Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

6 March 2025 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) 2019/1111 – Scope – Article 1(1)(b) and (2)(e) – Measure relating to the disposal of the property of a child – Article 7 – Jurisdiction in matters of parental responsibility – Article 10 – Choice of court – Regulation (EU) No 1215/2012 – Scope – Article 1(2)(a) – Exclusion concerning the status or legal capacity of natural persons – Rules on jurisdiction laid down in a bilateral agreement between the Republic of Bulgaria and the Russian Federation concluded before the accession of the Republic of Bulgaria to the European Union – Difference between those rules and the rules laid down in Regulation 2019/1111 – Article 351 TFEU – Concept of 'incompatibility')

In Case C-395/23 [Anikovi], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), made by decision of 24 June 2023, received at the Court on 29 June 2023, and supplemented by an order of 6 February 2024, received at the Court on the same day, in the proceedings

E. M. A.,

E. M. A.,

M. I. A.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Court, acting as President of the Fourth Chamber, C. Lycourgos, President of the Third Chamber, M.L. Arastey-Sahún, President of the Fifth Chamber, S. Rodin and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2024,

* Language of the case: Bulgarian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any of the party to the proceedings.

after considering the observations submitted on behalf of:

– E. M. A., E. M. A. and M. I. A., by L.S. Tsoncheva, advokat,

– the Spanish Government, by I. Herranz Elizalde and P. Pérez Zapico, acting as Agents,

– the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

– the European Commission, by S. Noë, W. Wils and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 November 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(1)(c) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; 'the Rome I Regulation'), Article 24(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1; 'the Brussels I *bis* Regulation'), and Article 1(2)(e) and Article 7(1) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ 2019 L 178, p. 1; 'the Brussels II *ter* Regulation').

2 The request has been made in non-contentious proceedings brought on behalf of two minors, E. M. A and E. M. A, with a view to obtaining authorisation from a court to sell, with the consent of their mother, M. I. A, the shares they own in three immoveable properties in Bulgaria.

Legal context

International law

3 The Treaty between the Union of Soviet Socialist Republics and the People's Republic of Bulgaria concerning legal assistance in civil, family and criminal cases, signed at Moscow on 19 February 1975 (*United Nations Treaty Series*, Vol. 1015, No 14855, p. 41; 'the Russo-Bulgarian Treaty'), was ratified in Bulgaria by Decree No 784 of 15 April 1975 (DV No 33/1975) and published on 10 February 1976 (DV No 12/1976, corrigendum DV No 17/2014). Article 25 thereof provides as follows:

'1. Legal relationships between parents and children shall be determined by the law of the Contracting Party in whose territory they have a common domicile.

…

6. For the purpose of executing decisions concerning the legal relations referred to in paragraphs 1, 2, 3, 4 and 5 above, jurisdiction shall be exercised by the authorities of the Contracting Party of which the child is a national or in whose territory he is domiciled or resident.'

4 Article 30(2) of the Russo-Bulgarian Treaty provides that the form of transactions relating to immovable property is to be determined by the law of the Contracting Party in whose territory such property is situated.

European Union law

The Rome I Regulation

5 Article 4 of the Rome I Regulation, headed 'Applicable law in the absence of choice', provides, in paragraph 1(c):

'To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

…

(c) a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

…'

The Brussels I bis *Regulation*

6 Article 1(1) of the Brussels I *bis* Regulation provides as follows:

'1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. …

2. This Regulation shall not apply to:

(a) the status and legal capacity of natural persons, …

…'

7 Under Article 24(1) of the Brussels I *bis* Regulation:

'The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

…'

The Brussels II ter *Regulation*

8 Recitals 10, 19, 20 and 91 of the Brussels II *ter* Regulation are worded as follows:

‘(10) As regards the property of the child, this Regulation should apply only to measures for the protection of the child, namely the designation and functions of a person or body having charge of the child’s property, representing or assisting the child, and the administration, conservation or disposal of the child’s property. In this context, this Regulation should, for instance, apply in cases where the object of the proceedings is the designation of a person or body administering the child’s property. Measures relating to the child’s property which do not concern the protection of the child should continue to be governed by [the Brussels I *bis* Regulation]. However, it should be possible for the provisions of this Regulation on jurisdiction over incidental questions to apply in such cases.

…

(19) The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. …

(20) To safeguard the best interests of the child, jurisdiction should in the first place be determined according to the criterion of proximity. Consequently, jurisdiction should lie with the Member State of the habitual residence of the child, except for certain situations set out in this Regulation, for instance, where there is a change in the child’s residence or pursuant to an agreement between the holders of parental responsibility.

