Reports of Cases

OPINION OF ADVOCATE GENERAL
NORKUS
delivered on 2 October 2025 [1]

Case C-516/24 [Winderwill] [i]

BC, represented by his legal representative,
v
LG

(Request for a preliminary ruling from the Amtsgericht Schleswig (Local Court, Schleswig, Germany))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction – Seising of a court – Filing of an application for legal aid for the purpose of requesting a variation of maintenance obligations – Subsequent filing of an application for variation of maintenance obligations with the courts of another Member State)

1. The legal framework for this reference for a preliminary ruling is Regulation (EC) No 4/2009 [2] on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Against the legal and factual background of the present case, the referring court's question invites the Court of Justice to consider the interpretation of the concept of 'document equivalent' to the document instituting the proceedings within the meaning of Article 9(a) of that regulation. In particular, the Court will have to rule on whether an application for legal aid [3] brought by the maintenance creditor in order to sue the debtor is capable of coming within the scope of that concept.

I. Legal framework

A. International law

2. According to Article 3(1) of the Hague Protocol: [4]

[1] Original language: French.

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

[2] Council 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, and corrigenda OJ 2011 L 131, p. 26, and OJ 2013 L 8, p. 19).

[3] In this Opinion, the use of the expression 'legal aid' also covers the legal aid mentioned by the referring court in the request for a preliminary ruling.

[4] The content of the protocol forms the annex to Council Decision 2009/941/EC of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (OJ 2009 L 331, p. 17) ('the 2007 Hague Protocol').

'Maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor, save where this Protocol provides otherwise.'

3. Article 4 of that protocol lays down special rules favouring certain maintenance creditors, applicable inter alia in the case of maintenance obligations of parents towards their children. Paragraph 3 of that article provides:

'Notwithstanding Article 3, if the creditor has seized the competent authority of the State where the debtor has his habitual residence, the law of the forum shall apply. However, if the creditor is unable, by virtue of this law, to obtain maintenance from the debtor, the law of the State of the habitual residence of the creditor shall apply.'

B. European Union law

Regulation No 4/2009

4. Recital 1 of Regulation No 4/2009 states that that regulation was adopted by the EU legislature in order to achieve its objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured.

5. According to recital 9 thereof, that regulation aims to make it easier to obtain a decision on a maintenance claim which will be automatically enforceable in another Member State without further formalities.

6. In accordance with recital 36 and Chapter V thereof, headed 'Access to justice', that regulation seeks to establish a special legal aid scheme for maintenance obligations which provides for full coverage of the costs relating to proceedings concerning maintenance obligations in respect of children under the age of 21 initiated via the Central Authorities.

7. Recital 44 thereof states that Regulation No 4/2009 is intended to amend Regulation (EC) No 44/2001[5] by replacing the provisions of that latter regulation applicable to maintenance obligations.

8. Article 3 of Regulation No 4/2009 provides:

'In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

(a) the court for the place where the defendant is habitually resident, or

(b) the court for the place where the creditor is habitually resident, or

…'

[5] Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

9. Article 9(a) of that regulation, headed 'Seising of a court', states:

'For the purposes of this Chapter, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant …'

10. According to Article 12 of that regulation, headed 'Lis pendens':

'1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.'

11. Under Article 15 of that regulation:

'The law applicable to maintenance obligations shall be determined in accordance with the [2007 Hague Protocol] in the Member States bound by that instrument'.

C. German law

1. The FamFG

12. The Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on proceedings in family matters and matters subject to non-contentious proceedings; 'the FamFG'), states in Paragraph 76(1) thereof:

'The provisions of the Code of Civil Procedure concerning assistance with court costs shall apply *mutatis mutandis* to the grant of legal aid [provided for by the FamFG] in so far as none of the following provisions provides otherwise.'

13. Paragraph 77(1) of the FamFG provides:

'Prior to an approval of legal aid, the court may grant the other participants the opportunity to comment. In proceedings initiated by the filing of an application, the defendant shall have the opportunity to comment on whether he believes the conditions are fulfilled for the grant of legal aid in so far as there are no particular reasons such that this would appear to be inappropriate.'

14. Paragraph 113(1) of the FamFG provides:

'In matrimonial matters and in family dispute matters … the general provisions of the Code of Civil Procedure and the provisions of the Code of Civil Procedure concerning proceedings before the regional courts shall be applicable *mutatis mutandis*.'

2. The ZPO

15. The Zivilprozessordnung (Code of Civil Procedure; 'the ZPO') states in Paragraph 114(1) thereof:

'A party who, because of his personal and economic circumstances, cannot pay the costs of the proceedings, or can pay them only in part or only in instalments, shall receive legal aid, on application, if his intended action or defence has sufficient prospects of success and does not appear to be frivolous. For cross-border legal aid within the European Union, Paragraphs 1076 to 1078 shall also apply.'

16. Paragraph 117 of the ZPO provides:

'1. The application for the grant of legal aid must be made to the court hearing the case; it may be recorded with the registry for the files of the court. The application shall summarise the dispute and cite the evidence. …

2. A declaration by the party concerning his personal and economic circumstances (family circumstances, occupation, assets, income and obligations) and corresponding supporting documents shall be annexed to the application. The declaration and the supporting documents may be made accessible to the opponent in the proceedings only with the party's consent, unless the opponent is entitled under civil law to be informed of the applicant's earnings and assets. Prior to his declaration being forwarded to the opponent, the applicant is to be given the opportunity to state his position. The applicant is to be informed of the fact that the declaration has been forwarded.

