Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 April 2021 *

[Text rectified by order of 12 May 2021]

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Recognition and enforcement of decisions in matters relating to maintenance obligations – Regulation (EC) No 4/2009 – Temporal scope – Article 75 – Decisions given by a court of a Member State prior to accession to the European Union)

In Case C-729/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal in Northern Ireland (United Kingdom), made by decision of 2 September 2019, received at the Court on 2 October 2019, in the proceedings

TKF

v

Department of Justice for Northern Ireland,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, N. Wahl, F. Biltgen, L.S. Rossi (Rapporteur) and J. Passer, Judges,

Advocate General: G. Hogan,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 14 October 2020,

after considering the observations submitted on behalf of:

– [As rectified by order of 12 May 2021] TKF, by R. Lavery QC, C. McGarrity, Solicitor, and M. McGowan, Barrister,

– [As rectified by order of 12 May 2021] the Department of Justice for Northern Ireland, by K. Brown, acting as Agent, T. McGleenan QC and L. McMahon, Barrister,

– [As rectified by order of 12 May 2021] the Polish Government, by S. Żyrek, acting as Agent,

* Language of the case: English.

– the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 75 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 (OJ 2009 L 7, p. 1, and corrigenda OJ 2011 L 131, p. 26, and OJ 2013 L 8, p. 19).

2 The request has been made in proceedings between TKF, who is a Polish national, and the Department of Justice for Northern Ireland, as the Central Authority responsible for discharging the duties arising from that regulation, concerning the recognition and enforcement in the United Kingdom of decisions in matters relating to maintenance obligations that were given in Poland before it acceded to the European Union.

Legal context

EU law

Regulation No 44/2001

3 Article 66 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), which is in Chapter VI of the regulation, headed ‘Transitional provisions’, provides:

‘1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,

(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels Convention [on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Brussels on 27 September 1968 (OJ 1978 L 304, p. 36),] or the Lugano Convention [on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Lugano on 16 September 1988 (OJ 1988 L 319, p. 9),] both in the Member State [of] origin and in the Member State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.’

Regulation No 4/2009

4 Recitals 31, 44 and 47 of Regulation No 4/2009 are worded as follows:

'(31) To facilitate cross-border recovery of maintenance claims, provision should be made for a system of cooperation between Central Authorities designated by the Member States. These Authorities should assist maintenance creditors and debtors in asserting their rights in another Member State by submitting applications for recognition, enforceability and enforcement of existing decisions, for the modification of such decisions or for the establishment of a decision. They should also exchange information in order to locate debtors and creditors, and identify their income and assets, as necessary. Lastly, they should cooperate with each other by exchanging general information and promoting cooperation amongst the competent authorities in their Member States.

…

(44) This Regulation should amend [Regulation No 44/2001] by replacing the provisions of that Regulation applicable to maintenance obligations. Subject to the transitional provisions of this Regulation, Member States should, in matters relating to maintenance obligations, apply the provisions of this Regulation on jurisdiction, recognition, enforceability and enforcement of decisions and on legal aid instead of those of [Regulation No 44/2001] as from the date on which this Regulation becomes applicable.

…

(47) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom of notifying its intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.'

5 Article 1 of Regulation No 4/2009, headed 'Scope of application', provides in paragraph 2:

'In this Regulation, the term "Member State" shall mean Member States to which this Regulation applies.'

6 Article 2 of Regulation No 4/2009, headed 'Definitions', states in paragraph 1:

'For the purposes of this Regulation:

1. the term "decision" shall mean a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term "decision" shall also mean a decision in matters relating to maintenance obligations given in a third State;

…

4. the term "Member State of origin" shall mean the Member State in which … the decision has been given …;

5. the term "Member State of enforcement" shall mean the Member State in which the enforcement of the decision … is sought;

6. the term "requesting Member State" shall mean the Member State whose Central Authority transmits an application pursuant to Chapter VII;

7. the term "requested Member State" shall mean the Member State whose Central Authority receives an application pursuant to Chapter VII;

…'

7 Chapter IV of Regulation No 4/2009, headed 'Recognition, enforceability and enforcement of decisions', is divided into three sections. In accordance with Article 16 of the regulation, Section 1, which consists of Articles 17 to 22, is to apply to decisions given in a Member State bound by the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations ('the Hague Protocol'). Section 2, which comprises Articles 23 to 38, is to apply to decisions given in a Member State not bound by the Hague Protocol. Section 3, which consists of Articles 39 to 43, contains provisions common to all the decisions.

