Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 25 September 2025 [1]

Case C-350/24

HJ
v
Crédit agricole Corporate & Investment Bank

(Request for a preliminary ruling from the Cour de cassation (Court of Cassation, France))

(Reference for a preliminary ruling – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community – Directive 2006/54/EC – Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – Transposition of that directive in the law of another Member States – Interpretation in conformity with the directive – Application of EU law to facts prior to withdrawal in proceedings initiated prior to withdrawal – Legal certainty – Non-retroactivity – Effective legal protection)

Brexit means Brexit. [2]

I. Introduction

1. Despite Brexit, is there an obligation *under EU law* to continue to apply, in accordance with EU law, the legislation to transpose EU law enacted previously by the United Kingdom? The Cour de cassation (Court of Cassation, France) has referred this question to the Court of Justice in respect of an 'old case'. It is based on facts in the United Kingdom which came into existence long before the withdrawal and which also gave rise to an action before French courts before the withdrawal.

2. In substantive terms, the case concerns a provision of the Equal Treatment Directive [3] on the burden of proof in the case of allegations of discrimination based on sex. The Cour de cassation (Court of Cassation) wishes to know whether the transposing legislation of the United Kingdom must, under EU law, be interpreted in conformity with the directive, or even whether direct application of the provision of the directive is possible. However, EU law requires the application

[1] Original language: German.

[2] Theresa May on 11 July 2016 (https://www.youtube.com/watch?v=zV6n6zNVw_I).

[3] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

of those instruments only if, despite the withdrawal, it continues to apply to such old cases in the United Kingdom. In order to answer that question, it is necessary to interpret Article 50 TEU and the Withdrawal Agreement. [4]

II. Legal framework

A. International law

3. Article 70(1) of the Vienna Convention of 23 May 1969 on the Law of Treaties [5] ('the Vienna Convention') governs the consequences of the termination of a treaty:

'Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.'

B. European Union law

1. Primary law

4. Article 50(1) to (3) TEU governs the effects of a withdrawal from the European Union and the Withdrawal Agreement:

'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. …

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] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7), approved by the Council of the European Union by Decision (EU) 2020/135 of 30 January 2020 (OJ 2020 L 29, p. 1), most recently amended by Decision No 2/2024 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 16 May 2024 adding a newly adopted Union act to Annex 2 to the Windsor Framework (OJ L, 2024/2134).

[5] *United Nations Treaty Series*, Vol. 1155, p. 331.

2. Withdrawal Agreement

5. The fourth recital of the Withdrawal Agreement recalls Article 50 TEU:

'RECALLING that, pursuant to Article 50 TFEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in this Agreement, the law of the Union and of Euratom in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement.'

6. The seventh recital of the Withdrawal Agreement emphasises the objective of legal certainty:

'RESOLVED to ensure an orderly withdrawal through various separation provisions aiming to prevent disruption and to provide legal certainty to citizens and economic operators as well as to judicial and administrative authorities in the Union and in the United Kingdom, while not excluding the possibility of relevant separation provisions being superseded by the agreement(s) on the future relationship'.

7. Articles 66 and 67 of the Withdrawal Agreement contain transitional provisions concerning matters of civil law:

'Article 66

Applicable law in contractual and non-contractual matters

In the United Kingdom, the following acts shall apply as follows:

(a) Regulation (EC) No 593/2008 of the European Parliament and of the Council[6] shall apply in respect of contracts concluded before the end of the transition period;

(b) Regulation (EC) No 864/2007 of the European Parliament and of the Council[7] shall apply in respect of events giving rise to damage, where such events occurred before the end of the transition period.'

Article 67

Jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities

1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, in respect of legal proceedings instituted before the end of the transition period and in respect of proceedings or actions that are related to such legal proceedings pursuant to

6 Regulation of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

7 Regulation of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).

Articles 29, 30 and 31 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council[,[8]] Article 19 of Regulation (EC) No 2201/2003[[9]] or Articles 12 and 13 of Council Regulation (EC) No 4/2009[,[10]] the following acts or provisions shall apply:

(a) the provisions regarding jurisdiction of Regulation (EU) No 1215/2012;

(b) the provisions regarding jurisdiction of Regulation (EU) 2017/1001[[11]], of Regulation (EC) No 6/2002[[12]], of Regulation (EC) No 2100/94[[13]], of Regulation (EU) 2016/679 of the European Parliament and of the Council[[14]] and of Directive 96/71/EC of the European Parliament and of the Council[;[15]]

(c) the provisions of Regulation (EC) No 2201/2003 regarding jurisdiction;

(d) the provisions of Regulation (EC) No 4/2009 regarding jurisdiction.

2. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts or provisions shall apply as follows in respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements:

(a) Regulation (EU) No 1215/2012 shall apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transition period, and to authentic instruments formally drawn up or registered and court settlements approved or concluded before the end of the transition period;

(b) the provisions of Regulation (EC) No 2201/2003 regarding recognition and enforcement shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to documents formally drawn up or registered as authentic instruments, and agreements concluded before the end of the transition period;

(c) the provisions of Regulation (EC) No 4/2009 regarding recognition and enforcement shall apply to decisions given in legal proceedings instituted before the end of the transition period, and to court settlements approved or concluded, and authentic instruments established before the end of the transition period;

8 Regulation of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

9 Council Regulation of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

10 Regulation of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1).

11 Regulation of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

12 Council Regulation of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

13 Council Regulation of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

14 Regulation of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

15 Directive of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

(d) Regulation (EC) No 805/2004 of the European Parliament and of the Council[16] shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to court settlements approved or concluded and authentic instruments drawn up before the end of the transition period, provided that the certification as a European Enforcement Order was applied for before the end of the transition period.

3. …'

8. Under Article 126 of the Withdrawal Agreement, the transition period ended on 31 December 2020. During that transition period, EU law continued to apply to and within the United Kingdom, subject to certain specific exceptions under Articles 127 to 131.

3. Equal Treatment Directive

9. Recital 30 of the Equal Treatment Directive concerns the rules on the burden of proof laid down in Article 19:

'The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice has held, provision should therefore be made to ensure that the burden of proof shifts to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent national body to investigate the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.'

10. Article 19(1) of the Equal Treatment Directive governs the burden of proof:

'1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.'

C. United Kingdom law

11. Section 136 of the Equality Act 2010 ('Burden of proof') transposes Article 19 of the Equal Treatment Directive:

'(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

[16] Regulation of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.'

III. Facts and request for a preliminary ruling

12. The request for a preliminary ruling sets out the facts as follows, without providing any information on the jurisdiction of French courts.

13. HJ had been employed by Crédit Agricole Corporate & Investment Bank ('CACIB') since 17 January 2007. The employment contract is governed by United Kingdom law. She most recently held the position of customer information systems officer at a site of the bank in that State before being placed on sick leave from 28 August 2013.

14. On 23 September 2013, HJ brought proceedings before the Conseil de prud'hommes de Nanterre (Labour Tribunal, Nanterre, France), alleging, with reference to the employment contract, discrimination on grounds of her sex and psychological harassment. By judgment of 26 June 2019, that tribunal dismissed her claims.

15. HJ lodged an appeal with the Cour d'appel de Versailles (Court of Appeal, Versailles, France). By judgment of 27 May 2021, that court held that HJ had failed to present primary facts that could be taken into account as relevant circumstances from which it would be appropriate to infer discrimination for the purposes of sections 13 to 19 and 136 of the UK Equality Act 2010. It also ruled that the existence of discriminatory harassment within the meaning of section 26 and victimisation within the meaning of section 27 of that act had not been demonstrated.

16. HJ brought an appeal on a point of law before the Cour de cassation (Court of Cassation).

17. The parties disagree, inter alia, as to whether, despite the United Kingdom's withdrawal from the European Union in the meantime, there is an obligation under EU law to interpret the Equality Act 2010 and, in particular, the rule on the burden of proof laid down in section 136 in conformity with EU law, that is to say, above all with Article 19 of the Equal Treatment Directive.

18. The Cour de cassation (Court of Cassation) has therefore referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the [Withdrawal Agreement] be interpreted as meaning that United Kingdom legislation transposing Article 19 of [the Equal Treatment Directive] must be regarded as legislation of a Member State transposing a directive, by a court giving its ruling after the end of the transition period, where the facts are prior to that date and/or the proceedings were brought before that date?

(2) Must Article 288 TFEU be interpreted as meaning that a national court hearing a dispute between individuals, which is obliged to apply the law of another Member State, must interpret the provisions of that law in conformity with a directive, without this being precluded by the principle of mutual trust?

(3) If the national court considers that it is impossible to interpret those provisions in conformity with the directive, must it disapply that law, as it would do with its own national law, where a general principle of EU law or a provision of primary law, as given concrete expression in a directive, is at issue?'

