



## Reports of Cases

VIEW OF ADVOCATE GENERAL  
KOKOTT  
delivered on 28 March 2012<sup>1</sup>

**Case C-92/12 PPU**

**Health Service Executive**

**v**  
**S.C.**  
**and**  
**A.C.**

(Reference for a preliminary ruling from the High Court of Ireland)

(Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility — Placement of a child in institutional care, involving detention, in another Member State — Consent of the host Member State — Declaration of enforceability)

### **I – Introduction**

1. The present case concerns, within the framework of an urgent preliminary ruling procedure, the interpretation of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.<sup>2</sup>

2. Article 56 of that regulation governs the cross-border placement of children in institutional care and with foster families. The Irish High Court has ordered that a 17-year-old child<sup>3</sup> (S.C.) be placed in a secure care institution in England. There was no suitable institution in Ireland. For reasons relating to the child's welfare, the situation did not allow any time for delay and S.C. was immediately placed in the care institution.

3. Accordingly, the High Court wishes to know, first, whether a placement involving detention, ordered to protect the child, actually comes within the material scope of the Regulation. Its further questions, against the background of the urgency of the placement, essentially relate to whether a judgment ordering such a placement of the child requires a declaration of enforceability under Article 28 of the Regulation and what legal effect it has in another Member State prior to such a declaration of enforceability. In addition, it asks about the requirements governing the consent procedure under Article 56(2) of the Regulation.

1 — Original language: German.

2 — OJ 2003 L 338, p. 1, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1), also known as the Brussels II bis Regulation ('Regulation No 2201/2003' or 'the Regulation').

3 — [This footnote in part concerns German terminology: the choice of 'Kind' or 'Jugendliche'. In the order for reference S.C. is generally referred to as a child] ... I will use the terminology employed in the Regulation, which mentions only 'child'. Unlike the Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children of 19 October 1996 (cited in footnote 10), the Regulation does not contain a definition of the term 'child'. However, in the present case, it is not appropriate to comment in this regard, since the personal scope of application is not the subject-matter of the proceedings and the issue has not been raised by any of the parties.

## II – Legislative framework

4. The following provisions of Regulation No 2201/2003 are of particular relevance to the present case:

‘Article 1

Scope

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:

...

(d) the placement of the child in a foster family or in institutional care ...’

‘Article 28

Enforceable judgments

1. 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.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland only when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.’

‘Article 56

Placement of a child in another Member State

1. Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.

2. The judgment on placement referred to in paragraph 1 may be made in the requesting State only if the competent authority of the requested State has consented to the placement.

3. The procedures for consultation or consent referred to in paragraphs 1 and 2 shall be governed by the national law of the requested State.’

## III – Facts, questions referred for a preliminary ruling and procedure before the Court

5. S.C. is an Irish national and lived in Ireland. The High Court is exercising rights of custody in respect of her. In 2000 S.C. was placed in the care of the Health Service Executive (the authority with responsibility for children in public care in Ireland, ‘the HSE’). Since then S.C. has been placed both with foster families and in institutional care in Ireland. The HSE has now made an interlocutory

application<sup>4</sup> to the referring court for a placement, involving detention, in a secure therapeutic and educational institution in England.<sup>5</sup> S.C. had previously been placed in a secure institution in Ireland. In the recent past, S.C. had attempted to take her own life on a number of occasions. No suitable institution in Ireland was available. The defendants are S.C. and A.C., the child's mother.

6. On 2 December 2011 the referring court granted the application made by the HSE and ordered that S.C. be placed in a private, secure institution in England for her own protection. Apart from S.C., all the parties to the proceedings supported the placement in England because it was in the child's best interests. The placement was ordered for an initial period of one month, to be reviewed on a monthly basis and, if necessary, extended.

7. Because, in the view of the referring court, the child's welfare called for immediate action, S.C. was moved into institutional care in England immediately after the court order. The main proceedings now concern questions relating to the lawfulness of the placement and its continuation. By order of 16 February 2012, received at the Court on 22 February 2012, the High Court referred the following questions for a preliminary ruling:

- (1) Does a judgment which provides for the detention of a child for a specified time in another Member State in an institution providing therapeutic and educational care come within the material scope of Council Regulation No 2201/2003?
- (2) If the answer to Question one is yes, what obligations, if any, arise out of Article 56 of Council Regulation No 2201/2003 as to the nature of the consultation and consent mechanism to ensure the effective protection of a child who is to be so detained?
- (3) Where a Court of a Member State has contemplated the placement of a child for a specified time in a residential care institution in another Member State and has obtained the consent of that State in accordance with Article 56 of Council Regulation No 2201/2003, must the judgment of the court directing the placement of a child for a specified time in a residential care institution situated in another Member State be recognised and/or declared enforceable in that other Member State as a precondition to the placement being effected?
- (4) Does a judgment of the court directing the placement of the child for a specified time in a residential care institution situated in another Member State and which has been consented to by that Member State in accordance with Article 56 of Council Regulation No 2201/2003 have any legal effect in that other Member State prior to the grant of a declaration of recognition and/or enforceability upon the completion of the proceedings seeking such declaration of recognition and/or enforceability?
- (5) Where a judgment of the court directing the placement of the child for a specified time in a residential care institution situated in another Member State under Article 56 of Council Regulation No 2201/2003 is renewed for a further specified time must the Article 56 consent of the other Member State be obtained upon the occasion of each renewal?
- (6) Where a judgment of the court directing the placement of the child for a specified time in a residential care institution situated in another Member State under Article 56 of Council Regulation No 2201/2003 is renewed for a further specified time must the judgment be recognised and/or enforced in that other Member State upon the occasion of each renewal?

8. By a further order of the same date, the referring court requested that the ruling be dealt with under the urgent procedure pursuant to Article 104b of the Court's Rules of Procedure. On 29 February 2012, the Second Chamber of the Court of Justice ordered that the present reference for a preliminary ruling be dealt with under the urgent procedure.

4 — Footnote does not apply to the English version.

5 — Known as 'secure care' in Irish law.

9. The HSE, S.C., represented by her guardian *ad litem*, A.C., the Irish Government and the Commission submitted written observations to the Court of Justice. At the hearing on 26 March 2012 those parties, the German Government and the United Kingdom Government presented oral argument.

