



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 November 2022*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility – Divorce – Regulation (EC) No 2201/2003 – Article 2(4) and Article 21 – Concept of ‘judgment’ – Recognition, in a Member State, of the dissolution of a marriage agreed in an agreement between spouses and pronounced by a civil registrar of another Member State – Criterion for determining the existence of a ‘judgment’)

In Case C-646/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 28 October 2020, received at the Court on 1 December 2020, in the proceedings

Senatsverwaltung für Inneres und Sport, Landesamtsaufsicht,

v

TB,

intervening parties:

Standesamt Mitte von Berlin,

RD,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, M. Safjan (Rapporteur) and M.L. Arastey Sahún, President of Chambers, M. Ilešič, J.-C. Bonichot, S. Rodin, I. Jarukaitis, A. Kumin, M. Gavalec, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 8 February 2022,

* Language of the case: German.

after considering the observations submitted on behalf of:

- the German Government, by J. Möller, M. Hellmann and U. Kühne, acting as Agents,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Natale, avvocato dello Stato,
- the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,
- the European Commission, by H. Leupold, M. Wilderspin and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 May 2022,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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; ‘the Brussels IIa Regulation’).
- 2 The request has been made in proceedings between the Senatsverwaltung für Inneres und Sport, Landesamtsaufsicht (Ministry of the Interior and Sports, Berlin, in its capacity as the authority responsible for monitoring civil status, Germany) (the ‘authority responsible for monitoring civil status’) and TB concerning the refusal by that authority to allow the registration, in the German register of marriages, of TB and RD’s divorce, which was obtained through extrajudicial means in Italy, in the absence of prior recognition of that divorce by the competent German judicial authority.

Legal context

European Union law

The Brussels Convention

- 3 Article 25 of the Convention of 27 September 1968 on the jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by successive conventions on the accession of new Member States to that convention (‘the Brussels Convention’), provides:

‘For the purposes of this Convention, “judgment” means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.’

The Brussels IIa Regulation

4 Recitals 1, 2, 8, 21 and 22 of the Brussels IIa Regulation stated:

- ‘(1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area ...
- ...
- (8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.
- ...
- (21) The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.
- (22) Authentic instruments and agreements between parties that are enforceable in one Member State should be treated as equivalent to “judgments” for the purpose of the application of the rules on recognition and enforcement.’

5 Article 1 of that regulation was worded as follows:

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

- (a) divorce, legal separation or marriage annulment;
- (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

...

3. This Regulation shall not apply to:

...

(e) maintenance obligations;

...’

6 Article 2 of that regulation provided:

‘For the purposes of this Regulation:

1. the term “court” shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;

...

3. the term “Member State” shall mean all Member States with the exception of Denmark;

4. the term “judgment” shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;

...’

7 Under the heading ‘Recognition and enforcement’, Chapter III of the Brussels IIa Regulation included Section 1, entitled ‘Recognition’, which contained Articles 21 to 27 of that regulation.

8 Article 21 of that regulation provided:

‘1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

...’

9 Under Article 22 of that regulation, entitled ‘Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment’:

‘A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

...’

10 Article 25 of the Brussels IIa Regulation was worded as follows:

‘The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.’

- 11 Section 3, entitled ‘Provisions common to Sections 1 and 2’, of Chapter III of that regulation, contained inter alia Article 39 thereof, which provided:

‘The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).’

- 12 Section 5 of Chapter III, entitled ‘Authentic instruments and agreements’, contained only Article 46 of that regulation, which was worded as follows:

‘Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments.’

The Brussels IIb Regulation

- 13 In accordance with Article 104(1) thereof, Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ 2019 L 178, p. 1) (‘the Brussels IIb Regulation’), which recasts the Brussels IIa Regulation, repealed the latter regulation with effect from 1 August 2022. However, pursuant to Article 100(2) of the Brussels IIb Regulation, the Brussels IIa Regulation continues to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022. In view of the date of the facts in the dispute in the main proceedings, that dispute is thus governed by the Brussels IIa Regulation.