19. Written observations have been submitted by HJ, Crédit Agricole Corporate & Investment Bank, the French Republic, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland and the European Commission. With the exception of Poland, the aforementioned parties also attended the hearing on 24 June 2025.

IV. Legal assessment

20. Before the United Kingdom's withdrawal from the European Union, EU law required the courts of that State to interpret national legislation transposing the Equal Treatment Directive, as far as possible, in conformity with that directive.[17] If that were not possible, the question would have arisen as to the direct application of the relevant provision of the directive[18] or the direct application of the fundamental prohibition on discrimination in light of the directive.[19]

21. Those obligations undoubtedly applied at the time of the events at issue in the main proceedings since they must have occurred before the action of 23 September 2013 before the Conseil de prud'hommes de Nanterre (Labour Tribunal, Nanterre). They also applied when the action was dismissed on 26 June 2019.

22. However, by the time the Cour d'appel de Versailles (Court of Appeal, Versailles) ruled on the appeal on 27 May 2021, the United Kingdom had already withdrawn from the European Union, and the transition period, during which EU law largely continued to apply there, had expired on 31 December 2020.

23. This gives rise to the central question of the request for a preliminary ruling from the Cour de cassation (Court of Cassation), namely whether, in such an 'old case', the abovementioned obligations under EU law continue to apply despite the withdrawal (see under B). The answer to that question depends on whether obligations under EU law to interpret the United Kingdom's legislation in conformity with the directive may exist in that regard (see under C). First, however, some comments on the admissibility of the request for a preliminary ruling are necessary, which, in particular, render the third question inadmissible (see under A).

A. Admissibility

24. The Commission and CACIB doubt the relevance to the outcome of the dispute of all or at least some of the questions referred.

25. The Commission sees no contradiction between section 136 of the Equality Act 2010 and Article 19 of the Equal Treatment Directive. Nor is it evident that the Cour d'appel de Versailles (Court of Appeal, Versailles) departed from Article 19 in its interpretation and application of section 136. Therefore, no question arises as to whether there is still an obligation under EU law to interpret United Kingdom legislation in conformity with the directive, let alone any question of the direct application of Article 19.

[17] See judgments of 10 April 1984, *von Colson and Kamann* (14/83, EU:C:1984:153, paragraph 26); of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 114); and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)* (C-582/21, EU:C:2024:282, paragraph 61).

[18] See judgments of 26 February 1986, *Marshall* (152/84, EU:C:1986:84, paragraph 49), and of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313, paragraph 17).

[19] See judgment of 19 January 2010, *Kücükdeveci* (C-555/07, EU:C:2010:21, paragraph 27).

26. CACIB explains that the main proceedings concern a rule on proof which arises not from EU law, but from French case-law. This is a – permitted – more favourable arrangement provided for in French law for persons allegedly discriminated against, which cannot be applied to the United Kingdom's transposition of the Equal Treatment Directive.

27. Furthermore, CACIB stresses that in substantive terms there is disagreement regarding the assessment of evidence by the Cour d'appel de Versailles (Court of Appeal, Versailles), which, however, the Cour de cassation (Court of Cassation) cannot review.

28. Therefore, the Cour de cassation (Court of Cassation) has failed to explain adequately why the request is relevant to the outcome of the dispute. In reality, the questions are hypothetical.

29. However, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court of Justice to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, 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. [20]

30. This request for a preliminary ruling clearly demonstrates why the Court presumes that the questions referred are relevant to the outcome of the dispute and requires obvious grounds to rebut that presumption.

31. The relevance of the questions to the outcome of the dispute turns on powers of review conferred on the Cour de cassation (Court of Cassation) in the main proceedings vis-à-vis the Cour d'appel de Versailles (Court of Appeal, Versailles). The scope of those powers is a question of French law, which the Court of Justice cannot assess. On the contrary, that is a task for the Cour de cassation (Court of Cassation) itself.

32. In fact, it would appear that the Assemblée plénière (full court) of the Cour de cassation (Court of Cassation) has made a request for a preliminary ruling to the Court of Justice in order to prepare a decision on a possible further development of those powers of review.

33. According to the request for a preliminary ruling, courts adjudicating on the merits have, in principle, absolute discretion in applying and interpreting foreign law. [21] It is therefore largely beyond the scope of review of the Cour de cassation (Court of Cassation), as a court of appeal.