3. In the interests of simplifying and streamlining the procedure, the Federal Ministry of Justice shall be authorised to introduce, by way of statutory instrument and with the approval of the Bundesrat, forms for making the declaration. …

4. In so far as such forms have been introduced for making the declaration referred to in subparagraph 2, the party must make use of them. …'

17. Paragraph 118(1) of the ZPO states:

'The opponent shall be given the opportunity to state his position as to whether he considers the conditions for the granting of legal aid have been met, unless this is deemed inappropriate for specific reasons. That position statement may be recorded with the registry for the files of the court. The court may summon the parties to an oral hearing if it is expected that the parties will settle; the court is to record any settlement reached. Any costs incurred by the opponent shall not be reimbursed. The expenses incurred in the course of examining witnesses and experts, pursuant to the third sentence of subparagraph 2, shall be borne as court costs by the party on whom the costs of the legal dispute have been imposed. Paragraph 128a shall be applicable *mutatis mutandis* to the hearing held pursuant to the third sentence.'

18. Paragraph 167 of the ZPO, headed 'Retroactive effect of the service', provides:

'If service is effected in order to comply with a deadline, or to have a limitation period begin anew, or to have it suspended pursuant to Paragraph 204 of the [Bürgerliches Gesetzbuch (Civil Code)],

this effect shall commence upon receipt of the corresponding application or declaration provided that service is effected shortly thereafter.'

19. Paragraph 261 of the ZPO provides:

'(1) By the action being brought, the dispute shall become pending.

…

(3) Once the dispute is pending, this shall have the following effects:

1. For as long as the dispute is pending, none of the parties may bring the dispute before another court or tribunal;

…'

3. The BGB

20. The Bürgerliches Gesetzbuch (Civil Code; 'the BGB') states in Paragraph 204(1)(14) thereof ('Suspension of the limitation period by the bringing of an action'):

'(1) The limitation period shall be suspended by

…

notification of the initial application for the grant of legal aid; if notification is made immediately after the application is lodged, the suspension of the limitation period shall take effect upon the lodging of the application'.

II. The facts of the dispute in the main proceedings, the question referred for a preliminary ruling and the proceedings before the Court

21. BC, the applicant in the main proceedings, is the son of the defendant in the main proceedings, LG. BC is habitually resident in Sweden, whereas LG lives in Germany.

22. On 17 December 2021, BC submitted to the Amtsgericht Schleswig (Local Court, Schleswig, Germany), the referring court, an application for legal aid for the purpose of applying for a variation of child maintenance. BC attached to the legal aid application an application to vary in draft form, indicating that it would be formally submitted in the event of legal aid being granted.

23. On 28 January 2022, that is to say, before the referring court ruled on the application for legal aid, LG brought an action seeking variation of his maintenance obligations to BC before the Eskilstuna tingsrätt (District Court, Eskilstuna, Sweden).

24. By order of 29 March 2022, the referring court refused to grant legal aid to BC, citing lack of international jurisdiction. Following an appeal by BC, the Schleswig-Holsteinisches Oberlandesgericht (Higher Regional Court, Schleswig-Holstein, Germany), by order of 27 May 2022, set aside the order of the referring court and granted legal aid to BC.

25. Subsequently, BC brought the application for variation of the maintenance obligations before the referring court, which was served on LG on 21 July 2022.

26. Meanwhile, the application for variation brought by LG before the Eskilstuna tingsrätt (District Court, Eskilstuna) had been dismissed on the grounds of lack of international jurisdiction. The Högsta domstolen (Supreme Court, Sweden) set aside that decision and referred the case back to the court of first instance. By order of 6 May 2024, that court stayed the proceedings pursuant to Article 12(1) of Regulation No 4/2009.

27. The referring court considers it necessary to establish the jurisdiction of the first court seised, within the meaning of Article 12 of Regulation No 4/2009. That court is uncertain whether an application for legal aid can be considered a document equivalent to a document instituting the proceedings within the meaning of Article 9(a) of that regulation in order to confirm its own jurisdiction. Since that question has not yet been ruled on by the Court, the referring court considers that only a uniform interpretation of Regulation No 4/2009 would make it possible to guarantee sufficient legal certainty.

28. It is in those circumstances that the Amtsgericht Schleswig (Local Court, Schleswig) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is an application for legal aid, to which an application to vary in a matter relating to maintenance obligations – which is intended to be formally submitted in the event that legal aid is granted – is attached only in draft form, an "equivalent document" within the meaning of Article 9(a) of [Regulation No 4/2009], with the result that a national court has been seised and the jurisdiction of that court established?'

29. The order for reference, dated 22 July 2024, was received at the Court Registry on 24 July 2024. Written observations were submitted by the applicant and defendant in the main proceedings, the German and Czech Governments and the European Commission. A hearing was held on 18 June 2025, at which the Commission and the German Government presented oral submissions.

III. Analysis

A. The lessons to be learned from the case-law of the Court concerning the concept of 'document instituting the proceedings' or 'equivalent document' in the context of other legal instruments

30. As a preliminary point, it should be noted that since, in the present case, the Court has been called upon to interpret the concept of 'document equivalent' to the document instituting the proceedings referred to in Article 9(a) of Regulation No 4/2009, it may be enquired whether guidelines for consideration or even criteria for providing a reply may be found in related instruments and their interpretation by the Court. The concept of 'document instituting the proceedings' and, in particular, that of 'equivalent document', are transversal concepts which can be found in a number of international agreements and other legal instruments relating to jurisdiction in civil matters. Those concepts have therefore already been interpreted by the

Court, making it possible to delineate their scope in the contexts of those international agreements and other legal instruments, which I consider should be borne in mind before examining the question referred to the Court for a preliminary ruling in the present case.

