



Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

3 October 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction to hear and determine an application for divorce — Jurisdiction in matters of parental responsibility and maintenance obligations with regard to the couple's minor child — Bringing of proceedings before a court of the State of the nationality of the parties — Article 3(1)(b) — Minor child and parents resident in another Member State — Article 12(1)(b) — Prorogation of jurisdiction — Article 17 — Ascertaining jurisdiction — Concept of 'parental responsibility')

In Case C-759/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Rădăuți (Court of First Instance, Rădăuți, Romania), made by decision of 19 November 2018, received at the Court on 3 December 2018, in the proceedings

OF

v

PG

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský, and C.G. Fernlund (Rapporteur),
Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Romanian Government, by E. Gane, L. Lițu and C.-R. Canțăr, acting as Agents,
- the European Commission, by M. Wilderspin and L. Radu Bouyon, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: Romanian.

Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(7), Article 3(1), and Articles 12 and 17 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).
- 2 The request has been made in proceedings between OF and PG concerning an application for divorce.

Legal context

European Union law

Regulation No 2201/2003

- 3 Article 1 of Regulation No 2201/2003 states:

‘1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access;

...

3. This Regulation shall not apply to:

...

(e) maintenance obligations;

...’

- 4 Article 2 of that regulation provides:

‘For the purposes of this Regulation:

...

7. the term “parental responsibility” shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

...

9. the term “rights of custody” shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child’s place of residence;

...'

5 Article 3 of that regulation, entitled 'General jurisdiction', provides, in paragraph 1 thereof:

'In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.'

6 Article 12 of that regulation, entitled 'Prorogation of jurisdiction', is worded as follows:

'1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

...'

7 Article 17 of Regulation No 2201/2003 provides:

'Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.'

Regulation (EC) No 4/2009

- 8 Article 3 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) 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
- (c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
- (d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.’

Romanian law

- 9 Article 915 of the Codul de procedură civilă (Code of Civil Procedure), adopted by Legea nr. 134/2010 (Law No 134/2010) (*Monitorul Oficial al României*, Part I, No 247 of 10 April 2015) (‘the Code of Civil Procedure’), lays down the rules for determining which Romanian court has jurisdiction to rule on an application for divorce.
- 10 Under Article 919(2) of the Code of Civil Procedure:

‘Where the spouses have minor children, whether born before or during the marriage or adopted, the court shall give a ruling on the exercise of parental authority and on the parental contributions towards the costs of caring for and bringing up those children, even if this has not been requested in the application for divorce.’

- 11 Article 130(1) of the Code of Civil Procedure provides:

‘A general lack of jurisdiction on the part of the courts may be raised by the parties or by the court at any stage of the proceedings.’

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

- 12 OF and PG, who are Romanian nationals, were married in Romania in 2000. From their union, a child was born the following year.
- 13 Shortly after the birth of their child, OF and PG settled with the child in Italy.
- 14 On 21 November 2012 the Tribunale di Aosta (District Court, Aosta, Italy) found that the spouses had separated de facto, awarded exclusive custody of the child to PG, its mother, and ordered OF, its father, to pay maintenance in respect of his child. That court also determined the terms of the father’s rights of access.

