JUDGMENT OF THE COURT (Sixth Chamber)

9 February 2017 ([\*](http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5c04562f5d5294a469ff6ac6786866460.e34KaxiLc3qMb40Rch0SaxyKch10?text=&docid=187686&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=189050" \l "Footnote*))

(Reference for a preliminary ruling — Regulation (EC) No 4/2009 — Article 41(1) — Recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations — Enforcement of a decision in a Member State — Application submitted directly to the competent authority of the Member State of enforcement — National legislation requiring recourse to be had to the Central Authority of the Member State of enforcement)

In Case C‑283/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England and Wales), Family Division, made by decision of 11 April 2016, received at the Court on 23 May 2016, in the proceedings

**M.S.**

v

**P.S.,**

THE COURT (Sixth Chamber),

composed of E. Regan, President of the Chamber, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

–        M.S., by T. Scott QC and E. Bennet, Barrister, instructed by M. Barnes, Solicitor,

–        the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

–        the Finnish Government, by H. Leppo, acting as Agent,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

**Judgment**

1        This request for a preliminary ruling concerns the interpretation 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).

2        The request has been made in proceedings between Mrs M.S., residing in Germany, and Mr P.S., residing in the United Kingdom, concerning maintenance claims.

**Legal context**

*Regulation No 4/2009*

3        Recitals 9, 27, 31 and 32 of Regulation No 4/2009 state as follows:

‘(9) A maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.

…

(27) It would also be appropriate to limit as far as possible the formal enforcement requirements likely to increase the costs to be borne by the maintenance creditor.

…

(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. …

(32)      …The criterion for determining a person’s right to request assistance from a Central Authority should be less strict than the connecting factor of “habitual residence” used elsewhere in this Regulation. However, the “residence” criterion should exclude mere presence.’

4        Chapter IV of Regulation No 4/2009 is entitled ‘Recognition, Enforceability and Enforcement of Decisions’. It consists of Articles 16 to 43 of the regulation.

5        Under the heading ‘Abolition of exequatur’, Article 17 of Regulation No 4/2009, which is in Section I of Chapter IV, concerning ‘Decisions given in a Member State bound by the 2007 Hague Protocol’, provides in paragraph 1 thereof as follows:

‘A decision given in a Member State bound by the 2007 Hague Protocol shall be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.’

6        Section I of Chapter IV also includes Article 20 of the regulation. That article, headed ‘Documents for the purposes of enforcement’, specifies, in paragraph 1 thereof, the documents which the claimant must provide to the ‘the competent enforcement authorities’.

7        Article 41 of Regulation No 4/2009, headed ‘Proceedings and conditions for enforcement’, provides in paragraph 1 thereof as follows:

‘Subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement. A decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement.’

8        Under the heading ‘Access to Justice’, Chapter V of Regulation No 4/2009 comprises Article 44 to 47. Article 45 of the regulation, headed ‘Content of legal aid’, is worded as follows:

‘Legal aid granted under this Chapter shall mean the assistance necessary to enable parties to know and assert their rights and to ensure that their applications, lodged through the Central Authorities or directly with the competent authorities, are fully and effectively dealt with. …

…’

9        Articles 49 to 63 of Regulation No 4/2009 are in Chapter VII, headed ‘Cooperation between Central Authorities’. Article 49 of the regulation, headed ‘Designation of Central Authorities’, provides in paragraph 1 thereof as follows:

‘Each Member State shall designate a Central Authority to discharge the duties which are imposed by this Regulation on such an authority.’

10      Article 51 of Regulation No 4/2009, headed ‘Specific functions of Central Authorities’, states in paragraph 1 thereof as follows:

‘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.’

11      Article 55 of Regulation No 4/2009, headed ‘Application through Central Authorities’, provides as follows:

‘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.’

12      Article 56 of Regulation No 4/2009, headed ‘Available applications’, is worded as follows:

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

…

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

…

4.      Save as otherwise provided in this Regulation, the applications referred to in paragraphs 1 and 2 shall be determined under the law of the requested Member State and shall be subject to the rules of jurisdiction applicable in that Member State.’

13      Article 76 of Regulation No 4/2009, headed ‘Entry into force’, states as follows:

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

…

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.

…’

*United Kingdom law*

14      Article 4 of Annex I to the Civil Jurisdictions and Judgments (Maintenance) Regulations 2011 provides as follows:

‘1.      Subject to subparagraph 2, where a maintenance decision falls to be enforced in the United Kingdom under Section I of Chapter IV of [Regulation No 4/2009], the court to which an application for enforcement is to be made is

(a)      in England and Wales, the family court,

…

2.      An application for enforcement is to be transmitted to the family court (“the enforcing court”) —

(a)      in England and Wales by the Lord Chancellor,

…

4.      For the purposes of the enforcement of a maintenance decision —

(a)      the decision shall be of the same force and effect;

(b)      the enforcing court shall have in relation to its enforcement the same powers, and

(c)      proceedings for or with respect to its enforcement may be taken,

as if the decision had originally been made by the enforcing court.’