31. In that regard, it should be noted that, in its initial judgments relating to its interpretation in the context of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters ('the Brussels Convention'),[6] the Court has already had occasion to clarify that the term 'document which instituted the proceedings' or 'equivalent document' means the document or documents which must be duly and timeously served on the defendant in order to enable him to assert his rights before an enforceable judgment is given in the State of origin.[7]

32. On the basis of that definition, the Court regarded as a document instituting proceedings an order for payment under German law (*Zahlungsbefehl*), service of which enables the plaintiff, where no objection to the order is made, to obtain an enforceable judgment[8] and an order for payment under Italian law (*decreto ingiuntivo*) served together with the application.[9]

33. By contrast, the Court has held that an enforcement order under German law (*Vollstreckungsbefehl*), which was in itself enforceable and was given following service of an order for payment, did not come within the concept of 'document which instituted the proceedings'.[10]

34. On the basis of the lessons to be learned from the aforementioned case-law, the Court has held, all in the context of order for payment proceedings, with regard to the Lugano II Convention,[11] that, in the event of a series of two procedures each allowing, at their end, an enforceable judgment relating to the same obligation to be obtained, the commencement of the former cannot constitute the document which institutes the latter unless there is a functional unity between the two.[12]

35. In that regard, it is important to note that the aforementioned criterion of functional unity reflects other examples in the case-law on the interpretation of the concepts of 'document instituting the proceedings' or 'equivalent document', in particular the judgment in *Schlömp*,[13] which also concerned the interpretation of the Lugano II Convention.[14]

6 Convention signed at Brussels on 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that convention. In that regard, it should be recalled that Regulation No 4/2009, on the interpretation of which the referring court is uncertain, replaced, in matters relating to maintenance obligations, as is apparent from Article 68(1) and Article 75(2) thereof, Regulation No 44/2001, which itself replaced, as between the Member States, the Brussels Convention.

7 Judgment of 13 July 1995, *Hengst Import* (C-474/93, 'the judgment in *Hengst Import*', EU:C:1995:243, paragraph 19).

8 Judgment of 16 June 1981, *Klomps* (166/80, EU:C:1981:137, paragraph 9).

9 Judgment in *Hengst Import*, paragraphs 20 and 21.

10 Judgment of 16 June 1981, *Klomps* (166/80, EU:C:1981:137, paragraph 9).

11 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Lugano on 30 October 2007, the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1; 'the Lugano II Convention').

12 See judgment of 30 March 2023, *PT (Order for payment under Swiss law)*, C-343/22, EU:C:2023:276, paragraph 35.

13 Judgment of 20 December 2017, *Schlömp* (C-467/16, 'the judgment in *Schlömp*', EU:C:2017:993).

14 Section 9 of the Lugano II Convention, entitled '*Lis pendens* – related actions', comprises Article 27. Paragraph 2 of that article provides that, in the event of *lis pendens*, 'where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court'. Article 30(1) of that convention states, in essence, that the time that a court is seised is the 'time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant'.

36. By that judgment, the Court not only took a functional approach in order to hold, in essence, that the date on which a mandatory conciliation procedure was lodged before a conciliation authority under Swiss law is the date on which a 'court' is deemed to be seised, it also stated that, having regard to the parallel approach existing between the mechanism to resolve situations of *lis pendens* introduced by the Lugano II Convention and, in particular, Regulation No 44/2001 [15] and in the light of the objective of a uniform interpretation of the equivalent provisions of that convention and that regulation, a situation of *lis pendens* is objective and automatic and is based on the chronological order in which the courts concerned were seised, [16] in a manner similar to another important judgment in the matter, namely the judgment in *HanseYachts*. [17]

37. In the latter judgment, the Court was called upon to rule on whether, in the case of *lis pendens*, the document setting in motion the procedure for a measure of inquiry prior to the commencement of any legal proceedings is a 'document instituting the proceedings' or an 'equivalent document' or whether that classification belongs only to the document by which the action is brought, [18] namely the 'substantive' procedure. [19]

38. Relying on the context of Article 30 of Regulation No 44/2001, its objective, [20] the independence of the first procedure for the taking of evidence in relation to the second 'substantive' proceedings and the very clear distinction between those two sets of proceedings, the Court held that, in cases of *lis pendens*, the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced could not constitute the date on which, within the meaning of point 1 of Article 30 of that regulation, a court called upon to rule on a 'substantive' application which was brought in the Member State following the result of that measure was 'deemed to be seised'. [21]

39. In other words, according to the Court, a document intended to obtain from a court a measure of inquiry prior to any legal proceedings cannot be classified as a document instituting the proceedings or as an equivalent document, since, in essence, the procedure instituted by such a document is independent from the 'substantive' proceedings.

40. In that regard, the following lessons may be learned from the abovementioned case-law. First, the document instituting the proceedings, or an equivalent document, must be served on the other party in order to afford that party the opportunity to exercise its rights of defence. [22] That requirement logically implies that that document must be such as to inform the other party that proceedings have been brought against it and of the essential elements of the dispute, thereby

15 In that regard, it should be noted that, in paragraphs 41 and 42 of the judgment in *Schlömp*, the Court stated that, as is clear from Article 68(1) of Regulation No 4/2009, that regulation amends Regulation No 44/2001 by replacing the provisions of the latter applicable to matters relating to maintenance obligations. However, in so far as Article 64(1) of the Lugano II Convention refers to any amendments made to Regulation No 44/2001, it must be understood as including Regulation No 4/2009, the interpretation of which is the subject of the present case.

16 Paragraphs 47 to 58 of the judgment in *Schlömp*.

17 Judgment of 4 May 2017, *HanseYachts* (C-29/16, 'the judgment in *HanseYachts*' EU:C:2017:343).

18 Paragraph 20 of the judgment in *HanseYachts*.

19 In particular, the Court was called upon to interpret Article 30 of Regulation No 44/2001, relating to the time when a court is to be deemed to be seised, the wording of that article being the same as that in Article 9(a) of Regulation No 4/2009.

20 Namely, that of obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending, that time being defined autonomously and therefore of reducing the problems and legal uncertainties caused by the wide variety of arrangements which existed in the Member States for determining the time when a court is seised. According to the Court, the objective pursued by that article seeks to permit the simple and uniform identification of the time at which a court is seised (see paragraphs 30 and 35 of the judgment in *HanseYachts*).

