Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
Delivered on 12 April 2018 [1]

Case C-335/17

Neli Valcheva
v
Georgios Babanarakis

(Request for a preliminary ruling
from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Scope — Concept of 'rights of access' — Applicability to grandparents)

I. Introduction

1. A grandmother wishes to exercise rights of access to her grandson. Does a dispute concerning such a claim fall within the scope of Regulation (EC) No 2201/2003? [2] That is, in essence, the question referred by the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria).

2. The present case therefore provides the Court with the opportunity to rule, for the first time, on the application of Regulation No 2201/2003 to a request for rights of access by grandparents, for the purpose of ascertaining whether the court having jurisdiction to rule on the arrangements for exercising such rights must be determined on the basis of that regulation or on that of the rules of private international law of the Member States. That regulation establishes that the courts of the child's habitual residence have jurisdiction, relying in particular on the criterion of proximity. The following analysis is therefore aimed at determining the court having jurisdiction in matters of rights of access but does not go into considerations of a substantive nature.

3. Above all, it must be emphasised that this case cannot be analysed independently of a fundamental issue: namely the importance for a child of maintaining contact with his or her grandparents, in so far as such contact is not contrary to the child's interest. It is therefore through the prism of the principle of the primacy of the best interests of the child that it is now necessary to interpret Regulation No 2201/2003 in matters of parental responsibility.

1 Original language: French.

2 Council Regulation 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).

II. Legal framework

A. EU law

1. The Charter

4. Under Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Respect for private and family life':

'Everyone has the right to respect for his or her private and family life, home and communications.'

5. Article 24(2) of the Charter states that, 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'.

2. Regulation No 2201/2003

6. It is clear from recital 2 of Regulation No 2201/2003 that 'the Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority'.

7. According to recital 5 of that regulation, 'in order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding'.

8. Recital 12 of that regulation states that 'the grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility'.

9. As regards the scope of Regulation No 2201/2003, Article 1 of that regulation provides:

'1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;

(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;

…'

10. As regards definitions, Article 2(1), (7), (8), (9) and (10) of that regulation provides:

'1. the term "court" shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;

…

7. the term "parental responsibility" shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

8. the term "holder of parental responsibility" shall mean any person having parental responsibility over a child;

9. the term "rights of custody" shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

10. the term "rights of access" shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time.'

11. As regards general jurisdiction, Article 8 of that regulation is worded as follows:

'1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.'

B. Bulgarian law

12. As regards rights of access of family members, Article 128 of the Semeen Kodets (Family Code) provides:

'(1) The grandfather and the grandmother may apply to the Rayonen sad [District Court, Bulgaria] at the place where the child currently resides for determination of measures governing their rights of access, if this is in the child's interests. The child shall also have the right to make such application.

(2) The court shall accordingly apply Article 59(8) and (9).

(3) If the parent to whom the judge has granted rights of access is temporarily unable to exercise them because of absence or illness, those rights may be exercised by the child's grandmother and grandfather.'

13. The Zakon za litsata i semeystvoto (Law on persons and the family) (DV No 182, of 9 August 1949, in the amended version published in DV No 120, of 29 December 2002) provides, in Article 4 thereof:

'Persons over the age of 14 but under the age of 18 are adolescent minors.

They require the consent of their parents or guardians to perform legal acts but may undertake small everyday transactions to satisfy their personal needs and have a right to dispose of their earnings from employment.'

III. Facts giving rise to the dispute in the main proceedings, the question referred and the procedure before the Court

14. Ms Neli Valcheva is the mother of Ms Mariana Koleva and the grandmother of Christos Babanarakis, born on 8 April 2002 of the marriage of Ms Koleva and Mr Georgios Babanarakis. That marriage was dissolved by a Greek court which awarded custody of Christos Babanarakis to his father. The Greek court determined the arrangements for the exercise by the mother of her rights of access to the child, including contact by internet and telephone as well as personal meetings in Greece for a few hours once a month.