34. However, the Cour de cassation (Court of Cassation) considers that in order to ensure respect for the primacy of EU law by the French State, it could be necessary to develop the nature of its review of the application and interpretation of foreign law if the French courts were required to assess the conformity with EU law of a law from another Member State. [22]

[20] Judgments of 24 June 2008, *Commune de Mesquer* (C-188/07, EU:C:2008:359, paragraph 30); of 24 October 2018, *XC and Others* (C-234/17, EU:C:2018:853, paragraph 16); and of 8 April 2025, *European Public Prosecutor's Office (Judicial review of procedural acts)* (C-292/23, EU:C:2025:255, paragraph 36).

[21] Paragraph 24 of the request for a preliminary ruling.

[22] Paragraph 40 of the request for a preliminary ruling.

35. To much the same effect, Ms Berriat, former first Advocate General of the Social Division of the Cour de cassation (Court of Cassation), proposed, in her observations on the main proceedings, a stricter review where foreign law is to be interpreted in conformity with EU law. She therefore also proposed that the Cour de cassation (Court of Cassation) should refer the first two questions to the Court of Justice. [23]

36. The first two questions referred for a preliminary ruling are therefore relevant to the decision of the Cour de cassation (Court of Cassation) on its own powers in relation to the pending dispute.

37. Contrary to the view taken by the Commission, it is moreover not permissible to speculate on what the Cour de cassation (Court of Cassation) could regard as a possible infringement by the Cour d'appel de Versailles (Court of Appeal, Versailles) of a possible obligation to interpret national law in conformity with the directive, which might require review in the appeal on a point of law. At present, the Cour de cassation (Court of Cassation) is still examining whether it has a power of review. The outcome of such a review is thereby not yet prejudiced.

38. On the other hand, in the light of the information contained in the request for a preliminary ruling concerning the content of section 136 of the Equality Act 2010, it is in fact unclear why it is necessary to rule on the third question referred. Applying the usual interpretive methods, it should be easy to interpret that provision in such a way as to avoid any incompatibility with Article 19 of the Equal Treatment Directive.

39. If it were nevertheless to follow from the UK courts' interpretation of section 136 that an interpretation in conformity with EU law is not possible, that should have been explained, in the light of the wording of the provision contained in the request for a preliminary ruling, in order to maintain the presumption of relevance to the outcome of the dispute.

40. However, the Cour de cassation (Court of Cassation) bases that question solely on the fact that an answer to that question *might* be useful.

41. The third question referred for a preliminary ruling is therefore, according to the information provided in the request for a preliminary ruling, hypothetical and thus inadmissible.

B. First question: Is EU law still concerned?

42. It is therefore necessary to examine the first question to ascertain whether, from the point of view of EU law, a provision such as section 136 of the Equality Act 2010 must still be regarded, despite the withdrawal of the United Kingdom, as transposition of EU law, at least in respect of old cases, so that there is an obligation to interpret national law in conformity with the directive.

43. According to the United Kingdom, the UK courts in fact continue to interpret that provision in conformity with the directive. They also follow the case-law of the Court established until the expiry of the transition period.

[23] Observations of 5 April 2024 (Pourvoi no D 21-21.615, pp. 24 and 25).

44. The United Kingdom disputes, however, that that practice is based on an obligation *under EU law*. Rather, it arises from national legislation on withdrawal from the European Union, the Withdrawal Act,[24] which, inter alia, incorporated into national law almost all of the EU law in force in the United Kingdom prior to withdrawal.[25]

45. However, that view cannot be based either on Article 50(3) TEU (see under 1) or on the Withdrawal Agreement (see under 2), in particular in the light of Article 70 of the Vienna Convention. Nonetheless, if, by way of exception, the courts of the Member States apply EU law in such old cases originating from the United Kingdom, they cannot, any more than the courts of the United Kingdom, make references to the Court for a preliminary ruling on the interpretation of EU law in relation to the main proceedings (see under 3).

1. Article 50(3) TEU

46. The view of the United Kingdom is prima facie consistent with Article 50(3) TEU. Under that provision, the Treaties are to cease to apply to a withdrawing State from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification of withdrawal, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend that period.

47. It is true that, since the expiry of the transition period, EU law no longer applies to or within the United Kingdom (see under (a)). However, that does not end the application of EU law to old cases (see under (b)).

(a) No application from the end of the transition period

48. The Court correctly construes Article 50(3) TEU as meaning that the Treaties cease to apply to the United Kingdom on the date on which the Withdrawal Agreement entered into force on 1 February 2020, so that that State is no longer, as from that date, a Member State.[26]

49. With a few exceptions, Articles 126 to 131 of the Withdrawal Agreement extended the application of EU law to apply within the United Kingdom until 31 December 2020, the expiry of the transition period.