15      The referring court states that the Central Authority designated for England and Wales, pursuant to Article 49 of Regulation No 4/2009, is the Lord Chancellor, who, in turn, has allocated the task of enforcement to the Reciprocal Enforcement of Maintenance Orders Unit (‘REMO’).

**III — Facts of the main proceedings and the questions referred for a preliminary ruling**

16      Mr and Mrs S. married in 2005 and separated in 2012. They have two children, aged 9 and 5 at the time of the request for a preliminary ruling. Their divorce was granted by the Amstgericht Walsrode (District Court, Walsrode, Germany), which made an order for the maintenance of the two children on 7 August 2014 (‘the order of the German court’).

17      Since the divorce, Mrs S. and the children have continued to live in Germany. Mr S. lives and works in the United Kingdom. He refuses to pay the maintenance under the terms of the order of the German court because, he alleges, Mrs S. is increasingly obstructing his contact with the children.

18      Mrs S. brought an application before the referring court, the High Court of Justice (England and Wales), Family Division, on the basis of Regulation No 4/2009, for enforcement of the order of the German court.

19      That court indicates that it is required to determine, as a preliminary issue, whether an application for enforcement of an order imposing maintenance obligations, such as the application at issue in the main proceedings, may be issued directly in the court with jurisdiction in respect of maintenance obligations, namely, in the present case, the Family Court, or whether the application must, in all cases, first be lodged with the central authority referred to in Article 49 of Regulation No 4/2009, namely, in the present case, the Lord Chancellor, for forward transmission to the Family Court through REMO.

20      The referring court refers to inconsistencies in the approach adopted by the United Kingdom courts and cites two cases in that regard. In the first case, the court with jurisdiction took the view that an applicant could issue an application for enforcement of a decision directly in the Family Court and that there must be an error in the domestic legislation, which requires the application to be issued through the Central Authority. In the second case, which concerned an application for modification, as opposed to enforcement, of a decision, the court with jurisdiction expressed reservations in relation to the decision in the first case, taking the view that the applicant must necessarily issue the application through the Central Authority. The referring court adds that, when questioned on the subject in connection with the main proceedings, REMO stated that there was no error in the national legislation, which requires recourse to be had to the Central Authority, and that the wording of the national provisions at issue was intended.

21      The referring court is of the view that, in the light of both the wording of the provisions of Chapter IV of Regulation No 4/2009, including the provisions in Section I of that chapter, applicable to the Federal Republic of Germany, and of the purpose of the regulation, it should be possible to issue an application for enforcement of a decision imposing maintenance obligations directly in the Family Court, as is the case in a purely domestic situation.

22      The referring court states that there is, however, some doubt concerning the matter and that the issue has arisen in a great number of cases pending in the United Kingdom.

23      In those circumstances, the High Court of Justice (England and Wales), Family Division, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)      In circumstances where a maintenance creditor wishes to enforce in one Member State an order which has been obtained in another Member State, does Chapter IV of Regulation No 4/2009 confer upon her a right to make an application for enforcement directly to the competent authority of the requested State?

(2)      If the answer to question 1 is in the affirmative, should Chapter IV of Regulation No 4/2009 be interpreted so as to mean that each Member State is obliged to provide a procedure or mechanism such as will enable the right to be recognised?’

*Procedure before the Court*

24      In its request for a preliminary ruling, the referring court requested that the case be determined under an expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice. That request was refused by order of the President of the Court of 27 June 2016 (C‑283/16, not published, EU:C:2016:482). By decision of 6 June 2016, the President of the Court ordered that the case be given priority.

**Consideration of the questions referred**

 The first question

25      By its first question, the referring court seeks to ascertain, in essence, whether Chapter VI of Regulation No 4/2009 is to be interpreted as meaning that a maintenance creditor who has obtained an order in one Member State and wishes to enforce it in another Member State may make an application directly to the competent authority of the latter Member State, such as a specialised court, or whether such a person may be required to submit the application to that court through the Central Authority of the Member State of enforcement.

26      The answer to that question calls for an interpretation of Article 41(1) of Regulation No 4/2009, which concerns proceedings and conditions for enforcement in one Member State of a decision imposing maintenance obligations given in another Member State.