15. After having argued that she was unable to maintain quality contact with her grandson and that she had unsuccessfully sought the support of the Greek authorities, Ms Valcheva applied to the Rayonen sad (District Court), on the basis of Article 128 of the Family Code, for a determination of arrangements for her to exercise rights of access to her minor grandson. She requested that she be allowed to see him regularly one weekend each month and that he stay at her home for two or three weeks during his holidays, twice a year.

16. The Rayonen sad (District Court) ruled that it did not have jurisdiction to examine Ms Valcheva's application. The Okrazhen sad Burgas (Regional Court, Burgas, Bulgaria), confirmed on appeal the outcome of the decision at first instance, on the basis of Regulation No 2201/2003. It found that that regulation applied to cases concerning rights of access to a child by a wide family circle, including grandparents, and that, according to Article 8 of that regulation, jurisdiction lay with the courts of the Member State in which the child was habitually resident at the time the courts were seised, that is to say the Greek courts.

17. Ms Valcheva lodged an appeal on a point of law before the Varhoven kasatsionen sad (Supreme Court of Cassation). That court states that it is inclined to concur with the view of the appellate court but adds that it is essential for it to ascertain whether Regulation No 2201/2003 applies to the rights of access of grandparents in order to determine the court having jurisdiction.

18. It was in those circumstances that the Varhoven kasatsionen sad (Supreme Court of Cassation), by judgment of 29 May 2017, received at the Court Registry on 6 June 2017, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the concept of "rights of access" used in Article 1(2)(a) and Article 2(10) of Regulation No 2201/2003 to be interpreted as encompassing not only access between the parents and the child but also the child's access to relatives other than the parents, that is to say the grandparents?'

19. The request for a preliminary ruling was notified to the parties concerned on 6 July 2017. A second notification of that request was sent to the defendant in the main proceedings on 15 September 2017. The parties concerned were granted, for the purpose of submitting written observations, a time limit which expired between 18 September and 4 December 2017. The referring court and those parties were informed, at the time of that notification, of the Court's decision to give priority to the present request for a preliminary ruling in accordance with Article 53(3) of the Rules of Procedure of the Court.

20. Written observations have been submitted by the Czech Republic and the European Commission. Since none of the parties concerned requested a hearing, the Court decided to give judgment without holding one.

IV. Analysis

21. In the situation at issue in the main proceedings, Ms Valcheva, a Bulgarian national, is the maternal grandmother of a minor child born on 8 April 2002.[3] Since the dissolution of his parents' marriage, the child has been habitually resident in Greece with his father, a Greek national. His grandmother wishes to obtain rights of access to her grandson.

22. However, in so far as, according to the information provided by the referring court, custody of the child has been awarded to his father, whilst the mother has only rights of access, the question arises as to whether a grandparent who wishes to maintain contact with his or her grandson can rely on the rules of jurisdiction of Regulation 2201/2003 to request rights of access.

A. General considerations

23. It seems appropriate, before I begin to examine the question referred for a preliminary ruling, to set out a number of general considerations which will make it possible to establish the framework for Regulation No 2201/2003. Those considerations concern the effect of European integration on the competences of the European Union in the field of private international law, the socio-economic context of that regulation and the primacy of the best interests of the child.

1. European integration and private international law

24. Almost 20 years have passed since the publication of the Explanatory Report on the Brussels Convention of 28 May 1998.[4] That report rightly emphasised that the issue of family law has to be faced as part of the phenomenon of European integration. In the 1990s, the question of the 'communitarisation' of private law figured prominently in academic programmes, research projects and university conferences.[5] The courses taught at The Hague Academy of International Law[6] took a particular interest in the outcomes of those discussions and that examination concerning the effect of 'Community' rules on private international law and the consequences of European integration on its development.

