETS'), which implements Framework Decision 2008/909, provided:

'Where surrender is refused solely on the basis of Article 6(2) …, the public prosecutor shall notify the issuing judicial authority that it is willing to execute the judgment in accordance with the procedure laid down in Article 11 of the Convention on the Transfer of Sentenced Persons, signed in Strasbourg on 21 March 1983, or on the basis of another applicable convention.'

14 Since the WETS came into force, Article 6(3) of the OLW is worded as follows:

'Where surrender is refused solely on the ground of Article 6(2) …, the public prosecutor shall notify the issuing judicial authority that it is willing to assume responsibility for executing the judgment.'

15 Article 5:2 of the WETS provides:

‘1. [The WETS] replaces the [Wet overdracht tenuitvoerlegging strafvonnissen (Law on the transfer of enforcement of judgments in criminal matters)] in relations with the Member States of the European Union.

…

3. [The WETS] shall not apply to judicial decisions which became final before 5 December 2011.

…’

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

16 By a judgment of 5 February 2007, which became final on 13 July 2007, the Sąd Rejonowy w Poznaniu (District Court, Poznań) imposed a one-year suspended custodial sentence on Mr Popławski, who is a Polish national. By decision of 15 April 2010, that court ordered the execution of that sentence.

17 On 7 October 2013, that court issued an EAW against Mr Popławski for the purposes of executing that sentence.

18 In the main proceedings relating to the execution of that EAW, the rechtbank Amsterdam (District Court, Amsterdam, the Netherlands) asked whether it had to apply Article 6(2) and (5) of the OLW which provides an automatic ground for non-execution of an EAW in favour of, inter alia, persons residing in the Netherlands, as is the case with Mr Popławski.

19 By a decision of 30 October 2015, the referring court made a first request for a preliminary ruling to the Court of Justice, in the context of which it observed that, under Article 6(3) of the OLW, in the version applicable until the entry into force of the WETS, where the Kingdom of the Netherlands refuses, pursuant to Article 6(2) and (5) of the OLW, to execute an EAW, it must state that it is ‘willing’ to take over the execution of the sentence on the basis of a convention in force between it and the issuing Member State. It stipulated that, in accordance with the provisions of the convention applicable to relations between the Republic of Poland and the Kingdom of the Netherlands, enforcement of the sentence in the Netherlands had to be preceded by a request to that effect made by the Republic of Poland and that Polish legislation precluded such a request being made in respect of Polish nationals.

20 In that decision, the referring court observed that, in such a situation, a refusal to surrender could lead to the impunity of the person to whom the EAW applies. After pronouncement of the judgment refusing the surrender, it may prove impossible to take over execution of the sentence, because there has been no request to that end from the Polish authorities.

21 The referring court also expressed doubts as to whether Article 6(2) to (4) of the OLW is compatible with Article 4(6) of Framework Decision 2002/584 which permits a refusal to surrender only if the executing Member State ‘undertakes’ to execute the sentence in accordance with its domestic law.

22 By its judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), the Court of Justice held that Article 4(6) of Framework Decision 2002/584 must be interpreted as meaning that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to

inform the judicial authorities of the second Member State that they are willing to take over the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged.

23 In the same judgment, the Court held that the provisions of Framework Decision 2002/584 do not have direct effect. However, it observed that the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, is obliged to interpret the provisions of national law concerned, so far as is possible, in the light of the wording and the purpose of that framework decision, which in the present case means that, in the event of a refusal to execute an EAW issued with a view to the surrender of a person who has been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State are themselves required to ensure that the sentence pronounced against that person is actually executed (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503).

24 In the order for reference, the referring court states that it is apparent from that judgment that Article 6(2), (3) and (5) of the OLW is contrary to Article 4(6) of Framework Decision 2002/584.

25 According to the referring court, it also follows from the judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), that EU law does not preclude an interpretation of Article 6(3) of the OLW, in the version applicable until the entry into force of the WETS, according to which Article 4(6) of Framework Decision 2002/584 provides the legal basis required by that national provision for enforcement of the sentence, bearing in mind that Article 4(6), unlike international conventions applicable to relations with the Republic of Poland, does not require a request for enforcement from the authorities which issued the EAW, in the present case the Polish authorities, and that therefore such an interpretation of Article 6(3) of the OLW would make it possible to ensure that the custodial sentence is actually enforced in the Netherlands.