8 As set out in Article 23(1) of Regulation No 4/2009:

'A decision given in a Member State not bound by the 2007 Hague Protocol shall be recognised in the other Member States without any special procedure being required.'

9 Article 24 of Regulation No 4/2009, headed 'Grounds of refusal of recognition', provides:

'A decision shall not be recognised:

(a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;

(b) where it was given in default of appearance, 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, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;

…'

10 Article 26 of Regulation No 4/2009, headed 'Enforceability', is worded as follows:

'A decision given in a Member State not bound by the 2007 Hague Protocol and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there.'

11 Chapter VII of Regulation No 4/2009 contains provisions relating to cooperation between Central Authorities. Those provisions are set out in Articles 49 to 63 of the regulation.

12 Article 51(1) of Regulation No 4/2009 provides:

'1. Central Authorities shall provide assistance in relation to applications under Article 56 and shall in particular:

(a) transmit and receive such applications;

(b) initiate or facilitate the institution of proceedings in respect of such applications.'

13 Article 55 of Regulation No 4/2009, headed 'Application through Central Authorities', states:

'An application under this Chapter shall be made through the Central Authority of the Member State in which the applicant resides to the Central Authority of the requested Member State.'

14 As set out in Article 56(1) and (2) of Regulation No 4/2009:

'1. A creditor seeking to recover maintenance under this Regulation may make applications for the following:

(a) recognition or recognition and declaration of enforceability of a decision;

(b) enforcement of a decision given or recognised in the requested Member State;

(c) establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;

(d) establishment of a decision in the requested Member State where the recognition and declaration of enforceability of a decision given in a State other than the requested Member State is not possible;

(e) modification of a decision given in the requested Member State;

(f) modification of a decision given in a State other than the requested Member State.

2. A debtor against whom there is an existing maintenance decision may make applications for the following:

(a) recognition of a decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested Member State;

(b) modification of a decision given in the requested Member State;

(c) modification of a decision given in a State other than the requested Member State.'

15 Article 75 of Regulation No 4/2009, which is headed 'Transitional provisions' and forms part of Chapter IX of the regulation, headed 'General and final provisions', provides as follows:

'1. This Regulation shall apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established as from its date of application, subject to paragraphs 2 and 3.

2. Sections 2 and 3 of Chapter IV shall apply:

(a) to decisions given in the Member States before the date of application of this Regulation for which recognition and the declaration of enforceability are requested as from that date;

(b) to decisions given as from the date of application of this Regulation following proceedings begun before that date,

in so far as those decisions fall [within] the scope of Regulation (EC) No 44/2001 for the purposes of recognition and enforcement.

…

3. Chapter VII on cooperation between Central Authorities shall apply to requests and applications received by the Central Authority as from the date of application of this Regulation.'

16 Article 76 of Regulation No 4/2009, headed 'Entry into force', is worded as follows:

'This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Articles 2(2), 47(3), 71, 72 and 73 shall apply from 18 September 2010.

Except for the provisions referred to in the second paragraph, this Regulation shall apply from 18 June 2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, this Regulation shall apply from the date of application of that Protocol in the Community.

…'

Decision 2009/451/EC

17 Pursuant to Article 2 of Commission Decision 2009/451/EC of 8 June 2009 on the intention of the United Kingdom to accept Regulation No 4/2009 (OJ 2009 L 149, p. 73), that regulation entered into force in the United Kingdom on 1 July 2009.

Decision 2009/941/EC

18 Article 4(1) of 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) provides that the rules of that protocol are to apply provisionally within the European Union from 18 June 2011.

United Kingdom law

19 Regulation No 4/2009 was implemented in the United Kingdom (including in Northern Ireland) by the Civil Jurisdiction and Judgments (Maintenance) Regulations (SI 2011/1484).

20 Rule 4(1A) of the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986 provides:

'Where the clerk of petty sessions receives an application under Article 26 of [Regulation No 4/2009] for the registration of a maintenance order made in a Regulation State other than the United Kingdom he shall, subject to Article 24 of [Regulation No 4/2009] and to paragraphs (3) and (4) of this Rule, cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in the Order Book.'

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

21 TKF and AKF, both Polish nationals, married in Poland in 1991. They had two sons.

22 On 1 April 1999, a Polish court made a maintenance decision in favour of AKF against TKF.

23 In December 2002, further maintenance proceedings were commenced before a Polish court. Those proceedings resulted in the adoption of fresh maintenance decisions dated 14 February 2003, varying the original decision.