21 Operative part of the judgment in *HanseYachts*.

22 However, the fact that the other party has not done so cannot affect the classification of that document, since the exercise of that procedural right depends on the will of that party.

enabling that party to understand whether it should arrange for its defence.[23] Since the institution of proceedings leads to the delivery of a judicial decision, respect for the rights of the defence and, more generally, for an *inter partes* stage, is particularly important. That may be explained in the light of the legal instruments relating to international jurisdiction which ensure that proceedings leading to the delivery of judicial decisions, the recognition and enforcement of which must be guaranteed in all States party to those instruments, take place in compliance with the rule that the parties should be heard. That compliance justifies the liberal approach in the matter of recognition and enforcement.[24]

41. Second, a document instituting the proceedings or an equivalent document must lead to the adoption of an enforceable decision and therefore, in principle, concerns 'substantive' proceedings. At the very least, it must concern prior proceedings which are mandatory under national law before those 'substantive' contentious proceedings are initiated[25] or proceedings which enable a functional unity to be created or which, in any event, are not independent of those 'substantive' proceedings.

42. That being so, it should be noted that none of those examples drawn from the case-law directly concerns the interpretation of the concept of 'document instituting the proceedings' or 'equivalent document' within the meaning of Regulation No 4/2009. It is therefore appropriate to interpret the concept of 'document equivalent' to the document instituting the proceedings in respect of which the referring court seeks a ruling from the Court, within the meaning of Article 9(a) of that regulation, by examining, where applicable, whether an analogy may be drawn with the lessons learned from the abovementioned case-law cited in points 31 to 39 of this Opinion.

B. The interpretation of the concept of 'document equivalent' to the document instituting the proceedings within the meaning of Article 9(a) of Regulation No 4/2009

1. Towards a clarification of the criteria for interpreting the concept of 'equivalent document' in the light of the existing case-law

43. As a preliminary point, it should be borne in mind that it is settled case-law that the provisions relating to the rules on jurisdiction must be interpreted independently, by reference, first, to the objectives and scheme of the regulation under consideration and, secondly, to the general principles which stem from the corpus of the national legal systems.[26]

44. Chapter 2 of Regulation No 4/2009, headed 'Jurisdiction', comprises Article 9, which lays down the rules for determining the time when a court is deemed to be seised. That time is crucial to establishing a court's jurisdiction to hear a cross-border dispute. In a situation of *lis pendens*, namely where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall

[23] Having regard to the situation which arose in the judgment in *Hengst Import*, one may cite the example of the '*decreto ingiuntivo*' in respect of which it was decided that, in itself, it was just a form and could not be understood without the application. Conversely, service of the application without the '*decreto ingiuntivo*' would not enable the other party to understand whether the court had granted or refused the application. Therefore, it was the combination of those two documents which was regarded as the document instituting proceedings (paragraph 20 of that judgment).

[24] See, to that effect and by analogy, judgment of 21 May 1980, *Denilauler* (125/79, EU:C:1980:130, paragraph 13).

[25] As was the case with a conciliation procedure, subject to the principle of *audi alteram partem* and, in principle, obligatory in Swiss law, the failure to observe which leads to the inadmissibility of any subsequent legal proceedings (see judgment in *Schlömp*, paragraph 53).

[26] Judgment of 18 December 2014, *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2461, paragraph 24).

of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. [27] According to Article 9(a) of that regulation, in essence, the time when the document instituting the proceedings or an equivalent document is lodged with the court is the time when the court must be regarded as seised.

45. However, Regulation No 4/2009 does not define the concept of 'document equivalent' to a document instituting the proceedings (any more than it defines the concept of 'document instituting the proceedings' itself), on which the referring court seeks a ruling from the Court in the present case. It follows from the wording of Article 9(a) of that regulation that that equivalent document institutes the proceedings. Therefore, the concept of 'document instituting the proceedings', as with that of 'equivalent document', refers to the general idea that it is a document initiating the procedure. [28]

46. With regard to that procedure, the term 'proceedings' must be understood as referring to 'substantive' proceedings, the purpose of which is to determine the rights and obligations of the parties to the dispute by the issuance of a judgment terminating the proceedings which is of such a nature that it can be recognised and enforced. Therefore, the concept of 'document equivalent' to the document instituting the proceedings must be interpreted as bringing the substance of a dispute before a court, [29] which, in the present case, concerns maintenance obligations.

47. I consider that the concept of 'document equivalent' to the document instituting the proceedings inevitably refers to the equivalent *effects* produced by the bringing of proceedings, namely the commencement of legal proceedings seeking to obtain an enforceable judgment which satisfies the applicant's claims. [30] Since the proceedings lead to the adoption of a judicial decision, the document which institutes them must form part of *inter partes* proceedings, that is to say, it must enable the other party to prepare its defence before an enforceable decision is delivered against it.

48. That interpretation is supported by the wording of Article 9(a) of Regulation No 4/2009, according to which a court is deemed to be seised at the time when the document equivalent to the document instituting the proceedings is lodged, which must be followed by its service on the defendant.

49. The context of Article 9(a) of Regulation No 4/2009, which emphasises the importance of compliance with the adversarial principle, supports that interpretation and, moreover, ensures a uniform interpretation of the concept of 'document equivalent' to the document instituting the proceedings in the regulation itself. Article 19(1)(a) of that regulation, [31] on the 'Right to apply for a review' of the decision before the court of the Member State of origin of a defendant who did not enter an appearance in that Member State, lays emphasis on the situation where the defendant has

[27] Article 12(1) of Regulation No 4/2009.

