



Neutral Citation Number: [2021] EWHC 1507 (Admin)

Case No: CO/3768/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/06/2021

**Before:**

**MR JUSTICE CHAMBERLAIN**

**Between:**

**PROSECUTOR AT THE TRIBUNAL JUDICIAIRE  
DE RENNES, FRANCE**

**Appellant**

**- and -**

**HASEM SALEH BAZLAH**

**Respondent**

**PETER CALDWELL (instructed by the Crown Prosecution Service) for the Appellant**  
**GRAEME HALL (instructed by Eshaghian Solicitors) for the Respondent**

Hearing dates: 18 May 2021

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**Approved Judgment**

**Mr Justice Chamberlain:**

**Introduction**

- 1 The respondent, Hashem Saleh Bazlah, is sought by the Prosecutor at the *Tribunal Judiciaire* at Rennes, France, pursuant to a European arrest warrant (“EAW”) issued on 21 January 2020 and certified on 25 February 2020. The warrant alleged four offences, which are translated as follows:
  - (a) aid to entry, movement or irregular residence of a foreigner on the territory of a state member of the protocol against the illicit trafficking of migrants (offence 1);
  - (b) human trafficking in organised gang (transport, transfer, accommodation or reception in conditions contrary to dignity) (offence 2);
  - (c) money laundering: participation in organised gang in an operation of investment, dissimulation or conversion of products of crime (offence 3);
  - (d) criminal association in order to prepare crimes and offences (offence 4).
- 2 After an extradition hearing at Westminster Magistrates’ Court, District Judge Ezzat handed down a judgment on 9 October 2020 in which he gave his reasons for discharging the respondent, holding that:
  - (a) the warrant did not give adequate particulars of any of the offences as required by s. 2(4)(c) of the Extradition Act 2003 (“the 2003 Act”);
  - (b) the warrant did not give adequate particulars of the sentence for offence 3 as required by s. 2(4)(d) of the 2003 Act; and
  - (c) prison conditions in France were not such as to give rise to a real risk of treatment contrary to Article 3 ECHR.
- 3 The French judicial authority appeals pursuant to s. 28 of the 2003 Act with the permission of Saini J, challenging conclusion (a), but not (b). It therefore accepts that the respondent cannot be extradited for offence 3. The respondent does not challenge (c).

**The EAW**

- 4 The description of the offences given in box e of the EAW is translated as follows:

“The investigation led by the services of the border police since summer 2018, allowed to bring out a network of alien immigration, led by Iraqis, who assured, against cost, the transport to various regions of FRANCE then transport in hidden trucks, heading to GREAT BRITAIN, migrants who do not have papers in order to access the British territory. This network appeals to numerous smugglers who take in charge the migrants, against remuneration, their transport and their dissimulation in these vehicles mainly on highway rest areas. The substantial income brought by this activity to the network, considering the individual cost of this service for every illegal alien, sum for the period of the facts several dozens of million Euro. A organisational logistics particularly elaborated has been

brought into light during the surveillances, using several vehicles, to numerous smugglers using discrete ways of communication and to illegal money laundering financial schemes. Hashem Saleh BAZLAH appears to have a central role as well on the national territory as in other European countries. The offenses continued from August 1, 2018 to January 21, 2020 in Le Mans, in Chatellerault, on the French national territory as well as within the European Union.”

- 5 The following offences were identified in the framework list: participation in a criminal organisation; trafficking in human beings; laundering of the proceeds of crime; facilitation of unauthorised entry and residence.
- 6 A request for further information was sent on 15 May 2020. Under the heading “Particulars of offending”, the French judicial authority was asked to provide “a description of the personal acts of the requested person’s constituting his participation in the four offences mentioned” and to “specify the relevant conduct for each offence”.
- 7 The answer, given on 10 September 2020, was that the respondent was “implicated in” the following facts:

“- Assistance to unauthorised entry, transit or residence of a foreigner on the territory of a state party to the protocol against the smuggling of migrants, with an organised gang, committed in LE MANS and on the French national territory and also within the European Union between the 1<sup>st</sup> of August 2018 and the 21<sup>st</sup> of January 2020

...

- human slave with an organised gang (transport, transfer, accommodation or hosting in housing conditions contrary to human dignity) committed in LE MANS and on French territory and also within the European Union between the 1<sup>st</sup> of August 2018 and the 21<sup>st</sup> of January 2020

...