- 15 The latter brought an application for divorce before the referring court, the Judecătoria Rădăuți (Court of First Instance, Rădăuți, Romania), on 3 September 2018.
- 16 That court states that the parties have established stable links with Italian society and that the child, now 17 years old, has lived in Italy with its mother from the age of 18 months.
- 17 That court also points out that the parties have not submitted a written agreement designating it as the court having jurisdiction to rule on the application for divorce. It emphasises that even though the applicant only indicated the address of the defendant's domicile in Romania, without mentioning his residence in Italy, the procedure for summoning the defendant was nevertheless duly completed in accordance with the Code of Civil Procedure, the defendant's mother having signed the proof of receipt of the summons. In addition, that same court had the defendant's telephone number added to the file so that the defendant could be contacted.
- 18 The referring court states that although the applicant has not submitted any requests relating to parental responsibility and maintenance obligations in respect of his child, it is required, under the Code of Civil Procedure, to take measures in that regard.
- 19 That court is uncertain as to whether it has jurisdiction to rule on the application for divorce and to take measures relating to parental responsibility and maintenance obligations where there is no express agreement between the parties on the subject.
- 20 That court states that, in its view, the court having jurisdiction in divorce matters may be selected only from among the courts listed in Article 3(1)(a) of Regulation No 2201/2003, depending on the habitual residence of one or both of the parties, as shown by the use in that provision of the coordinating conjunction 'or'. By contrast, there is no such possibility of choosing between, on the one hand, the courts designated in that provision and, on the other, the court of the Member State of the spouses' common nationality referred to in Article 3(1)(b) of that regulation. According to the referring court, the legislature intended to give preference to jurisdiction based on the habitual residence of the parties over that based on their common nationality.
- 21 Regarding a dispute concerning a 'divorce involving a minor', where there is no express agreement between the parties as to the choice of the court having jurisdiction, the referring court considers that it is to give priority to Regulation No 2201/2003 over national law and to raise the objection that the Romanian courts lack international jurisdiction of its own motion. According to that court, the court of the Member State in whose territory the parties are resident is better placed to gather the evidence. That court adds that it is apparent from Article 12 of Regulation No 2201/2003 that, where the parties are habitually resident in another Member State and choose as the court having jurisdiction in divorce matters a court of the Member State of their common nationality, that court does not automatically have jurisdiction to rule on parental responsibility and maintenance obligations.
- 22 In those circumstances, the Judecătoria Rădăuți (Court of First Instance, Rădăuți) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Should Article 3(1) of Regulation (EC) No 2201/2003 be interpreted as meaning that a failure on the part of the defendant to raise an objection that the Romanian courts lack international jurisdiction to give a ruling on a case concerning a "divorce involving a minor" amounts to his giving tacit consent to the case being decided by the court seised by the applicant, where the parties have their habitual residence in another Member State [of the European Union] (in the present case, Italy) and the divorce proceedings have been brought before a court of the State of which the parties are nationals?

- (2) Should [Article] 3(1) and [Article] 17 of Regulation No 2201/2003 be interpreted as meaning that a court may or must raise, of its own motion, an objection that the Romanian courts lack international jurisdiction to give a ruling on a case concerning a “divorce involving a minor”, where there has been no agreement between the parties, who are resident in another Member State [of the European Union] (in the present case, Italy), regarding the choice of the court having jurisdiction (resulting in the action being dismissed as not falling within the jurisdiction of the Romanian courts), which has priority over Article 915(2) of the [Code of Civil Procedure], pursuant to which an objection may be raised that the Judecătoria Rădăuți (Court of First Instance, Rădăuți) does not have exclusive territorial jurisdiction (resulting in its declining jurisdiction to give a ruling on the case in favour of the Judecătoria Sectorului 5 București (Court of First Instance, Sector 5, Bucharest[, Romania]) and the case being decided on the merits), especially given that those provisions are less favourable than the provision of national legislation concerned (Article 915(2) of the [Code of Civil Procedure])?
- (3) Should the expression contained in Article 12(1)(b) of Regulation No 2201/2003, namely “the jurisdiction of the courts has been accepted ... otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised”, be interpreted as meaning that, where the parties, who are habitually resident in another Member State [of the European Union] (in the present case, Italy), choose as the court having jurisdiction to give a ruling in divorce proceedings a court of the State of which they are nationals (the Judecătoria Rădăuți (Court of First Instance, Rădăuți) in Romania), that court automatically also has jurisdiction to rule on heads of claim concerning “the exercise of parental authority, the child’s place of habitual residence and the determination of parental contributions towards the costs of the child’s care and upbringing”?
- (4) Should the concept of “parental responsibility” referred to in Article 2(7) and Article 12 of Regulation No 2201/2003 be interpreted as also including the concepts of “parental authority” referred to in Article 483 of the Codul civil (Civil Code), “the child’s place of habitual residence” covered by Article 400 of the [Civil Code], and “parental contributions towards the costs of the child’s care and upbringing” covered by Article 402 of the [Civil Code]?

Consideration of the questions referred

- 23 Under Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge- Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 24 It is appropriate to apply that provision in the present case.

