



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

9 September 2015\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Articles 1(2) and 49 — Jurisdiction and the enforcement of judgments in civil and commercial matters — Matters excluded — Family law — Regulation (EC) No 2201/2003 — Article 47(1) — Jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility — Judgment concerning rights of access which imposes a periodic penalty payment — Enforcement of that penalty payment)

In Case C-4/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Finland), made by decision of 31 December 2013, received at the Court on 6 January 2014, in the proceedings

**Christophe Bohez**

v

**Ingrid Wiertz,**

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, E. Levits, M. Berger (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 8 January 2015,

after considering the observations submitted on behalf of:

- Mr Bohez, by L. Koskenvuo, asianajaja,
- the Finnish Government, by H. Leppo, acting as Agent,
- the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,
- the Lithuanian Government, by D. Kriauciūnas and R. Dzikovič, acting as Agents,
- the European Commission, by A.-M. Rouchaud-Joët and E. Paasivirta, acting as Agents,

\* Language of the case: Finnish.

after hearing the Opinion of the Advocate General at the sitting on 16 April 2015,  
gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 1(2) and 49 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and of Article 47(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 (OJ 2003 L 338, p. 1).
- 2 The request has been made in proceedings between Mr Bohez and Ms Wiertz concerning the enforcement in Finland of a penalty payment imposed by a decision given by a Belgian court in order to ensure compliance with the rights of access granted to Mr Bohez in respect of his children.

### Legal context

#### *EU law*

#### Regulation No 44/2001

- 3 Article 1(1) and (2) of Regulation No 44/2001, which concerns the scope of the regulation, provides:  
'1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. ...  
2. This Regulation shall not apply to:  
(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;  
...'
- 4 Article 45(2) of Regulation No 44/2001, which forms part of Chapter III entitled 'Recognition and enforcement', provides:  
'Under no circumstances may the foreign judgment be reviewed as to its substance.'
- 5 Article 49 of that regulation, which is also in Chapter III, provides:  
'A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.'

#### Regulation No 2201/2003

- 6 Regulation No 2201/2003 repealed and replaced Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ 2000 L 160, p. 19).

7 Recital 2 in the preamble to Regulation No 2201/2003 recalls that the principle of mutual recognition of judicial decisions is the cornerstone for the creation of a genuine judicial area and that, in that regard, ‘visiting rights’ [rights of access] have been identified as a priority.

8 Article 1 of the regulation defines the scope of the directive as follows:

‘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;

...’

9 In accordance with Article 26 of Regulation No 2201/2003 ‘[u]nder no circumstances may a judgment be reviewed as to its substance’.

10 As regards the enforceability of judgments concerning rights of access, Article 28(1) of the regulation provides:

‘A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

11 In certain circumstances judgments concerning rights of access may be automatically enforceable. The first subparagraph of Article 41(1) of Regulation No 2201/2003 provides in that regard:

‘The rights of access ... granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.’

12 Article 47(1) of the regulation specifies that the enforcement procedure is governed by the law of the Member State of enforcement.

### *National law*

#### Belgian law

13 Under Belgian law, penalty payments are governed by Articles 1385bis to 1385nonies of the Judicial Code (code judiciaire). Article 1385bis of the Code states:

‘On the application of one of the parties, the court may order the other party to pay a sum of money, known as a penalty payment, if the principal obligation laid down in the judgment has not been performed, without prejudice to damages, where appropriate. ...’

14 Article 1385ter of the Judicial Code provides:

‘The court may set the penalty payment at a fixed amount or at an amount determined by unit of time or by breach. In the last two cases, the court may also set an amount above which the order to pay the penalty payment shall cease to have effect.’

15 Under Article 1385quater of the Judicial Code, the enforceable instrument on the basis of which the penalty payment may be recovered is the judgment imposing the penalty and the beneficiary does not need to have the penalty payment quantified prior to enforcement.

16 The beneficiary of the penalty payment has the burden of proving that the conditions under which it falls due are met. In the event of a challenge by the debtor, the beneficiary must produce evidence to establish the breaches alleged. It will then be for the court dealing with the enforcement proceedings to decide whether the conditions under which the penalty payment falls due are met.

#### Finnish law

17 Under Finnish law, penalty payments imposed to ensure compliance with rights of access are governed by the Law on the enforcement of decisions on child custody and rights of access (Lapsen huoltoa ja tapaamisoikeutta koskevan päätöksen täytäntöönpanosta annettu laki; ‘TpL’), and by the Law on penalty payments (Uhkasakkolaki).

