# Lis pendens in Regulation (EC) 2201/03 (again on Purrucker v. Vallés)

Reference for a preliminary ruling from the Amtsgericht Stuttgart (Germany), to be dealt with through the accelerated procedure, was lodged on 16 June 2010 in case C- 296/10 (Bianca Purrucker v Guillermo Vallés Pérez, noch ein mal). ECJ's answer was published on Saturday in OJ, C, 013.

**Questions referred**

Is Article 19(2) of Council Regulation (EC) No 2201/2003 ('Brussels IIA') 1 applicable if the court of a Member State first seised by one party to resolve matters of parental responsibility is called upon to grant only provisional measures and the court of another Member State subsequently seised by the other party in the same cause of action is called upon to rule on the substance of the matter?

Is that provision also applicable if a ruling in the isolated proceedings for provisional measures in one Member State is not capable of recognition in another Member State within the meaning of Article 21 of Regulation No 2201/2003?

Is the seising of a court in a Member State for isolated provisional measures to be equated to seising as to the substance of the matter within the meaning of Article 19(2) of Regulation No 2201/2003 if under the national rules of procedure of that State a subsequent action to resolve the issue as to the substance of the matter must be brought in that court within a specified period in order to avoid procedural disadvantages?

**ECJ Ruling**

The provisions of Article 19(2) of Regulation No 2201/2003 are not applicable where a court of a Member State first seised for the purpose of obtaining measures in matters of parental responsibility is seised only for the purpose of its granting provisional measures within the meaning of Article 20 of that regulation and where a court of another Member State which has jurisdiction as to the substance of the matter within the meaning of the same regulation is seised second of an action directed at obtaining the same measures, whether on a provisional basis or as final measures.

The fact that a court of a Member State is seised in the context of proceedings to obtain interim relief or that a judgment is handed down in the context of such proceedings and there is nothing in the action brought or the judgment handed down which indicates that the court seised for the interim measures has jurisdiction within the meaning of Regulation No 2201/2003 does not necessarily preclude the possibility that, as may be provided for by the national law of that Member State, there may be an action as to the substance of the matter which is linked to the action to obtain interim measures and in which there is evidence to demonstrate that the court seised has jurisdiction within the meaning of that regulation.

Where, notwithstanding efforts made by the court second seised to obtain information by enquiry of the party claiming lis pendens, the court first seised and the central authority, the court second seised lacks any evidence which enables it to determine the cause of action of proceedings brought before another court and which serves, in particular, to demonstrate the jurisdiction of that court in accordance with Regulation No 2201/2003, and where, because of specific circumstances, the interest of the child requires the handing down of a judgment which may be recognised in Member States other than that of the court second seised, it is the duty of that court, after the expiry of a reasonable period in which answers to

the enquiries made are awaited, to proceed with consideration of the action brought before it. The duration of that reasonable period must take into account the best interests of the child in the specific circumstances of the proceedings concerned.