[28] Gaudemet-Talon, H., 'Les conditions de régularité de la décision étrangère', in *Compétence et exécution des jugements en Europe*, 7th ed., LGDJ, Paris-La Défense, 2024. Moreover, it will be noted that the Brussels Convention was the very first to contain the expression 'equivalent document', in particular since the accession thereto of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland in 1978, in order to take into account the specific features of the legal procedures of Common Law countries. Following that logic, the concept of 'equivalent act', far from being removed from the concept of 'document instituting the proceedings', has a very similar meaning.

[29] See, to that effect and by analogy, Law, S., 'Article 32', in Requejo Isidro, M. (ed.), *Brussels I Bis: A commentary on Regulation (EU) No 1215/2012*, Edward Elgar Publishing, Cheltenham, 2022, pp. 500 to 505.

[30] Clearly, if that is indeed the objective of the person bringing the action, the proceedings may also be terminated by the rejection of that person's claims.

[31] That article is contained in Section 1, 'Decisions given in a Member State bound by the 2007 Hague Protocol', within Chapter IV, on 'Recognition, enforceability and enforcement of decisions'.

not been served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence. In such a situation, the defendant would have the right to apply for a review, precisely because his rights of defence were not respected when a judicial decision was adopted against him. The same applies to Article 24 of that regulation,[32] headed 'Grounds of refusal of recognition', which provides, in point (b) of the first paragraph thereof, for non-recognition of a decision if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence.

50. Furthermore, the objectives pursued by Regulation No 4/2009, which are to facilitate, as far as possible, cross-border recovery of maintenance claims,[33] to preserve the interests of maintenance creditors and to promote the proper administration of justice,[34] cannot be attained by undermining in any way the right to a fair hearing.[35] For that reason, the conclusion that it is necessary, in essence, when interpreting the concept of 'document equivalent' to the document instituting the proceedings within the meaning of Article 9(a) of that regulation, to try to determine effects equivalent to those created by the bringing of proceedings for the purpose of obtaining an enforceable judgment upholding the applicant's claims, appears to me to be consistent with the objectives pursued by that regulation. Moreover, that conclusion has the advantage of enhancing the predictability of the criteria for interpreting the concept of 'document equivalent' to the document instituting the proceedings, since those criteria are the same as those for a document lodged in order to obtain the desired outcome in 'substantive' proceedings.

51. The lessons to be learned from the case-law cited in points 31 to 39 of this Opinion can be applied, in that sense, to the present case.

52. In that regard, it should be noted that the Court has already stated that its case-law concerning the provisions on jurisdiction in matters relating to maintenance obligations contained in the Brussels Convention and in Regulation No 44/2001, which follows on from the Brussels Convention, remains relevant for the purpose of analysing the corresponding provisions of Regulation No 4/2009.[36] Therefore, the lessons from the case-law summarised in point 40 of this Opinion are, in my view, directly applicable, notwithstanding the different contexts and legal instruments concerned by that case-law.

53. Furthermore, the importance of a converging interpretation of the Lugano II Convention and other legal instruments, in particular Regulation No 44/2001, – which may be understood as also concerning Regulation No 4/2009,[37] which contains equivalent provisions – has been repeatedly confirmed in the case-law.[38] The (almost) identical terminology used in those legal instruments, as interpreted in the case-law cited in points 35 to 39 of this Opinion, militates in favour of a convergence between the Court's interpretation of those instruments and its interpretation of

[32] That article falls within Section 2 of that Chapter IV, entitled 'Decisions given in a Member State not bound by the 2007 Hague Protocol'.

[33] Recitals 31, 33 and 45 of Regulation No 4/2009 and judgment of 9 February 2017, *S.* (C-283/16, EU:C:2017:104, paragraph 33).

[34] Recital 15 of Regulation No 4/2009.

[35] See, to that effect and by analogy, judgment of 14 December 2006, *ASML* (C-283/05, EU:C:2006:787, paragraph 24 and the case-law cited).

[36] Judgment of 18 December 2014, *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2461, paragraph 23).

[37] In that regard, see footnotes 6 and 15 to this Opinion.

[38] See, for example, judgments of 2 May 2019, *Pillar Securitisation* (C-694/17, EU:C:2019:345, paragraph 27), and of 30 September 2021, *Commerzbank* (C-296/20, EU:C:2021:784, paragraph 33). More generally, the Court's interpretation of the provisions of one of those legal instruments also applies to those of the others, whenever those provisions may be regarded as 'equivalent' (judgment of 6 June 2024, *Geterfer*, C-381/23, EU:C:2024:467, paragraph 24).

Regulation No 4/2009 in the present case. The converging interpretation of those provisions is also justified in the light of the objectives pursued by those instruments which seek, in general, to ensure the free movement of judgments in civil and commercial matters. [39]

54. In addition, it should be noted that, as is clear from the *travaux préparatoires*, Article 9 of Regulation No 4/2009 identically reproduced the wording of the former Article 30 of Regulation No 44/2001. In my view, that fact reflects the legislature's intention to harmonise the interpretation of that article with that of the legal instruments on jurisdiction which precede the adoption of Regulation No 4/2009. [40]

55. However, it must be pointed out that the criteria for interpreting the concept of 'document instituting the proceedings' or 'equivalent document' set out in points 31 to 39 of this Opinion are to be interpreted on a case-by-case basis. Although such an approach is justified in the light of the specific features of the national systems to which the documents concerned in those cases belonged, it led to the development of, in my view, somewhat abstract criteria, in particular with regard to the functional unity between two sets of proceedings or the independence of one set of proceedings from the other. Therefore, in order to transpose those criteria to the present case, the Court will inevitably have to consider the possibility of clarifying their scope. I regard such clarification as desirable in respect of the transposition of the most recent case-law.

