

Opinion of Advocate General Bobek in the case C-41/19, FX: Jurisdiction to rule on an application opposing enforcement of a maintenance decision

In today's Opinion, Advocate General Bobek analyses whether the courts of a Member State in which a maintenance decision delivered by the courts of another Member State is enforced have jurisdiction to rule on an application opposing the enforcement.

More specifically, the reference for a preliminary ruling originates in a dispute between a maintenance debtor residing in Germany and a maintenance creditor residing in Poland. The latter lodged with the referring court an application requesting the recognition of a Polish maintenance decision and a declaration of its enforceability in Germany in accordance with Maintenance Regulation. The referring court delivered an order for enforcement in respect of the Polish maintenance decision. On the basis of that order, the defendant sought the enforcement of this decision against the debtor in Germany. **The maintenance debtor opposed the enforcement based on Paragraph 767 of the German Code of Civil Procedure (the ZPO) and argued that the claim underlying the maintenance decision has been settled by payment.**

Before deciding on the merits, **it was for the referring court to decide whether it has jurisdiction to rule on the application opposing the enforcement.** As the Opinion explains, at point 29:

In a nutshell, it seems that the referring court understands that there are two mutually exclusive possibilities. If [the Maintenance Regulation] were applicable, that would mean that the referring court lacks jurisdiction under Article 3 of that regulation. It is only if [the Maintenance Regulation] cannot be applied that it would be possible to base jurisdiction on Article 24(5) of [the Brussels I bis Regulation], according to which the courts of the Member State

of enforcement have jurisdiction in proceedings concerned with such enforcement.

Against this background, the Opinion confirms, at points 32 et 33, that while the Brussels I bis Regulation contains, in Article 24(5), an explicit rule granting exclusive jurisdiction in proceedings concerned with the enforcement of judgments to the courts of the Member State in which the judgment has been or is to be enforced, the Maintenance Regulation does not contain any explicit rule on jurisdiction regarding the enforcement of decisions in matters relating to maintenance.

Disagreeing with the referring court's understanding of the issue of jurisdiction, at point 42, the Opinion states, however, that the rules on jurisdiction provided for in the Chapter II of the Maintenance Regulation establish jurisdiction with regard to the main *procedure on the merits*, but not with regard to the *enforcement* of such decisions.

Moreover, at points 43 et seq., the Opinion explains that a rule according to which enforcement belongs to the courts of the Member State where enforcement is sought is inherent in the system of the Maintenance Regulation and is an expression of what could be considered a general principle of international law:

43. [...] even though Chapter IV of [the Maintenance Regulation] does not contain any explicit jurisdictional rule with regard to enforcement, that rule can be considered inherent in the system of that regulation.

44. In general terms, international jurisdiction for enforcement belongs to the courts of the Member State where enforcement is sought. As the Polish Government points out, that rule is an expression of what could be considered a general principle of international law connected with State sovereignty: it is only the authorities of the State of enforcement that are empowered to rule on the execution of decisions, as enforcement measures can only be carried out by the authorities of the Member State(s) where the assets or persons against which enforcement is sought are situated. That rule is valid, a fortiori, where a decision has already been recognised as enforceable in the Member State where enforcement is sought.

45. Therefore, 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]. Indeed, that article can be considered as an expression of the general principle just mentioned.

Next, at points 50 et seq., the Opinion addresses the question whether an application seeking to oppose enforcement based on the discharge of the debt is to be considered as appertaining, for the purposes of jurisdiction, to enforcement proceedings. The extensive analysis is followed by a summary, at point 85:

85. For those reasons, it is my view that jurisdiction to adjudicate on an action opposing enforcement based on the discharge of debt falls to the courts of the Member State where the enforcement is sought. For the sake of completeness, I wish to stress two points in lieu of a conclusion. First, the discussion in the present Opinion and the conclusion reached concerned only the ground of opposition based on the discharge of the debt. Second, beyond that specific ground, no position is taken on the overall compatibility of Paragraph 767 of the ZPO with EU law.

The Advocate General concluded, at point 86:

86. [The Maintenance Regulation] and, in particular, Article 41(1) thereof, should be interpreted as meaning that the courts of the Member State where the enforcement of a maintenance decision given in another Member State is sought have jurisdiction to adjudicate on an application opposing enforcement, in so far as it is intrinsically connected with enforcement proceedings, it does not seek the modification or review of the maintenance decision, and it is based on grounds that could not have been raised before the court that issued the maintenance decision. Those conditions appear to be fulfilled by the application of opposition to enforcement based on the discharge of the debt at issue in the present case, which is nonetheless ultimately for the referring court to verify.

The Opinion can be found [here](#).