18 Under Paragraph 16(2) of the TpL, after a judgment concerning rights of access has been delivered, the court before which a case is brought concerning the enforcement of those rights may require the respondent to comply with the judgment or else be liable for a penalty payment.

19 Under Paragraph 18(1) and (2) of the TpL the penalty payment imposed is, as a rule, a fixed amount. If circumstances so warrant, the penalty may, however, be structured as cumulative amounts.

20 Penalty payments are always paid to the State, not to the other party.

21 Under Paragraph 19(1) and (2) of the TpL, on a fresh application the court may order payment of the penalty imposed if it considers that there are grounds for so doing. Payment of the penalty may not be ordered where the party subject to the obligation shows that he had good reason for failing to perform the obligation, or where the obligation has been performed in the intervening period.

22 Paragraph 11 of the Law on penalty payments provides that the court may reduce the amount of the penalty payment originally imposed if the principal obligation has in substance been performed, if the ability of the party subject to the obligation to pay has significantly deteriorated or if there are other good reasons for reducing the amount.

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

23 Mr Bohez and Ms Wiertz were married in Belgium in 1997 and had two children. They divorced in 2005 and Ms Wiertz moved to Finland.

24 On 28 March 2007, the rechtbank van eerste aanleg te Gent (Court of First Instance, Ghent (Belgium)), gave judgment concerning custody, residence, rights of access and maintenance in respect of those children (‘the judgment of 28 March 2007’). The court also supplemented its judgment with a penalty payment intended to ensure compliance with the rights of access granted to Mr Bohez. That penalty payment was set at EUR 1 000 per child, which was to be paid to Mr Bohez for every day of the child’s non-appearance. The maximum amount of the penalty payment was set at EUR 25 000.

- 25 Mr Bohez applied to the Finnish courts for an order requiring Ms Wiertz to pay him the penalty payment imposed in the judgment of 28 March 2007, or for a declaration that the judgment was enforceable in Finland. In support of his application, he argued before the Itä-Uudenmaan käräjäoikeus (District Court, Itä Uusimaa (Finland)) that numerous access visits had not taken place and that, as a result, the maximum amount of the penalty payment set in the judgment had already been reached. Relying on the fact that, under Belgian law, recovery of penalty payments is effected directly by the authorities responsible for enforcing judicial decisions, without there being any need for fresh court proceedings, Mr Bohez submitted that his application had to be considered to be seeking recovery of a monetary claim that has fallen due and, on that account, to fall within the scope of Regulation No 44/2001.
- 26 Ms Wiertz contended that the order that she pay the penalty had not been definitively confirmed by the Belgian courts and that the judgment of 28 March 2007 was therefore not enforceable. There had been no determination by the authorities as to the existence of breaches capable of giving rise to the obligation to pay the penalty.
- 27 In its judgment of 8 March 2012, the Itä-Uudenmaan käräjäoikeus found that Mr Bohez's application did not relate to the enforcement of a judgment on rights of access, but only to the enforcement of a penalty payment imposed to ensure compliance with that judgment. It concluded that in so far the application concerned the enforcement of a judgment laying down a monetary obligation, it fell within the scope of Regulation No 44/2001. However, pointing out that the judgment of 28 March 2007 provided only for a periodic penalty payment the amount of which had not been finally determined, contrary to the requirements of Article 49 of Regulation No 44/2001, the Itä-Uudenmaan käräjäoikeus held that Mr Bohez's application was inadmissible.
- 28 The Helsingin hovioikeus (Court of Appeal, Helsinki), to which Mr Bohez appealed, confirmed, by judgment of 16 August 2012, that the application was inadmissible. The grounds of that judgment were based, however, on a different analysis from that of the court at first instance. Taking the view that M. Bohez's application pertained to the enforcement of a judgment concerning rights of access, the Helsingin hovioikeus held that, having regard to Article 1(2)(a) of Regulation No 44/2001, the application did not fall within the scope of that regulation, but rather within that of Regulation No 2201/2003. Therefore, in accordance with Article 47(1) of Regulation No 2201/2003, the enforcement procedure would be governed, in this case, by Finnish law, namely the TpL.
- 29 M. Bohez brought an appeal before the Korkein oikeus (Supreme Court), arguing that the judgment of 16 August 2012 of the Helsingin hovioikeus should be set aside and reiterating the heads of claim put forward at first instance.
- 30 In those circumstances the Korkein oikeus decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Is Article 1(2) of ... Regulation [No 44/2001] to be interpreted as meaning that cases concerning the enforcement of a penalty payment (astreinte) imposed to ensure compliance with the principal obligation in a case concerning child custody or rights of access are outside the scope of the regulation?
- (2) If the cases set out in the preceding paragraph fall within the scope of ... Regulation [No 44/2001], is Article 49 of [that] regulation to be interpreted as meaning that a periodic penalty payment which is enforceable as such in the amount stated in the State in which judgment was given, but whose final amount may be changed on the application or arguments of the party subject to the penalty payment, is enforceable in a [nother] Member State only if its amount has been separately determined in the State in which judgment was given?