50. As provided for in the second sentence of Article 50(2) TEU, the Withdrawal Agreement has laid down, in respect of a number of issues, specific provisions which also apply after the expiry of the transition period. EU law in the form of the Withdrawal Agreement thus obliges the United Kingdom to decide on those issues in accordance with those provisions of the Agreement.

51. However, the Equal Treatment Directive is not covered by those specific provisions of the Withdrawal Agreement. Therefore, since the expiry of the transition period, the Agreement does not oblige the United Kingdom or its courts to comply with the Equal Treatment Directive.

[24] Considered in the judgment of the Supreme Court (United Kingdom) of 10 July 2024, Lipton and another v BA Cityflyer Ltd ([2024] UKSC 24, paragraphs 81 to 132).

[25] Set out in the judgment of the Supreme Court of 10 July 2024, Lipton and another v BA Cityflyer Ltd ([2024] UKSC 24, paragraphs 51 to 57).

[26] Judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques* (C-673/20, EU:C:2022:449, paragraph 55), and order of 16 June 2021, *Sharpston* v *Council and Representatives of the Governments of the Member States* (C-685/20 P, EU:C:2021:485, paragraph 53).

(b) Continued application to old cases

52. But what does that mean for old cases, that is to say to prior facts?

53. In that regard, it might be thought that, under Article 50(3) TEU, EU law can no longer give rise to further obligations on the United Kingdom even in old cases since 'the Treaties shall cease to apply to [that State]'. So where is there a provision of EU law which would oblige the UK to continue to apply EU law to old situations? None of the few rules of EU law which remain binding on that State makes such provision. That is, moreover, also the position of the United Kingdom in the present proceedings. [27]

54. However, on closer inspection, that interpretation of Article 50(3) TEU is not inescapable since that provision also does not expressly state that EU law is no longer applicable to old cases in the State concerned after a withdrawal. Such an express provision would, nonetheless, be necessary in order to conclude that the Member States intended to give retroactive effect (*ex tunc*) to Article 50(3) TEU. Legislation normally only applies after its publication (*ex nunc*). It is only in rare exceptional cases that retroactivity would be compatible with the fundamental principle of legal certainty. [28]

55. It is true that the United Kingdom seeks to argue that it is no longer bound by EU law and, in particular, by the principle of legal certainty under EU law. However, that does not mean that Article 50(3) TEU can be construed as a derogation from that principle.

56. The principle of legal certainty is not a special feature of EU law, but a principle common to the legal systems of the Member States whose origins may be traced back to Roman law. [29] In particular, it is an integral part of the legal order of the United Kingdom. [30] Consequently, it cannot be assumed that the Member States wished to accept, in the event of withdrawal, such a serious reduction in legal certainty, which could also be detrimental to their own nationals and undertakings.

57. Moreover, the international community is aware of the importance of legal certainty, specifically in connection with the termination of international treaties, the consequences of which are governed by Article 70 of the Vienna Convention. In a manner similar to Article 50(3) TEU, Article 70(1)(a) of the Vienna Convention provides that the termination of an international treaty releases the parties from any obligation further to perform it. However, under Article 70(1)(b), termination does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

58. Even though the Vienna Convention does not bind either the European Union or all its Member States, a series of provisions in that convention reflect the rules of customary international law that, as such, are binding upon the EU institutions and form part of the EU legal

[27] That is also how I understand the European Union Committee of the House of Lords of the United Kingdom, Brexit and the EU budget, 15th Report of Session 2016/17 of 4 March 2017 (HL Paper 125, Nos 133 and 135).

[28] See judgments of 12 October 1978, *Belbouab* (10/78, EU:C:1978:181, paragraph 7); of 6 July 2006, *Kersbergen-Lap and Dams-Schipper* (C-154/05, EU:C:2006:449, paragraph 42); and of 10 September 2024, *Neves 77 Solutions* (C-351/22, EU:C:2024:723, paragraph 102).

[29] Judgments of 25 February 1969, *Klomp* (23/68, EU:C:1969:6, paragraph 13), and of 29 March 2011, *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 63). See, moreover, judgments of the European Court of Human Rights of 9 December 1994, *Stran Greek Refineries and Stratis Andreadis v. Greece* (CE:ECHR:1994:1209JUD001342787, § 49), and of 28 October 1999, *Zielinski and Pradal and Gonzales and Others v. France* (CE:ECHR:1999:1028JUD002484694, § 57).