The first question

- 25 By its first question, the referring court asks, in essence, whether Article 3(1) of Regulation No 2201/2003 is to be interpreted as meaning that, in the case of an application for divorce, where the applicant brings proceedings before a court of the Member State of the spouses’ common nationality, although their habitual residence is in another Member State, a failure on the part of the defendant to raise an objection that that court lacks international jurisdiction amounts to his giving tacit consent to that court having jurisdiction.
- 26 In this respect, it should be noted that Article 3(1) of Regulation No 2201/2003, which establishes the criteria for general jurisdiction in matrimonial matters, does not lay down a requirement for the defendant to consent to the choice of court made by the applicant.

- 27 On the other hand, Article 3(1) of that regulation lists in points (a) and (b) thereof a number of grounds of jurisdiction, without establishing any hierarchy, with the result that all the grounds set out in that provision are alternatives (judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 48).
- 28 The Court has also held that the system of jurisdiction established by Regulation No 2201/2003 concerning the dissolution of matrimonial ties is not intended to preclude the courts of several States from having jurisdiction. Rather, the coexistence of several courts having jurisdiction is expressly provided for, without any hierarchy being established between them (judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 49).
- 29 It follows that a court of the Member State of the common nationality of the parties concerned, in this case a Romanian court, has jurisdiction on the basis of Article 3(1)(b) of Regulation No 2201/2003 to rule on an application for divorce brought by the applicant.
- 30 Consequently, the answer to the first question is that Article 3(1) of Regulation No 2201/2003 must be interpreted as meaning that, in the case of an application for divorce, where the applicant brings proceedings before a court of the Member State of the spouses' common nationality, although their habitual residence is in another Member State, that court has jurisdiction to rule on that application pursuant to point (b) of that provision. As the defendant is not required to give consent, it is not necessary to examine whether a failure on the part of the defendant to raise an objection that that court lacks jurisdiction constitutes tacit consent to the court seised having jurisdiction.

The second question

- 31 By its second question, the referring court asks, in essence, whether Article 3(1) and Article 17 of Regulation No 2201/2003 are to be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the fact that the couple seeking dissolution of their marriage have a minor child has the effect of enabling or requiring the court of the Member State of the parties' common nationality before which proceedings have been brought to raise of its own motion the objection that it lacks international jurisdiction where there is no agreement between the parties regarding its jurisdiction.
- 32 In that regard, it should be borne in mind that, in order to ensure the effective implementation of Regulation No 2201/2003 and in accordance with the principle of mutual trust on which it is based, it is for each court, in accordance with Article 17 of that regulation, to examine whether it has jurisdiction (judgment of 16 January 2019, *Liberato*, C-386/17, EU:C:2019:24, paragraph 44 and the case-law cited).
- 33 As has been noted in response to the first question, an agreement between the parties as to the court seised is not required by Article 3(1) of Regulation No 2201/2003.
- 34 It should also be emphasised that, taking into account that regulation's purpose of ensuring legal certainty, Article 6 thereof provides, in essence, that the grounds of jurisdiction contained in Articles 3 to 5 of that regulation are exclusive in nature (judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 48).
- 35 As the fact that the couple concerned have a minor child is not one of the grounds of jurisdiction laid down in Articles 3 to 5 of that regulation and since a situation such as that at issue in the main proceedings does not fall within the scope of Article 7 of Regulation No 2201/2003, which provides for residual jurisdiction if the application does not fall within the scope of Articles 3 to 5 thereof, that fact must be considered irrelevant for the purposes of determining the court having jurisdiction.

- 36 Thus, in a situation such as that at issue in the main proceedings, since the court seised has jurisdiction under Article 3(1)(b) of Regulation No 2201/2003, that court cannot raise an objection that it lacks international jurisdiction.
- 37 Consequently, the answer to the second question is that Article 3(1) and Article 17 of Regulation No 2201/2003 are to be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the fact that the couple seeking dissolution of their marriage have a minor child is irrelevant for the purposes of determining the court having jurisdiction to rule on the application for divorce. Since the court of the Member State of the spouses' common nationality, seised by the applicant, has jurisdiction to rule on that application under Article 3(1)(b) of that regulation, that court cannot, even where there is no agreement between the parties on the matter, raise an objection that it lacks international jurisdiction.