- (3) If cases such as those identified above are outside the scope of ... Regulation [No 44/2001], is Article 47(1) of ... Regulation [No 2201/2003] to be interpreted as meaning that penalties and protective measures concerning child custody and rights of access fall within the enforcement procedure referred to in that provision which is governed by the legislation of the Member State of enforcement, or can they form part of the judgment concerning child custody and rights of access which is enforceable in another Member State under ... Regulation [No 2201/2003]?
- (4) When enforcement of a penalty payment is sought in another Member State, is it a requirement that the amount of the penalty payment to be enforced has been finally determined separately in the Member State in which judgment was given, even if ... Regulation [No 44/2001] does not apply in the enforcement proceedings?
- (5) If a periodic penalty payment imposed as a means to ensure compliance with rights of access is enforceable in another Member State without the amount of the penalty payment to be enforced having separately been finally determined:
  - (a) does the enforcement of the penalty payment nevertheless require a review of whether the failure to comply with rights of access was based on obstacles which it was essential to take into consideration on account of the rights of children, and
  - (b) which court has jurisdiction to examine such factors, more specifically,
    - (i) is the jurisdiction of the court of the State of enforcement always limited solely to an examination of whether the alleged failure to comply with rights of access has occurred for reasons which are expressly set out in the judgment in the main proceedings, or
    - (ii) does it follow from the protection of the rights of children in the Charter of Fundamental Rights of the European Union that the court of the State of enforcement has a more extensive right or obligation to examine whether the failure to comply with rights of access was based on grounds which it was essential to take into consideration in order to safeguard the rights of children?’

## Consideration of the questions referred

### *The first question*

- 31 By its first question, the referring court asks, in essence, whether Article 1 of Regulation No 44/2001 must be interpreted as meaning that that regulation applies to the enforcement in a Member State of a penalty payment which was imposed in a judgment, given in another Member State, concerning rights of custody and rights of access in order to ensure that the holder of the rights of custody complies with those rights of access.
- 32 In that regard, it should be recalled that the scope of Regulation No 44/2001 is limited to ‘civil and commercial matters’. That scope is determined essentially according to the factors characterising the nature of the legal relationships between the parties to the action or the subject-matter of the action (see judgment in *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 39 and the case-law cited).
- 33 More particularly, as regards interim measures, the Court considers that their inclusion in the scope of Regulation No 44/2001 is determined not by their own nature but by the nature of the rights that they serve to protect (see judgment in *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 40 and the case-law cited).

- 34 Thus, as regards the enforcement in a Member State of an order to pay a fine, which has been imposed by a court of another Member State, for the purpose of ensuring compliance with a prohibition laid down in a judgment given in that Member State in civil and commercial matters, the Court has stated that the nature of that right of enforcement depends on the nature of the subjective right, for infringement of which enforcement was ordered (see, to that effect, judgment in *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 42).
- 35 In the present case, it is apparent from Article 1385bis of the Belgian Judicial Code, on the basis of which the court of the State of origin imposed the penalty payment at issue in the main proceedings, that that measure can be seen as an order, made on the application of one of the parties, requiring the other party to pay a sum of money in the event of that other party failing to perform his or her principal obligation. It follows that penalty payments are ancillary to that principal obligation.
- 36 Moreover, the documents before the Court make it clear that the purpose of the penalty payment at issue in the main proceedings is to ensure that rights of access granted, in the same judgment, by the court of the State of origin are effective. That penalty payment is intended to exert financial pressure on the person who has custody of the child so that that person cooperates in giving effect to the rights of access.
- 37 Article 1(2)(a) of Regulation No 44/2001 expressly excludes from the scope of that regulation the status of natural persons, a notion which encompasses the exercise of parental responsibility over the person of a child.
- 38 It was because of that exclusion and in order to fill that gap that Regulations Nos 1347/2000 and 2201/2003 were successively enacted, the scope of each of those regulations encompassing, inter alia, matters of parental responsibility. Those matters include, as Article 1(2)(a) of Regulation No 2201/2003 makes clear, rights of custody and rights of access.
- 39 In those circumstances, it must be found that the penalty payment whose enforcement is sought in the main proceedings is an ancillary measure which serves to protect a right which falls not within the scope of Regulation No 44/2001, but rather within that of Regulation No 2201/2003.
- 40 The answer to the first question is therefore that Article 1 of Regulation No 44/2001 must be interpreted as meaning that that regulation does not apply to the enforcement in a Member State of a penalty payment which is imposed in a judgment, given in another Member State, concerning rights of custody and rights of access in order to ensure that the holder of the rights of custody complies with those rights of access.