[30] See judgment of the Supreme Court of 10 July 2024, Lipton and another v BA Cityflyer Ltd ([2024] UKSC 24, paragraphs 66 and 67), and the concurring judgment of Lord Lloyd-Jones (paragraph 196).

order.[31] So far as can be seen, it is not disputed that Article 70 also codifies customary international law,[32] which in turn is based on the generally recognised legal principles of legal certainty and non-retroactivity.[33]

59. Although Article 70 of the Vienna Convention permits the parties to agree otherwise, in the absence of an express provision in Article 50 TEU, it is not possible, in my opinion, to construe that provision as such an agreement.

2. Withdrawal Agreement

60. It therefore remains to be clarified whether the Withdrawal Agreement contains a specific agreement derogating from Article 70(1)(b) of the Vienna Convention, which excludes the continued application of the Equal Treatment Directive to the main proceedings.

61. In this respect, it should firstly be stated that the Withdrawal Agreement does not contain any provision expressly concerning the application of the Equal Treatment Directive or EU law as a whole to old cases.

62. However, the Withdrawal Agreement does expressly provide that certain provisions are to continue to apply to old cases. In particular, Articles 66 and 67 of the Withdrawal Agreement are relevant in this regard.

63. Under Article 66 of the Withdrawal Agreement, the regulations on the applicable law in contractual and non-contractual matters are to continue to apply in the United Kingdom in respect of contracts concluded before the end of the transition period and events giving rise to damage, where such events occurred before the end of the transition period.[34] By contrast, in the Member States, as in the main proceedings in France, those regulations already apply independently of the Withdrawal Agreement, as the Commission explains.

64. Furthermore, Article 67 of the Withdrawal Agreement provides that certain provisions of EU law on jurisdiction and the enforcement of judgments are to continue to apply to legal proceedings, such as the main proceedings, which were instituted before the end of the transition period. Thus, courts within the European Union may have to recognise the jurisdiction of the UK courts, and Member States must, in principle, enforce certain judgments of those courts.

65. From this CACIB concludes, *a contrario*, that EU law no longer applies to matters which are not governed by Articles 66 and 67 or by other provisions, including in respect of old cases. The United Kingdom also reaches that conclusion since the Withdrawal Agreement constitutes a detailed, comprehensive and complete codification which provides for the application of EU law to certain, expressly covered old cases, but precisely not in the main proceedings. Otherwise, the Court would retain the power to assess the law of the United Kingdom despite the withdrawal.

[31] Judgments of 16 June 1998, *Racke* (C-162/96, EU:C:1998:293, paragraphs 24, 45 and 46); of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91, paragraph 42); and of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118, paragraph 58).

[32] Ruling of 30 April 1990, New Zealand *v.* France (Rainbow Warrior) (*United Nations Reports of International Arbitration Awards*, Vol. XX, paragraph 75); Villiger, M.E., 'Article 70', *Commentary on the 1969 Vienna Convention on the Law of Treaties*, 2008, paragraph 14; Ascensio, H., 'Article 70', in Corten, O. and Klein, P. (eds), *The Vienna Conventions on the Law of Treaties: A Commentary*, Vol. 2, 2011, No 8; Wittich, S., 'Article 70', in Dörr, O. and Schmalenbach, K. (eds), *Vienna convention on the law of treaties*, 2018, paragraphs 40 and 41.

[33] Villiger, M.E., footnote 32, op. cit., paragraph 14, and Ascensio, H., footnote 32, op. cit., Nos 8 and 9.

[34] See, to that effect, judgment of 14 September 2023, *Diamond Resorts Europe and Others* (C-632/21, EU:C:2023:671, paragraph 66).

66. By contrast, HJ and the Commission dismiss that *a contrario* conclusion. Their interpretation of the Withdrawal Agreement is supported by the objective of providing legal certainty, as expressed in the seventh recital of that agreement. A retroactive change in the legal position is in principle incompatible with that. This is particularly so given that the outcome of the pending disputes could turn on the fortuitous circumstance that they were concluded before the end of the transition period or – as in the main proceedings – only afterwards. [35]

67. It is true that it was precisely in order to provide legal certainty that the United Kingdom, on withdrawal, incorporated almost all EU law into national law [36] and that the UK courts still interpret those provisions in the light of EU law and the case-law of the Court of Justice. [37]

68. However, that does not alter the consideration which already underlies the interpretation of Article 50(3) TEU presented here: in view of the fundamental importance of the principle of legal certainty, it cannot be concluded, in the absence of an express provision, that the European Union and the United Kingdom have agreed in the Withdrawal Agreement, as an act of EU law, to eliminate retroactively the application of almost all EU law to old cases. [38]

3. Limitation of the preliminary ruling proceedings

69. However, the United Kingdom is correct in its view that, in relation to old cases heard by the courts of Member States, the Court of Justice should no longer have the power to rule on the compatibility of transposing UK law – which may continue to apply – with EU law. On this matter, the Withdrawal Agreement does contain provisions which, although not expressly covering the main proceedings, show how this matter should be addressed.

