

# Brexit – certain legal issues and Irish case law

# Article 50 TFEU

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

•

# Article 50 TFEU contd.

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

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

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

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 If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

# TIMELINE

- Referendum: 23 June 2016
- Miller Challenge November 2016
- March 2017 UK Parliament approves Bill requiring consultation
- Article 50 notification March 19<sup>th</sup> 2017
- EU-UK Negotiations Begin – June 2017
- End of Phase One? European Council Meeting on December 14/15 2017
- Phase Two commences January 2018?
- Withdrawal Agreement
- Brexit on March 19<sup>th</sup> 2019
- Transitional Period/Agreement and the 'Great' Repeal Bill

# The Withdrawal Procedure and Agreement

- EU Council (27) adopts Guidelines to cover both withdrawal and future relationship agreement negotiations
- Two years to agree
- Automatic Brexit unless both sides agree to extend (Art 50.3 TEU)
- Once draft agreement in place consent of European Parliament required (EU 28)

# Procedure continued..

- EU Council (27) then adopts agreement - a super qualified majority required (72% of members of Council with 65% of EU 27 population)
- No ratification required by the 27 separately on withdrawal simpliciter
- But ratification required where any FTA reached (article 48 TEU)

# FTAs and Third States

- EU-Canada – Negotiations for CETA begin in May 2009 and conclude in August 2014 – All 28 MS to ratify – Wallonian Assembly – Reference by Belgian Courts to CJEU on dispute resolution mechanism. Entry into force: 2019?
- EU- Japan – Negotiations begin 2013 and concluded December 2017 – European Parliament, EU 28 (plus internals) plus Japanese Diet to confirm. Entry into force: 2020?
- EU-EFTA – the EEA

# FTAs and Third States (2)

- EU- United States: Transatlantic Trade and Investment Agreement (T-TIP)
- EU –EFTA: European Economic Area



# Irish case law

- *Minister for Justice and Equality v A.M.* [2016] IEHC 568 – Donnelly J – European Arrest Warrants
- *Minister for Justice and Equality v. O'Connor* [2017] IEHC 518 – Donnelly J – European Arrest Warrants
- *North East Pylon Pressure Campaign v. An Bord Pleanála* [2017] IEHC 338 – Barrett J – Environment
- *M.A. v Minister for Justice and Equality* [2017] IEHC 677 Humphreys J – Asylum

***Minister for Justice and Equality v. O'Connor*** [2017] IEHC 518

FINE TO TRANSFER FOR NOW...

- Donnelly J at paragraphs 49/50
- “The order of surrender speaks to the situation that obtains at the time it is made. The U.K. is a member state of the E.U. and the Court must surrender a person to the U.K. who has been requested on an otherwise valid European arrest warrant.

The arguments of the respondent relating to the Brexit point did not address that central core of the dem**must deal with the issues of surrender on the basis of the law as it currently stands and that there was no evidence that there was a real risk that any specific right set out in the Act of 2003 (or the 2002 Framework Decision) would be violated**cision in A.M.; that the Court. The same position applies in the present case.”

## ***M.A. v Minister for Justice and Equality* [2017] IEHC 677 Humphreys J**

**But maybe not in the area of asylum ...**

- *M.A. v Minister for Justice and Equality* [2017] IEHC 677 Humphreys J
- Dublin III Regulation
- Transfer decision to UK impugned by Bangladeshi nationals fearing chain refoulement
- Claim EU rights threatened by Brexit: Charter, Common Asylum System etc.
- J refers the following question with request for **urgent procedure**:
- *When dealing with transfer of a protection applicant under regulation 604/2013 to the UK, is a national decision-maker, in considering any issues arising in relation to the discretion under art. 17 and/or any issues of protection of fundamental rights in the UK, required to disregard circumstances as they stand at the time of such consideration in relation to the proposed withdrawal of the UK from the EU?*

*M.A. v Minister for Justice and Equality*  
CJEU Case c 661/17

- December 13 2017 – Request for Urgent Procedure declined
- First Chamber
- Hearing in November 2018?
- Judgment in February 2019?
- Brexit 29 March 2019 at 11 pm GMT