The third question

- 38 By its third question, the referring court asks, in essence, whether Article 12(1)(b) of Regulation No 2201/2003 is to be interpreted as meaning that, where a court of the Member State of the spouses' common nationality, seised by the applicant, has jurisdiction to rule on divorce proceedings pursuant to Article 3(1)(b) of Regulation No 2201/2003, the condition relating to the acceptance of jurisdiction laid down in Article 12(1)(b) of that regulation is satisfied, so that that court automatically has jurisdiction to rule on issues of parental responsibility and maintenance obligations relating to the child concerned.
- 39 It should be borne in mind that, in order to meet the best interests of the child and favour the criterion of proximity, Article 8 of Regulation No 2201/2003 establishes a general jurisdiction in matters of parental responsibility in favour of the courts of the Member State in which the child is habitually resident (see, to that effect, judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraphs 51 and 52).
- 40 As is clear from its wording, Article 12(1)(b) of Regulation No 2201/2003 provides for the possibility of proroguing jurisdiction in matters of parental responsibility in favour of the courts of the Member State exercising jurisdiction by virtue of Article 3 of that regulation to rule on an application for dissolution of matrimonial ties (see, to that effect, judgment of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 42). Thus, a court which has jurisdiction under Article 12(1) of that regulation also has jurisdiction to rule in matters relating to maintenance obligations pursuant to Article 3(d) of Regulation No 4/2009 if the matter relating to maintenance is ancillary to proceedings concerning parental responsibility (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 48).
- 41 However, Article 12(1) requires it to be established that an express or, at the very least, unequivocal agreement exists regarding the prorogation of jurisdiction in matters of parental responsibility between all the parties to the proceedings at the time the court is seised.
- 42 In proceedings such as the main proceedings, the subject matter of which is not parental responsibility but only the dissolution of matrimonial ties, and in which the defendant has not entered an appearance, it must be found that neither the applicant nor the defendant has expressly or, at the very least, unequivocally accepted the jurisdiction of the court seised to rule on issues relating to that responsibility.

- 43 Consequently, in those circumstances, the court having jurisdiction to rule on the application for divorce under Article 3(1)(b) of Regulation No 2201/2003 cannot be considered, under Article 12 of that regulation, to have jurisdiction and, a fortiori, to have automatic jurisdiction to rule on issues relating to parental responsibility and maintenance obligations in respect of the minor child concerned.
- 44 This interpretation is borne out by the order of the President of the Court of 16 January 2018, *PM* (C-604/17, not published, EU:C:2018:10, paragraph 29), in which it was held that it follows from the very wording of Regulation No 2201/2003 that a court of a Member State having jurisdiction to rule, pursuant to Article 3(1)(b) of that regulation, on an application for divorce of spouses who are nationals of that Member State does not, by contrast, have jurisdiction to give a ruling on rights of custody and rights of access in respect of the child of those spouses where that child has, at the time that court is seised, its place of habitual residence in another Member State within the meaning of Article 8(1) of that regulation, and that the conditions necessary for such jurisdiction to be conferred on that court under Article 12 of that regulation are not satisfied, taking into account, in addition, the fact that it is also not apparent from the facts of the case in the main proceedings that such jurisdiction could be based on other articles of the same regulation.
- 45 Consequently, the answer to the third question is that Article 12(1)(b) of Regulation No 2201/2003 must be interpreted as meaning that, where a court of the Member State of the spouses' common nationality, seised by the applicant, has jurisdiction to rule on divorce proceedings pursuant to Article 3(1)(b) of Regulation No 2201/2003, the condition relating to the acceptance of jurisdiction laid down in Article 12(1)(b) of that regulation cannot be regarded as satisfied where parental responsibility is not the subject of the proceedings and the defendant has not entered an appearance. In that situation, the court seised, which has jurisdiction to rule on the divorce of the spouses, does not have jurisdiction under Article 12(1)(b) of Regulation No 2201/2003 and Article 3(d) of Regulation No 4/2009 to rule on issues relating to parental responsibility and maintenance obligations, respectively, in respect of the child concerned.