56. In that regard, I would be inclined to advocate an approach based on the nature of the proceedings initiated by the document under examination, which would make it possible to determine whether there is a functional unity or independence between the two sets of proceedings. In particular, what is, in my view, decisive is to determine whether the proceedings to which the document to be classified relates are 'substantive' proceedings and therefore have the same or equivalent effects as those produced by the bringing of proceedings seeking to obtain an enforceable judgment satisfying the applicant's claims.

57. Therefore, the criteria linked, inter alia, to (i) service, on the other party, of a document containing the essential elements of the dispute in order to inform that party that proceedings have been brought against it, (ii) thereby allowing it to choose how to arrange for its defence, in so far as the objective of the proceedings is to obtain a decision satisfying the applicant's claims, (iii) before the adoption of an enforceable judgment upholding or dismissing the applicant's claims, and to (iv) the possibility given to the other party to contest that decision, appear to me to clearly indicate the existence of the effects that 'substantive' proceedings would produce. Other such criteria might also be added enabling, where appropriate, account to be taken of specific situations, such as the optional or mandatory nature of proceedings, irrespective of whether they are pre-litigation proceedings or contentious proceedings.

58. That said, I should emphasise that, in adopting the foregoing reasoning, my intention is not to define comprehensively all the criteria relevant to the classification of a document as equivalent to a document instituting the proceedings or the only criteria that would be relevant. My aim is

[39] See preamble to the Brussels Convention, preamble to the Lugano II Convention and recital 6 of Regulation No 44/2001. In that regard, it should be noted that, in order to achieve the main objectives of Regulation No 4/2009 stated in point 50 of this Opinion, that regulation therefore inevitably seeks to ensure the free movement of judgments in civil matters and shares that purpose with other legal instruments interpreted by the case-law cited in points 31 to 39 of this Opinion.

[40] See publication of Commission legislative proposal COM(2005)0649. In that regard, it should be noted that, during the procedure for the adoption of Regulation No 4/2009, the European Parliament's Committee on Legal Affairs proposed that Article 9 be repealed, on the ground that it reproduced almost verbatim the former Article 30 of Regulation No 44/2001 and was therefore not needed. That suggestion, reproduced in the European Parliament legislative resolution of 13 December 2007, was not, however, adopted in the final version of that regulation. Therefore, there is a very strong correlation between the two legal instruments, which justifies, in principle, the transposability of the lessons to be learned from the interpretation of the first regulation to the interpretation of the second.

merely to provide non-exhaustive examples of specific criteria which, in the light of the existing case-law, would make for greater clarity in determining the effects which must result from proceedings initiated by the filing of a document which may come within the concept of 'document equivalent' to the document instituting the proceedings. In that regard, I should also emphasise that an examination of the nature of the proceedings concerned, of the document itself and of the effects which it may produce is of particular significance.

59. In the light of those considerations, it must be determined whether an application for legal aid is covered by the concept of 'document equivalent' to the document instituting the proceedings.

2. The consequences of applying the criteria for interpreting the concept of 'equivalent document' to an application for legal aid

60. It is clear from the ZPO, read in conjunction with the FamFG, that, under German law, legal aid may be granted to a party who, on account of his personal and financial circumstances, is unable to pay the costs of the proceedings, if the intended action or defence at law presents a sufficient prospect of success and does not appear to be frivolous.[41] The application must outline the essential elements of the dispute and cite the evidence.[42] The other party must have the opportunity to comment on whether the conditions for the granting of that aid have been satisfied.[43] That opportunity given to the other party to become informed of the submission of the application for legal aid, thereby revealing the elements of the dispute, is precisely the particular feature of German law which gives rise to doubts as to the classification of that application in the light of Article 9(a) of Regulation No 4/2009.

61. As a preliminary point, it should be noted that it is common ground that German law does not provide that an application for legal aid may, as such, institute proceedings. For the reasons set out in points 44 to 58 of this Opinion, it is necessary to determine the effects that the application for legal aid and the proceedings it triggers are capable of producing. In other words, the question to be asked is whether the proceedings initiated by such an application may produce effects equivalent to those of the bringing of 'substantive' proceedings, in order thereby to find that the proceedings initiated by that application form a functional unity with, or are not independent from, the 'substantive' proceedings.

62. In those circumstances, it is necessary, in the first place, to examine the content of the application for legal aid on which the German Government and the applicant in the main proceedings rely in order to claim that that application is covered by the concept of 'document equivalent' to the document instituting the proceedings. In that regard, it is clear that that application must contain a statement of the essential elements of the dispute and cite the evidence, attached in draft form. Therefore, as that government maintains, in essence, those proceedings bear some resemblance or are linked to the bringing of 'substantive' proceedings.

63. However, the submission of those elements in a draft attached to an application for legal aid pursues a rather different objective than their submission in a document instituting 'substantive' proceedings in the strict sense of the term, namely an application in an action. Those elements must enable the court hearing the application for legal aid to ensure compliance with the conditions that the intended action following the granting of that aid has sufficient prospects of

41 Paragraph 114(1) of the ZPO.

42 Paragraph 117(1) of the ZPO.

43 Paragraph 118(1) of the ZPO.

success and is not frivolous in nature. On the other hand, the merits of the 'substance' of the intended action are not examined and no 'substantive' judicial decision on the rights and obligations of the parties is adopted.

64. Logically, the submission of those elements does not in any way require the maintenance creditor to comply with them to the letter if he or she decides to bring 'substantive' proceedings after legal aid has been granted. Therefore, the content of the application relating to maintenance obligations may vary in the latter proceedings from that stated in the application for legal aid. [44] Moreover, the main examination of that application will be focused, in particular, on the personal and financial situation of the applicant for legal aid, because the procedure for granting that aid seeks to guarantee equality in matters of legal protection and to provide individuals lacking sufficient financial resources with the possibility of asserting their rights before the courts.