- criminal association for the preparation of crime and offences by 10 years imprisonment committed in LE MANS and on French national territory and also within the European Union between the 1<sup>st</sup> of August 2018 and the 21<sup>st</sup> of January 2020”

- 8 Under each of these was a heading “Facts likely to characterize his implication in the commission of the offence”. In each case the same description appeared:

“During the numerous observations carried out during the investigation, Hashem BAZLAH was regularly seen on the camp of the rue du chemin aux boeufs in Le Mans, a place for grouping together of migrants and for accommodation in unhealthy and precarious conditions. Among these migrants, there are also children. This area is to keep them waiting before they are taken to the motorway service areas located nearby.

On 6 January 2020 at 22h39, Hashem BAZLAH was seen coming out the squat located at Passage aux Boeufs in the city of LE MANS. This squat is used as a waiting area for illegal migrants who want to get on to the lorries.

He takes the driver's seat in the Audi A6 vehicle registered HK 56 DWZ. Abdallah REKAN, appearing among the most implicated persons in the smuggling network, gets on the vehicle along with two other persons likely to be smugglers. They are heading to the A 28 motorway. A few minutes before, the observations make it possible to see the boarding of eight migrants on a vehicle which came back empty two hours later, suggesting that they have been put on to lorries.

On 8 January 2020 Hashem BAZLAH was seen driving the same Audi A6 vehicle registered HK 56 DWZ with REBEN on the motorway service area of Bosgouët when they were driving between the locality «Le Chemin aux Boeufs» (illegal waiting area of migrants waiting to get on a lorry) and the Netherlands.

On 9 January 2020, the Audi A6 registered HK 56 DWZ mentioned above was spotted in a hotel «Bastion Hotel» of the town Vlaardingen (Netherlands). The vehicle was previously equipped with a geo-location system (marker) by the French investigation services. A second vehicle BMW RX 14 VHJ belonging to the same group of persons was also present.

Hashlem BAZLAH was controlled driving this vehicle Audi A6 registered HK 56 DWZ in Vlaardingen (Netherlands).

The driver of this second vehicle BMW RX 14 VHJ is Mohammed Ahmed QARAMAN. Two persons went on board, these persons had occupied hotel bedrooms where were found forged Romanian ID documents, a residence permit issued by the air and border police of Dunkerque (France) and an Iraqi passport.”

### **The judgment below**

- 9 The material parts of the judgment dealing with the respondent's argument that the EAW was insufficiently particularised were as follows:

“20. The RP's primary submission is that the EAW is entirely deficient in relation to section 2(4)(c). There is no conduct attributable to the RP on the face of the EAW relating to any of the offences that the RP is sought for. The JA do not concede the point but do not argue that the particulars in the EAW are sufficient.

21. Considered in isolation the EAW is insufficient to satisfy section 2(4)(c). There is no information on the RP's purported role within the enterprise. The EAW is wholly deficient.

...

24. The actions attributed to the RP in the FI do not amount to any criminal activity unless viewed in the context of further incriminating evidence. Without such evidence, the RP's actions amount to nothing of significance.

...

26. I do not find on the information contained in the EAW or FI that any criminal activity is described. I accept that it is not for this court to decide on whether the charges are likely to succeed in the requesting state, however, there must be some evidential basis for making the assertions that the RP's actions amount to some criminal activity. In my view, on the evidence before me, no such evidential basis exists.

27. The particulars of what is alleged are not sufficiently clear and there is ample ambiguity such that the RP would not be able to properly invoke the principle of specialty on his surrender.”

### **The law**

- 10 Section 2(4) prescribes the information that an accusation warrant must contain. This includes, in para. (c):

“particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute the offence”

- 11 In *von der Pahlen v Austria* [2006] EWHC 1672 (Admin), Dyson LJ noted that information is required on four separate matters: “(1) the conduct alleged to constitute the offence; (2) the time and (3) the place at which he is alleged to have committed the offence; and (4) any provision of law under which the conduct is alleged to constitute an offence”. There, as here, the dispute centred on (1). As to that, “[t]he use of the introductory word ‘particulars’ indicates that a broad omnibus description of the alleged criminal conduct, ‘obtaining property by deception’, to take an English example, will not suffice”.