#### IV – Legal assessment

##### A – First question: the material scope of Regulation No 2201/2003

10. The High Court of Ireland wishes to know, first of all, whether a judgment of a court ordering the placement of a child, for his or her protection from self-harm, under detention in an institution providing therapeutic and educational care also comes within the scope of Regulation No 2201/2003.

11. The material scope of the regulation is governed by Article 1 thereof. Under Article 1(1)(b), it applies, whatever the nature of the court or tribunal, in civil matters relating to the attribution, exercise, delegation, restriction or termination of parental responsibility.

12. Under Article 2(7), ‘parental responsibility’ covers in particular rights of custody, which include, under Article 2(9), the right to determine the child’s place of residence. Under Article 2(8), the holder of parental responsibility is ‘any person having parental responsibility over a child’. It is therefore irrelevant if — as in the present case — the parents do not hold rights of custody.

13. Article 1(2)(d) provides that civil matters relating to parental responsibility cover in particular the placement of the child in a foster family or in institutional care.

14. The Court has already ruled, first, that the term ‘civil matters’ is to be interpreted as including child protection measures adopted in the context of the public law rules of a Member State’s legal order.<sup>6</sup> The Court has further held that — even though not expressly mentioned in the Regulation — taking a child into care as a child protection measure does fall within the scope of the Regulation.<sup>7</sup> In that regard, the Court expressly mentioned the view of one Member State that a decision ordering that a child be taken into care could in those circumstances, even result in that child being deprived of his liberty.<sup>8</sup> The Court has not yet dealt with the question whether a placement involving deprivation of liberty also comes within the scope of the Regulation.

15. The term ‘institutional care’ used in Article 1(2)(d) of the Regulation refers to an institution in which children and juveniles live and receive educational care. According to its natural meaning, the concept can also cover institutions in which children are placed in detention for their own protection.

16. Exemptions from the scope of the Regulation are laid down in Article 1(3). Under Article 1(3)(g), the Regulation does not apply to measures taken as a result of criminal offences committed by children. That exemption indicates, *a contrario*, that the legislature also considered secure placement to be covered in principle by the Regulation. That is the only explanation why it considered it necessary to state that penalties for criminal offences committed by children, which can include detention, are not covered by the Regulation.

17. This is also suggested by the Explanatory Report by Paul Lagarde<sup>9</sup> on the Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children of 19 October 1996 (‘the Child Protection Convention’).<sup>10</sup> In connection with the interpretation of Regulation No 2201/2003 having regard to its

6 — Case C-435/06 C [2007] ECR I-10141, paragraph 53, and Case C-523/07 A [2009] ECR I-2805, paragraph 27.

7 — C, cited in footnote 6, paragraphs 25 to 36.

8 — C, cited in footnote 6, paragraph 43.

9 — ‘The Lagarde Report’, [http://www.hcch.net/index\\_en.php?act=publications.details&pid=2943](http://www.hcch.net/index_en.php?act=publications.details&pid=2943)

10 — [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=70](http://www.hcch.net/index_en.php?act=conventions.text&cid=70)

drafting history and its scheme, that report may offer guidance to the interpretation of the relevant provisions of the Regulation. The provisions on custody in the Regulation are based on the preparatory work for the Child Protection Convention and are identical in large parts,<sup>11</sup> including with regard to the provisions on scope to be interpreted here.<sup>12</sup> Furthermore, the provisions of the Regulation and corresponding provisions in other conventions ought, so far as possible, to be interpreted in the same way, in order to avoid different results according to whether a case concerns another Member State or a third country.<sup>13</sup>

18. The Lagarde Report describes measures of placement of a child in a foster family or in institutional care as the prototypes of measures of protection. They are obviously covered by the Convention unless *expressly* excluded, as is placement following a criminal offence committed by the child.<sup>14</sup> It is stated that the Convention should deal with the protection of childhood and, for that reason, only measures relating to criminal law as it pertains to children should be excluded.<sup>15</sup>

19. In addition, under the Regulation every decision which affects parental responsibility should fall within the Regulation's scope, provided none of the exceptions in Article 1(3) applies.<sup>16</sup> According to the wording, drafting history and context of the Regulation, a secure placement made in order to protect the child from self-endangerment or suicide and providing educational and therapeutic care thus comes within its scope.

20. This interpretation is also consistent with the objective of the Regulation as expressed in recital 5 in the preamble.<sup>17</sup> According to that recital, the Regulation is intended to cover all decisions on parental responsibility, including measures for the protection of the child, in order to ensure equality for all children.

21. If the protection of the child may require secure placement and the Regulation seeks to ensure equality for all children in respect of decisions on parental responsibility, it would be inexplicable that decisions on secure placement in particular should be excluded from the scope of the Regulation. That kind of placement may most seriously affect the fundamental rights of the child. Precisely in this sensitive area, it is crucial that the Regulation lays down uniform rules for jurisdiction, which the Regulation bases on the best interests of the child,<sup>18</sup> and for recognition and enforcement of such decisions.

22. Including such placements also avoids any problems of delimitation in a specific case. The different forms of placement are, as a rule, seamlessly interconnected. Secure placement will always be the last resort and only for the period of time that is absolutely necessary. After a secure placement, however, the placement of the child will perhaps continue in the same institution, but without deprivation of liberty. That is the situation in the main proceedings: S.C. is to be placed in detention only for as long as is absolutely necessary, but will remain in the same institution after that condition has been lifted at the earliest opportunity. Only an arrangement which ensures that decisions on all kinds of placement are subject to uniform rules on jurisdiction and recognition can serve the child's best interests here. If placement in institutional care involving detention did not come under the scope of the Regulation, that might lead to differences of jurisdiction depending on the form of placement. That would not be appropriate.

11 — See Pirrung, J., 'Auslegung der Brüssel IIA-Verordnung in Sorgerechtsachen', in: *Festschrift für Jan Kropholler*, 2008, p. 399, p. 407.

12 — Under Article 3(e) of the Child Protection Convention, that Convention applies to the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution. Under Article 4(i) of the Child Protection Convention, measures taken as a result of criminal offences committed by children are exempted.

13 — Or Denmark, to which Regulation No 2201/2003 does not apply. See also my Opinion in *C*, cited in footnote 6, point 50.

14 — Lagarde Report, cited in footnote 9, paragraph 23.

15 — Lagarde Report, cited in footnote 9, paragraph 35.

16 — See also my Opinion in *C*, cited in footnote 6, point 43.

17 — See *C*, cited in footnote 6, paragraph 48 et seq.