*The second question*

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

*The third question*

- 42 By its third question, the referring court asks, in essence, whether the recovery of a penalty payment — a penalty which the court of the Member State of origin that gave judgment on the merits with regard to rights of access has imposed in order to ensure the effectiveness of those rights — must be regarded as forming part of the procedure for enforcing those rights, which, under Article 47(1) of Regulation No 2201/2003, is governed by national law, or as forming part of the same scheme as the rights of access that the penalty safeguards so that the latter must, on that basis, be declared enforceable in accordance with the rules laid down by Regulation No 2201/2003.

- 43 As is made clear in recital 2 in the preamble to Regulation No 2201/2003, mutual recognition of judgments concerning rights of access has been identified as a priority within the judicial area of the European Union. Since those judgments are regarded as particularly important, they are covered by a special scheme. Regulation No 2201/2003 provides, in Articles 28(1) and 41(1), for a simplified, even automatic, system of enforcement which is based on the principle of mutual trust.
- 44 On the basis of that mutual trust and in accordance with Article 26 of Regulation No 2201/2003, those judgments may not be reviewed as to their substance.
- 45 In the present case, the penalty payment whose enforcement is sought in the main proceedings was imposed by the court which, under Regulation No 2201/2003, had jurisdiction to give judgment on the merits with regard to rights of access.
- 46 It is true that, unlike Regulation No 44/2001, Regulation No 2201/2003, like its predecessor Regulation No 1347/2000, does not include any rule concerning penalty payments. However, as the European Commission has submitted, the fact that that issue was not addressed during the drafting of those regulations is not a ground for inferring that the intention of the EU legislature was to exclude the enforcement of penalty payments from their scope. Such a measure, inasmuch as it contributes to bringing about compliance with judgments given, under those regulations, in relation to rights of access, pertains to the objective of effectiveness pursued by Regulation No 2201/2003.
- 47 As has been stated in paragraph 35 of this judgment, the penalty payment at issue in the main proceedings is merely ancillary to the principal obligation which it safeguards, namely the obligation, incumbent on the parent to whom custody has been granted, to cooperate in giving effect to the rights of access granted by the court of the State of origin, which has jurisdiction as to the substance of the case.
- 48 Enforcement of that penalty payment is, therefore, directly linked to the existence of both that principal obligation and a breach thereof.
- 49 In view of that link, a penalty payment imposed in a judgment concerning rights of access cannot be considered in isolation as a self-standing obligation, but must be considered together with the rights of access which it serves to protect and from which it cannot be dissociated.
- 50 Recovery of the penalty payment must therefore fall under the same scheme of enforcement as the rights of access which are to be safeguarded, namely the rules laid down in Articles 28(1) and 41(1) of Regulation No 2201/2003.
- 51 If the scheme of enforcement of penalty payments were separated from the scheme applicable to rights of access so as to bring it, as the Finnish and Lithuanian Governments have suggested, within the ambit of the enforcement procedure itself, which, under Article 47(1) of Regulation No 2201/2003, is governed by the law of the Member State of enforcement, that would amount to allowing the court of that State to verify whether there has been a breach of rights of access.
- 52 Such a review, which would be conducted in accordance with the rules of the State of enforcement and would entail an assessment, by the court of that State, of the circumstances of the case, would run counter to the intention of the EU legislature to establish, in respect of judgments given in that sphere, a uniform and simplified scheme of enforcement, which does not permit any interference in the substance of the case by the court dealing with enforcement and is based on the trust placed in the court of the State of origin as the court designated as having jurisdiction to take the decision relating to rights of access.