- 12 In *von der Pahlen*, the information in the EAW is set out at [6]:

“(1) Peter von der PAHLEN is urgently suspected of having committed the offence of severe and professional fraud according to ss. 146, 147/3, 148, 2nd case Austrian Criminal Code by being the director of DR LIVINGSTON & FEUKER LTD in the period between 25/10/2003 and 30/12/2003, first as a managing director according to trade law and then as an actual director. In this capacity acting with fraudulent intention as of the year 2003 in Lower Austria, Vienna and Styria, intending to enrich himself unlawfully through the behaviour of the deceived persons and to receive a continuous income by repeatedly committing frauds

a) by deceiving various persons willing to buy a house pretending to sell single family houses thus making them pay advance payments,

b) by deceiving various companies on facts, that is by pretending to arrange for building contracts, delivery of materials and making professional construction works seducing them act in a way that damaged them on their property to a total amount exceeding €50,000.

(2) Moreover, Peter von der PAHLEN is urgently suspected of having committed the crime of dishonest dealings according to s. 153/1 and /2 Austrian Criminal Code by having misused his authorization to dispose of foreign property in the period until October 2003 in Gänserndorf and Mistelbach acting as a director of DR LIVINGSTON & FEUKER LTD and as of 25/10/2003 acting in his capacity as a managing director and authorized signatory of DRAGON Bau GmbH, by taking unjustified money from the business account of DRAGON Bau GmbH at the ERSTE BANK in 2130 Mistelbach in favour of My Home Is My Castle Limited, Clifford Administration Limited and Paris London Limited, or had intended to take it, thus causing a damage to DRAGON Bau GmbH exceeding €50,000.

(3) Moreover, Peter von der PAHLEN is urgently suspected of having committed the crime of faked bankruptcy according to s. 156/1 and /2 Austrian Criminal Code by having taken the payments for works from some customers in the period until October 2003 in Gänserndorf and Mistelbach acting as a director of Dr LIVINGSTON & FEUKER LTD and as of 25/10/2003 acting in his capacity as a managing director and authorized signatory of DRAGON Bau GmbH, and then invoicing the DRAGON Bau GmbH partially with claims of suppliers from these works, thus pretending non existing liabilities of DRAGON Bau GmbH, and by doing so fictitiously reducing the property of the DRAGON Bau GmbH, that is at least having reduced the satisfaction of creditors, thus causing a damage exceeding €50,000.”

- 13 Dyson LJ’s reasons for concluding that this was not enough to satisfy s. 2(4)(c) of the 2003 Act were as follows:

“22. How far does the warrant have to go? It would be unwise to attempt a prescriptive answer to this question, and I do not do so. But I am in no doubt that the warrant in this case did not go far enough. In the first charge, the warrant gave no details of the identity of the victims of the fraud, the number and size of the advanced payments (except that in aggregate they exceeded €50,000), or the nature of the fraudulent misrepresentation. Is it alleged that the appellant pretended to sell single family houses when he was in fact offering something else? Or is it that he pretended to sell single family houses when he was not offering anything for sale? A similar question arises in relation to the alleged intended arranging for building contracts, delivery of materials and professional construction works.

23. In the second charge there are similar difficulties. What was the foreign property? How much money was unjustifiably taken? In answering the charge of obscurity, Ms Ezekiel submits that the whole of this charge must be read together, and that it contains only one allegation and not two, as suggested by Mr Summers. It seems to me that this is by no means clear. But what is clear is that the allegation is put on the basis that there was an obtaining of unjustified monies, dishonestly; or alternatively that the appellant ‘had intended to take it’. How those two alternatives are to be understood without any amplification is totally unclear. No amplification or explanation is provided in the text of the charge.

24. In the third charge, there are similar problems of lack of particularity. As regards the question of clarity, Ms Ezekiel acknowledges that the language is

obscure and suggests that one can make sense of the charge as a whole by deleting most of the first two and a half lines on the grounds of redundancy. I am unpersuaded that this is permissible in interpreting the warrant, having regard to the approach of relatively strict compliance that needs to be adopted, as was explained by Lord Hope.