26 However, the Minister van Veiligheid en Justitie (Minister of Security and Justice, Netherlands) ('the Minister'), who is the competent organ of State under Netherlands law for enforcement of the sentence, considered that Framework Decision 2002/584 was not a convention for the purposes of Article 6(3) of the OLW in the version applicable until the entry into force of the WETS.

27 The referring court considers that, irrespective of whether the Minister's interpretation is correct, it cannot, in those circumstances, conclude that that interpretation will ensure that the sentence pronounced against Mr Popławski will actually be enforced in the Netherlands.

28 The referring court is therefore unsure whether, under the principle of the primacy of EU law, it can disapply the provisions of Netherlands law which are incompatible with the provisions of a framework decision, even if the latter provisions do not have direct effect. It states that, if it disapplied Article 6(2) and (5) of the OLW, there would no longer be any ground for refusing to surrender Mr Popławski to the Polish authorities.

29 Moreover, the referring court is unsure whether Article 6(3) of the OLW, as amended by the WETS, may be applied to the dispute in the main proceedings, bearing in mind that, since that amendment, that provision no longer refers to a basis in the convention for the actual enforcement of the sentence in the Netherlands.

30 It is true that that court states that, by virtue of Article 5:2(3) of the WETS, its provisions, which transpose Framework Decision 2008/909, do not apply to court decisions which became final before 5 December 2011, as is the case with the decision which imposed a custodial sentence on Mr Popławski. The referring court states, however, that Article 5:2(3) of the WETS implements the declaration made by the Netherlands pursuant to Article 28(2) of Framework Decision 2008/909 and

that the Court of Justice has not ruled on the validity of that declaration, in particular on the fact that it might have been out of time, in so far as that declaration was not made until after that framework decision was adopted.

31 That court states that, if that declaration were found to be invalid, the national provisions transposing Framework Decision 2008/909, including Article 6 of the OLW, as amended by the WETS, would apply, in accordance with Article 26 of that framework decision, to the enforcement of the EAW issued against Mr Popławski.

32 However, the application of those national provisions to the dispute in the main proceedings assumes that Article 5:2(3) of the WETS may be interpreted in accordance with Framework Decision 2008/909 and, conversely, that that court may disapply that provision by virtue of the principle of the primacy of EU law. In addition, it should be ascertained that, in the event of a refusal to surrender based on Article 6 of the OLW, as amended by the WETS, the sentence would actually be executed in the Netherlands.

33 If so, it could refuse to surrender Mr Popławski and the sentence could be executed in the Netherlands, in accordance with Article 6(2) and (5) of the OLW and with Article 4(6) of Framework Decision 2002/584.

34 It was in those circumstances that the rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) If the executing judicial authority cannot interpret the national provisions implementing a framework decision in such a way that their application leads to an outcome in conformity with the framework decision, must it then, in accordance with the primacy principle, disapply those national provisions not in conformity with that framework decision?

(2) Does a declaration of a Member State within the meaning of Article 28(2) of Framework Decision 2008/909, which it did not make “on the adoption of this Framework Decision”, but at a later date, have legal effect?’

Consideration of the questions referred

The second question

35 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 28(2) of Framework Decision 2008/909 must be interpreted as meaning that a declaration made pursuant to that provision by a Member State after that framework decision was adopted is capable of producing legal effects.

36 According to Article 3(1), the purpose of Framework Decision 2008/909 is to set the rules which make it possible for a Member State, with a view to facilitating the social rehabilitation of the sentenced person, to recognise a judgment and enforce the sentence pronounced by a court in another Member State. It follows from Article 25 of that framework decision that it applies, *mutatis mutandis* in so far as its provisions are compatible with the provisions of Framework Decision 2002/584, to the enforcement of sentences in cases where a Member State undertakes to enforce the sentence pursuant to Article 4(6) of that framework decision.

37 In accordance with Article 26, as of 5 December 2011 Framework Decision 2008/909 replaces the provisions of the conventions on the transfer of sentenced persons referred to in that article, applicable in relations between the Member States. It is also apparent from Article 28(1) of that framework decision that requests for the recognition and enforcement of a sentence received as from 5 December 2011 are no longer to be governed by existing legal instruments on the transfer of sentenced persons, but by the rules adopted by the Member States pursuant to that framework decision.