18 — See recital 12 in the preamble to the Regulation.

23. The answer to the first question should therefore be that a judgment ordering the placement of a child in institutional care, involving detention, in another Member State for the child's protection comes within the material scope of Regulation No 2201/2003.

*B – Second question: the requirement of prior consent from the competent authority*

24. By its second question, the referring court would like to know what obligations in connection with such a placement arise out of Article 56 of Regulation No 2201/2003 as to the nature of the consultation and consent mechanism.

25. The context of this question is clear from the information provided in the order for reference.

26. According to the referring court, it was not possible for it to find out beyond doubt which authority in the United Kingdom is competent as regards consent under Article 56(2) of the Regulation. The Official Solicitor and the Central Authority for England and Wales<sup>19</sup> first forwarded confirmation from a 'private unit' that it was able to offer S.C. a placement. In an affidavit subsequently presented to the High Court, an official of the Central Authority for England and Wales stated that it was not the competent authority for the purposes of Article 56 and that there was no one competent authority for the purposes of the Regulation. The referring court therefore had the impression that consent had only been given by the 'private unit' in which S.C. was to be placed and that that institution was regarded as the competent authority.

27. When questioned at the hearing, on the other hand, the United Kingdom Government explained that the institution in which the child was placed was not a private institution. The institution belonged to and was managed by the City of Peterborough and was therefore a public institution. In principle, a reference for a preliminary ruling must be answered on the basis of the factual findings made by the referring court in its order for reference. However, in the light of the information provided by the United Kingdom, a useful answer to the second question asked by the referring court will also have to clarify whether consent from the public care institution satisfies the requirements laid down in Article 56(2).

1. The care institution as the competent authority

28. Under Article 56(2), the judgment on the placement of a child in another Member State may be made only if the *competent authority* of the requested State has consented to the placement. Article 56(1) regulates a prior consultation procedure: where a court contemplates placement abroad, it must first consult the central authority or other authority having jurisdiction in the host Member State.

29. The term 'competent authority' used in Article 56(2) must be understood as a collective term covering the terms 'central authority' and 'authority having jurisdiction' used in Article 56(1). It is clear from the wording used in that provision, 'or other authority having jurisdiction' that the central authority is also regarded as a competent authority.

30. That view is also supported by the drafting history of the provision. Earlier drafts of the Regulation also mentioned in Article 56(2), alongside the terms used in Article 56(1), 'central authority' and 'other authority having jurisdiction'.<sup>20</sup> It was only at a very late stage in the legislative process that the mention of 'central authority' in Article 56(2) was removed.<sup>21</sup> It cannot be inferred from the documents relating to the Council discussions that the deletion of 'central authority' in Article 56(2) was intended as a substantive amendment.

19 — The Lord Chancellor, who has delegated this function to the International Child Abduction and Contact Unit (ICACU). The ICACU is also listed as the Central Authority for England and Wales on the European Commission website; see [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_jmm\\_centralauthorities\\_uk\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jmm_centralauthorities_uk_en.htm) According to United Kingdom Government websites, the ICACU is based within the office of the Official Solicitor.

20 — See Council document No 8281/03 of 30 April 2003, p. 29.

21 — Council document No 12992/03 of 29 September 2003, p. 37. In the Italian version of the Regulation there is even still a mention of the central authority: 'l'autorità centrale o un'altra autorità competente dello Stato richiesto'.

31. Under Article 56, consent must therefore be given by either the central authority or another materially competent authority. Since under Article 53 each Member State must designate one or more central authorities, the scheme of the Regulation prevents a situation where there is no competent authority within the meaning of Article 56(2).<sup>22</sup> Article 53 requires a central authority without jurisdiction to forward a communication to the (central) authority with jurisdiction.

32. It remains to be examined whether ‘competent authority’ within the meaning of Article 56(2) can also mean the private or public institution in which the child is to be placed.

33. Article 56(3) provides that the procedures for consultation or consent referred to in Article 56(1) and (2) are to be governed by the national law of the requested State. The question whether the private institution in which the child is to be placed can be the competent authority within the meaning of Article 56 is not, however, a question concerning the procedures for consent, but a fundamental decision concerning the consent itself. This may not be left to national law, but must be determined autonomously at Union level to ensure the uniform application of European Union law.<sup>23</sup>

34. In the German version, it is clear from the use of the term ‘*Behörde*’ that consent from a *public* body is required. Other language versions of the Regulation also use terms which indicate the public character of the body giving consent: the term ‘*autorité compétente*’ appears in the French version; the term ‘competent authority’ in the English version. In those language versions, the requirement that a public body be involved is also made clear in connection with the last clause of Article 56(1), which refers to the intervention of a ‘*öffentlichen Behörde*’ (‘*autorité publique*’, ‘public authority’) in similar domestic cases.

35. It is therefore clear from the wording of Article 56 that consent from the private institution in which the child is to be placed is not sufficient. The wording is not so clear with regard to the question whether consent from a public care institution satisfies Article 56(2). A broad interpretation of the term ‘authority’ could also encompass a public care institution.

36. However, the spirit and purpose of the consent requirement confirm that consent from the care institution in which the child is to be placed — irrespective of whether it is a private or public care institution — does not constitute valid consent for the purposes of Article 56(2). This becomes clear if we look at the Lagarde Report on the Child Protection Convention, which, in Article 33(2), contains a provision on placement of children corresponding to Article 56 of Regulation No 2201/2003. The Convention also lays down a requirement of prior consent from the host State.<sup>24</sup> The Lagarde Report states that this prior consent is intended to allow the authorities to determine in advance the conditions under which the child will stay in the receiving State, in particular in respect of immigration laws in force in that State<sup>25</sup> or even the sharing of the costs involved in carrying out the placement measure.<sup>26</sup>

37. The consent requirement is intended to ensure that, as far as possible, all questions which may be raised by a placement in the host Member State are resolved in advance, before the placement occurs. The intention is also specifically to ensure, in the child’s best interests, that administrative or other difficulties do not become apparent only at a later date when the child has already been placed and, in the worst-case scenario, possibly make it necessary to return the child.

22 — Apart from the exception laid down in the last clause of Article 56(1), which I will examine in point 48 of this View.

23 — See Case C-66/08 *Kozłowski* [2008] ECR I-6041, paragraph 42, and judgment of 14 February 2012 in Case C-204/09 *Flachglas Torgau*, paragraph 37.