24 TKF and AKF divorced in 2004. In August 2006, TKF arrived in Northern Ireland, where he has resided ever since.

25 By decisions of 24 October 2013 and 15 August 2014 ('the decisions to register'), a clerk of the Magistrates' Court for the Petty Sessions District of Belfast and Newtownabbey (United Kingdom) registered and declared enforceable the two maintenance decisions made by the Polish court on 14 February 2003. The decisions to register were made in accordance with Article 75 of Regulation No 4/2009. They also state that the decisions so registered are enforceable for the purposes of Section 2 of Chapter IV of that regulation.

26 TKF brought an action challenging the decisions to register before the High Court of Justice in Northern Ireland, Queen's Bench Division (United Kingdom). In support of that action, he submitted in essence that, as the Republic of Poland was not a Member State when the maintenance decisions at issue were made, Section 2 of Chapter IV of Regulation No 4/2009 was not applicable in the case in point. Furthermore, he contended that Articles 23 and 26 of the regulation did not apply to the maintenance decisions and that, in any event, those decisions did not comply with Article 24 of the regulation as there was no evidence that he was aware of, attended or was represented at the proceedings in question.

27 That action was dismissed by the High Court of Justice in Northern Ireland, Queen's Bench Division, on the ground that Regulation No 4/2009 contains no provision restricting its temporal scope solely to maintenance decisions made by a court of a Member State after the date of that State's accession to the European Union. Furthermore, according to that court, whilst Article 75(2) of Regulation No 4/2009 did not apply, Chapter VII of that regulation was applicable in the case in point, by virtue of Article 75(3), given that the Republic of Poland is a State party to the Hague Protocol. That court therefore held that the decisions of the Polish court had been properly registered and enforced on the basis of that chapter.

28 TKF appealed against that judgment to the referring court, which has doubts as to the applicability of Regulation No 4/2009 to decisions in matters relating to maintenance obligations that were given in Poland before its accession to the European Union and as to whether the Magistrates' Court for the Petty Sessions District of Belfast and Newtownabbey had jurisdiction to register the decisions at issue under a provision of Article 75 of that regulation.

29 In those circumstances, the Court of Appeal in Northern Ireland (United Kingdom) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 75(2) of [Regulation No 4/2009] be interpreted as applying only to "decisions" which were given in States that were Member States of the EU at the time those decisions were made?

(2) Bearing in mind that [the Republic of] Poland is now a Member State of the European Union which is bound by the Hague Protocol, are maintenance decisions made by a court in Poland in 1999 and 2003, that is, prior to [the Republic of] Poland becoming a Member State of the European Union, now capable of being registered and enforced in another EU Member State pursuant to any part of [Regulation No 4/2009], and in particular:
(a) pursuant to Article 75(3) and Article 56 of [Regulation No 4/2009];
(b) pursuant to Article 75(2) and Section 2 of Chapter IV of [Regulation No 4/2009];
(c) pursuant to Article 75(2)(a) and Section 3 of Chapter IV of [Regulation No 4/2009];
(d) pursuant to any other articles of [Regulation No 4/2009]?'

Consideration of the questions referred

The first question

30 By its first question, the referring court asks, in essence, whether Article 75(2)(a) of Regulation No 4/2009 must be interpreted as applying only to decisions given by national courts in States which were already members of the European Union on the date of adoption of those decisions.

31 First of all, it should be noted that, by Regulation No 4/2009, the EU legislature intended to replace the provisions on maintenance obligations in Regulation No 44/2001 with provisions which, in view of the particularly urgent nature of maintenance claims, simplify the procedure before the enforcing court, thus making it quicker (judgment of 4 June 2020, *FX (Opposing enforcement of a maintenance claim)*, C-41/19, EU:C:2020:425, paragraph 32).

32 As the Court has held, Regulation No 4/2009 constitutes a *lex specialis* in matters relating, in particular, to jurisdiction, applicable law and the recognition and enforcement of judicial decisions in the specific field of maintenance obligations (judgment of 4 June 2020, *FX (Opposing enforcement of a maintenance claim)*, C-41/19, EU:C:2020:425, paragraph 33).

33 As regards, in particular, Article 75 of Regulation No 4/2009, headed 'Transitional provisions', paragraph 1 thereof provides that the regulation is, as a general rule, to apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established as from its date of application.