27      The first sentence of that provision states that, subject to the other provisions of Regulation No 4/2009, the procedure for the enforcement of decisions given in another Member State is to be governed by ‘the law of the Member State of enforcement’, while the second sentence provides that such a decision is to be enforced ‘under the same conditions’ as a decision given in that Member State of enforcement.

28      As it refers to the application of the law of the Member State of enforcement, the first sentence of that provision might, prima facie, be interpreted as meaning that a Member State of enforcement may provide, in its rules governing enforcement procedures, that recourse must be had to the central authority of the requested State.

29      However, in the light of the wording of the second sentence of that provision, which states that the decision must be enforced ‘under the same conditions’ as a decision given in the Member State of enforcement, it might be considered that Article 41(1) precludes mandatory recourse to the Central Authority if that is not a requirement in purely domestic cases, as is the case in the Member State to which the referring court belongs.

30      It is therefore necessary to examine the scope of the term ‘the same conditions’ in order to determine whether a national legal provision, such as Article 4(4)(a), (b) and (c) of Annex I to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 complies with Article 41(1) of Regulation No 4/2009, even if a maintenance creditor, such as Mrs S., unlike a creditor in purely domestic applications, cannot bring proceedings directly before the court with jurisdiction.

31      In that regard, account must be taken of the purpose of Regulation No 4/2009 and of the system of which Article 41(1) of the regulation forms part.

32      With regard to the purpose of Regulation No 4/2009, it is apparent from the preparatory works, in particular the Commission’s Green Paper of 15 April 2004 on maintenance obligations (COM(2004) 254 final), that the EU legislature intended to replace the provisions on maintenance obligations in Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) with provisions which, in view of the particularly urgent nature of maintenance claims, simplify the procedure before the enforcing court, thus making it quicker.

33      The Court has stated, in that regard, that the objective of Regulation No 4/2009 is to facilitate as far as possible the recovery of international maintenance claims (judgment of 18 December 2014, *Sanders and Huber*, C‑400/13 and C‑408/13, EU:C:2014:2461, paragraph 41).

34      Those objectives of simplicity and speed are also apparent from recitals 9 and 27 of Regulation No 4/2009. Recital 9 states that a maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities. According to recital 27, one of the objectives of Regulation No 4/2009 is to limit as far as possible the formal enforcement requirements likely to increase the costs to be borne by the maintenance creditor.

35      Mention should also be made of recitals 31 and 32 of Regulation No 4/2009. Recital 31 makes clear the legislature’s intention to establish a system of cooperation between central authorities to facilitate cross-border recovery of maintenance claims and to assist maintenance creditors in asserting their rights in another Member State. Recital 32 defines recourse to such assistance as ‘a right’.

36      The system of which Article 41(1) of Regulation No 4/2009 forms part reflects the objectives of simplicity and speed in Chapter IV of the regulation and allows recourse to be had to the assistance of the Central Authorities in Chapter VII.

37      Thus, nothing in Chapter IV, which is headed ‘Recognition, enforceability and enforcement of decisions’ and contains Article 41(1), provides that a special procedure, in addition to the procedures applicable to purely domestic claims, must be followed, or, in particular, that recourse must be had to the Central Authorities of the Member States.

38      The fact that there is no obligation to have recourse to the Central Authorities is also apparent in so far as concerns decisions given in a Member State bound by the Protocol on the law applicable to maintenance obligations concluded in the Hague on 23 November 2007, such as the Federal Republic of Germany. Under the heading ‘Abolition of equatur’, Article 17 of Regulation No 4/2009, which forms part of Chapter IV, provides in paragraph 1 thereof that such decisions are to be recognised in another Member State without any special procedure being required. Article 20 of the regulation, also in Chapter IV, specifies, in paragraph 1 thereof, the documents which the claimant must provide to the ‘the competent enforcement authorities’; that wording suggest that documents may be submitted directly to the competent authorities.

39      Provision is made for the issuing of proceedings via the Central Authorities in Chapter VII of Regulation No 4/2009, concerning cooperation between Central Authorities. Pursuant to Article 51(1) of the regulation, those authorities are to provide assistance in relation to applications under Article 56, inter alia by transmitting applications. Article 56 provides that a creditor seeking to recover maintenance ‘may’ make an application for, inter alia, enforcement of a decision given or recognised in the requested Member State. In that case, the creditor is required, pursuant to Article 55 of the regulation, to submit her application to the Central Authority of the Member State in which she resides, which will transmit it to the Central Authority of the requested Member States.

40      It follows from Articles 51 and 56 of Regulation No 4/2009, read in the light of recitals 31 and 32 thereof, 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 the regulation. It is, therefore, optional and that right will be exercised only if the maintenance creditor wishes to avail herself of it, in order, for example, to overcome certain specific difficulties, such as the location of the maintenance debtor.