25. In my judgment, these three charges are too vague, and as regards charges (2) and (3) too obscure, to satisfy the requirements of section 2(4)(c) of the 2003 Act. As I say, I bear in mind the need for strict compliance as explained by Lord Hope, and also have regard to the principle of speciality, which is referred to in Article 27.2 of the Framework Decision.

- 14 In *Dhar v Netherlands* [2012] EWHC 697 (Admin), King J noted at [63] that s. 2(4)(c) “does not demand the specificity of a count on an indictment or of an allegation in a civil pleading”. He went on to observe that the court must be “alive to the purpose of the legislation namely that of simplifying extradition procedures so as not to put too onerous a burden on the requesting judicial authorities”. At [64], he noted that the particulars required must at the very least enable the person sought by the warrant to know what offence he is said to have committed under the law of the requesting state and to have “an idea” of “the nature and extent of the allegations against him in relation to that offence”. At [65] he said that it was not necessary to provide “every last detail of the case against the person” and there was no requirement to set out the evidence. At [68], he emphasised the importance of providing particulars which were sufficiently clear and unambiguous to enable the person to invoke the principle of speciality – a point made by Dyson LJ in *von der Pahlen* at [25].
- 15 The appellant in *Dhar* was sought for trial on one offence of money laundering. The particulars given by the Dutch judicial authority are set out at [72] of the judgment in that case as follows:

“The warrant relates to in total... 1... offence.

One of these individuals is Sanjay DHAR (DOB 24/08/1964 in Delhi) who operates within the United Kingdom. The Dutch investigation has identified that Singh has provided loans to DHAR via his wife’s UK Bank account. DHAR has been identified as using a variety of mobile telephones and is regularly in contact with Singh.

Furthermore indications from the Dutch investigation are that Sanjay DHAR received funds within the United Kingdom that were paid to suspected drug traffickers in the Netherlands by Singh. On the 5th of May 2011 Singh and DHAR were identified as being in a telephone conversation discussing a sum of money of 40,000 Euros.

Surveillance by the Dutch National Crime Squad on the 16 May 2011 identified that DHAR was meeting with another of Singh’s associates, previously arrested with 112,400 Euros.

DHAR was identified in telephone contact with Singh shortly after his arrest, during which the cash and seizure were discussed. In addition DHAR made reference to having viewed paperwork from the seizure. The nature of the conversation concerns the rectifying the loss of cash by splitting the amount into

smaller amounts. The Dutch investigation believes that DHAR is a key figure in Singh's illegal money laundering activities and is suspected of being part of the money laundering conspiracy within the Netherlands.”

16 King J's conclusion as to the adequacy of these particulars was as follows:

“80. For my part, I have not found the resolution of this ground of appeal an easy one. The court at this stage of the appeal is not concerned with whether the conduct alleged amounts to the specified offence in Dutch law but simply with whether sufficient particulars have been given for the appellant to understand the nature and extent of his alleged offence role and participation in the alleged which go beyond the omnibus description set out in the final sentence of the particulars ('key role in Singh's money laundering activities... being part of the money laundering conspiracy within the Netherlands'). I have had in these circumstances considerable sympathy with the submissions made by Mr Stansfeld, in particular given the need to avoid requiring such particularity as would satisfy a civil pleading and to have in mind the objects of conciseness and simplicity. Ultimately however I have been persuaded by Mr Farrell's submissions on the issue of clarity and ambiguity.

81. The Appellant is entitled in my judgment to sufficient particulars to enable him to understand how the case is being put against him on critical allegations without that understanding being obscured by the fog of vagueness or ambiguity. The respondent has chosen in the EAW to make what in my judgment, looking at the particulars as a whole, is a critical allegation in the conduct alleged to amount to the offence of money laundering, namely the appellant 'received funds within the United Kingdom that were paid to suspected drug traffickers in the Netherlands by Singh'. The appellant's understanding of that allegation must be wholly disabled in my judgment by the ambiguity to which Mr Farrell referred and which is discussed above, and the lack of clarity of what it is the appellant is supposed to have done in this regard. Whether the funds were received by the appellant before or after they were paid to the suspected drug traffickers, how he is said to have received them and from whom, and the role if any which the appellant is supposed to have played in facilitating that payment, must be of considerable importance to any understanding of the role the appellant is supposed to have played in the alleged conspiracy.”