24 — Article 33(2) of the Child Protection Convention provides: ‘The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child’s best interests.’

25 — In connection with the Regulation, this can apply only if there is a right of residence stemming from European Union citizenship.

26 — Lagarde Report, cited in footnote 9, paragraph 143.

38. A re-examination by the host Member State of the question whether the placement is in the child's best interests would not appear to be consistent with the scheme of the Regulation. That examination has already been carried out by the court ordering the placement, as the court considered by the Regulation to have jurisdiction. However, the authorities of the host Member State will be able to indicate if, in their view, difficulties might arise in connection with their public policy which might preclude the recognition or declaration of enforceability of a judgment on placement under Article 23. The consultation and consent procedure makes it possible for the authority in the Member State in which the child is to be placed to indicate whether there are problems in connection with the institution specifically chosen. The authority in the host Member State will generally be more familiar with the local care institutions than the court in the Member State of origin. In particular, the consent requirement is intended to ensure that the competent authorities are informed at an early stage that a child is to come into their area of jurisdiction, so that this does not happen without the opportunity for supervision by the public authorities.

39. The purposes of the consent requirement are not fulfilled if consent is given by the *private* institution itself in which the child is to be placed. That is because the private institution cannot give any binding assurances as to the administrative elements of the placement to which the host Member State must subsequently adhere. That part of the consent requirement could indeed be fulfilled by a *public* care institution. However, consideration of how problems in connection with the institution specifically chosen for the placement are to be monitored militates against the possibility that consent given by the institution itself could be regarded as sufficient. The spirit and purpose of the consent requirement therefore demand that consent be given by a public authority which must not be the care institution itself. It is irrelevant that a care institution is managed or run by the competent authority. It must nevertheless be ensured that the decision on consent is an autonomous decision by the competent authority. In making its decision, that public authority can and must, of course, take into account the assessment made by the care institution in which the child is to be placed. However, that assessment may not take the place of consent from the authority.

40. In the proceedings before the Court, the United Kingdom has submitted that in England the competent authority within the meaning of Article 56(2) is the local authority in whose jurisdiction the care institution in which the child is to be placed is located.<sup>27</sup> In the present case, this is Peterborough City Council.

41. According to the file before the Court, in response to an enquiry by the referring court regarding consent under Article 56(2), the central authority first forwarded a letter from the team leader of the care institution in which the child was to be placed. The letterhead mentioned both the City Council and the name of the care institution.<sup>28</sup> The United Kingdom explained the double letterhead on the ground that the care institution was managed by Peterborough City Council. However, it is also clear from the file that the central authority later forwarded to the competent Irish authority a further letter of clarification from the care institution, the letterhead of which mentioned only the name of the institution.<sup>29</sup>

42. It is for the referring court definitively to resolve whether in the present case there was a decision by Peterborough City Council or only a decision by the care institution in which the child was to be placed.

## 2. Consequences in the absence of consent from the competent authority

43. I will therefore examine below what the consequences are if it should be confirmed in the main proceedings that the competent authority did not give consent.

27 — The 'relevant local authority'. In the case of secure placement of children younger than 13, the Secretary of State for Education must approve the consent.

28 — Letter of 21 October 2011.

29 — Letter of 7 November 2011.

44. Under Article 56(2), the judgment on placement may be made only if the competent authority of the host Member State has given its consent. Consent must therefore exist *before* the court in the Member State of origin gives a judgment on placement. The mandatory nature of the consent is underlined by the fact that Article 23(g) provides that a judgment relating to parental responsibility must not be recognised or declared enforceable if the procedure laid down in Article 56 has not been complied with.

45. I therefore essentially concur with the Commission that consent is a precondition for the judgment on placement by the court. This must also follow from the abovementioned spirit and purpose of the consent requirement. Prior clarification of reasons for not making the placement order is specifically intended to avoid a situation where it might otherwise later become necessary to return the child.

46. Nevertheless, in an exceptional case like the present one, which is characterised by contradictory statements from the central authority, consideration must be given to the possibility that consent may exceptionally be obtained subsequently. After all, the referring court has, on the one hand, made great efforts to obtain consent, and, on the other, it was not the case that no consent at all existed, rather the United Kingdom's central authority initially forwarded consent, but subsequently explained that it was not the competent authority. The central authority did not, however, object to the placement. In this scenario, it would not be in the child's best interests to re-run the whole placement order procedure in order then to repeat the placement order, after valid consent has been given and after a considerable lapse of time.

47. It would therefore appear to be justified, in such an exceptional case, where, notwithstanding the efforts made by the court ordering the placement, it has merely obtained a consent which subsequently transpires to be insufficient for the purposes of Article 56(2) of the Regulation, to allow consent to be obtained subsequently.<sup>30</sup> Such a circumscribed acceptance of the possibility that consent can be obtained subsequently does not entail a risk of the consent requirement being circumvented.

48. The competent authority in the United Kingdom will have to take into consideration, in assessing the subsequent consent, that, even on the basis of the ambiguous statements by the United Kingdom central authority, which is actually required under Article 53 to forward the enquiry to the competent authority, the placement was made in the United Kingdom without sufficient consent. Regard for the child's best interests in the present case would seem to mean that consent for the purposes of Article 56 of Regulation No 2201/2003 may be refused only where the grounds for refusing consent are very substantial.

### 3. Other requirements governing the consent procedure

49. In its order for reference, the referring court also at one point addresses the question of what information the requesting court must send to the competent authority of the host Member State for the assessment of consent. Some of the parties also made comments in their observations on other requirements governing the consent procedure.

50. It must be stated in this regard that under Article 56(3) of the Regulation the procedures for consent are governed by the relevant national law. However, in accordance with the principle of effectiveness, the Member States are required to lay down clear rules and procedures for consent under Article 56 in order to guarantee legal certainty and expedition. Under Article 53 a central authority without jurisdiction is responsible for forwarding a communication to the central authority with jurisdiction. It is therefore contrary to the obligations imposed by the Regulation if a central authority merely informs a court of another Member State requesting consent that it does not have jurisdiction, without indicating the authority which is actually competent, since loss of time and lack of clarity in identifying the competent authority unnecessarily delay the placement order and are thus contrary to the child's best interests, which are to be safeguarded by the Regulation.

<sup>30</sup> — See Case C-296/10 *Purrucker* [2010] ECR I-11163, paragraphs 82 and 86.