- 14 Recital 14 of the Brussels IIb Regulation states:

‘According to the case-law of the Court of Justice, the term “court” should be given a broad meaning so as to also cover administrative authorities, or other authorities, such as notaries, who or which exercise jurisdiction in certain matrimonial matters or matters of parental responsibility. Any agreement approved by the court following an examination of the substance in accordance with national law and procedure should be recognised or enforced as a “decision”. Other agreements which acquire binding legal effect in the Member State of origin following the formal intervention of a public authority or other authority as communicated to the Commission by a Member State for that purpose should be given effect in other Member States in accordance with the specific provisions on authentic instruments and agreements in this Regulation. This Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument, but have been registered by a public authority competent to do so, should circulate. Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession.’

- 15 Article 30 of that regulation provides:

‘1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.’

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a decision relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

...'

16 Article 65 of that regulation provides:

'1. Authentic instruments and agreements on legal separation and divorce which have binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Section 1 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

2. Authentic instruments and agreements in matters of parental responsibility which have binding legal effect and are enforceable in the Member State of origin shall be recognised and enforced in other Member States without any declaration of enforceability being required. Sections 1 and 3 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.'

German law

17 The second sentence of Paragraph 97(1) of the Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on proceedings in family matters and in matters of non-contentious jurisdiction) of 17 December 2008 (BGBl. 2008 I, p. 2586), in the version applicable to the dispute in the main proceedings (the 'FamFG'), provides that 'the provisions contained in the acts of the European Union shall not be affected' by those of the FamFG.

18 Paragraph 107 of the FamFG, entitled 'Recognition of foreign decisions in matrimonial matters', states, in paragraph 1 thereof:

'Decisions delivered abroad, by which a marriage is annulled, invalidated or terminated with or without matrimonial ties being maintained or by which the existence of a marriage between the parties, or the absence thereof, shall be recognised only if the *Land* competent judicial authority has found that the requirements for recognition are met. Where the decision was given by a court or authority of a State of which both spouses were nationals at the time of the decision, recognition shall not depend on a finding by the *Land* competent judicial authority.'

19 Article 3 of the Personenstandsgesetz (Law on civil status) of 19 February 2007 (BGBl. 2007 I, p. 122), in the version applicable to the main proceedings (the 'PStG'), is entitled 'Civil status register'. Paragraph 1 of that article is worded as follows:

'In its field of competence, the civil registration service shall keep:

1. a register of marriages (Article 15),

...'

- 20 Article 5 of the PStG, entitled ‘Updating of the civil register’, provides in paragraph 1 thereof: ‘Entries in the register shall be completed and corrected in accordance with the provisions of this Law (updating).’
- 21 Article 16 of the PStG, entitled ‘Updating’, provides in paragraph 1 thereof: ‘The entry relating to marriage shall mention subsequent acts concerning
...
3. annulment of the marriage or divorce;
...’

Italian law

- 22 Decreto-legge n 132 – Misure urgenti di degiurisdizionalizzazione ed altri interventi per la definizione dell’arretrato in materia di processo civile (Decree-Law No 132 on urgent measures for out-of-court resolution and other actions to reduce the backlog in civil proceedings) of 12 September 2014 (GURI No 212 of 12 September 2014), converted into law, with amendments, by Law No 162 of 10 November 2014 (GURI No 261 of 10 November 2014) (‘Decree-Law No 132/2014’), provides, in the first two paragraphs of Article 12, entitled ‘Separation by mutual consent, application for dissolution or termination of the civil effects of marriage and modification of the conditions of separation or divorce before the civil registrar’, that spouses, potentially with the assistance of a lawyer, may in particular conclude, before the competent civil registrar, an agreement for dissolution or termination of the civil effects of marriage, provided that they have no minor children or adult children who do not have legal capacity, have a severe disability or are not financially independent.
- 23 Furthermore, Article 12(3) of Decree-Law No 132/2014 provides that (i) the civil registrar is to receive personally from each party a declaration that they wish to dissolve or terminate the civil effects of the marriage, in accordance with the conditions agreed between them, (ii) the agreement may not relate to the transfer of assets, (iii) the act containing the agreement is to be completed and signed upon receipt of the spouses’ declarations, (iv) that agreement replaces judicial decisions relating, in particular, to the procedure for dissolution and termination of the civil effects of the marriage and, (v) upon receipt of the spouses’ declarations, the civil registrar must request the parties to appear before him or her at the earliest 30 days from the date of receipt of those declarations for the purpose of confirming the agreement; any failure to appear amounts to a failure to confirm the agreement.
- 24 A circular of the Ministero della Giustizia (Ministry of Justice, Italy) of 22 May 2018 relating to Decree-Law No 132/2014 designates the civil registrar as the competent authority, in Italy, to issue the certificate provided for in Article 39 of the Brussels IIa Regulation.