38 However, Article 28(2) of Framework Decision 2008/909 allows each Member State, at the time of the adoption of that framework decision, to make a declaration indicating that it will continue to apply, as an issuing and an executing State, the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011 in cases where the final sentence was pronounced before the date which that Member State sets, provided that that date is not later than 5 December 2011. Where a Member State makes such a declaration, those instruments will apply in cases covered by that declaration to all the other Member States, whether or not those Member States have made the same declaration.

39 Decision 2008/909 was adopted on 27 November 2008. On 24 March 2009, the Kingdom of the Netherlands sent a declaration to the Council pursuant to Article 28(2) of that framework decision (OJ 2009 L 265, p. 41), in which that Member State indicated that it would apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011 for all cases where the final sentence is pronounced before that date.

40 It is apparent from the information provided by the referring court that, after the submission of the request for a preliminary ruling examined in the present case, that declaration was withdrawn by the Kingdom of the Netherlands with effect from 1 June 2018. Nevertheless, the referring court considered that it was necessary to retain its second question on the ground, inter alia, that the Republic of Poland had itself made a declaration under Article 28(2) of Framework Decision 2008/909 after the date on which that framework decision was adopted, meaning that that declaration might also have been out of time.

41 In that regard, it should be recalled that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26 and the case-law cited).

42 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27 and the case-law cited).

43 In the present case, despite the withdrawal of the declaration made under Article 28(2) of Framework Decision 2008/909 by the Kingdom of the Netherlands, the conditions which may lead the Court to refuse to rule on the question referred have not been met.

44 Suffice it to state that the question whether the declaration made by the Republic of Poland produces legal effects may be important in the dispute in the main proceedings, given that, in accordance with Article 28(2) of Framework Decision 2008/909, such a declaration requires other Member States, in

their relations with the Republic of Poland, to continue to apply, in the cases laid down by that declaration, the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011.

45 As to the substance, it should be stated that Article 28(2) of Framework Decision 2008/909 derogates from the general arrangements laid down in Article 28(1) of that framework decision and that the implementation of that derogation is, moreover, unilaterally entrusted to each Member State. It follows that that provision must be given a strict interpretation (see, to that effect, judgment of 25 January 2017, *van Vemde*, C-582/15, EU:C:2017:37, paragraph 30).

46 It is apparent from the actual wording of that provision that the declaration to which it refers must be made by the Member State on the date that framework decision is adopted. It follows that a declaration made after that date does not satisfy the conditions expressly laid down by the EU legislature for that declaration to produce legal effects.

47 Such an interpretation is supported by the general scheme of Framework Decision 2008/909. As the Advocate General stated in paragraph 47 of his Opinion, where the EU legislature intended to allow a declaration to be made, not only when that framework decision is adopted, but also subsequently, such a power was expressly laid down by that framework decision, as is illustrated by Article 4(7) and Article 7(4) thereof.

48 It should also be observed that, contrary to what the Netherlands Government argues in its written observations, the mere fact that a Member State, when that framework decision is adopted or sometime before it is drawn up, expresses its intention to make a declaration in accordance with Article 28(2) of that framework decision does not amount to a declaration for the purposes of that provision. Such a declaration, unlike a mere declaration of intent, must reveal unambiguously the date of delivery of the final sentences which the Member State concerned intends to have excluded from the application of that framework decision.

49 In the light of the foregoing considerations, the answer to the second question is that Article 28(2) of Framework Decision 2008/909 must be interpreted as meaning that a declaration made pursuant to that provision by a Member State, after that framework decision was adopted, is not capable of producing legal effects.

The first question

50 By its first question, the referring court asks in essence whether the principle of the primacy of EU law must be interpreted as meaning that it imposes an obligation on a Member State court to disapply a provision of the law of that State which is incompatible with the provisions of a framework decision.

51 It is apparent from the documents before the Court that the referring court wishes to ascertain in particular whether it is possible to disregard the application of national provisions which it considers to be contrary to Framework Decisions 2002/584 and 2008/909.

