

- give a final decision in the case and dismiss the application as unfounded;
- order the applicant in the main proceedings to pay the costs of these appeal proceedings as well as the costs of the proceedings at first instance in Case T-196/02.

### Pleas in law and main arguments

The Court of First Instance erred in assuming that it was not possible to make a decision on the basis of the available information for the purpose of establishing the actual beneficiary of the aid. Establishing the actual beneficiary is normally an integral part of Commission decisions ordering recovery of unlawful aid. Making this determination is indeed necessary to ensure efficient recovery of unlawful aid. Excluding the possibility of establishing the actual beneficiary of aid on the basis of the available information is thus not compatible with Article 13(1) of Regulation (EC) No 659/1999.

Secondly, the Court was wrong to assume that the Commission decision was based on a mere presumption which did not meet the requirements of a decision on the basis of the available information. On the one hand, where a decision is made on the basis of the information available no absolute certainty is required. On the other, the Commission decision was based on the information sent by SKL-M's insolvency administrator as to the development costs of the know-how. The Commission thus had sufficient evidence to allow it to conclude that the transfer of the know-how to MTU represented an advantage for that undertaking.

**Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 23 November 2007 —**  
**A**

**(Case C-523/07)**

(2008/C 22/63)

*Language of the case: Finnish*

### Referring court

Korkein hallinto-oikeus

### Parties to the main proceedings

Applicant: A

### Questions referred

1. (a) Does Council Regulation (EC) No 2201/2003<sup>(1)</sup> concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, (the Brussels IIa Regulation) apply to the enforcement, such as in the present case, of a public-law decision made in connection with child protection, as a single decision, concerning the immediate taking into care of a child and his or her placement outside the home, in its entirety,
- (b) or, having regard to the provision in Article 1(2)(d) of the regulation, only to the part of the decision relating to the placement outside the home?
2. How is the concept of habitual residence in Article 8(1) of the regulation, like the associated Article 13(1), to be interpreted in Community law, bearing in mind in particular the situation in which a child has a permanent residence in one Member State but is staying in another Member State, carrying on a peripatetic life there?
3. (a) If it is considered that the child's habitual residence is not in the latter Member State, on what conditions may an urgent measure (taking into care) nevertheless be taken in that Member State on the basis of Article 20(1) of the regulation?
- (b) Is a protective measure within the meaning of Article 20(1) of the regulation solely a measure which can be taken under national law, and are the provisions of national law concerning that measure binding when the article is applied?
- (c) Must the case, after the taking of the protective measure, be transferred of the court's own motion to the court of the Member State with jurisdiction?
4. If the court of a Member State has no jurisdiction at all, must it dismiss the case as inadmissible or transfer it to the court of the other Member State?

<sup>(1)</sup> OJ L 338, p. 1.