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

- 25 TB, who has dual German and Italian nationality, married RD, an Italian national, on 20 September 2013 before the Standesamt Mitte von Berlin (Civil Registry Office of Berlin-Mitte, Germany). That marriage was entered in the Berlin marriages register.
- 26 On 30 March 2017, TB and RD appeared for the first time before the civil registrar of Parma (Italy) with a view to initiating divorce proceedings through extrajudicial means under Article 12 of Decree-Law No 132/2014. They appeared before that registrar a second time, on 11 May 2017, to confirm their declaration. Following a third appearance, on 15 February 2018, TB and RD stated, referring to their declaration of 30 March 2017, that they wished their marriage to be dissolved, and also stated that no proceedings were pending in that regard. Those declarations were again confirmed on 26 April 2018 before that registrar and, on 2 July 2018, he issued TB with the certificate referred to in Article 39 of the Brussels IIa Regulation, confirming her divorce from RD with effect from 15 February 2018.
- 27 TB applied to the Civil Registry Office of Berlin-Mitte for the divorce to be entered in the Berlin register of marriages, in accordance with the provisions of the PStG. Uncertain as to whether that entry required prior recognition under Paragraph 107 of the FamFG, that office, through the authority responsible for monitoring civil status, brought the matter before the Amtsgericht (Local Court, Germany), which had jurisdiction to deal with that matter.
- 28 By order of 1 July 2019, that court held that it was possible to register TB and RD's divorce obtained through extrajudicial means in the register of marriages only after recognition, pursuant to the first sentence of Paragraph 107(1) of the FamFG, by the *Land* competent judicial authority, namely the Senatsverwaltung für Justiz, Verbraucherschutz und Antidiskriminierung (Ministry of Justice, Consumer Protection and Fight against Discrimination, Berlin, Germany) (the 'Berlin Ministry of Justice').
- 29 However, the application for recognition submitted by TB to the Berlin Ministry of Justice was rejected by the latter on the ground that it was not a decision requiring recognition. The action brought by TB against the rejection of that application is still pending before the Kammergericht Berlin (Higher Regional Court, Berlin, Germany).
- 30 TB also brought an action against the order of 1 July 2019, which was upheld by the Kammergericht Berlin (Higher Regional Court, Berlin). That court thus prohibited the Civil Registry Office of Berlin-Mitte from making the registration in the register of marriages of TB and RD's divorce in Italy conditional upon prior recognition by the Berlin Ministry of Justice.
- 31 The authority responsible for monitoring civil status brought an appeal against that decision before the Bundesgerichtshof (Federal Court of Justice, Germany), the referring court, in order to secure the reinstatement of the order of 1 July 2019.
- 32 The referring court asks whether, in the light of the concept of 'judgment' referred to in Article 21 of the Brussels IIa Regulation, read in conjunction with Article 2(4) of that regulation, the rules laid down by that regulation for the recognition of a decision granting a divorce are applicable in the case of a divorce resulting from an agreement concluded by spouses and pronounced by a Member State's civil registrar in accordance with the laws of that State. If so, and in view of the fact that those rules are not affected, pursuant to the second sentence of Paragraph 97(1) of the FamFG, by those laid down in German legislation, no recognition procedure is necessary in

Germany. It is therefore necessary to determine whether the concept of ‘judgment’, within the meaning of those provisions of the Brussels IIa Regulation, must be interpreted as covering only acts issued by a court or an authority exercising public powers and which have the effect of creating a new legal situation or whether it also covers private legal acts stemming from the independent will of the parties, adopted without the intervention of a State authority that has the effect of creating a new legal situation, as is the case with the procedure laid down in Italy in Article 12 of Decree-Law No 132/2014.