51. In my view, it is not appropriate in the present case to comment further on whether EU law imposes requirements on the consent procedure, for example as to the documents to be submitted. There is nothing to suggest that the issue arose in the main proceedings. According to other statements made in the order for reference, at issue was only the question whether a private institution can also be a competent authority within the meaning of Article 56(2). In an urgent preliminary ruling procedure in particular, where the Member States' participation is reduced to the oral procedure,<sup>31</sup> the Court should be cautious in assessing whether questions referred are relevant to the decision.

52. There is likewise no need in the present proceedings to clarify the question of when consent under Article 56(2) is unnecessary in accordance with the last clause of Article 56(1). Under Article 56(1), the *consultation* duty does not apply where public authority intervention in the Member State in which the child is placed is not required for similar domestic cases of placement. A comparable exception to the *consent* requirement is not provided for in Article 56(2). It is not clear from the text of the Regulation whether, like the *consultation* requirement in paragraph 1, the *consent* requirement also does not apply — in particular in the case of a placement in institutional care — where public authority intervention is not required for domestic cases of child placement. In connection with a placement in institutional care, if it is actually conceivable that such a placement is possible without public authority intervention under the law of a Member State, it does not seem acceptable in any case to dispense with the consent requirement. This would also appear not to have been the intention of the Regulation, otherwise it would have at least laid down a duty to inform the competent authority, as with cases of placement in foster families under Article 56(4).

53. In the present case, however — as an enquiry to the United Kingdom revealed and as is to be expected in the case of a secure placement — under United Kingdom law public authority or judicial intervention is required for a domestic case similar to the contested placement.

#### 4. Interim conclusion

54. The answer to the second question should therefore be that consent under Article 56(2) of Regulation No 2201/2003 must be given by a public authority before the judgment on placement. Mere consent from the institution in which the child is to be placed is not sufficient. If it subsequently transpires that, despite the efforts of the court giving judgment on the placement, it has not obtained consent from the competent authority and that that error is attributable to ambiguous or inadequate statements by the central authority, it is permissible to obtain consent subsequently without a fresh placement order having to be made.

#### C – Third and fourth questions

55. By the third question, the referring court would like to know whether a judgment ordering the placement of a child in a secure care institution in another Member State against his or her will must be declared enforceable in the host Member State before the child is actually placed. The fourth question asks what legal effect such a placement order has in the host State prior to a declaration of enforceability.

##### 1. Admissibility of the questions

56. According to the order for reference, S.C. has already been placed in the secure institution in England, even though the judgment on placement had not been declared enforceable there. Because the placement has already been made, it can no longer be relevant, for the purposes of the third question, whether a declaration of enforceability must exist before the actual placement. Information

<sup>31</sup> — With the exception of the Member State whose court or tribunal makes the reference for a preliminary ruling.

provided by the United Kingdom in the procedure before the Court has also revealed that in the meantime, on 8 March 2012, on an application by the HSE, the Irish placement order was registered for enforcement in England and thus declared enforceable. The relevance to the decision and thus the admissibility of the two questions is therefore questionable.

57. However, the period for lodging an appeal against the declaration of enforceability has not yet expired. For that time at least the fourth question remains relevant to the decision. Furthermore, since the referring court has stated that it orders the placements on an interlocutory basis and for four week periods, the question of the legal effect of such a decision throughout the entire duration of S.C.'s placement prior to the conclusion of an exequatur procedure remains relevant to the subsequent decisions. The referring court wishes to know, above all, whether — in the event that S.C. absconds from the care institution — its decision may form the legal basis, without a declaration of enforceability, for measures taken by public authorities for the return of the child to the care institution. The question whether a placement order such as that in the main proceedings requires a declaration of enforceability is therefore still relevant for the referring court and is therefore admissible. I will examine that question below.

## 2. Requirement of a declaration of enforceability

58. Article 21 of Regulation No 2201/2003 establishes the principle that a judgment given in a Member State must be automatically recognised in the other Member States.

59. The declaration of enforceability is governed by Article 28 of the Regulation. Under that provision, 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 must be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. Under Article 28(2) of the Regulation, in the United Kingdom the declaration of enforceability is replaced by registration for enforcement in England and Wales, in Scotland or in Northern Ireland, depending on where the judgment is to be enforced. There is no evident substantive difference with a declaration of enforceability.

60. As has been explained above, a judgment ordering placement in a secure care institution is a judgment relating to parental responsibility. Such classification is not affected in any way by the provisional nature of the placement order at issue.<sup>32</sup> It is also enforceable in the sense that its substance is capable of enforcement<sup>33</sup> since, by its judgment, the referring court ordered that S.C. be placed in the secure institution.<sup>34</sup>

61. The procedure for the issue of a declaration of enforceability ('exequatur procedure') is the procedure for obtaining an order for the enforcement of foreign enforceable instruments.<sup>35</sup> The declaration of enforceability or registration for enforcement, as opposed to simple automatic recognition under Article 21 of the Regulation, is therefore necessary where *enforcement* of a judgment is sought. Enforcement means that the substance of a judgment is *executed by means of coercion from the public authorities*.

62. In the main proceedings, the child opposes the judgment ordering her secure placement. Enforcement measures are thus necessary to implement the placement measure. This is confirmed by the factual circumstances surrounding the transfer of S.C. from Ireland to the English care institution: Irish officials and police officers flew with S.C. to London, where British police officers received her and organised her transportation to the institution by a private firm. Since then she has been detained against her will in the care institution.

32 — See also the Opinion of Advocate General Sharpston in *Purrucker*, cited in footnote 30, point 132 et seq.

33 — The view is taken in legal literature that, if necessary, judgments relating to rights of custody whose substance is not capable of enforcement must also be declared enforceable so as not to permit any autonomous measures to effect a transfer of rights of custody by taking the child to another Member State without a declaration of enforceability, see Rauscher, Th., in Rauscher, Th. (ed.), *Europäisches Zivilprozess- und Kollisionsrecht, Kommentar Brüssel IIa-VO*, Munich 2010, Article 28, paragraph 8.

34 — The wording reads: orders 'that S.C., a Minor, be detained in the custody of the Director of ...'.

35 — See with regard to the Brussels Convention, Case C-267/97 *Coursier* [1999] ECR I-2543, paragraph 28.