17 At [114], Moore-Bick LJ said this:

“It is clear from box (e) of the warrant that the appellant is accused of knowingly concealing, possessing or transferring property obtained by crime and, in broader terms, laundering the proceeds of crime. One would expect, therefore, the particulars of the offence to identify the property in question, to describe in general terms how it was obtained by crime, how the appellant became aware of that and what he did in relation to it.”

18 At [117], he continued as follows:

“Although I accept that the warrant need not contain highly detailed information of the kind that one might expect to find in a civil pleading, it must contain enough information to enable the requested person to understand with a reasonable degree

of certainty the substance of the allegations against him, namely, what he is said to have done, when and where, and also, in a case where knowledge of particular matters is an essential ingredient of the offence, sufficient information to enable him to understand why it is said that he had the necessary knowledge.”

- 19 In *Pelka v Poland* [2012] EWHC 3989 (Admin), Collins J noted that the requirement in s. 2(4)(c) of the 2003 Act for particulars of “the conduct alleged to constitute the offence” was the means by which the UK had implemented Article 8(1)(e) of Framework Decision 2002/584/JHA, which requires EAWs to contain “a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person”. In *Pelka*, the appellant’s extradition was sought to face trial for offences of money laundering, the money in question being the proceeds derived from the smuggling of cannabis from the Netherlands to the United Kingdom. One of the charges alleged direct involvement in the smuggling of cannabis: see at [1]. At [6], Collins J said this:

“Certainly, where involvement in a conspiracy is alleged, it is not necessary to include any great detail as to the precise acts committed in furtherance of the conspiracy. But, as a general proposition, it seems to me that a warrant ought to indicate, at least in brief terms, what is alleged to have constituted the involvement or the participation of the individual in question. It seems to me that, *prima facie*, simply to say there was a conspiracy and he conspired with others is to do whatever the end result of the offence is, is likely not to be sufficient.”

- 20 At the time of these decisions, it was thought impermissible to rely on material extraneous to the EAW in determining whether adequate particulars had been given. It is now clear that extraneous material in the form of further information from the requesting authority submitted pursuant to Article 15(2) of the Framework Decision may be relied upon: *Case C-241/15 Criminal Proceedings Against Bob-Dogi* [2016] 1 WLR 4583 and *Goluchowski v Poland* [2016] UKSC 36, [2016] 1 WLR 2665. The effect of these decisions was explained by Irwin LJ in *Alexander v France* [2017] EWHC 1392 (Admin), [2018] QB 408, at [75]:

“None of this means that extradition can properly be achieved on the basis of a ‘bit of paper’. In our view, there must be a document in the prescribed form, presented as an EAW, and setting out to address the information required by the Act. An otherwise blank document containing the name of a requested person, even if in the form of an EAW, will properly be dismissed as insufficient without more ado. The system of mutual respect and co-operation between states does not mean that the English court should set about requesting all the required information in the face of a wholly deficient warrant. Article 15(2) of the Framework Decision expressly concerns itself with ‘supplementary’ information, and can properly be implemented with that description in mind. That will of course include resolution of any ambiguity in the information provided. It will include filling ‘lacunae’. The question in a given case whether the court is faced with lacunae or a wholesale failure to provide the necessary particulars can only be decided on the specific facts.”

- 21 At [77], Irwin LJ continued:

“At all stages, the principal responsibility for the provision of information required by an EAW lies on the state requesting extradition. That responsibility is not transferred to the English court considering extradition. Nothing in the Framework

Decision or the Act carries any different implication. Nor is the requesting judicial authority relieved of that responsibility because the RP fails to raise the point.”

- 22 In *Alexander*, the appellant was sought for trial for offences arising out of a single course of conduct of obtaining and possession of weapons. The requesting authority submitted that the information in the EAW was sufficient to satisfy s. 2(4)(c) of the 2003 Act in that the appellant’s role as part of a gang was specified as having been the organiser of the purchase of the weapons and having organised the arrival in France of the vehicle which was used to endeavour to transport the weapons back to the UK. It was said that the information provided also made clear the *modus operandi* of the gang and the appellant’s role within it, including where, when and how it operated: see at [91]. At [101], Irwin LJ held that this was sufficient because the appellant “had all the information that he needed to raise any applicable bars under the Act”, given that the EAW made clear that the appellant:

“was alleged to be the organiser of a criminal gang engaged in France in the unlawful acquiring, possessing, transferring and transporting and weapons and ammunition (broad details of which were provided – including a submachine gun) with a view to their sale in England to drug dealing groups and other delinquents. This was not... an impermissibly broad omnibus description.”