- 33 The referring court considers that neither the wording of those provisions nor the findings derived from the judgment of 20 December 2017, *Sahyouni* (C-372/16, EU:C:2017:988), allow that question to be clearly resolved, even though some German legal commentators argue in favour of a broad interpretation of that wording which would permit the inference that the rules laid down by the Brussels IIa Regulation on the recognition of a decision granting a divorce apply to divorces which have been granted at the end of extrajudicial proceedings, such as that laid down by the Italian legislation at issue in the main proceedings.
- 34 While the same commentators argue that such an interpretation is justified in the light of the purpose of the Brussels IIa Regulation, consisting in ensuring easy recognition in matrimonial matters in the European Union, the referring court favours an interpretation to the contrary. According to that court, the Brussels IIa Regulation is based on the premiss that only a divorce granted by a public authority and which has the effect of creating a new legal situation, guarantees the protection of the ‘weaker’ spouse against the adverse consequences of divorce, since such an authority is thus able to prevent the divorce by exercising its power of review. The same would not be true where the legal basis of the dissolution of the marriage stems from the independent will of the spouses expressed in a private legal act and the involvement of the public authority is confined to warning, clarification, evidence or advice without any power of review as to the substance.
- 35 The referring court adds that such an approach is supported, first, by the fact that, when the Brussels IIa Regulation was adopted, no provision was made for divorce proceedings through extrajudicial means in the law of the Member States at the time, so that the EU legislature was not able to take that situation into consideration. Second, it follows from the provisions of the Brussels IIb Regulation, which repealed and replaced the Brussels IIa Regulation as from 1 August 2022, that the EU legislature laid down in the intervening period rules covering divorces such as that provided for by the Italian legislation at issue in the main proceedings, which was not the case under the Brussels IIa Regulation.
- 36 Should the Court consider that there is no ‘judgment’ within the meaning of Article 21 of the Brussels IIa Regulation, read in conjunction with Article 2(4) of that regulation, in the case of divorces such as that provided for by the Italian legislation at issue in the main proceedings, the referring court wishes to know whether recognition of such a divorce is nevertheless possible on the basis of Article 46 of that regulation. The referring court leans towards the exclusion of such a possibility because that provision, unlike the corresponding provision in the Brussels IIb Regulation, refers only to authentic instruments and enforceable agreements between the parties, which does not concern the matter of divorce, but only that of parental responsibility.
- 37 However, the referring court observes that, according to some German legal commentators, Article 46 of the Brussels IIa Regulation applies in the case of divorces such as that provided for by the Italian legislation at issue in the main proceedings.

38 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is the dissolution of a marriage on the basis of Article 12 of [Decree-Law No 132/2014] a divorce within the meaning of the Brussels IIa Regulation?
- (2) If Question 1 is answered in the negative: is the dissolution of a marriage on the basis of Article 12 of [Decree-Law] No 132/2014 to be treated in accordance with the rule in Article 46 of the Brussels IIa Regulation on authentic instruments and agreements?’