70. Under Article 4(4) of the Agreement, the provisions of that agreement referring to EU law or to concepts or provisions thereof are in their implementation and application to be interpreted in conformity with the relevant case-law of the Court of Justice of the European Union handed down before the end of the transition period. Article 4(5) thereof further provides that, in the interpretation and application of that agreement, the United Kingdom's judicial and administrative authorities are to have due regard to relevant case-law of the Court of Justice of the European Union handed down after the end of the transition period. However, with the exception of the few cases expressly covered by the Withdrawal Agreement, [39] the courts of the United Kingdom no longer have the capacity to make references.

71. I infer from this that, since the end of the transition period, the Court cannot adopt new binding decisions on the interpretation of EU law in relation to facts subject to the law of the United Kingdom. That precludes, in particular, the courts of the Member States seised, as in the main proceedings, of old cases originating from the United Kingdom from requesting from the Court a preliminary ruling on the interpretation of the provisions applicable to those cases. A judgment of the Court in which the latter gives a preliminary ruling is binding on the national

[35] See judgment of the Supreme Court of 10 July 2024, Lipton and another v BA Cityflyer Ltd ([2024] UKSC 24, paragraph 66). Illustrative, on the Union side, is the position of the Board of Appeal of EUIPO, as set out in the judgment of the General Court of 16 March 2022, *Nowhere* v *EUIPO – Ye (APE TEES)* (T-281/21, EU:T:2022:139, paragraph 15).

[36] See point 44 above.

[37] See section 6 of the Withdrawal Act.

[38] See point 56 above.

[39] Articles 158 and 160 of the Withdrawal Agreement.

court for the purposes of the decision to be given in the main proceedings [40] and does not serve to deliver advisory opinions on general or hypothetical questions. [41] To that end, it is not sufficient that due regard is had to a decision of the Court for the purposes of Article 4(5) of the Withdrawal Agreement.

72. Therefore, the courts of the Member States must rule on old cases subject to the law of the United Kingdom in exactly the same way as the courts of that State, by complying with the relevant case-law of the Court of Justice established before the end of the transition period and taking due account of the case-law established since then, without, however, being able to make a reference to the Court of Justice.

4. Interim conclusion

73. It follows that the answer to the first question is that a court of a Member State ruling after the end of the transition period must regard United Kingdom legislation transposing Article 19 of the Equal Treatment Directive as legislation transposing EU law where its decision relates to facts in the United Kingdom prior to that date. In that regard, the court must – like a court of the United Kingdom – comply with the relevant case-law of the Court of Justice established before the end of the transition period and take due account of the case-law established since, without, however, being able to make a reference to the Court of Justice for a preliminary ruling.

C. Second question: Obligation to interpret in conformity with the directive

74. By its second question, the Cour de cassation (Court of Cassation) seeks to ascertain whether the courts of the Member States applying the law of other Member States are obliged to interpret that law in conformity with EU law, in the same way as national law.

75. The answer to this question is obvious. As the Court of Justice has already ruled in two judgments, which are also referred to in the request for a preliminary ruling, the courts of the Member States must also apply the law of other Member States in accordance with EU law. [42] Even the Courts of the European Union have a duty, in certain cases, to interpret national law in conformity with EU law. [43]

76. That conclusion is logical since the obligation to interpret national law in conformity with EU law applies in all the Member States of the European Union. It is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them. [44]

[40] Judgments of 3 February 1977, *Benedetti* (52/76, EU:C:1977:16, paragraph 26 and 27), and of 16 June 2015, *Gauweiler and Others* (C-62/14, EU:C:2015:400, paragraph 16).

[41] Judgments of 16 December 1981, *Foglia* (244/80, EU:C:1981:302, paragraph 18); of 16 July 1992, *Meilicke* (C-83/91, EU:C:1992:332, paragraph 25); and of 1 August 2025, *Voore Mets and Lemeks Põlva* (C-784/23, EU:C:2025:609, paragraph 64).