41      It is therefore apparent that Regulation No 4/2009 provides two alternative methods of submitting an application to the courts with jurisdiction, one direct, pursuant to the provisions in Chapter IV of the regulation, and the other through the Central Authorities, if the maintenance creditor seeks the assistance of the Central Authority of the Member State in which she resides, pursuant to the provisions in Chapter VII of the regulation.

42      That analysis is supported by the wording of Article 45 of Regulation No 4/2009, which forms part of Chapter V thereof. That article, which concerns legal aid, makes an express distinction between two alternative means by which a maintenance creditor may submit an application for enforcement, namely through the Central Authorities ‘or’ directly to the competent authorities.

43      Accordingly, the obligation imposed on a maintenance creditor by national regulations such as those at issue in the main proceedings to submit an application through the Central Authority of the requested Member State — even though that person wishes to submit an application directly to the competent authorities on the basis of Chapter IV of Regulation No 4/2009 — which, according to the referring court, takes more time, is contrary to Article 41(1) of that regulation, considered in the light of the purpose of the regulation and the system of which that provision forms part.

44      The answer to Question 1 is therefore that Chapter IV of Regulation No 4/2009, in particular Article 41(1) thereof, must be interpreted as meaning that a maintenance creditor who has obtained an order in one Member State and wishes to enforce it in another Member State may make an application directly to the competent authority of the latter Member State, such as a specialised court, and cannot be required to submit the application to that court through the Central Authority of the Member State of enforcement.

 The second question

45      The second question concerns the consequences for the Member State of enforcement if the first question is answered in the affirmative and seeks to ascertain, in particular, whether there is an obligation to provide a procedure or mechanism whereby it is possible to submit an application directly to the competent authority of the Member State of enforcement.

46      In order to give a useful answer to the referring court, it is necessary not only to indicate whether Member States are required to provide such a procedure or such a mechanism but also to specify the obligation a national court is under in a case such as that in the main proceedings.

47      With regard to the implementation of a regulation, it should be noted that, pursuant to the second paragraph of Article 288 TFEU, such an EU measure is binding in its entirety and directly applicable in all Member States.

48      The direct application of a regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law, unless the regulation in question leaves it to the Member States themselves to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation (judgment of 14 June 2012, C‑606/10, *Association nationale d’assistance aux frontières pour les étrangers*, C‑606/10, EU:C:2012:384, paragraph 72).

49      In the present case, Regulation No 4/2009, which was applicable with effect from 18 June 2011, provides in Article 76 thereof for the deferred application of its provisions from the date of its entry into force, namely 20 January 2009. Between those two dates, it fell to the Member States, where necessary, to amend their domestic legislation by adapting their procedural rules so as to avoid any contravention of Regulation No 4/2009 and, in particular, to enable maintenance creditors, such as Mrs S., to exercise their right to submit an application directly to the competent authority of the Member State of enforcement, as provided for in the regulation.

50      In any event, it is the Court’s well-established case-law that a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national law, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting-aside of such provision by legislative or other constitutional means (see inter alia, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraphs 21 and 24; of 22 June 2010, *Melki and Abdeli*, C‑188/10 and C‑189/10, EU:C:2010:363, paragraph 43, and of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C‑5/14, EU:C:2015:354, paragraph 32).

51      In the light of the foregoing considerations, the answer to the second question is that Member States are required to give full effect to the right laid down in Article 41(1) of Regulation No 4/2009 by amending, where appropriate, their rules of procedure. In any event, it is for the national court to apply Article 41(1), if necessary refusing to apply any conflicting provision of national law and, as a consequence, to allow a maintenance creditor to submit her application directly to the competent authority of the Member State of enforcement, even if national law does not make provision for such an application.

**Costs**

52      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 (Sixth Chamber) hereby rules:

**1.      Chapter IV 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, in particular Article 41(1) thereof, must be interpreted as meaning that a maintenance creditor who has obtained an order in one Member State and wishes to enforce it in another Member State may make an application directly to the competent authority of the latter Member State, such as a specialised court, and cannot be required to submit the application to that court through the Central Authority of the Member State of enforcement.**

**2.      Member States are required to give full effect to the right laid down in Article 41(1) of Regulation No 4/2009 by amending, where appropriate, their rules of procedure. In any event, it is for the national court to apply Article 41(1), if necessary refusing to apply any conflicting provision of national law and, as a consequence, to allow a maintenance creditor to submit her application directly to the competent authority of the Member State of enforcement, even if national law does not make provision for such an application.**

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| Regan | Arabadjiev | Fernlund |

Delivered in open court in Luxembourg on 9 February 2017.

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| A. Calot Escobar |  | E. Regan |

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| Registrar |  | President of the Sixth Chamber |