25. It emerged from this, in particular, that the development of the European Union and its objectives had had a real effect on its own competences in the field of private international law. Indeed, the role of European private international law, at first very limited in view of the initial objective of creating a common market, benefited from the introduction of a second objective, namely European citizenship, which allowed the European Union to go beyond the limits of mere economic integration towards the

3 The referring court states that Bulgarian law distinguishes between 'minors' under the age of 14 ('maloletni') and 'minors' between the ages of 14 and 18 ('nepalnoletni', literally 'non-adults', who have limited legal capacity). It should be noted, in this regard, that Regulation No 2201/2003 applies to all 'children' without distinction and that no age limit was laid down. According to the legal literature, 'in view of that silence, and in the absence of an autonomous Community definition of the concept of "child", it will be necessary to refer to national legislation to ascertain the age of majority of a child', see Corneloup, S., 'Les règles de compétence relatives à la responsabilité parentale', *Le nouveau droit communautaire du divorce et de la responsabilité parentale*, Actes du colloque organisé les 7 et 8 avril 2005 par le Centre de droit de la famille de l'Université Lyon III, Dalloz, 2005, pp. 69 to 84.

4 Council Act of 28 May 1998 drawing up, on basis of Article K.3 of the Treaty on European Union, the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (OJ 1998 C 221, p. 1, 'the 1998 Brussels Convention'). Explanatory Report on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters prepared by Ms Alegría Borrás, Professor of private international law at the University of Barcelona (OJ 1998 C 221, p. 27, 'the Borrás Report').

5 See, in particular, von Hoffman, B. (ed.), *European Private International Law*, Nijmegen, 1998, pp. 13 to 37; Kohler, C., 'Interrogations sur les sources du droit international privé européen après le Traité d'Amsterdam', *Revue critique de droit international privé*, 1999, No 1, p. 1.

6 See, in particular, Struycken, A.V.M., 'Les conséquences de l'intégration européenne sur le développement du droit international privé', *Recueil des cours*, Volume 232, 1992, pp. 256 to 383; Fallon, M., 'Les conflits de lois et de juridictions dans un espace économique intégré. L'expérience de la Communauté européenne', *Recueil des cours*, Volume 253, 1995, pp. 9 to 290, and Borrás, A., 'Le droit international privé communautaire: réalités, problèmes et perspectives d'avenir', *Recueil de cours*, Volume 317, 2005, pp. 313 to 516.

Europe of Citizens.[7] Moreover, after the Treaty of Amsterdam, a third objective contributed towards advancing the European project: the enshrinement of an area of freedom, security and justice, which guarantees the free movement of persons by establishing a framework for the increasing mobility of citizens and by giving substance to that European citizenship,[8] in particular, with the right of access to justice.[9] As regards that right, which is crucial for implementing other procedural and fundamental rights, I consider that it is clearly essential, in order for the process of European integration to have some reality for citizens of the European Union, for it to be possible to achieve 'rapid and tangible results' in areas such as the recognition and enforcement of decisions.[10]

26. This therefore constitutes the general context of the rules of European private international law and, in particular, the rules concerning jurisdiction, recognition and enforcement in matters of parental responsibility contained in Regulation No 2201/2003.

2. Developments in society and Regulation No 2201/2003

27. I would also like to refer to the impact on the scope of EU legislation in matters of parental responsibility of the transformations which have affected society in recent decades. This will make it possible better to determine the context of Regulation No 2201/2003 for the purpose of analysing the question raised by the referring court.

28. As regards, in the first place, the transformations of society within the European Union (and in western society generally), it must be observed, on the one hand, that the economic changes linked to globalisation have profoundly altered employment relationships, resulting, in particular, in a phenomenon of separation between place of habitual residence and place of work. It has become commonplace for some citizens of the European Union to reside in one Member State and to work in another Member State. However, the situation is more complex in the case of citizens residing in a Member State who are posted to a third country on behalf of a company established in another Member State. Those changes also have a significant influence on the family life of citizens of the European Union.