34 However, by way of derogation from that general rule, Sections 2 and 3 of Chapter IV of Regulation No 4/2009 are, by virtue of Article 75(2), to apply to certain decisions given and proceedings begun before the date of application of the regulation.

35 In the present instance, it is apparent from the order for reference that the decisions in matters relating to maintenance obligations that are at issue in the main proceedings, the registration and enforcement of which in the United Kingdom are contested, were given in Poland on 14 February 2003, that is to say, before the date of application of Regulation No 4/2009. As follows from the third paragraph of Article 76 thereof, that regulation, except for the provisions referred to in the second paragraph of Article 76, was to apply from 18 June 2011, subject to the Hague Protocol being applicable in the European Union by that date. In accordance with Article 4 of Decision 2009/941, that protocol was indeed applicable in the European Union on 18 June 2011.

36 On the other hand, those decisions were registered and declared enforceable in Northern Ireland by decisions of 24 October 2013 and 15 August 2014, so that it is probable that recognition and the declaration of enforceability of those decisions were requested after the date of application of Regulation No 4/2009, but this is a matter for the referring court to establish.

37 Subject to that last reservation, it is therefore the situation referred to in Article 75(2)(a) of Regulation No 4/2009 which appears, in principle, to be relevant here, in that it refers to decisions given in the Member States before the date of application of that regulation for which recognition and the declaration of enforceability are requested as from that date.

38 That said, it must be borne in mind that the Republic of Poland acceded to the European Union on 1 May 2004, that is to say, after the date on which each of those decisions in matters relating to maintenance obligations was given, but before recognition and enforcement of those decisions was requested.

39 In that context, it must accordingly be determined whether Article 75(2)(a) of Regulation No 4/2009 is capable of applying solely in the case of decisions in matters relating to maintenance obligations that have been given in States which were already members of the European Union on the date of adoption of those decisions, or whether that provision is also capable of applying as regards decisions which were given before the date of application of that regulation in a State which did not become a member of the European Union until after the decisions' adoption.

40 According to settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 38).

41 As regards the wording of Article 75(2)(a) of Regulation No 4/2009, it should be noted that it refers to decisions 'given in the Member States'.

42 Furthermore, by virtue of the first sentence of point 1 of Article 2(1) of that regulation, the term 'decision' is to mean a decision in matters relating to maintenance obligations given by a court 'of a Member State'.

43 However, as the Commission has pointed out, the combined wording of those two provisions is not, in itself, sufficient for it to be concluded that a decision, for the purposes of the first of those provisions, must have been given by a court of a State which was already a member of the European Union on the date of the decision's adoption. Whilst it follows from such wording that it is necessary that, at the time when recognition or enforcement of a decision is pursued, that decision can be found to come from a State which has at that time the status of Member State of the European Union, that wording does not signify, on the other hand, that it must necessarily have had that status on the date of adoption of the decision concerned.

44 It is therefore necessary also to take account of the context of Article 75(2)(a) of Regulation No 4/2009 and of the objectives pursued by the rules of which it is part.

45 In that regard, it is clear from recital 44 of Regulation No 4/2009 that the transitional provisions in Article 75 of that regulation are intended to ensure the transition from the set of rules laid down by Regulation No 44/2001 applicable to maintenance obligations to the set of rules laid down by Regulation No 4/2009, thereby allowing the recognition and enforcement of judgments given under Regulation No 44/2001.

46 In addition, it is apparent from the first subparagraph of Article 75(2) of Regulation No 4/2009 that Article 75(2)(a) applies only if the decisions to which it refers fall within the scope of Regulation No 44/2001 for the purposes of their recognition and enforcement.

47 It is to be noted that, as is clear from Article 66(1) of Regulation No 44/2001, that regulation is to apply only to legal proceedings instituted after its entry into force. That principle is intended to govern both the question of jurisdiction and the provisions relating to the recognition and enforcement of judgments (judgment of 21 June 2012, *Wolf Naturprodukte*, C-514/10, EU:C:2012:367, paragraph 21).

48 Article 66(2)(a) of Regulation No 44/2001 provides, however, that, as an exception to that principle, the provisions of that regulation relating to the recognition and enforcement of judgments are to apply to judgments given after the entry into force of the regulation in consequence of legal proceedings instituted in the Member State of origin before that date if the proceedings were instituted after the entry into force of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil

and Commercial Matters or the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ('the Lugano Convention') both in the Member State of origin and in the Member State addressed.