65. In such circumstances, the effects of the possibility for the other party, under German law, of presenting his views on whether the conditions for the granting of legal aid have been satisfied cannot, in my view, be likened to those produced by the exercise of the rights of the defence in 'substantive' proceedings, because of the difference of purpose between the two types of proceedings. [45] Thus, in the strict sense and notwithstanding the specific features of German legal procedure, proceedings for legal aid unilaterally concern the applicant alone. Therefore, they have no effect on the other party.

66. In the second place, it is necessary to examine the consequences of the procedure for transmitting the application for legal aid, that is to say, the notification of the other party of the submission of that application together with the draft application to vary in a matter relating to maintenance obligations, a procedure on which the German Government and the applicant in the main proceedings rely in order to argue that the question referred for a preliminary ruling should be answered in the affirmative. In that regard, as was made clear at the hearing, it is not a question of service in the strict sense, but merely of notifying the other party informally.

67. That procedure for transmitting the application for legal aid does not confer on it effects equivalent to those produced by the official communication by way of service of a document instituting proceedings. On the contrary, it emphasises the different nature of those effects, namely that the transmission of the application for legal aid is intended to provide the other party with the opportunity to state his position on whether the conditions for the granting of

[44] The German Government stated at the hearing that, in the event that legal aid is granted, the 'substantive' proceedings would be limited to what was relied on in the application for legal aid. In that regard, admittedly, legal aid granted for the purpose of an intended action relating to maintenance obligations could not be used for an action concerning, for example, environmental protection. However, would that limit also be imposed in the event of additional claims, change of debtors or other data differing, in the application, from the draft outlining the application to vary in a matter relating to maintenance obligations attached to the application for legal aid if the maintenance creditor considered that he or she would have greater chances of success as a result of those changes when the 'substantive' action is brought? I doubt that that is the case. If the application for legal aid, to which the application to vary in a matter relating to maintenance obligations, which will be formally lodged in the event that the aid is granted, is attached only in draft form, were classified as a document equivalent to the document instituting proceedings, how, then, would those changes be treated? Would they be regarded as amending that document? If so, what fate would await them in the 'substantive' proceedings? These are only a few examples of the practical difficulties that would result from classifying the application for legal aid as a 'document equivalent' to the document instituting the proceedings.

[45] In general, it may be questioned whether it is really possible to speak of another party in such proceedings concerning the application for legal aid, since no claim is brought against that party. Nonetheless, even if it is conceivable, in proceedings relating to the grant of an application for legal aid, to consider that other party *in futurum*, that capacity does not, in my view, confer on that party any procedural right to make it comparable to a real defendant within the meaning of 'substantive' adversarial proceedings.

legal aid have been met in the light of the application submitted to that effect. On the other hand, the service of a document instituting proceedings is intended to ensure that the rights of defence of the other party to the dispute are respected.

68. Therefore, the conclusion that the effects of the possibility provided for in German law, whereby the other party may state his position on whether the conditions for allowing the application for legal aid have been satisfied, cannot be likened to those produced by a document instituting 'substantive' proceedings is all the more necessary in the light of the procedure for transmitting the application for legal aid.

69. In the third place and lastly, as regards the seising of the court by means of the application for legal aid, I consider that the proceedings before that court have in principle run their full course once it has delivered a decision granting or rejecting that application. In order to obtain a judicial decision on the 'substance' of the case, the maintenance creditor must bring separate legal proceedings from those seeking to obtain legal aid. Although the maintenance creditor in the main proceedings has indeed brought the substantive action, it should be noted that the person obtaining legal aid is not obliged to bring legal proceedings on the 'substance' after obtaining legal aid.[46] The bringing of proceedings on the 'substance' depends, in any event, on his will, which, remains, by its very nature, uncertain.

70. In those circumstances, the existence of a link or proximity between the proceedings for obtaining legal aid and the 'substantive' proceedings is not sufficient, in itself, to consider that the latter proceedings would have been instituted as soon as the proceedings for applying for legal aid have been brought in the State in question. In reality, the effects which those two sets of proceedings produce are different, both from the perspective of the maintenance creditor and that of the debtor.

71. Contrary to what the German Government claims, the objective of protecting the maintenance creditor pursued by Regulation No 4/2009 and the choice of the court having jurisdiction and, consequently, of the applicable law conferred on it by that regulation cannot affect the conclusion that the application for legal aid is not a document equivalent to the document instituting the proceedings. That said, it must be recognised that, in this situation, there is, in fact, in German law, a problem placing the maintenance creditor who does not have sufficient financial resources at a potential disadvantage vis-à-vis the other party *in futurum*.

72. As that government explains, in essence, allowing the maintenance debtor to state his position on the merits of the maintenance creditor's application for legal aid may deprive the latter of his choice of court having jurisdiction and, therefore, of the applicable law.[47] Such a situation might occur if that debtor brought an action on the 'substance' of the case in order to benefit from the

[46] He may, for example, decide to seek an amicable settlement or merely to forego any action.

[47] In that regard, it should be noted that Regulation No 4/2009 lays down alternative jurisdiction criteria, as attested by the use of the conjunction 'or' after each of them in Article 3 of that regulation (judgment of 17 September 2020, *Landkreis Harburg (Subrogation of a public body to the claims of a maintenance creditor)*, C-540/19, EU:C:2020:732, paragraph 29), which are non-hierarchised (judgment of 5 September 2019, *R (Jurisdiction for parental responsibility and maintenance)*, C-468/18, EU:C:2019:666, paragraph 45). They thereby offer the maintenance creditor, when acting as applicant, the possibility of bringing a claim relating to a maintenance obligation under various bases of jurisdiction, listed, inter alia, in points (a) and (b) of Article 3 of that regulation, namely, before the court for the place where the defendant is habitually resident or before the court for the place where the creditor is habitually resident. Moreover, the importance of that choice given the aim of protecting the maintenance creditor reflects the 2007 Hague Protocol, with which, according to the Court, Regulation No 4/2009 has close links (judgment of 7 June 2018, *KP*, C-83/17, EU:C:2018:408, paragraph 49). The Court thus ruled that that protocol allows the maintenance creditor, de facto, to determine the law applicable to his or her claim, by providing that the law of the forum, rather than the law of the State of the habitual residence of the creditor, may be applied first of all where he lodges his application with the competent authority of the State where the debtor has his habitual residence (see, to that effect, judgment of 20 September 2018, *Mölk*, C-214/17, EU:C:2018:744, paragraphs 31 and 32).

knowledge that he has gained, with the intention of circumventing the creditor's choice, while the creditor is forced, through lack of financial means, to wait for legal aid to be granted, having revealed his intention to possibly bring proceedings against that debtor when filing that application.