The fourth question

- 46 By its fourth question, the referring court asks, in essence, whether the concept of 'parental responsibility', as defined in Regulation No 2201/2003, is to be interpreted as covering the concepts of 'parental authority', 'the child's place of habitual residence', and 'parental contributions towards the costs of the child's care and upbringing' laid down in the national law concerned.
- 47 It should be borne in mind that, in exercising the powers conferred on it by Article 267 TFEU, the Court is only empowered to give a ruling on the interpretation of the Treaties and acts of the institutions of the European Union and that it is not for it to assess the provisions of national law.
- 48 In order to provide a useful answer to the national court, it is necessary to refer to Article 1 of Regulation No 2201/2003, which specifies the scope of that regulation and provides in paragraph 1(b) thereof that it is to apply in matters relating to the attribution, exercise, delegation, restriction or termination of parental responsibility, and in paragraph 2 thereof that the matters referred to may, in particular, deal with rights of custody and rights of access.
- 49 The concept of 'parental responsibility' is defined in Article 2(7) of Regulation No 2201/2003 as covering all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.

- 50 The concept of ‘rights of custody’ is defined in Article 2(9) of Regulation No 2201/2003 as including rights and duties relating to the care of the person of a child, and in particular the right to determine the child’s place of residence.
- 51 The Court has held, first, that the use of the words ‘in particular’ in Article 1(2) of Regulation No 2201/2003 implies that the list set out in that provision is only to be used as a guide and, second, that parental responsibility, for the purposes of Article 2(7) of that regulation, is given a broad definition (judgment of 27 November 2007, C, C-435/06, EU:C:2007:714, paragraphs 30 and 49).
- 52 It follows that the concept of ‘parental responsibility’, as defined in Article 2(7) of Regulation No 2201/2003, covers in particular all decisions relating to rights of custody and the child’s place of residence.
- 53 As can be seen from Article 1(3)(e) of Regulation No 2201/2003, that regulation does not apply to maintenance obligations. However, those obligations are covered by Regulation No 4/2009.
- 54 In the light of the foregoing considerations, the answer to the fourth question is that the concept of ‘parental responsibility’, as defined in Regulation No 2201/2003, must be interpreted as covering decisions relating to, in particular, custody of the child and the child’s place of habitual residence, but it does not include parental contributions towards the costs of the child’s care and upbringing, which is covered by the concept of ‘maintenance obligations’ and comes within the scope of Regulation No 4/2009.

Costs

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby orders:

- 1. Article 3(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in the case of an application for divorce, where the applicant brings proceedings before a court of the Member State of the spouses’ common nationality, although their habitual residence is in another Member State, that court has jurisdiction to rule on that application pursuant to point (b) of that provision. As the defendant is not required to give consent, it is not necessary to examine whether a failure on the part of the defendant to raise an objection that that court lacks jurisdiction constitutes tacit consent to the court seised having jurisdiction.**
- 2. Article 3(1) and Article 17 of Regulation No 2201/2003 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the fact that the couple seeking dissolution of their marriage have a minor child is irrelevant for the purposes of determining the court having jurisdiction to rule on the application for divorce. Since the court of the Member State of the spouses’ common nationality, seised by the applicant, has jurisdiction to rule on that application under Article 3(1)(b) of that regulation, that court cannot, even where there is no agreement between the parties on the matter, raise an objection that it lacks international jurisdiction.**

- 3. Article 12(1)(b) of Regulation No 2201/2003 must be interpreted as meaning that, where a court of the Member State of the spouses' common nationality, seised by the applicant, has jurisdiction to rule on divorce proceedings pursuant to Article 3(1)(b) of Regulation No 2201/2003, the condition relating to the acceptance of jurisdiction laid down in Article 12(1)(b) of that regulation cannot be regarded as satisfied where parental responsibility is not the subject of the proceedings and the defendant has not entered an appearance. In that situation, the court seised, which has jurisdiction to rule on the divorce of the spouses, does not have jurisdiction under Article 12(1)(b) of Regulation No 2201/2003 and Article 3(d) 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 to rule on issues relating to parental responsibility and maintenance obligations, respectively, in respect of the child concerned.**
- 4. The concept of 'parental responsibility', as defined in Regulation No 2201/2003, must be interpreted as covering decisions relating to, in particular, custody of the child and the child's place of habitual residence, but it does not include parental contributions towards the costs of the child's care and upbringing, which is covered by the concept of 'maintenance obligations' and comes within the scope of Regulation No 4/2009.**

[Signatures]