52 In order to answer that question, it should be noted, in the first place, that EU law is characterised by the fact that it stems from an independent source of law, the Treaties, by its primacy over the laws of the Member States and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves. These essential characteristics of EU law have given rise to a structured network of principles, rules and mutually interdependent legal relations linking the EU and its Member States, and its Member States with each other (see, inter alia, Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraphs 166 and 167; judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 45; and Opinion 1/17, of 30 April 2019, EU:C:2019:341, paragraph 109).

53 The principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States (judgment of 15 July 1964, *Costa*, 6/64, EU:C:1964:66, pp. 1159 and 1160).

54 That principle therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (see, to that effect, judgments of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 59, and of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, point 39).

55 In that regard, it should be pointed out that the principle that national law must be interpreted in conformity with EU law, by virtue of which the national court is required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, is inherent in the system of the treaties, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it (judgments of 19 December 2013, *Koushkaki*, C-84/12, EU:C:2013:862, paragraphs 75 and 76; of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 59; and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 31).

56 Similarly, the full effectiveness of EU rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain reparation when their rights are infringed by a breach of EU law for which a Member State can be held responsible (judgment of 19 November 1991, *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, paragraph 33).

57 It follows from the foregoing that, in order to ensure the effectiveness of all provisions of EU law, the primacy principle requires, inter alia, national courts to interpret, to the greatest extent possible, their national law in conformity with EU law and to afford individuals the possibility of obtaining redress where their rights have been impaired by a breach of EU law attributable to a Member State.

58 It is also in the light of the primacy principle that, where it is unable to interpret national law in compliance with the requirements of EU law, the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means (see, to that effect, judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 35 and the case-law cited).

59 That said, account should also be taken of the other essential characteristics of EU law and, more particularly, the fact that only some of the provisions of that law have direct effect.

60 Thus, the principle of the primacy of EU law cannot have the effect of undermining the essential distinction between provisions of EU law which have direct effect and those which do not and, consequently, of creating a single set of rules for the application of all of the provisions of EU law by the national courts.

61 In that regard, it should be pointed out that any national court, hearing a case within its jurisdiction, has, as an organ of a Member State, the obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before it (see, to that effect, judgments of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 55 and the case-law cited; of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 41; and of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 75).

62 On the other hand, a provision of EU law which does not have direct effect may not be relied on, as such, in a dispute coming under EU law in order to disapply a provision of national law that conflicts with it.

63 Thus the national court is not required, solely on the basis of EU law, to disapply a provision of national law which is incompatible with a provision of the Charter of Fundamental Rights of the European Union which, like Article 27, does not have direct effect (see, to that effect, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraphs 46 to 48).

64 Similarly, reliance on a provision of a directive which is not sufficiently clear, precise and unconditional to confer on it direct effect may not, solely on the basis of EU law, lead to a provision of national law being disapplied by a court of a Member State (see, to that effect, judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 41; of 6 March 2014, *Napoli*, C-595/12, EU:C:2014:128, paragraph 50; of 25 June 2015, *Indėlių ir investicijų draudimas and Nemaniūnas*, C-671/13, EU:C:2015:418, paragraph 60; and of 16 July 2015, *Larentia + Minerva and Marenave Schiffahrt*, C-108/14 and C-109/14, EU:C:2015:496, paragraphs 51 and 52).

65 In addition, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against that individual before a national court (see, to that effect, judgments of 26 September 1996, *Arcaro*, C-168/95, EU:C:1996:363, paragraph 36 and the case-law cited; of 17 July 2008, *Arcor and Others*, C-152/07 to C-154/07, EU:C:2008:426, paragraph 35; and of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 72 and the case-law cited).

66 It should be recalled that, in accordance with the third paragraph of Article 288 TFEU, the binding nature of a directive, which constitutes the basis for the possibility of relying on it, exists only in relation to 'each Member State to which it is addressed' and that the European Union has the power to enact, in a general and abstract manner, obligations for individuals with immediate effect, only where it is empowered to adopt regulations (see, to that effect, judgments of 12 December 2013, *Portgás*, C-425/12, EU:C:2013:829, paragraph 22, and of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 72).

67 It follows from the foregoing that, even a clear, precise and unconditional provision of a directive does not allow a national court to disapply a provision of its national law which conflicts with it, if, in doing so, an additional obligation were to be imposed on an individual (see, to that effect, judgments of 3 May 2005, *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraphs 72 and 73; of 17 July 2008, *Arcor and Others*, C-152/07 to C-154/07, EU:C:2008:426, paragraphs 35 to 44; of 27 February 2014, *OSA*, C-351/12, EU:C:2014:110, paragraphs 46 and 47; of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, point 49; and of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 73).