…

(91) It is recalled that for agreements with one or more third States concluded by a Member State before the date of its accession to the Union, Article 351 TFEU applies.’

9 Article 1 of that regulation, headed ‘Scope’, provides:

‘1. This Regulation applies in civil matters of:

(a) divorce, legal separation or marriage annulment;

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in point (b) of paragraph 1 may, in particular, include:

…

(e) measures for the protection of the child relating to the administration, conservation or disposal of the property of a child.

…’

10 Article 7 of that regulation, headed 'General jurisdiction', provides:

'1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 of this Article shall be subject to Articles 8 to 10.'

11 Article 10 of the Brussels II *ter* Regulation, headed 'Choice of court', provides, in paragraph 1:

'The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that:
   (i) at least one of the holders of parental responsibility is habitually resident in that Member State;
   (ii) that Member State is the former habitual residence of the child; or
   (iii) the child is a national of that Member State;

(b) the parties, as well as any other holder of parental responsibility have:
   (i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or
   (ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and

(c) the exercise of jurisdiction is in the best interests of the child.'

12 Chapter VIII of that regulation, which comprises Articles 94 to 99, governs the relations between that regulation and other legal instruments, including certain bilateral treaties concluded between Member States and the Holy See.

Bulgarian law

13 Under Article 18 of the Zakon za zadalzheniata i dogovorite (Law on obligations and contracts), contracts on the transfer of ownership or the establishment of other rights *in rem* in immovable property are to require notarial attestation.

14 In accordance with Article 130(3) of the Semeen kodeks (Family Code), acts disposing of, inter alia, immovable property belonging to a child may be carried out only with the approval of the Rayonen sad (District Court) within the judicial district of which the child has his or her current place of residence provided that that act of disposal is not contrary to the interests of the child.

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

15 In 2023, the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), which is the referring court, was seised of an application lodged on behalf of two minors of Russian nationality whose habitual residence is in Germany in order to obtain authorisation to sell the shares they own in three immoveable properties in Bulgaria which they inherited following the death of their father.

16 Under Article 130(3) of the Family Code, the sale of immovable property belonging to a child has to be authorised by the Rayonen sad (District Court) with territorial jurisdiction, which must have regard to the interests of the child, before it can be registered by a notary under Article 18 of the Law on obligations and contracts.

17 The referring court is uncertain whether the Bulgarian courts have jurisdiction in a situation such as the one at issue in the main proceedings. It notes, first, that the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) bases the jurisdiction of the Bulgarian courts in such a situation on provisions of national law and on Article 30(2) of the Russo-Bulgarian Treaty, while another national court also relies on Article 4(1)(c) of the Rome I Regulation. However, the referring court takes the view that the latter provision is not relevant, and that, instead, it is Article 24(1) of the Brussels I *bis* Regulation that is relevant.

18 Second, that court observes that a situation such as the one at issue in the main proceedings could also come within the scope of the Brussels II *ter* Regulation, unless there is an international agreement, such as the Russo-Bulgarian Treaty, which derogates from it. In the latter case and in accordance with Article 7(1) of that regulation, it is the courts of the Member State in which the child is habitually resident, in this case the German courts, which have jurisdiction.

19 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the scope of Article 1[(2)](e) of [the Brussels II *ter* Regulation] cover non-contentious proceedings concerning the granting of permission by a court for the disposal, [for example] a sale, of immovable property or co-ownership shares in immovable property belonging to a child?

(2) Which regulation determines the international jurisdiction of a court of a Member State of the European Union in non-contentious proceedings concerning the granting of permission by a court for the disposal, [for example] a sale, of immovable property or co-ownership shares in immovable property belonging to a child: (i) Article 7(1) of [the Brussels II *ter* Regulation] – the court for the place where the child is habitually resident – or (ii) Article 4(1)(c) of [the Rome I Regulation] or Article 24(1) of [the Brussels I *bis* Regulation] – the court for the place where the immovable property is situated?

(3) Are the rules of [the Brussels II *ter* Regulation] on international jurisdiction in matters of parental responsibility derogated from by a bilateral international agreement between a Member State ([the Republic of] Bulgaria) and a third country (the Soviet Union or the Russian Federation) which was concluded before the Member State’s accession to the European Union, if that international agreement is not listed in Chapter VIII [of that regulation]?’