- 23 In *FK v Germany* [2017] EWHC 2160 (Admin), the Divisional Court had to consider s. 2(4)(c) of the 2003 Act again. Citing previous case law, including *Alexander*, Hickinbottom LJ said this at [54]:

“There is a particularly high level of mutual trust, confidence and respect between states which are parties to the Framework Decision. The object of the EAW process is to remove the complexity and potential for delay in extradition between such states. There is consequently no requirement for full and exhaustive particularisation, the appropriate level of particularisation being dependent upon the circumstances of the specific case. In assessing whether a description is adequate, the EAW should be considered as a whole. However, sufficient circumstances must be set out to enable the requested person and the requested state (i) to identify the offence with which the requested person is charged; (ii) to understand, with a reasonable certainty, the substance of the allegations against the requested person and in particular when and where the offence is said to have been committed, and what he is said to have done; (iii) to perform a transposition exercise, when dual criminality is in issue; and (iv) to determine whether any compulsory or optional barriers to extradition apply. Where a request for extradition is made in respect of more than one offence, each offence must be adequately particularised.”

- 24 In *M & B v Italy* [2018] EWHC 1808 (Admin), the Divisional Court held that EAWs issued by an Italian judicial authority were “wholly deficient” because they failed entirely to make clear for what offences the appellants were to be prosecuted. These deficiencies were not simply *lacunae* that could be made good by further information: they were fundamental: [55]. This meant that further information was not admissible and the appellants had to be discharged: [57]-[58].

- 25 Finally, the parties made reference to a permission decision of mine, *Killoran v Belgium* [2021] EWHC 1257 (Admin), in which I rejected as unarguable a challenge under s. 2(4)(c) of the 2003 Act to an EAW alleging people smuggling. In that case, the conduct alleged

against the appellant in the EAW included that she had “transported victims” from one (specified) place to another on several nights: see at [8]. Further details of the appellant’s role were given in the further information, including that she was “responsible for transporting [an individual] and other members of the organization to the parking and picking them back up after completing the smuggling activities” and that she had “smuggled victims/migrants from France to the UK by ferry”: [9]. She was also said to have been involved in “purchasing cars in the UK used for smuggling activities”, to be responsible for transferring money on behalf of another individual and to have given advice to a leading member of the gang on how to carry out his activities clandestinely: [10].

## **Submissions**

### Submissions for the French judicial authority

- 26 For the French judicial authority, Peter Caldwell submitted that the judge’s conclusion at [21] of his judgment that the EAW gave “no information on the RP’s purported role within the enterprise” was inconsistent with the statement that the respondent appeared to have a “central role”. That was a very clear statement of his position within the enterprise and the “degree of participation in the offence” as required by Article 8 of the Framework Decision. The further information provides more detail, making clear that the respondent was not simply a foot soldier or driver but had an organisational role.
- 27 The central flaw in the judge’s assessment of the particulars was his failure to treat the EAW and the further information as a single set of information. Mr Caldwell submitted:
- “Read together, as a single set of information, the conduct of the respondent around the Le Mans camp, whilst the migrants were put onto lorries, then leaving the area with other organisers in separate cars – the two lorries returning empty two hours later, gives a very clear picture of what is alleged against him.”
- 28 Mr Caldwell submitted that the judge was wrong to observe at [24] that the actions attributed to the respondent in the further information did not amount to criminal activity “unless viewed in the context of further incriminating evidence”. This shows that the judge was looking for “evidence” when there is no requirement in the Framework Decision or the 2003 Act that an EAW should include evidence.
- 29 Finally, Mr Caldwell submitted that the respondent would have no difficulty in asserting his specialty rights. The conduct is adequately described. The respondent would be able to identify if he were charged with conduct outside that specified in the EAW.