Consideration of the questions referred

The first question

- 39 By its first question, the referring court asks, in essence, whether Article 2(4) of the Brussels IIa Regulation must be interpreted, in particular for the purpose of the application of Article 21(1) of that regulation, as meaning that a divorce decree drawn up by a civil registrar of a Member State, containing a divorce agreement concluded by the spouses and confirmed by them before that registrar in accordance with the conditions laid down by the legislation of that Member State, constitutes a ‘judgment’ within the meaning of Article 2(4) of that regulation.
- 40 It must be recalled that, in accordance with the settled case-law of the Court, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard not only to the wording of that provision but also to the context of the provision and the objective pursued by the legislation of which it forms part (judgment of 31 March 2022, *Bundesamt für Fremdenwesen und Asyl and Others (Committal of an asylum seeker to a psychiatric hospital)*, C-231/21, EU:C:2022:237, paragraph 42 and the case-law cited).
- 41 In view of the fact that no provision of the Brussels IIa Regulation, in particular Article 2(4) thereof, makes express reference to the law of the Member States for the purpose of determining the meaning and scope of the term ‘judgment’ referred to in, inter alia, both that provision and Article 21 of that regulation, it must be held that that term must be given an autonomous and uniform interpretation in EU law, in accordance with the methodology set out in the preceding paragraph.
- 42 In that regard, it must be recalled that it follows both from the combined provisions of Article 67(1) and (4) and Article 81(1) and (2) TFEU and from the previous provisions of Article 61(c) and Article 65(a) EC that, for the purposes of establishing an area of freedom, security and justice, the European Union is to develop judicial cooperation in civil matters having cross-border implications, by ensuring inter alia, particularly when necessary for the proper functioning of the internal market, the mutual recognition between the Member States of judicial and extrajudicial decisions.

- 43 In that context, both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained (judgment of 9 March 2017, *Pula Parking*, C-551/15, EU:C:2017:193, paragraph 51 and the case-law cited).
- 44 It is in that context that the Brussels IIa Regulation seeks, as is apparent from recitals 1, 2 and 21 thereof, to facilitate, inter alia, on the basis of the principle of mutual trust as the cornerstone for the creation of a genuine judicial area, the recognition of judgments concerning divorce given in a Member State by keeping to the minimum required the grounds for non-recognition of such judgments (see, to that effect, judgment of 16 January 2019, *Liberato*, C-386/17, EU:C:2019:24, paragraphs 41 and 46 and the case-law cited).
- 45 Thus, Article 21(1) and (2) of the Brussels IIa Regulation, read in conjunction with Article 1(1)(a) and Article 25 of that regulation, provides, inter alia, that, unless one of the grounds for non-recognition listed exhaustively in Article 22 of that regulation, read in the light of recital 21 thereof, is established, judgments relating to divorce given in a Member State must be recognised in the other Member States without there being any need to have recourse to any special procedure, provided, first, that in view of the updating of the civil-status records of the Member State in which such recognition is sought, no further appeal lies against that judgment under the law of the Member State of origin and, second, that the recognition of a judgment may not in particular be refused because the law of the Member State in which such recognition is sought would not allow divorce on the same facts.
- 46 As regards the concept of ‘judgment’ within the meaning of Article 2(4) of the Brussels IIa Regulation, it should be noted that, in matrimonial matters, that term covers ‘a divorce ... pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision’. The term ‘court’ is itself defined, in paragraph 1 of that article, as all the ‘authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1’. It should also be noted that, under Article 2(3) of the Brussels IIa Regulation, the term ‘Member State’ covers all Member States with the exception of the Kingdom of Denmark.
- 47 Therefore, it follows from a combined reading of Article 1(1)(a) and Article 2(1), (3) and (4) of the Brussels IIa Regulation that the concept of judgment concerning divorce covers any divorce, whatever the judgment may be called, pronounced by a competent authority of a Member State, with the exception of the authorities of the Kingdom of Denmark.
- 48 It is apparent from that definition given in the Brussels IIa Regulation itself that, as the Advocate General stated, in essence, in points 34 and 36 of his Opinion, that regulation is capable of covering divorces which have been granted at the end of both judicial and extrajudicial proceedings, provided that the law of the Member States also confers jurisdiction in relation to divorce on extrajudicial authorities.
- 49 It follows that any judgment given by such extrajudicial authorities with jurisdiction in relation to divorce in a Member State, with the exception of the Kingdom of Denmark, must, pursuant to Article 21 of the Brussels IIa Regulation, be automatically recognised in the other Member States, with the exception of the Kingdom of Denmark, without prejudice, first, to the

application of Article 22 of that regulation as regards the grounds for non-recognition and, second, to the fact that, for the purposes of updating civil-status records in the Member State in which recognition is sought, no further appeal lies against that judgment.