Consideration of the questions referred

The first and second questions

20 As a preliminary point, the Court notes that, although the second question mentions Article 4(1)(c) of the Rome I Regulation, the referring court explains that it referred to that provision only because a Bulgarian court based its jurisdiction on that provision, but that it has

no doubt that that provision, which relates to the applicable law and not to jurisdiction, is not relevant for the purposes of answering the second question, and that, instead, it is Article 24(1) of the Brussels I *bis* Regulation that is relevant.

21 The Court also notes that, as is apparent from the order for reference and as was confirmed at the hearing by the lawyer for the mother and the two children concerned, one of those children has become an adult during the course of the proceedings.

22 In those circumstances, the Court holds that, by its first and second questions, which it is appropriate to deal with together, the referring court asks, in essence, whether judicial authorisation, sought on behalf of a minor habitually resident in a Member State, to sell the shares owned by that child in immovable property situated in another Member State comes within the scope of the Brussels II *ter* Regulation or that of the Brussels I *bis* Regulation.

23 According to Article 1 of the Brussels II *ter* Regulation, that regulation is to apply in civil matters relating, inter alia, to the exercise of parental responsibility. Article 1(2)(e) of that regulation provides that those matters concern, in particular, 'measures for the protection of the child relating to the administration, conservation or disposal of the property of a child'.

24 Pursuant to Article 1(1) of the Brussels I *bis* Regulation, that regulation is to govern civil and commercial matters whatever the nature of the court or tribunal seised, it being noted that it is clear from Article 24(1) in particular thereof that civil and commercial matters are to include 'proceedings which have as their object rights *in rem* in immovable property'. Article 1(2)(a) of the Brussels I *bis* Regulation excludes from its scope 'the status and legal capacity of natural persons'.

25 In the present case, as is clear from the order for reference, judicial authorisation, as sought in the main proceedings, is a measure taken having regard to the status and legal capacity of the minor, which aims to protect the best interests of that minor. It is apparent from the Court's case-law that, since the fact that judicial authorisation is necessary is the immediate consequence of that status and of that legal capacity, that authorisation, regardless of the subject matter of the legal act concerned by that authorisation, constitutes a protective measure for the child relating to the administration, conservation or disposal of the child's property in the exercise of parental responsibility within the meaning of Article 1(2)(e) of the Brussels II *ter* Regulation, which relates directly to the legal capacity of a natural person concerned, within the meaning of Article 1(2)(a) of the Brussels I *bis* Regulation (see, to that effect, judgments of 3 October 2013, *Schneider*, C-386/12, EU:C:2013:633, paragraph 26, and of 6 October 2015, *Matoušková*, C-404/14, EU:C:2015:653, paragraphs 28 to 31).

26 In the light of those factors and the intention of the EU legislature, as expressed in recital 10 of the Brussels II *ter* Regulation, judicial authorisation as sought in the main proceedings comes within the scope of that regulation, and therefore falls outside of the scope of the Brussels I *bis* Regulation.

27 In those circumstances, in accordance with Article 7(1) of the Brussels II *ter* Regulation, it is the courts of the Member State in which the child is habitually resident at the time the court is seised which, in principle, have jurisdiction to grant that authorisation.

28 In the light of the reasoning above, the answer to the first and second questions is that the Brussels II *ter* Regulation must be interpreted as meaning that judicial authorisation, sought on behalf of a minor habitually resident in a Member State, to sell the shares owned by that minor in immovable property situated in another Member State comes within the scope of parental responsibility, within the meaning of Article 1(1)(b) of that regulation, in that that authorisation concerns protection measures, as referred to in Article 1(2)(e) of that regulation, with the result that, pursuant to Article 7(1) of that regulation, it is the courts of a Member State in which the minor is habitually resident at the time the court is seised which, in principle, have jurisdiction to grant that authorisation.

The third question

29 By its third question, the referring court seeks to ascertain whether a bilateral treaty concluded between a Member State and a third State before the accession of that Member State to the European Union may derogate from the provisions of the Brussels II *ter* Regulation even though that treaty is not referred to in Chapter VIII of that regulation.

Admissibility

30 In its written observations, the Spanish Government questions the admissibility of the third question in so far as it is not connected to the subject matter of the main proceedings and the referring court has not established that there is a connection between the Russo-Bulgarian Treaty and any provision of EU law.

31 In that regard, the Court recalls that that it is solely for the national courts before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 60 and 61 and the case-law cited).

32 According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure of the Court of Justice, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 59 and the case-law cited).