### Submissions for the respondent

- 30 For the respondent, Graeme Hall submitted that the judge’s conclusion that the EAW was “wholly deficient” was open to him and correct, given that the EAW does not specify the respondent’s role in the conspiracy (beyond saying that it was a “central” one) and indeed does not specify any conduct on the part of the respondent which constitutes an offence.
- 31 Furthermore, Mr Hall submitted that offences 1 and 2 involve “trafficking”, but the conduct alleged does not correspond to trafficking as that term is defined in the Trafficking Directive (Council Directive 2011/36/EU), namely:

“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

- 32 The conduct alleged against the group, while perhaps constituting people smuggling, does not appear to be trafficking.
- 33 Mr Hall said that the complaint that the judge failed to consider the EAW and further information together is without merit. The judge considered both, but was right to conclude that the further information provides no greater insight into the respondent’s role in the alleged conspiracy than the EAW. The further information also does not particularise conduct amounting to an offence.

### Discussion

- 34 The EAW contains the following information about the conspiracy. It was led by Iraqis. It involved the transportation, for money, of illegal migrants to various regions of France and then on, hidden in lorries, to the UK. Many smugglers were involved in taking migrants, in return for money, and hiding them in vehicles on motorway rest areas. The scale of the operation was large and must have netted several dozen million Euros. The operation involved several vehicles, the use of discrete means of communication and illegal money laundering schemes. The offences took place from 1 August 2018 to 21 January 2020 in Le Mans, Châtelleraut, and in the EU.
- 35 The only information in the EAW about what the respondent is alleged to have done personally is that he “appears to have a central role” both in France and in other European countries.
- 36 The difficulty with this is that, although the EAW provides an assessment of the importance of the respondent’s alleged role in the conspiracy, it does not provide any details of what that role was. The EAW does not allege, for example, that he personally transported any illegal migrant, or that he personally hid any migrant or assisted one or more to board a lorry bound for the UK. It does not allege that he received or transferred money from or in respect of any migrant or that he did any act designed to launder money received by others. It does not allege that he procured discrete communications technology or used or advised anyone else about the use of any particular method of communication.
- 37 Not only is there nothing approaching the level of detail said in *von der Pahlen* and *Dhar* to be required: the EAW does not indicate, even in brief terms, “what is alleged to have constituted the involvement or the participation of the individual in question” (to use Collins J’s formulation in *Pelka*). It does not, in my judgment, provide “particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence”, as required by s. 2(4)(c) of the 2003 Act.
- 38 For these reasons, the judge was in my view correct to say that the EAW was “wholly deficient”. As in *M&B*, this meant that the deficiencies could not be cured by further information. As the judge held, the respondent was entitled to be discharged.

- 39 I have, however, gone on to consider the position if the EAW is read together with the further information. The latter provides details of the evidential basis on which the respondent is alleged to have been involved in the conspiracy. It gives the times and places when he was seen with others suspected of involvement in the conspiracy. It does not, however, specify any conduct on the part of the respondent that would constitute an offence. The closest it comes to identifying such conduct is in relation to 6 January 2020, when it is said that the respondent and others believed to be people smugglers was seen at the Passage aux Boeufs minutes after 8 migrants were loaded on to a vehicle. The further information does not say that it is inferred from this that the respondent participated in loading them on. Nor does it allege any other overt act by which he is said to have participated in the conspiracy.
- 40 In my judgment, the EAW and further information, read together, did not contain any properly particularised allegation of unlawful conduct on the part of the respondent. Nowhere in either document is it said what part the respondent played in the alleged conspiracy. Unlike in *Killoran*, there is no allegation that the respondent transported migrants, or purchased cars or gave advice to others. The EAW and further information, taken together, do not provide “particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence”.
- 41 For these reasons, I would hold that the judge was correct to conclude that s. 2(4)(c) of the 2003 Act was not satisfied.
- 42 Mr Hall submitted that, quite apart from the defect in identifying conduct on the part of the respondent, the conspiracy alleged amounted only to “smuggling” rather than “trafficking” and the EAW was therefore deficient for that reason also. I doubt whether it is legitimate to challenge a requesting State’s categorisation of an offence as falling within the rubric “trafficking in human beings” in the framework list simply on the basis that it does not correspond to the definition of “trafficking” in another later directive. But in the light of my conclusions above, it is not necessary for me to reach a definitive view on that question.

## **Conclusion**

- 43 For these reasons, the appeal of the French judicial authority will be dismissed.