49 In that regard, the Court has already held that, in order for Regulation No 44/2001 to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that, on the date of delivery of that judgment, the regulation was in force both in the Member State of origin, that is to say, the State in which the judgment has been given, and in the Member State addressed, that is to say, the State in which recognition and enforcement of that judgment are sought (see, to that effect, judgment of 21 June 2012, *Wolf Naturprodukte*, C-514/10, EU:C:2012:367, paragraph 34).

50 It follows that decisions in matters relating to maintenance obligations that have been given by a court of a State which, on the date of adoption of those decisions, was not yet a member of the European Union and in which Regulation No 44/2001 had accordingly not yet entered into force do not fall within the scope of that regulation.

51 In such a situation, it is irrelevant whether the legal proceedings that resulted in the adoption of those decisions were instituted after the Lugano Convention entered into force in the State concerned, since, on the date on which those decisions were given, Regulation No 44/2001 had not yet entered into force in that State.

52 In the light of the foregoing, nor do such decisions fall within the scope of the transitional provision in Article 75(2)(a) of Regulation No 4/2009.

53 Since decisions given in States which were not members of the European Union do not fall within the scope of Regulation No 44/2001, the benefit of the transitional provisions in Article 75 of Regulation No 4/2009, which, as has been pointed out in paragraph 45 of the present judgment, are intended to ensure the recognition and enforcement of judgments given under that first regulation, should not be extended to them.

54 Finally, such an interpretation of Article 75(2)(a) of Regulation No 4/2009 is also consistent with the principle that a rule, such as that provision, derogating, as has been found in paragraph 34 of the present judgment, from a general rule must be interpreted strictly (see, to that effect, judgment of 15 November 2007, *Granberg*, C-330/05, EU:C:2007:679, paragraph 30 and the case-law cited).

55 In the light of all the foregoing considerations, the answer to the first question is that Article 75(2)(a) of Regulation No 4/2009 must be interpreted as applying only to decisions given by national courts in States which were already members of the European Union on the date of adoption of those decisions.

The second question

56 By its second question, the referring court asks, in essence, whether Regulation No 4/2009 must be interpreted as meaning that Article 75 or any other provision of that regulation enables decisions in matters relating to maintenance obligations, given in a State before its accession to the European Union and before the date of application of that regulation, to be recognised and enforced, after that State's accession to the European Union, in another Member State.

57 First of all, it should be recalled that, as has been noted in paragraph 33 of the present judgment, Article 75(1) of Regulation No 4/2009 provides that the regulation is, as a general rule, to apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established as from its date of application.

58 Furthermore, the only derogations from that rule were expressly laid down by the EU legislature in Article 75(2) and (3) of Regulation No 4/2009.

59 It is clear, however, from the answer to the first question that the derogation in Article 75(2)(a) of Regulation No 4/2009 is applicable only to decisions given in States which were already members of the European Union on the date on which the decisions were given. That is not so in the case of the decisions in matters relating to maintenance obligations that are at issue in the main proceedings, which were given on 14 February 2003 in Poland, a State which did not accede to the European Union until 1 May 2004. That provision accordingly cannot form the basis for the recognition and enforcement of such decisions in another Member State.

60 The derogation in Article 75(2)(b) of Regulation No 4/2009 relates to decisions given as from the date of application of that regulation following proceedings begun before that date. Thus, it likewise appears not to be applicable in the main proceedings since, as stated in paragraph 35 of the present judgment, the decisions in matters relating to maintenance obligations that are at issue in the main proceedings were given before the date of application of that regulation.

61 Moreover, as has been pointed out in paragraph 46 of the present judgment, it is apparent from the first subparagraph of Article 75(2) of Regulation No 4/2009 that that subparagraph applies only if the decisions to which it refers fall within the scope of Regulation No 44/2001 for the purposes of recognition and enforcement.

62 However, Regulation No 44/2001 did not enter into force in Poland until 1 May 2004.

63 It follows, as is apparent from paragraph 50 of the present judgment, that the decisions in matters relating to maintenance obligations that are at issue in the main proceedings do not fall within the scope of Regulation No 44/2001 and, therefore, as is apparent from paragraph 60 of the present judgment, do not fall within the scope of Article 75(2) of Regulation No 4/2009 either.

64 The fact, relied upon by the Polish Government in its oral observations, relating to Article 66(2)(a) of Regulation No 44/2001, that the Lugano Convention came into effect in Poland on 1 February 2000 cannot call that interpretation into question, as is apparent from paragraph 51 of the present judgment.