33 In the present case, as the Spanish Government stated, in essence, in its written observations, the referring court does not make an express reference, in its third question referred for a preliminary ruling, to the provision of the Russo-Bulgarian Treaty which might run counter to the rule of jurisdiction laid down in Article 7(1) of the Brussels II *ter* Regulation, that being the only rule referred to by that court in the event that that regulation is applicable.

34 However, in the grounds of the order for reference setting out the legal background to the case at issue, the referring court cites Articles 25 and 30 of that treaty. First, it states that it is clear from national case-law that, under provisions of national law and Article 30(2) of that treaty, the Bulgarian courts are to declare that they have jurisdiction, as the court of the State in which the immovable property is situated, to grant the authorisation provided for in Article 130(3) of the Family Code.

35 Second, it claims that it follows from Article 25(6) of the Russo-Bulgarian Treaty that, in view of the fact that, in the case in the main proceedings, the minor is habitually resident in a State which is not a Contracting Party to the Russo-Bulgarian Treaty, namely the Federal Republic of Germany, the judicial bodies of the Contracting Party of which that child is a national, in this case the Russian judicial bodies, could also, as the Commission stated in its written observations, have jurisdiction under that treaty provision to grant the authorisation sought.

36 As stated in paragraph 27 of the present judgment, the rule of jurisdiction referred to in Article 7(1) of the Brussels II *ter* Regulation lays down the principle that the courts of the Member State in which the child is habitually resident – the German courts, in the present case – are to have jurisdiction.

37 Since that provision provides for jurisdiction that is different from that which might result from Article 25(6) of the Russo-Bulgarian Treaty and from that which results, according to the national case-law cited in the request for a preliminary ruling, from Article 30(2) of that treaty, it is sufficiently clear from the third question, its reasoning and the legal framework set out by the referring court that that question is linked to the subject matter of the main proceedings because the rules of jurisdiction under EU law and under that treaty are different, and that the problem raised in that request is not purely hypothetical.

38 Under those circumstances the third question must be held to be admissible.

Substance

39 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 31).

40 The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court,

in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 22 December 2022, *Ministre de la Transition écologique and Premier ministre (Liability of the State for air pollution)*, C-61/21, EU:C:2022:1015, paragraph 34 and the case-law cited).

41 The Court notes that the referring court has, in essence, justified its third question by stating that, although Chapter VIII of the Brussels II *ter* Regulation governs, in accordance with its heading, relations between that regulation and 'other instruments', the relations referred to in that chapter do not concern any bilateral treaty concluded between a Member State and a third State, such as the Russo-Bulgarian Treaty, except for bilateral treaties concluded by certain Member States with the Holy See, which are not relevant in the present case.

42 That said, it is apparent from recital 91 of the Brussels II *ter* Regulation that, for agreements with one or more third States concluded by a Member State before the date of its accession to the Union, Article 351 TFEU is to apply.

43 In those circumstances, the Court must conclude that, by its third question, the referring court asks, in essence, whether Article 351 TFEU must be interpreted as governing the relations between a bilateral treaty concluded between a Member State and a third State before the accession of that Member State to the Union and the Brussels II *ter* Regulation where there is no reference to that treaty in Chapter VIII of that regulation and, if so, in what circumstances that treaty may derogate from that regulation.

44 The first paragraph of Article 351 TFEU provides that the rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, are not to be affected by the provisions of the Treaties. The second paragraph of that article states that, to the extent that such agreements are not compatible with the Treaties, the Member State or States concerned are to take all appropriate steps to eliminate the incompatibilities established. Member States, where necessary, are to assist each other to that end and, where appropriate, are to adopt a common attitude.

45 It is apparent from the Court's case-law on Article 351 TFEU that that provision is intended to enable Member States to respect the rights which third States derive, under international law, from agreements concluded prior to the accession of those Member States to the European Union and to comply with their corresponding obligations (see, inter alia, to that effect, judgments of 9 February 2012, *Luksan*, C-277/10, EU:C:2012:65, paragraph 61; of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania*, C-282/19, EU:C:2022:3, paragraph 55; and of 14 March 2024, *Commission* v *United Kingdom (Judgment of the Supreme Court)*, C-516/22, EU:C:2024:231, paragraph 60).

46 Furthermore, the first paragraph of Article 351 TFEU is a rule which may, where its conditions of application are met, allow derogations from the application of any provision of EU law, whether primary or secondary law (see, for example, judgment of 28 October 2022, *Generalstaatsanwaltschaft München (Extradition and ne bis in idem)*, C-435/22 PPU, EU:C:2022:852, paragraphs 119 and 121 and the case-law cited).