53 In those circumstances, the answer to the third question is that recovery of a penalty payment — a penalty which the court of the Member State of origin that gave judgment on the merits with regard to rights of access has imposed in order to ensure the effectiveness of those rights — forms part of the same scheme of enforcement as the judgment concerning the rights of access that the penalty safeguards and the latter must therefore be declared enforceable in accordance with the rules laid down by Regulation No 2201/2003.

*The fourth question*

54 By its fourth question, the referring court asks whether, in the context of Regulation No 2201/2003, a foreign judgment which orders a periodic penalty payment is enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

55 It is apparent from the documents before the Court that the periodic penalty payment whose enforcement is sought in the main proceedings was set by the court of the State of origin at EUR 1 000 for each breach of the rights of access, subject to a ceiling of EUR 25 000. It is also apparent from those documents that, under Article 1385quater of the Belgian Judicial Code, the beneficiary of the penalty payment does not have to apply to the court for a final determination of the amount of the penalty payment prior to it being enforced. Belgian law differs on that point from the rules in force in other Member States, notably from Finnish law, under which, pursuant to Paragraph 19(1) and (2) of the TpL, the beneficiary must ask the court to set the final amount of the penalty payment before being able to apply for enforcement thereof.

56 In order to address the difficulties that might result from differences between the laws of the Member States on this point, Article 43 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978, L 304, p. 36) included the rule that a foreign judgment which orders a periodic payment by way of a penalty is to be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin (see the report by Dr Schlosser on the Convention of 9 October 1978 on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (OJ 1979, C 59, p. 71, point 213). That rule has been restated in the same terms in Article 49 of Regulation No 44/2001.

57 Neither Regulation No 2201/2003 nor its predecessor, Regulation No 1347/2000, includes any equivalent rule. However, as the Advocate General has observed in point 81 of his Opinion, a requirement, in the context of Regulation No 2201/2003, for quantification of a periodic penalty payment prior to its enforcement is consistent with the sensitive nature of rights of access.

58 As has been recalled in paragraph 40 of this judgment, the importance of rights of access, which are essential for the protection of the right of a child to maintain a personal relationship and direct contact with both his or her parents, which is laid down in Article 24(3) of the Charter, prompted the EU legislature to provide for a specific scheme in order to facilitate enforcement of judgments concerning rights of access. That scheme is based on the principle of mutual trust between Member States in the fact that their respective national legal systems are capable of providing an equivalent and effective protection of fundamental rights, recognised at EU level, in particular, in the Charter (judgment in *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, paragraph 70), and precludes any review of the judgment given by the court of the State of origin.

- 59 Should the holder of rights of access granted in a Member State make an application — on the basis that effect has not been given to those rights — for enforcement in another Member State of a penalty payment whose amount has not been finally determined by the court of the State of origin, it would be contrary to the system put in place by Regulation No 2201/2003 to allow the court of the State of enforcement to be involved in the determination of the final sum to be paid by the person who, since he or she had custody of the child, was obliged to cooperate in giving effect to the rights of access. A determination of that kind entails a review of the breaches alleged by the holder of the rights of access. Such a review, which is of the utmost importance in terms of the best interests of the child, entails not only establishing the number of non-appearances of the child, but also an assessment of the reasons for those breaches. Only the court of the Member State of origin, as the court having jurisdiction as to the substance of the matter, is entitled to make assessments of that kind.
- 60 Consequently, in such a situation, it is for the beneficiary of the penalty payment to use the procedural remedies available in the Member State of origin to obtain a document quantifying the final amount of the penalty.
- 61 Accordingly, the answer to the fourth question is that, in the context of Regulation No 2201/2003, a foreign judgment which orders a periodic penalty payment is enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

*The fifth question*

- 62 In view of the answer to the fourth question, there is no need to answer this question.

**Costs**

- 63 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 (First Chamber) hereby rules:

- 1. Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that regulation does not apply to the enforcement in a Member State of a penalty payment which is imposed in a judgment, given in another Member State, concerning rights of custody and rights of access in order to ensure that the holder of the rights of custody complies with those rights of access.**
- 2. Recovery of a penalty payment — a penalty which the court of the Member State of origin that gave judgment on the merits with regard to rights of access has imposed in order to ensure the effectiveness of those rights — forms part of the same scheme of enforcement as the judgment concerning the rights of access that the penalty safeguards and the latter must therefore be declared enforceable in accordance with the rules laid down by 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.**

3. **In the context of Regulation No 2201/2003, a foreign judgment which orders a periodic penalty payment is enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.**

[Signatures]