The European Court of Justice: Germany's extradition of an Italian national to the USA in a cartel case was lawful

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The European Court of Justice has held that a German court's approval in 2014 of the extradition to the USA of an Italian national, Mr Romano Pisciotti, for prosecution for cartel participation was in compliance with EU law. Mr Pisciotti is the first person ever to have been extradited for prosecution for cartel participation, so the case proves that the US competition authorities are willing to go rather far in cartel cases.

The Court's judgment of 10 April 2018 – case C-191/16 Mr Pisciotti v Germany

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Background

The case started in 2010 when the company Parker ITR acknowledged having participated in a worldwide cartel (the "Marine Hose" cartel) fixing prices and bids and allocating market shares. Mr Pisciotti had been working as a business unit manager with Parker ITR, but was no longer employed with Parker ITR when the US competition authorities gained knowledge of the cartel. Consequently, he was
not covered by Parker ITR’s settlement agreement with the competition authorities, including the agreed protection from prosecution.

Later in 2010, Mr Pisciotti was charged personally for his involvement in the cartel, in which connection he was placed on Interpol’s wanted list. Three years later, in 2013, Mr Pisciotti was arrested in Germany while catching a connecting flight to Italy after a business trip to Nigeria. The US authorities subsequently requested Germany to extradite Mr Pisciotti for prosecution.

Extradition to the USA

In 2014 a German court approved the extradition and refused that such extradition would be contrary to EU law. The court’s reasoning was that under EU law, nationals of other EU member states do not enjoy the same protection from extradition as that enjoyed by Germany’s own nationals. Mr Pisciotti tried to appeal the decision in both Germany and the EU, but without success. Mr Pisciotti was extradited to the USA where he pleaded guilty and was sentenced to two years of imprisonment and payment of a USD 50,000 fine. He was subsequently released in 2015.

In connection with the extradition to USA, Mr Pisciotti brought an action against the Federal Republic of Germany for a declaration that the extradition was unlawful and for payment of damages. In particular, he argued that his extradition was contrary to EU law, including the prohibition of discrimination of EU nationals. The German court decided to refer the case to the European Court of Justice for a preliminary ruling.

The judgment of the European Court of Justice

The Court issued its judgment on 10 April 2018. In the opinion of the Court, Germany’s extradition of Mr Pisciotti was not contrary to EU law. Accordingly, an EU member state is not required to afford nationals of other EU member states the same protection from extradition to third countries as the protection afforded to its
own nationals. The Court held, though, that the extraditing member state must notify the EU national's home state of the imminent extradition in order that the home state may request surrender of its national. However, since Germany had notified Italy properly, and since Italy had not requested surrender of Mr Pisciotti, there was nothing to blame Germany for.

The case is now awaiting its final judgment by the German court.