

CJEU on jurisdiction to adjudicate on an application opposing enforcement of a maintenance decision: Case C-41/19, FX

Before a court of a Member State of enforcement, a debtor lodges an application opposing enforcement of a maintenance decision given by a court of another Member State. The court of the Member State of enforcement asks the Court of Justice **whether that application falls within the scope of the Maintenance Regulation or that of Brussels I bis Regulation and whether the jurisdiction to rule on the application lies with the courts of the Member State of enforcement.**

In essence, these are the questions at stake in the case C-41/19, FX. Back in February, we reported on the Opinion of AG Bobek presented in this case.

In its Judgment of 4 June 2020, the Court follows its Advocate General to a large extent and considers that **an application opposing enforcement, which has a close link with the procedure for enforcement, falls within the scope of the Maintenance Regulation and is within the international jurisdiction of the courts of the Member State of enforcement.**

First, at paragraphs 31 to 33 of that Judgment, it is observed that the Maintenance Regulation is an instrument governing, inter alia, enforcement of decisions of the courts of the Member States in matters relating to maintenance obligations, these matters being excluded from the Brussels I bis Regulation pursuant to its Article 1(2)(e). As such, the Regulation covers the proceedings on enforcement of a maintenance decision.

Next, at paragraph 35, it is stated that when an application opposing enforcement is connected with an action seeking enforcement of a decision in matters relating to maintenance obligations, it falls within the scope of the Maintenance Regulation, just as that decision itself.

After that, at paragraphs 36 to 42, the Court tackles the question whether the

courts of the Member State of enforcement have jurisdiction to rule on such application opposing enforcement. In contrast to the Brussels I bis Regulation and its Article 24(5), the Maintenance Regulation does not contain a provision explicitly concerning jurisdiction at the stage of enforcement. Nevertheless, the Court considers that a court of the Member State of enforcement has jurisdiction under the Maintenance Regulation to adjudicate on an application opposing enforcement where that application has a close link with the action for enforcement brought before it.

While both the Opinion and the Judgments seem to come to the conclusion that the Maintenance Regulation contains an implicit rule on jurisdiction at the stage of enforcement that is inherent in the system of that regulation (see point 43 of the Opinion; paragraphs 36 and 38 of the Judgment), the reasonings backing that conclusion seem to differ at least in some aspects.

At point 44 et seq. of his Opinion, AG Bobek argued mainly that a rule according to which international jurisdiction for enforcement belongs to the courts of the Member State where enforcement is sought is ‘an expression of what could be considered a general principle of international law connected with State sovereignty’. Therefore, according to the Advocate General, it is not necessary to have recourse to Article 24(5) of the Brussels I bis Regulation as a supplementary provision in order to be able to establish that the courts of the Member State of enforcement also have jurisdiction with regard to the enforcement of maintenance decisions within the scope of the Maintenance Regulation.

In its Judgment, the Court does not reproduce the aforementioned argument. At paragraphs 37 et seq., **it rather infers an implicit rule on jurisdiction from the structure and objectives of the Maintenance Regulation. While doing so, it seems to rely on the idea that, jurisdiction-wise, the procedures closely linked to the enforcement, such as the opposition against it, should not be disconnected from the enforcement itself.**

Finally, at paragraphs 44 et seq., the Judgment provides some guidance on interpreting the Maintenance Regulation which may be of assistance to the referring court in connection with a ground of opposition relating to the satisfaction of the debt.