68 As confirmed by the case-law recalled in paragraphs 64 to 67 above, a national court's obligation to disapply a provision of its national law which is contrary to a provision of EU law, if it stems from the primacy afforded to the latter provision, is nevertheless dependent on the direct effect of that provision in the dispute pending before that court. Therefore, a national court is not required, solely on the basis of EU law, to disapply a provision of its national law which is contrary to a provision of EU law if the latter provision does not have direct effect.

69 It should be stated, in the second place, that neither Framework Decision 2002/584 nor Framework Decision 2008/909 has direct effect. That is because those framework decisions were adopted on the basis of the former third pillar of the European Union, in particular, under Article 34(2)(b) EU. That provision stated, first, that framework decisions are binding on the Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods, and, second, that

framework decisions are not to entail direct effect (judgments of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 56, and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 26).

70 In that regard, it is important to point out that, in accordance with Article 9 of Protocol (No 36) on transitional provisions, annexed to the treaties, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon are to be preserved until those acts are repealed, annulled or amended in implementation of the treaties. Since Framework Decisions 2002/584 and 2008/909 have not been subject to any such repeal, annulment or amendment, they continue therefore to have the legal effect attributed to them under Article 34(2)(b) EU (judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 57).

71 Since those framework decisions do not have direct effect under the EU Treaty itself, it follows from paragraph 68 above that a court of a Member State is not required, solely on the basis of EU law, to disapply a provision of its national law which is contrary to those framework decisions.

72 In the third place, it should be recalled that, although the framework decisions cannot have direct effect, their binding character nevertheless places on national authorities an obligation to interpret national law in conformity with EU law as from the date of expiry of the period for the transposition of those framework decisions (judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 58 and 61).

73 When applying national law, those authorities are therefore required to interpret it, to the greatest extent possible, in the light of the text and the purpose of the framework decision in order to achieve the result sought by that decision (see, to that effect, judgments of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraph 43; of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 54; of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 59; and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 31).

74 However, the principle of interpreting national law in conformity with EU law has certain limits.

75 Thus, the general principles of law, in particular the principles of legal certainty and non-retroactivity, preclude inter alia that obligation to interpret national law in conformity with EU law from leading to the criminal liability of individuals being determined or aggravated, on the basis of a framework decision alone, in the absence of any legislation implementing its provisions, where they committed an infringement (judgments of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 63 to 64 and the case-law cited, and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 32).

76 Similarly, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 33 and the case-law cited). In other words, the obligation to interpret national law in conformity with EU law ceases when the former cannot be applied in a way that leads to a result compatible with that envisaged by the framework decision concerned (judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 66).

77 That being so, the principle that national law must be interpreted in conformity with EU law requires that the whole body of domestic law be taken into consideration and that the interpretative methods recognised by domestic law be applied, with a view to ensuring that the framework decision concerned is fully effective and to achieving an outcome consistent with the objective pursued by it (see, to that effect, judgments of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 56; of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 34; and of 12 February 2019, *TC*, C-492/18 PPU, EU:C:2019:108, paragraph 68).

78 In that context, the Court has already held that the obligation to interpret domestic law in conformity with EU law requires national courts to change established case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a framework decision and to disapply, on their own authority, the interpretation adopted by a higher court which it must follow in accordance with its national law, if that interpretation is not compatible with the framework decision concerned (see, to that effect, judgments of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 33, and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraphs 35 and 36).

79 Consequently, a national court cannot validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (judgments of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 69, and of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 60) or is applied in such a manner by the relevant national authorities.

80 In the present case, with regard to the obligation to interpret Netherlands law, and more particularly the OLW, in conformity with Framework Decision 2002/584, the following should be noted.

81 In paragraph 37 of the judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), the Court found that the national court's obligation to ensure the complete effectiveness of Framework Decision 2002/584 brings with it the obligation for the Kingdom of the Netherlands to execute the EAW at issue in the main proceedings or, in the event of a refusal, the obligation to ensure that the sentence pronounced in Poland against Mr Popławski is actually executed in the Netherlands.