[42] Judgments of 18 November 2020, *DelayFix* (C-519/19, EU:C:2020:933, paragraph 51), and of 8 December 2022, *Luxury Trust Automobil* (C-247/21, EU:C:2022:966, paragraph 67).

[43] Judgment of 15 July 2025, *ECB and Commission* v *Corneli* (C-777/22 P and C-789/22 P, EU:C:2025:580, paragraph 137).

[44] Judgments of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 114); of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 24); and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)* (C-582/21, EU:C:2024:282, paragraph 61).

77. The doubts as to this conclusion are based, according to the request for a preliminary ruling and even more clearly according to the observations of Advocate General Berriat, on the fact that interpreting the law of another Member State in conformity with EU law could be regarded as an encroachment on its sovereign rights.[45] Those concerns are also expressed in the reference to mutual trust in the question referred.

78. When the courts of one Member State apply the law of another Member State, those courts, as bodies of one Member State, necessarily affect the sovereign rights of the other Member State.[46] There is always a risk of the provisions concerned being applied in a way which the courts having primary jurisdiction in the other Member State would not have done. However, such affecting of sovereign rights is, in principle, accepted under the rules of EU law on applicable law, such as the Rome I and Rome II Regulations referred to in Article 66 of the Withdrawal Agreement. Therefore, this does not constitute impairment of those rights.

79. In addition, the Cour de cassation (Court of Cassation) and Advocate General Berriat mention that, in one case, the Court of Justice refused to answer a question relating to interpretation of the law of other Member States in conformity with EU law.[47] However, that decision is based solely on the fact that the answer to the question was not relevant to the outcome of the dispute. It cannot be construed as precluding national courts that apply the law of other Member States from interpreting it in conformity with EU law.

80. However, the question of what result can be achieved is to be distinguished from the obligation to interpret in accordance with EU law. Interpretation is limited under EU law by general principles of EU law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law *contra legem*.[48] In other words, the obligation to interpret in conformity ends if national law cannot be applied in such a way as to achieve a result which is compatible with the result envisaged by the directive.[49]

81. Furthermore, the interpretation of national law in conformity with EU law can only be carried out applying the interpretive methods recognised *by national law*.[50] In so far as different interpretative methods are recognised in the Member States, it is therefore conceivable that the interpretation of similarly worded transposition provisions in different Member States in conformity with EU law could lead to different results.

82. It follows that a national court seised of a dispute between individuals and called upon to apply the law of another Member State is required, applying the interpretive methods recognised in that other Member State and having regard to the general principles of law, to interpret the provisions of that law in conformity with EU law.

[45] See also the Opinion of Advocate General Emiliou in *European Lotto and Betting and Deutsche Lotto- und Sportwetten* (C-440/23, EU:C:2025:668, point 54).

[46] See the Opinion of Advocate General Emiliou in *European Lotto and Betting and Deutsche Lotto- und Sportwetten* (C-440/23, EU:C:2025:668, points 48, 49 and 56) on the more extensive issue of the power to reject the application of foreign law.

[47] Judgment of 15 December 2022, *HUK-COBURG-Allgemeine Versicherung* (C-577/21, EU:C:2022:992, paragraph 52).

[48] Judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 110); of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)* (C-582/21, EU:C:2024:282, paragraph 63); and of 5 June 2025, *Nuratau* (C-349/24, EU:C:2025:397, paragraph 45).

[49] Judgments of 8 November 2016, *Ognyanov* (C-554/14, EU:C:2016:835, paragraph 66); of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 76); and of 15 July 2025, *ECB and Commission* v *Corneli* (C-777/22 P and C-789/22 P, EU:C:2025:580, paragraph 140).

[50] Judgments of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 116); of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 111); of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)* (C-582/21, EU:C:2024:282, paragraph 62); and of 5 June 2025, *Nuratau* (C-349/24, EU:C:2025:397, paragraph 46).

V. Conclusion

83. I therefore propose that the Court give the following answer to the request for a preliminary ruling:

(1) A court of a Member State ruling after the end of the transition period must regard United Kingdom legislation transposing Article 19 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation as legislation transposing EU law where its decision relates to facts in the United Kingdom prior to that date. In that regard, the court must – like a court of the United Kingdom – comply with the relevant case-law of the Court of Justice established before the end of the transition period and take due account of the case-law established since, without, however, being able to make a reference to the Court of Justice for a preliminary ruling.

(2) A national court seised of a dispute between individuals and called upon to apply the law of another Member State is required, applying the interpretive methods recognised in that other Member State and having regard to the general principles of law, to interpret the provisions of that law in conformity with EU law.