47 The Court has, however, stated that, for a rule of EU law to be deprived of effect as a result of an international agreement, pursuant to the first paragraph of Article 351 TFEU, two conditions must be fulfilled: the agreement must have been concluded before the entry into force of the EU

Treaties in the Member State concerned and the third country concerned must derive from it rights which it can require the Member State concerned to respect (judgment of 14 March 2024, *Commission* v *United Kingdom (Judgment of the Supreme Court)*, C-516/22, EU:C:2024:231, paragraph 64 and the case-law cited).

48 The Court has also stated that it is for the courts of the Member States to ascertain whether that potential incompatibility between EU law and an international convention, as referred to in Article 351 TFEU, can be avoided by interpreting that convention, to the extent possible and in compliance with international law, in such a way that it is consistent with EU law. If it is not possible to interpret the convention in such a way that it is consistent with EU law, the Member States are obliged, pursuant to the second paragraph of Article 351 TFEU, to take the necessary measures to eliminate the incompatibility of that convention with EU law, where appropriate, by denouncing it. However, pending such elimination, the first paragraph of Article 351 TFEU permits them to continue to apply that convention (judgment of 22 October 2020, *Ferrari*, C-720/18 and C-721/18, EU:C:2020:854, paragraphs 68 to 69 and the case-law cited).

49 It follows from paragraphs 44 to 48 of the present judgment that, where a treaty concluded between a Member State and one or more third States before the date of accession of that Member State to the European Union is not referred to in an act of EU law, Article 351 TFEU, as a general provision of primary law, is intended to govern relations between that act and that treaty, as is recalled in recital 91 of Brussels II *ter* Regulation. Provided that a third State that is party to such a treaty derives from it rights which it can require the Member State in question to respect, Article 351 TFEU allows that Member State to apply the rules of that treaty even if, because they cannot be interpreted in a manner consistent with EU law, they are incompatible with EU law. If they are incompatible, that Member State may continue to apply the rules of that treaty until such time as the measures necessary to eliminate that incompatibility take effect.

50 In the present case, in the first place, it will be for the referring court to ascertain whether the Russo-Bulgarian Treaty concluded by the Republic of Bulgaria before its accession to the European Union contains rules that the Russian Federation may require that Member State to respect.

51 If that were the case, it would be for the referring court, in the second place, to verify whether the Russo-Bulgarian Treaty is incompatible with the Brussels II *ter* Regulation in that those two legal instruments do not provide that the same court has jurisdiction in the circumstances of the dispute in the main proceedings.

52 In the context of that verification, it will be necessary to take into account not only Article 7(1) of the Brussels II *ter* Regulation, but also Article 7(2) of that regulation, according to which paragraph 1 of that article ‘shall be subject to Articles 8 to 10’ of that regulation, wording which reflects, as is apparent from recital 20 of that regulation, the will of the EU legislature to provide, in certain situations, for the jurisdiction of courts other than those of the child’s place of habitual residence, those courts being designated on the basis of the criterion of proximity.

53 In that regard, Article 10(1) of the Brussels II *ter* Regulation provides that the courts of a Member State are to have jurisdiction in matters of parental responsibility where three conditions are met.

54 According to point (a) of that provision, the child concerned must have a substantial connection with that Member State, it being specified that, as a result of the expression ‘in particular’, the list of three situations in point (a) is not exhaustive, and it may therefore also be established that there

is a substantial connection on the basis of another factor which (i) is relevant in the proceedings as part of which a court is being chosen, as provided for in Article 10 of the Brussels II *ter* Regulation, and which (ii) creates a concrete and significant connection between that Member State and the personal interests of that child.

55 That provision requires that the parties or any other holder of parental responsibility must either, under point (b)(i), have freely agreed on jurisdiction, at the latest at the time the court is seised, or, under point (b)(ii), have expressly accepted jurisdiction in the course of the proceedings, in which case the court must have ensured that all the parties have been informed of their right not to accept its jurisdiction.

56 Point (c) of that provision states that the exercise of jurisdiction must be in the best interests of the child. That paragraph reflects recital 19 of the Brussels II *ter* Regulation, which states, inter alia, that the grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child. It follows that jurisdiction must be determined, above all, in those best interests. That can be ensured only by a review, in each specific case, of the question whether the court chosen on the basis of Article 10(1) of that regulation is consistent with those interests (see, to that effect, judgment of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraphs 45 and 47).