82 It should be observed that the impunity of the requested person would be incompatible with the objective pursued both by Framework Decision 2002/584 (see, to that effect, judgments of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 23, and of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 47) and by Article 3(2) TEU, under which the European Union offers its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures, in particular with respect to external border controls and the prevention and combating of crime (judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 86).

83 The Court also stated that, since the obligation referred to in paragraph 81 above has no bearing on the determination of Mr Popławski's criminal liability which stems from the judgment pronounced against him on 5 February 2007 by the Sąd Rejonowy w Poznaniu (District Court, Poznań) it cannot, a fortiori, be regarded as aggravating that liability, within the meaning of paragraph 75 above (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 37).

84 It is apparent from the documents before this Court that the referring court, unless it resorts to an interpretation *contra legem*, seems to rule out the possibility that the OLW may be applied in such a way that the EAW at issue in the main proceedings is enforced and that Mr Popławski is surrendered to the Polish judicial authorities.

85 Therefore, if the outcome of an interpretation of national law is that the enforcement of the EAW issued against Mr Popławski actually proves to be impossible, which is a matter for the referring court to establish, it falls again to that court to interpret the relevant Netherlands legislation, and in particular Article 6 of the OLW, upon which Mr Popławski's surrender to the Polish authorities is refused, to the greatest extent possible in such a way that the application of that legislation makes it possible, by the sentence pronounced against Mr Popławski actually being executed in the Netherlands, to avoid his impunity and thus to produce a solution that is compatible with the objective pursued by Framework Decision 2002/584, as recalled in paragraph 82 above.

86 In that regard, as the Court stated in paragraph 23 of its judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), legislation of a Member State, such as Article 6 of the OLW, which implements the ground for optional non-execution of an EAW in order to execute a custodial sentence or detention order contained in Article 4(6) of Framework Decision 2002/584 by providing that the judicial authorities of that Member State are, in any event, obliged to refuse to execute an EAW if the requested person resides in that State, without those authorities having any margin of discretion and without that Member State actually undertaking to execute the custodial sentence pronounced against that requested person, thereby creating a risk of impunity of that person, cannot be regarded as compatible with that framework decision.

87 In those circumstances, it should be stated that the Court, when called on to provide answers that are of use to the national court in the context of a reference for a preliminary ruling, may offer clarification intended to provide the national court with guidance and indicate to it which interpretation of national law would fulfil its obligation to interpret that law in conformity with EU law (judgment of 17 October 2018, *Klohn*, C-167/17, EU:C:2018:833, paragraph 68).

88 In the present case, with regard, first of all, to the obligation, laid down in Article 4(6) of Framework Decision 2002/584 and recalled to in paragraph 86 above, to ensure, in the event of a refusal to execute the EAW, that the custodial sentence is actually enforced by the executing Member State, it should be pointed out that that obligation presupposes an actual undertaking on the part of that State to execute the custodial sentence imposed on the requested person, even though, in any event, the mere fact that that Member State declares itself 'willing' to execute the sentence could not be regarded as justifying such a refusal. It follows that any refusal to execute an EAW must be preceded by the executing judicial authority's examination of whether it is actually possible to execute the sentence in accordance with its domestic law (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 22).

89 It is apparent from paragraph 38 of the judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), that, according to the referring court, the declaration, in which the Openbaar Ministerie (Public Prosecutor, Netherlands) informed the issuing judicial authority that, pursuant to Article 6(3) of the OLW in the version applicable until the entry into force of the WETS, it was willing to take over the execution of the sentence on the basis of the EAW at issue in the main proceedings, cannot be interpreted as constituting an actual undertaking on the part of the Kingdom of the Netherlands to execute that sentence, unless Article 4(6) of Framework Decision 2002/584 can be regarded as a formal legal basis, for the purposes of Article 6(3) of the OLW, for the actual execution of such a sentence in the Netherlands.

90 Although it falls to the referring court to assess whether Netherlands law may be interpreted as meaning that Framework Decision 2002/584 may be treated as a formal legal basis for the purposes of applying Article 6(3) of the OLW in the version applicable until the entry into force of the WETS, the Court has already held that EU law does not preclude such treatment.