29. On the other hand, at the sociocultural level, equally profound transformations are affecting the way of life of citizens. The phenomenon of families whose members (parents and children) have dual or different nationalities (which is closely linked to the free movement of persons and, more generally, to globalisation), the diversity of forms of union and cohabitation, besides marriage, in particular the civil partnership ('Pacs'), new forms of family structures, including single-parent families, reconstituted families or families with same-sex parents, and new forms of parenthood as regards children born of an earlier union, born through medically assisted reproduction or adopted, are just a few examples. The diversification of family structures is therefore a reality of contemporary society. Some of those phenomena are not truly new but, since the 1960s, the transformations have intensified and developed

7 See, to that effect, Borrás, A., op. cit., pp. 333 to 369. See, also, Borrás Report, p. 28: 'European integration was mainly an economic affair to begin with and for that reason the legal instruments established were designed to serve an economic purpose. However, the situation has changed fundamentally in recent times so that integration is now no longer purely economic and is coming to have an increasingly profound effect on the life of the European citizen.'

8 Recital 1 of Regulation No 2201/2003 recalls that objective of the European Union as follows: 'The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured.'

9 As regards the access of children to justice and in particular the right to maintain contact with both parents in cross-border disputes, the Directive on Access to Justice is particularly important. See Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41).

10 See, to that effect, Borrás, A., op. cit., p. 369. See, also, Lagarde, P., 'En guise de synthèse', *Quelle architecture pour un code européen de droit international privé*, Fallon, M., Lagarde, P., and Poillot-Peruzzetto, S. (eds), Peter Lang, 2011, pp. 365 to 388, p. 366: 'From the point of view of private international law, this means that the code envisaged must no longer be limited to rules guaranteeing, in the economic sphere, the exercise of the four major freedoms of the founding Treaty. It will be necessary to ensure that citizens of the European Union are afforded not only freedom of movement within the European Union for the needs of their economic activity, but also every guarantee of security and justice when they move within the European Union for whatever reason.'

exponentially. Those economic and sociocultural changes, whose multiple effects on the lives of citizens are being felt at a steady pace, require in some cases a reconsideration of the assumptions underlying legal systems and the substance of their rules, and necessitate an adaptation of the law and in particular EU law (including European private international law).

30. In the second place, as regards more specifically the impact of the developments in society on Regulation No 2201/2003, it must be pointed out that, as regards disputes relating to children, the scope of that regulation has significantly increased in relation to the 1998 Brussels Convention [11] and Regulation No 1347/2000. [12] While Regulation No 1347/2000 covered only civil proceedings relating to parental responsibility for the children of both spouses in proceedings concerning the dissolution (divorce and annulment) of matrimonial ties or legal separation, [13] Regulation No 2201/2003 now extends, whatever the nature of the jurisdiction, to 'all disputes' relating to parental responsibility. With a view to ensuring the equality of 'all children', without distinction, the latter applies to the situation of children of a previous relationship and illegitimate children, whether parental responsibility is exercised by parents or third persons, and also taking into account reconstituted families.

31. However, despite the efforts of the EU legislature to adapt the legislation in matters of parental responsibility to developments in society, those developments are proceeding at a much faster pace than the process of legislative adaptation and it is clear that there remain some 'grey areas', for which the legislation does not provide an explicit response. The case in the main proceedings is an illustration of those grey areas created by developments in society, in particular with regard to a child's contact with other persons to whom the child has 'family' ties based on law or on fact (such as the former spouse of one of the parents, the child's siblings, grandparents or the partner of a parent who is the holder of parental responsibility). Those grey areas may give rise to, sometimes paradoxical, uncertainties concerning the existence of rights of access by persons other than the parents, in this case grandparents.

32. With regard to grandparents specifically, is not that uncertainty disconcerting considering that, in principle and subject to the best interests of the child, contact between grandparents and their grandchildren, in particular in an ever-changing society, remains an essential source of stability for children and an important factor in the intergenerational bond which undoubtedly contributes to building their personal identity?

3. The principle of the primacy of the best interests of the child

33. I cannot end this section on general considerations without mentioning the most important principle of Regulation No 2201/2003: the primacy of the best interests of the child.