63. The referring court also states that should S.C. abscond from the secure institution, the assistance of the authorities in the United Kingdom will be needed in order to return S.C., against her will and employing coercion, to the institution, for her own protection. The referring court states in this regard that, as soon as it is pedagogically justifiable, S.C. is to take part in excursions from the institution. Participation in such excursions is of crucial importance to the success of the programme, even though they entail an increased risk of absconding.

64. All these measures involving a deprivation or restriction of liberty employ direct coercion in order to execute the judgment on placement.

65. In this connection, there may not be standard means of enforcement in civil proceedings in all the national legal orders. However, just as the Court adopts a broad understanding in interpreting the scope of the Regulation and includes public law measures,<sup>36</sup> a comparable broad understanding must also be employed in defining the enforcement measures as a precondition for the requirement of a declaration of enforceability. An autonomous European Union-wide definition of the concept of enforcement is likewise not precluded by Article 47(1) of the Regulation, which provides that the enforcement procedure is governed by the law of the Member State of enforcement. That is because the enforcement procedure is not at issue here, rather it is necessary to determine in what circumstances a procedure for obtaining a declaration of enforceability is necessary. That must apply uniformly throughout the European Union.

66. Enforcement in this sense is any execution, by or legitimated by a public authority, of a judgment relating to parental responsibility.

67. On the basis of the foregoing, in principle a declaration of enforceability is also necessary to enforce a judgment ordering the secure placement of a child.

68. On the other hand, the referring court and all the parties to the main proceedings express concerns at the loss of time associated with conducting an exequatur procedure. They stress the particular urgency in the main proceedings. In the absence of the availability of alternative placements in Ireland, only a placement in England was possible and this could not have been postponed any longer on account of the acute risk of self-harm. The argument is therefore that, because of the urgency and in the child's best interests, a declaration of enforceability should not be a condition for carrying out a placement abroad. The effectiveness of a cross-border placement would be jeopardised if a declaration of enforceability were required.

69. The practical problems explained by the referring court in connection with making such an urgent cross-border placement of a child do actually exist. I can therefore understand the reservations expressed by the parties. It is also apparent that cases of cross-border placement of children will often be particularly urgent in nature.

70. Article 31(1) of Regulation No 2201/2003 provides that the decision on the declaration of enforceability must be given without delay. When questioned, the United Kingdom Government explained that that decision could even be taken in less than a week. On the other hand, Article 33(5) provides for a period of one or two months for lodging an appeal against a declaration of enforceability.

71. However, reasons of particular urgency cannot in themselves bring it about that enforcement measures in another Member State can be based on an order for secure placement when that order has not been declared enforceable.

36 — C and A, cited in footnote 6.

72. Regulation No 2201/2003 has explicitly declared that a declaration of enforceability is unnecessary, for reasons of urgency, in respect of two categories of judgments, namely judgments concerning rights of access<sup>37</sup> and judgments relating to the return of an abducted child.<sup>38</sup> The declaration of enforceability is replaced, to a certain extent, by a certificate which must accompany the judgment in such cases in order for the exequatur procedure to be dispensed with. By that certificate, the court giving judgment provides evidence that the requirements laid down by the Regulation have been complied with, in particular that the child has had the opportunity to be heard.

73. However, it can be inferred *a contrario* from the elimination of the exequatur procedure for the abovementioned specific categories of judgment, with the introduction of the certificate, that the exequatur procedure is to be conducted without exception — including in urgent cases — for other judgments relating to parental responsibility. If the intention was also to dispense with that procedure for reasons of urgency in the case of judgments on placement, a certificate from the court giving judgment would not even be available as a substitute.

74. Enforcement outside the State in which the judgment is given without a prior declaration of enforceability would then also raise considerable practical problems. Domestic enforcement bodies would not really be in a position to undertake any assessment of a foreign judgment submitted to them, in particular to examine the conditions governing the enforceability of the judgment and to infer from it the nature and extent of the enforcement to be effected. In order to eliminate such uncertainties, the Regulation establishes the procedure for obtaining a declaration of enforceability. The practical difficulties arising from enforcement without a declaration of enforceability may not be obvious in the main proceedings because of the similarity between the legal orders involved and because the same language is used. However, the same question of the requirement of a declaration of enforceability may, of course, also arise in situations where the enforcement bodies are faced with the implementation of an instrument which is completely unfamiliar to them.

75. Reasons of urgency cannot therefore justify an exception to the requirement of the declaration of enforceability.

76. S.C.'s guardian *ad litem* has put forward a further argument against a declaration of enforceability of the judgment at issue. In his view, the Regulation does not, in general, provide that a coercive measure in respect of a child requires a declaration of enforceability; such a declaration is necessary only for the enforcement of a judgment in respect of adults. In the main proceedings both the HSE and S.C.'s mother, who is a party to the proceedings, agreed with the placement. Similar arguments were put forward at the hearing by the German Government, in whose view measures to implement a judgment against a child's will do not constitute enforcement.

77. Of course, the standard case which comes to mind in connection with the enforcement of judgments relating to parental responsibility is where one parent wishes to enforce a judgment against the other parent. However, the Regulation has also included within its scope judgments on the placement of children. There is nothing in the Regulation to suggest that such judgments are intended to be excluded from the requirement of a declaration of enforceability where they have to be enforced despite opposition from the child himself or herself.

78. In the certificate to be issued under Article 39 of the Regulation the referring court names the central authority and Peterborough City Council as the parties against whom enforcement is sought. Accordingly, S.C.'s guardian *ad litem* takes the view that the judgment does not contain any directions for the child to take action or to refrain from taking action but was addressed to the care institution where the placement was to be made. However, the judgment on the placement does include an order ordering S.C. to accept a transfer to the care institution and residence there.

37 — Article 40(1)(a) and Article 41 of the Regulation.

38 — Article 40(1)(b) and Article 42 of the Regulation.

79. Furthermore, the compulsory enforcement of a secure placement order affects the fundamental right to liberty of the child being placed, a right which, under Article 6 of the Charter of Fundamental Rights, is enjoyed by ‘everyone’, including minors.<sup>39</sup> The view that the enforcement of a placement order against a child does not require a declaration of enforceability would ultimately mean that enforcement measures in respect of the child would not require the legal basis, which is required in principle for enforcement and which justifies the encroachment on liberty, in the form of the declaration of enforceability whereby a foreign judgment is incorporated into the legal order of the State of enforcement. The child would then become a mere object of State coercion.