65 So far as concerns Article 75(3) of Regulation No 4/2009, that provision states that Chapter VII of the regulation, on cooperation between Central Authorities, is to apply to requests and applications received by the Central Authority as from the date of application of the regulation.

66 In that regard, it is clear from recital 31 of Regulation No 4/2009 that the EU legislature intended to establish a system of cooperation between Central Authorities in order to facilitate cross-border recovery of maintenance claims and assist maintenance creditors and debtors in asserting their right in another Member State (judgment of 9 February 2017, *S.*, C-283/16, EU:C:2017:104, paragraph 35).

67 More specifically, as set out in Article 51(1) of Regulation No 4/2009, those authorities are to provide assistance in relation to applications under Article 56 thereof, by transmitting and receiving such applications and by initiating or facilitating the institution of proceedings in respect of such applications.

68 Pursuant to Article 56(1), a creditor seeking to recover maintenance under Regulation No 4/2009 may thus make several types of application, that is to say, in essence, an application for recognition and/or declaration of enforceability of a decision, an application for enforcement of a decision given or recognised in the requested Member State, an application for establishment of a decision in the requested Member State or an application for modification of a decision. In that case, the creditor, in

accordance with Article 55 of the regulation, makes the application through the Central Authority of the Member State in which he or she resides, which is required to transmit it to the Central Authority of the requested Member State.

69 The debtor may, pursuant to Article 56(2) of Regulation No 4/2009, apply for recognition of a decision suspending or limiting the enforcement of a previous decision or apply for modification of a decision.

70 It follows from the provisions referred to in paragraphs 66 to 68 of the present judgment, set out in Chapter VII of Regulation No 4/2009, that the role of the Central Authorities is limited in that regard, however, to providing assistance to the maintenance creditors or debtors who request it for the purpose of the transmission or receipt of their applications or the initiation of proceedings in respect of such applications, pursuant to Article 56 of that regulation.

71 On the other hand, those provisions do not concern the conditions for recognising or enforcing judicial decisions in matters relating to maintenance obligations; those conditions fall exclusively within Chapter IV of Regulation No 4/2009, headed 'Recognition, enforceability and enforcement of decisions', a chapter to which Article 75(2) and not Article 75(3) of that regulation refers.

72 Consequently, decisions in matters relating to maintenance obligations, such as those at issue in the main proceedings, given in a State before its accession to the European Union and before the date of application of Regulation No 4/2009 cannot be recognised and enforced, after that State's accession to the European Union, in another Member State pursuant to Article 75(3) of that regulation.

73 In that regard, the Court has already held that a person has a right but is not under any obligation to make an application to the Central Authorities for assistance pursuant to the provisions in Chapter VII of Regulation No 4/2009. Such an application is, therefore, optional and that right will be exercised only if the maintenance creditor wishes to avail him or herself of it, in order, for example, to overcome certain specific difficulties, such as the location of the maintenance debtor (judgment of 9 February 2017, *S.*, C-283/16, EU:C:2017:104, paragraph 40).

74 As the Advocate General has maintained in point 47 of his Opinion, acceptance that the recognition and enforcement of a decision given by a court of a State before that State's accession to the European Union may turn on whether or not the creditor had recourse to the various options provided by Chapter VII for enforcing a decision in matters relating to maintenance obligations would result in discrimination between creditors who choose to make their application through the Central Authorities and those who decide to bring the matter directly before the competent authorities.

75 In the light of all the foregoing considerations, the answer to the second question is that Regulation No 4/2009 must be interpreted as meaning that no provision of that regulation enables decisions in matters relating to maintenance obligations, given in a State before its accession to the European Union and before the date of application of that regulation, to be recognised and enforced, after that State's accession to the European Union, in another Member State.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

1. **Article 75(2)(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 must be interpreted as applying only to decisions given by national courts in States which were already members of the European Union on the date of adoption of those decisions.**

2. **Regulation No 4/2009 must be interpreted as meaning that no provision of that regulation enables decisions in matters relating to maintenance obligations, given in a State before its accession to the European Union and before the date of application of that regulation, to be recognised and enforced, after that State's accession to the European Union, in another Member State.**

Prechal Wahl Biltgen

Rossi Passer

Delivered in open court in Luxembourg on 15 April 2021.

A. Calot Escobar
Registrar

A. Prechal
President of the Third Chamber