91 First, as is apparent from the Court's case-law, according to recitals 5, 7 and 11 and Article 1(1) and (2) of Framework Decision 2002/584, in relations between Member States, that decision replaces all the previous instruments concerning extradition, including the conventions which existed between the different Member States. In addition, given that that framework decision coexists, whilst having its own legal arrangements defined by EU law, with the extradition conventions in force between the various Member States and third States, it is not inconceivable that that framework decision could be placed on the same footing as such a convention (see, to that effect, judgments of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 41, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 39).

92 Secondly, the Court also held that Framework Decision 2002/584 does not contain any provision which leads to the conclusion that it precludes the term 'another applicable convention' in Article 6(3) of the OLW, in the version applicable until the entry into force of the WETS, from being interpreted as meaning that it also covers Article 4(6) of that framework decision, provided that such an interpretation would ensure that the discretionary power of the executing judicial authority to refuse to execute the EAW is exercised only on condition that the sentence pronounced against Mr Popławski is in fact executed in the Netherlands, and a solution that is compatible with the purpose of that framework decision is thus achieved (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 42).

93 It is apparent from the request for a preliminary ruling that the referring court confirms that such treatment would make it possible, according to its interpretation of Netherlands law, to ensure that the sentence handed down to Mr Popławski is actually executed in the Netherlands. Nevertheless, it states that the Minister, called on to intervene in the main proceedings by virtue of Article 6(4) of the OLW, considers that Framework Decision 2002/584 was not a convention for the purposes of Article 6(3) of the OLW in the version applicable until the entry into force of the WETS.

94 In that regard, it should be recalled first that, as was stated in paragraph 72 above, the obligation to interpret national law in conformity with Framework Decision 2002/584 binds all Member State authorities, including, in the present case, the Minister. The Minister, like the judicial authorities, is therefore required to interpret Netherlands law, to the greatest extent possible, in the light of the text and the purpose of the framework decision, in such a way that, by the sentence pronounced against Mr Popławski being enforced in the Netherlands, the effectiveness of Framework Decision 2002/584 is preserved, which is guaranteed by the interpretation of Article 6(3) of the OLW in the version applicable until the entry into force of the WETS, recalled in paragraph 92 above.

95 Secondly, the fact that an interpretation of national law which is incompatible with EU law is endorsed by the Minister in no way impedes the referring court's obligation to interpret domestic law in conformity with EU law.

96 This is all the more so since Framework Decision 2002/584 creates a mechanism for cooperation between the judicial authorities of the Member States and the decision on the execution of the EAW must be taken by a judicial authority that meets the requirements inherent in effective judicial protection, including the guarantee of independence, so that the entire procedure provided for by the framework decision is carried out under judicial supervision (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 56). It follows that, since the Minister is not a judicial authority for the purposes of the framework decision (see, to that effect, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 45), the decision on the execution of the EAW made against Mr Popławski cannot depend on the Minister's interpretation of Article 6(3) of the OLW.

97 Consequently, the referring court cannot, in the main proceedings, validly claim that it is impossible for it to interpret Article 6(3) in a manner that is compatible with EU law, for the sole reason that that provision has been interpreted, by the Minister, in a way that is not compatible with EU law (see, by analogy, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 69).

98 It follows from the foregoing that, although the referring court concluded that Framework Decision 2002/584, in accordance with the methods of construction recognised by Netherlands law, may be treated as a convention for the purposes of the application of Article 6(3) of the OLW in the version applicable until the entry into force of the WETS, it is required to apply that provision, as interpreted, to the dispute in the main proceedings, without having regard to the fact that the Minister is opposed to that interpretation.

99 Next, with regard to the obligation, laid down in Article 4(6) of Framework Decision 2002/584 and referred to in paragraph 86 above, to ensure that the executing judicial authority has a margin of discretion in the implementation of the ground for optional non-execution of the EAW provided for in that provision, it should be recalled, first of all, that that authority must be able to take into consideration the objective pursued by the ground for optional non-execution set out in that provision, which, according to the Court's well-established case-law, means enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 21).

100 It follows that the option conferred on the executing judicial authority to refuse, on the basis of Article 4(6), to surrender the requested person may be exercised only if that authority, after having ascertained, first, that the person is staying in, or is a national or a resident of the executing Member State and, second, that the custodial sentence passed in the issuing Member State against that person can actually be enforced in the executing Member State, considers that there is a legitimate interest which would justify the sentence imposed in the issuing Member State being enforced in the executing Member State (judgment of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 37).