80. Such a view would not be compatible with the fundamental rights of the child. However, according to recital 33 in the preamble to the Regulation, the Regulation recognises the fundamental rights and observes the principles of the Charter and seeks in particular to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter.<sup>40</sup>

81. A placement involving deprivation of liberty such as that which is the subject of the judgment at issue relating to parental responsibility, and its enforcement, is a particularly serious encroachment on a child’s rights. If it were assumed that in the present case a declaration of enforceability was unnecessary, the coercive measures to implement the placement order would be based solely on the effect of recognition of the judgment under Article 21 of the Regulation. As the Commission has rightly argued, moreover, that would require the child or her guardian *ad litem* to apply for a decision that the judgment not be recognised under Article 21(3) in order to deprive the enforcement measures of their legal basis. In such a situation, insufficient attention is given to the child’s interests.

82. After all, Article 20 of the United Nations Convention on the Rights of the Child also states that a child temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance provided by the State.

83. In the procedure for obtaining a declaration of enforceability, as part of the assessment whether the ‘exequatur’ should be issued, a court examines of its own motion whether there exists a ground for refusal under Article 23 of the Regulation. Such grounds include, in addition to compliance with the procedure laid down in Article 56, public policy under Article 23(a), with express reference to the best interests of the child. Particular mention should also be made in this connection of the ground for refusal of failure to hear the child under Article 23(b).

84. In enacting Regulation No 2201/2003, certain uniform procedural standards were agreed, such as maintaining in principle the requirement of the declaration of enforceability. This was also to protect the parties to the proceedings. It would not be in the spirit of the Regulation to refuse those procedural standards to minors in respect of whom orders for secure placement are made on account of their minority.

85. The consent procedure under Article 56(2) of the Regulation cannot take the place of the declaration of enforceability. This is apparent, first, from the schematic position of Article 56 in the Regulation, which appears in the chapter on cooperation between central authorities and not in the chapter on recognition and enforcement. Furthermore, the two procedures serve different purposes. As has been explained above, consent is intended to detect administrative difficulties which might be faced in connection with a cross-border placement, before the placement order is made. The declaration of enforceability, on the other hand, enables enforcement of the judgment on placement. The Regulation does not contain any indications as to the practical organisation of the consent procedure, which Article 56(3) leaves to national law. For this reason too, consent cannot be an adequate substitute for the exequatur procedure, for which precise rules are laid down in the Regulation.

39 — With regard to enjoyment of fundamental rights by minors in relation to the right to liberty under the ECHR, see the judgment of the European Court of Human Rights in *Nielsen v. Denmark*, 28 November 1988, § 58, Series A no. 144.

40 — Case C-403/09 PPU *Detiček* [2009] ECR I-12193, paragraphs 53 to 55.

86. A judgment on the secure placement of a child therefore requires a declaration of enforceability even where its enforcement is sought against the child.

### 3. Interim conclusion

87. The answer to the third and fourth questions should be that a judgment on the secure placement of a child requires a declaration of enforceability pursuant to Article 28 of Regulation No 2201/2003 where measures taken by public authorities in another Member State to implement the substance of the judgment are to be based on it.

### 4. Observations on exceptional urgency

88. The situation in the present case is exceptionally urgent on account of the risk of self-harm and the absence of suitable alternative placements in Ireland. I would therefore like to make a few brief remarks below on the question discussed at the hearing of possible ways to achieve pragmatic results in the case of a particularly urgent cross-border placement.

89. One possibility in the present case would be, until the conclusion of the exequatur procedure, for the English courts to adopt provisional measures on the basis of Article 20(1) of the Regulation in order to implement the placement. That was the course of action chosen by the English High Court.

90. Under Article 20 of Regulation No 2201/2003 three cumulative conditions must be satisfied: first, under Article 20(1) the measures concerned must be urgent, second they must be taken in respect of persons who are present in the Member State in which the courts wishing to rely on Article 20 sit, and third they must be provisional for the purposes of Article 20(2), i.e. they cease to apply when the court having jurisdiction as to the substance of the matter has ‘taken the measures’.<sup>41</sup>

91. The condition of urgency would undoubtedly be satisfied in the present case. The second condition, according to which the person must be in the State in which the court sits, would also be met here. In my view, in a particularly urgent case the child should also initially be taken to another Member State by virtue of national measures to implement the placement order in order to establish the conditions for a provisional placement there under Article 20 until the conclusion of the exequatur procedure. In order to ensure the dovetailing of measures to protect the child, in such a case the courts could and should communicate with one another in advance in accordance with Article 55(c).

92. Most of the parties have argued against proceeding under Article 20, asserting that the court which actually has jurisdiction under the Regulation does not in that case take the decision. Article 20(2) itself provides that the provisional measures cease to apply as soon as the court having jurisdiction as to the substance of the matter has taken a measure. In the present case, the court having jurisdiction as to the substance has already given a judgment and the question is merely whether that judgment has effect.

93. At the hearing, it was therefore debated whether, as an alternative to proceeding under Article 20 of the Regulation, enforcement might be based on the declaration of enforceability before the period for lodging an appeal against the exequatur has expired or the appeal procedure has been concluded. That would mean that as soon as the court having jurisdiction under Article 31(1) has issued the exequatur, enforcement measures could be based on it. Lodging an appeal would then have no suspensory effect. Under Article 31(1) of the Regulation, the declaration of enforceability must be made without delay; in England the intention is that this should be possible within a few days.

41 — *A*, cited in footnote 6, paragraph 47; *Detiček*, cited in footnote 40, paragraph 39; and *Purrucker*, cited in footnote 30, paragraph 77.

94. However, it is clear from the legislation submitted by the United Kingdom Government and the written answer to a question asked by the Court that under English law no enforcement measures may be based on a foreign judgment until the expiration of the periods specified in the Regulation for lodging an appeal against the declaration of enforceability.<sup>42</sup>

95. The question therefore arises whether, in a case like the present one, enforcement measures might have to be permitted under the Regulation even where the declaration of enforceability is not yet final under national law.

96. Regulation No 2201/2003 does not contain a provision comparable to Article 47 of Regulation No 44/2001 ('the Brussels I Regulation'<sup>43</sup>). That provision expressly permits protective enforcement measures prior to the conclusion of the exequatur procedure.