73. However, that problem appears to result from the German legislation, which provides for a procedural peculiarity whereby the other party is given the opportunity to submit his point of view in proceedings which are, in principle, unilateral and should solely concern the applicant for legal aid alone, as the only addressee of the decision on whether or not that aid is granted. [48]

74. In that regard, I consider that a certain balance must be struck in protecting the respective interests of the maintenance creditor and debtor, in view, in particular, of the specific features of the procedure for obtaining legal aid. The answer to the question put by the referring court must inevitably weigh up the competing interests of the two parties to the dispute. Admittedly, it cannot be ruled out that a debtor may choose a procedural strategy aimed at constraining the maintenance creditor's choice of the applicable law upon being informed of the latter's intention to bring proceedings against him. However, assuming that such a strategy is prohibited by Regulation No 4/2009, no element of the request for a preliminary ruling suggests that the debtor's action has been motivated by fraudulent intent.

75. Moreover, a mechanism for protecting the maintenance creditor, who is deemed to be the weaker party, against the risk of the proceedings being used by the other party for strategic purposes, appears to exist in German law. Indeed, it is clear from Paragraph 77(1) of the FamFG that the court has the power not to afford the other party the opportunity to comment on whether he believes the conditions for the granting of legal aid have been satisfied if that appears to be inappropriate for particular reasons. That protection would, in my view, enable full effect to be given to the objectives of Regulation No 4/2009. [49]

76. In any event, to adopt a contrary position would have the major practical consequence of fragmenting EU law in favour of procedural rules specific to each national legal system, which does not seem to me to be justified either by the wording or the context of Article 9(a) of Regulation No 4/2009, or the objectives pursued by that regulation, which are intended, in particular, to guarantee legal certainty in the matter. That is, moreover, why the Court has long emphasised the importance of an independent interpretation of the provisions relating to the rules on jurisdiction.

77. In my view, the application for legal aid is not, therefore, an 'equivalent document' within the meaning of Article 9(a) of Regulation No 4/2009. That conclusion cannot be affected by the German Government's argument that that application may be equated with the bringing of proceedings on account of the suspensive effect it has on the limitation period. The suspension of the limitation period resulting from the submission of the application for legal aid is merely intended to ensure that the right of persons with insufficient financial resources to bring proceedings is protected during the period necessary to complete the steps required to obtain

[48] In the light of the discussion at the hearing, it appears that it cannot be ruled out that that particular feature is strictly specific to German law. Nonetheless, to my knowledge, it is a quite exceptional case in the legal systems of the Member States as a whole. However, that may be, in my view, that is without prejudice to the fact that it is for the Member States to ensure the effectiveness of the objectives pursued by EU regulations under their national law.

[49] The implementation of Regulation No 4/2009 in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union, according to which, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration (see, to that effect and by analogy, judgment of 16 July 2015, *A*, C-184/14, EU:C:2015:479, paragraph 46), would thereby also be ensured.

those resources. In other words, that suspension appears to me to be mandatory in such a situation in order to ensure the equal treatment of persons in respect of their ability to enforce their rights before the courts.

78. In addition, it should be noted that, although, under German law, when an application for legal aid is submitted, the court may summon the parties to a hearing if a settlement is likely to be reached, unless such a procedure is mandatory,[50] which does not seem to be the case under German law, it cannot enable the effects of the proceedings for the granting of legal aid to be equated with those of 'substantive' proceedings, since the use of that procedure is at the discretion of the court.

79. It must nevertheless be stated that it is for the national court to assess whether such an interpretation of its national law is to be adopted, since, in accordance with settled case-law, the Court does not have jurisdiction to interpret the domestic law of a Member State.[51]

80. Lastly, in so far as the referring court asks the Court about the effects of classifying that application for legal aid on the considerations related to its being seised and to the establishment of its jurisdiction, it should be borne in mind that, in accordance with settled case-law, it is solely for the national court 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.[52] Accordingly, it is without prejudging the issue of the international jurisdiction of the referring court that I propose that the Court should reply to the question referred for a preliminary ruling as follows.

81. I consider that the question for a preliminary ruling asked by the referring court should be answered in the negative in the present case, since an application for legal aid, to which the application to vary in a matter relating to maintenance obligations – which is intended to be formally submitted in the event that legal aid is granted – is attached only in draft form, is not an 'equivalent document' within the meaning of Article 9(a) of Regulation No 4/2009.

IV. Conclusion

82. In the light of all of the foregoing considerations, I propose that the Court should answer the question of the Amtsgericht Schleswig (Local Court, Schleswig, Germany) as follows:

An application for legal aid, to which the application to vary in a matter relating to maintenance obligations – which is intended to be formally submitted in the event that legal aid is granted – is attached only in draft form, is not an 'equivalent document' within the meaning of Article 9(a) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

[50] See, by analogy, the mandatory conciliation procedure in the judgment in *Schlömp*.

[51] Paragraph 34 of the judgment in *HanseYachts*.

[52] Paragraph 24 of the judgment in *HanseYachts*.