- 50 That interpretation of the concept of ‘judgment’ cannot be invalidated by the fact that no Member State had yet made any provision in its legislation, at the time of the development and adoption of the Brussels IIa Regulation, for the option for spouses to divorce through extrajudicial means. That interpretation follows directly from the broad and open definitions of the concepts of ‘court’ and ‘judgment’ referred to in Article 2(1) and (4) of that regulation, respectively.
- 51 Furthermore, the same interpretation is supported by the objective pursued by the Brussels IIa Regulation, which seeks, inter alia, as is apparent from paragraphs 42 to 44 above, to facilitate, on the basis of the principle of mutual trust underlying the creation of a genuine judicial area at EU level, the recognition of judgments given in the Member States relating, inter alia, to divorce.
- 52 However, as is apparent from the information set out by the referring court in its request for a preliminary ruling and recalled in paragraphs 32 to 34 above, that court is still uncertain as to the degree of control which must be exercised by the authority with jurisdiction in relation to divorce in order for the divorce decree which it draws up, in particular in a divorce by mutual consent, to be classified as a ‘judgment’ within the meaning of Article 2(4) of the Brussels IIa Regulation, for the purpose of the application of Article 21(1) of that regulation.
- 53 In that regard, it follows from the case-law of the Court that the Brussels IIa Regulation covers only a divorce which is pronounced either by a national court or by, or under the supervision of, a public authority, thereby excluding mere private divorces, such as a divorce resulting from a unilateral declaration of one of the spouses before a religious court (see, to that effect, judgment of 20 December 2017, *Sahyouni*, C-372/16, EU:C:2017:988, paragraphs 39 to 43, 48 and 49).
- 54 It may be inferred from that case-law that any public authority called upon to pronounce a ‘judgment’, within the meaning of Article 2(4) of the Brussels IIa Regulation, must retain control over the grant of the divorce, which means, in the context of divorces by mutual consent, that it examines the conditions of the divorce in the light of national law and the actual existence and validity of the spouses’ consent to divorce.
- 55 The requirement for an examination, within the meaning of the preceding paragraph, as a characteristic feature of the concept of ‘judgment’ may also be inferred from the judgment of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221). In paragraphs 15 to 17 of that judgment, the Court held, with regard to Article 25 of the Brussels Convention, drafted in terms substantially identical to those of Article 2(4) of the Brussels IIa Regulation, with the notable exception of the fact that only judicial decisions are covered by that provision of that convention, that the concept of ‘judgment’ implies that the court is to decide ‘on its own authority on the issues between the parties’.
- 56 It is true that, as the Polish Government observed at the hearing, the Court held in that judgment that a settlement concluded before a court of a Member State terminating the dispute cannot constitute a ‘judgment’, within the meaning of Article 25 of the Brussels Convention. However, it cannot be inferred by analogy that classification as a ‘judgment’ within the meaning of Article 2(4) of the Brussels IIa Regulation should be systematically excluded where an extrajudicial authority is competent to pronounce a divorce on the basis of an agreement concluded by the spouses, following an examination of the conditions laid down by the national provisions in force.