97. The wording of the Regulation does not, however, preclude an interpretation under which enforcement measures are immediately possible as soon as the exequatur exists. Article 28(1) of the Regulation provides that a judgment on the exercise of parental responsibility must be enforced when it has been declared enforceable. The declaration of enforceability exists upon the decision by the court under Article 31. According to the wording of the Regulation, this situation does not change if an appeal is lodged against the declaration of enforceability under Article 33.

98. In interpreting and applying the regulation, regard should be had above all, in the light of Article 24 of the Charter of Fundamental Rights, to the child's best interests. The child's best interests may require a flexible solution to be permitted for the duration of the exequatur procedure in cases of exceptionally urgent cross-border placements, where the cross-border placement order cannot otherwise fulfil its purpose on account of the passage of time.

99. If the child's best interests are to be taken into consideration and served as far as possible, an argument in favour of enforcement upon the existence of the exequatur is that this permits the implementation of the judgment of the court having jurisdiction in accordance with the scheme of the Regulation, without the need to have recourse to provisional urgent measures adopted by a court having jurisdiction as the court second seised. The Regulation regards the court in the place where the child is habitually resident as the court having primary jurisdiction, since it is considered that that court will take the most appropriate decision because of its proximity to the child.<sup>44</sup> Furthermore, by the declaration of enforceability a judicial decision has already been made that enforcement of the instrument in the host Member State is to be permitted.

100. The immediate implementation of the judgment for the duration of the appeal procedure under Article 33 of the Regulation would result in *faits accomplis*, since the order by the court having jurisdiction would be complied with irretrievably at least for that period. However, in the present case the protection of the child's interests prevails. Without a placement during the appeal procedure, there would also be a danger of *faits accomplis* with far more serious consequences, namely risks to the child's health or even her life. Accordingly, the placement order was identified by the court having jurisdiction, after considering all the relevant circumstances, as a necessary measure. It would be contrary to the system of jurisdiction under the Regulation and the principle of mutual trust if a court in the host Member State reviewed that assessment indirectly when it adopted its own urgent measures for the duration of the appeal procedure.

101. I would therefore prefer the solution whereby, in cases of particularly urgent cross-border placements, in which the urgency is evident from the judgment itself, the judgment by the court having jurisdiction is implemented even before the exequatur has legal force.

42 — See rule 31.17 of the Family Procedure Rules 2010.

43 — 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.

44 — A transfer of jurisdiction to the English courts pursuant to Article 15 of the Regulation on the ground that S.C.'s mother lives in London does not seem reasonable, since despite this fact it is unlikely that the English courts are able to assess the case better.

102. If, on the other hand, only proceedings under Article 20 of the Regulation were permitted, the above observations would mean, in my view, that the protective measures must in any case implement the *substance* of the judgment by the court having jurisdiction as far as possible until the conclusion of the exequatur procedure.

103. Such provisional measures and protective measures are measures provided for in the law of that Member State. In that context, it is for the national legislature in principle to lay down the measures to be adopted by the national authorities in order to protect the best interests of the child and to lay down detailed procedural rules for their implementation.<sup>45</sup>

104. In a case like the present one, where only the intermediate period until the final conclusion of the exequatur procedure is relevant, the courts of the host State must utilise the means available in their national law as far as possible to implement the substance of the judgment by the court having jurisdiction by means of their urgent measures. This follows from the effects of recognition of a judgment on placement under Article 21 of the Regulation.

#### D – *Fifth and sixth questions*

105. The fifth and sixth questions seek to ascertain whether, in the case of fresh court orders extending the placement, consent under Article 56(2) and a declaration of enforceability under Article 28 are necessary in each case. The referring court asks these questions in the light of the fact that it would like to order the placement by a provisional measure for as short a period as possible of four weeks in each instance, and then to renew the placement orders for short periods if still necessary. Repeated consent and exequatur procedures do not appear to be practicable to the referring court.

106. In order to fulfil its abovementioned purpose, the planned duration of the placement must be covered by consent under Article 56(2). Consent granted for only one month cannot therefore continue to have indefinite effect in the future, unless it was also expressly granted in respect of possible extensions of the placement order or for an unspecified period.

107. Enforcement measures may be based on a judgment which has been declared enforceable only to the extent that arises from the judgment. If the placement was ordered only for a specified period, even a judgment which has been declared enforceable cannot be the legal basis for the compulsory implementation of placement for a longer period than is specified in the judgment. It is not enforceable for a longer period. Outside the period for which the judgment orders the placement, the condition of an exequatur procedure that the judgment is enforceable in the State in which the judgment is given would not be satisfied.<sup>46</sup> A fresh declaration of enforceability will therefore be necessary for further placement orders. Since a secure placement will always be the last resort, it is reasonable to order it only for the time absolutely necessary. If necessary, the court ordering the placement may nevertheless consider whether to order the placement initially for a longer period (and this is declared enforceable) and then review at short intervals whether that order should be annulled.

108. Consequently, the answer to the fifth and sixth questions should be that consent under Article 56(2) of Regulation No 2201/2003 which was granted for a specified time does not also apply to judgments extending the placement, rather it must be obtained again. Enforcement measures may be based on a judgment which has been declared enforceable only for the period for which the placement was ordered in that judgment.

<sup>45</sup> — A, cited in footnote 6, paragraph 51.

<sup>46</sup> — See the Opinion of the Advocate General in *Purrucker*, cited in footnote 30, point 148 et seq.

## V – Conclusion

109. On the basis of the foregoing, I propose that the Court give the following answers to the questions referred by the High Court of Ireland:

- (1) A judgment ordering the placement of a child in institutional care, involving detention, in another Member State for the child's protection comes within the material scope of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004.
- (2) Consent under Article 56(2) of Regulation No 2201/2003 must be given by a public authority before the judgment on placement. Mere consent from the institution in which the child is to be placed is not sufficient. If it subsequently transpires that, despite the efforts of the court giving judgment on the placement, it has not obtained consent from the competent authority and that that error is attributable to ambiguous or inadequate statements by the central authority, it is permissible to obtain consent subsequently without a fresh placement order being necessary.
- (3) A judgment on the secure placement of a child requires a declaration of enforceability pursuant to Article 28 of Regulation No 2201/2003 where measures taken by public authorities in another Member State to implement the substance of the judgment are to be based on it.
- (4) Consent under Article 56(2) of Regulation No 2201/2003 which was granted for a specified time does not also apply to judgments extending the placement; rather, consent must be obtained again. Enforcement measures may be based on a judgment which has been declared enforceable only for the period for which the placement was ordered in that judgment.