101 Therefore, it falls primarily to the referring court to interpret its national law, to the greatest extent possible, in conformity with the requirement set out in the preceding paragraph.

102 At the very least, that court should interpret its national law in a way that makes it possible for it to reach a solution which, in the main proceedings, is not contrary to the objective pursued by Framework Decision 2002/584. The obligation to interpret national law in conformity with EU law persists for as long as the former can be applied in a way that leads to a result which is compatible with that envisaged by that framework decision (see, to that effect, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 66).

103 In that regard, it is apparent from the conditions governing the implementation of the ground for optional non-execution of the EAW, provided for in Article 4(6) of Framework Decision 2002/584, that the EU legislature wanted to avoid any risk of impunity of the requested person (see, to that effect, judgment of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 47), in accordance with the general purpose of that framework decision, as was stated in paragraph 82 above.

104 An interpretation of Article 6 of the OLW by which the referring court may not, under any circumstances, execute the EAW issued against Mr Popławski does not necessarily preclude the removal of any risk of impunity as regards Mr Popławski and therefore the fulfilment of both the objective pursued by that framework decision and the obligation which it imposes, in the present case on the Kingdom of the Netherlands, as recalled in paragraphs 81 and 82 above.

105 On the other hand, the existence of a requirement, in order for the interpretation of Article 6 of the OLW to be considered compatible with EU law, that that provision should give the referring court a margin of discretion enabling it to execute the EAW issued against Mr Popławski, if it considers that no legitimate interest justifies the sentence which he received being executed in the Netherlands, would lead to a risk, if national law could not be interpreted in accordance with such a requirement, of making it impossible, in view of the lack of direct effect of Framework Decision 2002/584, not only to surrender Mr Popławski to the Polish judicial authorities, but also to have his sentence actually executed in the Netherlands.

106 Such an outcome would provide for the impunity of the requested person and would run counter to the purpose of Framework Decision 2002/584 and the obligation which it imposes, in the present case on the Netherlands, as recalled in paragraphs 81 and 82 above.

107 In those circumstances, the referring court would adopt an interpretation of Netherlands law in conformity with the objectives pursued by Framework Decision 2002/584 if it interpreted that law in such a way that the refusal to execute the EAW at issue in the main proceedings, issued by the Republic of Poland, is subject to the guarantee that the custodial sentence which Mr Popławski received will actually be enforced in the Netherlands, even if Netherlands law provides that that refusal occurs automatically.

108 In view of the information provided in the order for reference, such an interpretation of Netherlands in conformity with Article 4(6) of Framework Decision 2002/584 seems possible, and therefore the execution in the Netherlands of the custodial sentence which Mr Popławski received in Poland appears to be permissible, a matter which must, however, be verified by the referring court.

109 In the light of the foregoing, the answer to the first question is that the principle of the primacy of EU law must be interpreted as meaning that it does not require a national court to disapply a provision of national law which is incompatible with the provisions of a framework decision, such as the framework decisions at issue in the main proceedings, the legal effects of which are preserved in accordance with Article 9 of Protocol (No 36) on transitional provisions, annexed to the treaties, since those provisions do not have direct effect. The authorities of the Member States, including the courts, are nevertheless required to interpret their national law, to the greatest extent possible, in conformity with EU law, which enables them to ensure an outcome that is compatible with the objective pursued by the framework decision concerned.

Costs

110 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 28(2) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union must be interpreted as meaning that a declaration made pursuant to that provision by a Member State, after that framework decision was adopted, is not capable of producing legal effects.**

2. **The principle of the primacy of EU law must be interpreted as meaning that it does not require a national court to disapply a provision of national law which is incompatible with the provisions of a framework decision, such as the framework decisions at issue in the main proceedings, the legal effects of which are preserved in accordance with Article 9 of Protocol (No 36) on transitional provisions, annexed to the treaties, since those provisions do not have direct effect. The authorities of the Member States, including the courts, are nevertheless required to interpret their national law, to the greatest extent possible, in conformity with EU law, which enables them to ensure an outcome that is compatible with the objective pursued by the framework decision concerned.**

[Signatures]