- 57 As the Advocate General stated, in essence, in point 50 of his Opinion, the Court, in the judgment of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221), based its decision on the fact that the settlements concerned were essentially contractual in nature, the court in question simply taking note of that legally binding settlement without carrying out any examination of the content of that settlement in the light of the legal provisions in force.
- 58 Moreover, the Brussels Iib Regulation, which recast the Brussels Ia Regulation, states, in recital 14 thereof, that ‘any agreement approved by the court following an examination of the substance in accordance with national law and procedure should be recognised or enforced as a “decision”’. It adds that ‘other agreements which acquire binding legal effect in the Member State of origin following the formal intervention of a public authority or other authority as communicated to the Commission by a Member State for that purpose should be given effect in other Member States in accordance with the specific provisions on authentic instruments and agreements in this Regulation. This Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument, but have been registered by a public authority competent to do so, should circulate. Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession’.
- 59 The EU legislature thus made it clear, with a view to ensuring continuity, that divorce agreements, which have been approved by a judicial or extrajudicial authority following a substantive examination carried out in accordance with national laws and procedures, constitute ‘judgments’ within the meaning of Article 2(4) of the Brussels Ia Regulation and of the provisions of the Brussels Iib Regulation which replaced it, and that it is precisely that substantive examination which distinguishes those judgments from authentic instruments and agreements, within the meaning of those regulations.
- 60 Therefore, where a competent extrajudicial authority approves, after an examination as to the substance of the matter, a divorce agreement, it is recognised as a ‘judgment’, in accordance with Article 21 of the Brussels Ia Regulation and Article 30 of the Brussels Iib Regulation, whereas other divorce agreements which have binding legal effects in the Member State of origin are recognised, as the case may be, as authentic instruments or agreements, in accordance with Article 46 of the Brussels Ia Regulation and Article 65 of the Brussels Iib Regulation.
- 61 In that context, it should be noted that, as the Commission rightly stated at the hearing, it follows from the legislative history of recital 14 and Article 65 of the Brussels Iib Regulation that, in adopting that regulation, the EU legislature was not seeking to innovate and introduce new rules, but only to ‘clarify’, on the one hand, the scope of the rule already laid down in Article 46 of the Brussels Ia Regulation and, on the other hand, the criterion for distinguishing the concept of ‘judgment’ from those of ‘authentic instrument’ and ‘agreement between the parties’, namely the criterion relating to the examination of the substance.
- 62 It is in the light of all those considerations that it must be determined whether, in the present case, a divorce decree issued by a civil registrar of a Member State, containing a divorce agreement concluded by the spouses and confirmed by them before that registrar in accordance with the conditions laid down by the national legislation of that Member State, constitutes a ‘judgment’, within the meaning of Article 2(4) of the Brussels Ia Regulation, for the purpose of the application of Article 21(1) of that regulation.

- 63 In that regard, it is apparent from the documents before the Court that the civil registrar is, in Italy, a legally established authority which, under the law of that Member State, has jurisdiction to pronounce the divorce in a legally binding manner by recording, in writing, the divorce agreement drawn up by the spouses, after having carried out an examination within the meaning of paragraph 54 of the present judgment.
- 64 Under Article 12 of Decree-Law No 132/2014, a civil registrar must obtain, personally and on two occasions, within at least 30 days, the declarations made by each spouse, as a result of which he or she is satisfied that their consent to divorce is valid, free and informed.
- 65 Furthermore, in accordance with that provision, that registrar is to examine the content of the divorce agreement in the light of the legal provisions in force, in that he or she ensures that that agreement relates only to the dissolution or termination of the civil effects of the marriage, to the exclusion of any transfer of assets, and that the spouses do not have minor children or adult children who do not have legal capacity, have a severe disability or are not financially independent with the result that the agreement does not relate to such children.
- 66 It is also apparent from Article 12 of Decree-Law No 132/2014 that a civil registrar is not competent to pronounce a divorce if one or more of the conditions laid down in that provision are not met, in particular if that registrar has doubt as to the free and informed nature of the consent of one of the divorcing spouses, if the agreement concerns the transfer of assets or if the spouses have children other than financially independent adult children.
- 67 In the light of the foregoing considerations, the answer to the first question is that Article 2(4) of the Brussels IIa Regulation must be interpreted, in particular for the purpose of the application of Article 21(1) of that regulation, as meaning that a divorce decree drawn up by a civil registrar of the Member State of origin, containing a divorce agreement concluded by the spouses and confirmed by them before that registrar in accordance with the conditions laid down by the legislation of that Member State, constitutes a ‘judgment’ within the meaning of Article 2(4).

The second question

- 68 In view of the answer to the first question, there is no need to answer the second question.

Costs

- 69 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 (Grand Chamber) hereby rules:

Article 2(4) 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, in particular for the purpose of the application of Article 21(1) of that regulation, as meaning that a divorce decree drawn up by a civil registrar of the Member State of origin, containing a divorce agreement concluded by the spouses and confirmed by

them before that registrar in accordance with the conditions laid down by the legislation of that Member State, constitutes a ‘judgment’ within the meaning of Article 2(4).

[Signatures]