57 The referring court could therefore assume jurisdiction under the Brussels II *ter* Regulation provided that it ensures (i) that, in the context of the proceedings brought before it, there is a concrete and significant connection between the Republic of Bulgaria and the personal interests of the child concerned, as could be the case bearing in mind that that child owns a share of immovable property situated in that Member State, (ii) that, given that in non-contentious proceedings, such as those at issue in the main proceedings, there is no defendant party, the mother of the minor, as the sole holder of parental responsibility, expressly accepts the jurisdiction of that court in the course of the proceedings after having been informed of her right not to accept it, and (iii) that the exercise of that jurisdiction is in the best interests of the child.

58 If the referring court were to find that, in the case in the main proceedings, the Russo-Bulgarian Treaty is incompatible with the Brussels II *ter* Regulation in so far as it confers jurisdiction on courts other than those designated by Articles 7 to 10 of that regulation, it will have to examine, in the third place, in accordance with the case-law referred to in paragraph 48 of the present judgment, whether that incompatibility can be avoided by adopting an interpretation of that treaty that is consistent with that regulation. If that is not possible and it does not itself have the power to eliminate that incompatibility, the referring court will, in the fourth place, be able to apply the rules of that treaty and disregard those of the Brussels II *ter* Regulation.

59 However, the Court wishes to emphasise that, while the courts of the Member States are indeed required to verify whether any incompatibility between EU law and an earlier bilateral convention, such as the Russo-Bulgarian Treaty, can be avoided by adopting an interpretation of that convention, so far as possible and in compliance with international law, that is consistent with EU law, they are not required to verify whether any incompatibility between EU law and such a convention can be avoided by interpreting or applying EU law in a manner that is consistent with that convention.

60 Accordingly, the referring court must not have recourse to the possibility, referred to in paragraph 57 of the present judgment, of recognising that it has jurisdiction under Article 10(1)(a), (b)(ii) and (c) of the Brussels II *ter* Regulation, instead of applying the general rule of jurisdiction set out in Article 7(1) of that regulation, with the aim of reconciling EU law

with the Russo-Bulgarian Treaty and, in so doing, of finding that, in the circumstances of the dispute in the main proceedings, that treaty is compatible with EU law in so far as they both provide for the same court to have jurisdiction in that dispute.

61 In the light of the reasoning set out above, the answer to the third question is that Article 351 TFEU must be interpreted as governing the relations between a treaty concluded between a Member State and one or more third States before the date of that Member State's accession to the European Union and the Brussels II *ter* Regulation where that treaty, although not referred to in Chapter VIII of that regulation, confers rights which a third State party to that treaty may require the Member State concerned to respect. In the event that that treaty is incompatible with the Brussels II *ter* Regulation, and that incompatibility cannot be avoided by a court of that Member State in proceedings pending before it in a matter that is governed by both that treaty and that regulation, that court may apply the rules of that treaty to the detriment of those laid down by that regulation, as long as the measures necessary to eliminate that incompatibility have not taken effect, it being specified that that Member State must take all appropriate steps to adopt and implement those measures.

Costs

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

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

1. **Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction**

   must be interpreted as meaning that judicial authorisation, sought on behalf of a minor habitually resident in a Member State, to sell the shares owned by that minor in immovable property situated in another Member State comes within the scope of parental responsibility, within the meaning of Article 1(1)(b) of that regulation, in that that authorisation concerns protection measures, as referred to in Article 1(2)(e) of that regulation, with the result that, pursuant to Article 7(1) of that regulation, it is the courts of a Member State in which the minor is habitually resident at the time the court is seised which, in principle, have jurisdiction to grant that authorisation.

2. **Article 351 TFEU must be interpreted as governing the relations between a treaty concluded between a Member State and one or more third States before the date of that Member State's accession to the European Union and Regulation 2019/1111 where that treaty, although not referred to in Chapter VIII of that regulation, confers rights which a third State party to that treaty may require the Member State concerned to respect. In the event that that treaty is incompatible with Regulation 2019/1111, and that incompatibility cannot be avoided by a court of that Member State in proceedings pending before it in a matter that is governed by both that treaty and that regulation, that court may apply the rules of that treaty to the detriment of those laid down by that**

regulation, as long as the measures necessary to eliminate that incompatibility have not taken effect, it being specified that that Member State must take all appropriate steps to adopt and implement those measures.

[Signatures]