

2. Article 2(1)(b) of Regulation No 2580/2001 must be interpreted as covering the transfer to a legal person, group or entity on the list provided for in Article 2(3) of that regulation, by a member of that legal person, group or entity, of funds and other financial assets or economic resources collected or obtained from third persons.

(¹) OJ C 148, 5.6.2010.

**Judgment of the Court (Third Chamber) of 1 July 2010
(reference for a preliminary ruling from the Oberster
Gerichtshof — Austria) — Doris Povse v Mauro Alpagó**

(Case C-211/10 PPU) (¹)

(Judicial cooperation in civil matters — Matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Unlawful removal of a child — Provisional measures relating to ‘right to take parental decisions’ — Rights of custody — Judgment ordering the return of the child — Enforcement — Jurisdiction — Urgent preliminary ruling procedure)

(2010/C 234/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: Doris Povse

Respondent: Mauro Alpagó

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Articles 10(b)(iv), 11(8), 42(2) and 47(2) 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) — Child abduction — Jurisdiction of courts or tribunals of a Member State to order the return of the child to that State in circumstances where the child has resided more than one year in another Member State and where the courts of the first State have, after the abduction, provisionally awarded custody of the child to the parent who abducted the child — Whether possible to refuse, in the interests of the child, enforcement of the decision ordering the child’s return to the first Member State

Operative part of the judgment

- Article 10(b)(iv) 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 a provisional measure does not constitute a ‘judgment on custody that does not entail the return of the child’ within the meaning of that provision, and cannot be the basis of a transfer of jurisdiction to the courts of the Member State to which the child has been unlawfully removed.
- Article 11(8) of Regulation No 2201/2003 must be interpreted as meaning that a judgment of the court with jurisdiction ordering the return of the child falls within the scope of that provision, even if it is not preceded by a final judgment of that court relating to rights of custody of the child.
- The second subparagraph of Article 47(2) of Regulation No 2201/2003 must be interpreted as meaning that a judgment delivered subsequently by a court in the Member State of enforcement which awards provisional rights of custody and is deemed to be enforceable under the law of that State cannot preclude enforcement of a certified judgment delivered previously by the court which has jurisdiction in the Member State of origin and ordering the return of the child.
- Enforcement of a certified judgment cannot be refused in the Member State of enforcement because, as a result of a subsequent change of circumstances, it might be seriously detrimental to the best interests of the child. Such a change must be pleaded before the court which has jurisdiction in the Member State of origin, which should also hear any application to suspend enforcement of its judgment.

(¹) OJ C 179, 3.7.2010.