11 That convention never entered into force, as it was superseded by 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) following the 'communitarisation' of judicial cooperation in civil matters through the move of the relevant chapter from the former third pillar to the first pillar (Part III, Title IV of the EC Treaty) with the entry into force of the Treaty of Amsterdam on 1 May 1999.

12 From the adoption of Regulation No 1347/2000, its scope was considered to be very restricted. On the positive and negative aspects of that regulation, see Borrás, A., 'Le règlement No 1347/2000 sur la compétence, la reconnaissance et l'exécution des décisions en matière matrimoniale et en matière de la responsabilité parentale des enfants communs', *Petites affiches*, 2002, No 248, p. 12. The 'chaotic and close succession of measures solely in the field of divorce, annulment or separation and parental responsibility' is explained, in particular, by the existence of a wide range of national traditions which are more marked and more sensitive than in estate matters. See Ancel, B., and Muir Watt, H., 'L'intérêt supérieur de l'enfant dans le concert des juridictions: le règlement Bruxelles II bis', *Revue critique de droit international privé*, 2005, No 94 (4), pp. 569 to 586.

13 In other words, Regulation No 1347/2000 did not apply to children born outside the marriage in crisis or to the protection of the couple's children outside a matrimonial crisis. Borrás, A., p. 12. On Regulation No 1347/2000, see, in particular, Gaudemet-Tallon, H., 'Le règlement No 1347/2000 ...', *Journal de Droit international*, 2001, p. 381.

34. That principle is one of the principles permeating the EU legal order.[14] In that respect, not only have all the Member States ratified the United Nations Convention on the Rights of the Child,[15] but the Court has also already had occasion to point out that that convention binds each of the Member States and is one of the international instruments for the protection of human rights of which it takes account in applying the general principles of EU law.[16] Moreover, Article 3(3) TEU provides that the 'Union shall establish an internal market' and then provides that the Union 'shall promote … justice …, solidarity between generations and protection of the rights of the child'.[17]

35. As regards Regulation No 2201/2003, it is based on the principle of the primacy of the interests of the child and respect for the child's rights. Recital 33 states that that regulation, in particular, seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter. That article recognises that children are independent and autonomous holders of rights, making the child's best interests a primary consideration for public authorities and private institutions.[18] In that regard, it is also appropriate to refer to Article 7 of the Charter concerning respect for private and family life.

36. As regards, more specifically, the rules of jurisdiction laid down by Regulation No 2201/2003 in matters of parental responsibility, they are shaped in the light of that principle and, in particular, the criterion of proximity. This means that it is the courts of the child's place of habitual residence which are best placed to resolve any issue concerning parental responsibility and, consequently, rights of access.[19] Moreover, in the interest of the child, Regulation No 2201/2003 allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case.[20]

37. Finally, the Court has held that the principle of the primacy of the interests of the child is the prism through which the provisions of EU law must be read.[21] In its case-law, the Court refers to the interest of children in maintaining their family life, which is also protected by the fundamental right of respect for family life guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[22]

38. There is therefore no doubt that the principle of the primacy of the interests of the child must guide any teleological interpretation of the provisions of Regulation No 2201/2003 concerning, as in the present case, a request for rights of access by grandparents. I shall return to this later.

14 For an overview of the EU *acquis* on the rights of the child, see European Commission, DG Justice, *EU acquis and policy documents on the rights of the child*, December 2015, pp. 1 to 83. See, also, Opinion of Advocate General Szpunar in *Chavez-Vilchez and Others* (C-133/15, EU:C:2016:659, point 42).

15 Convention concluded at New York on 20 November 1989. Article 3(1) thereof provides that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

16 See judgment of 27 June 2006, *Parliament* v *Council* (C-540/03, EU:C:2006:429, paragraph 37 and the case-law cited).

17 The protection of the rights of the child is also an important aspect of EU external policy. See Article 3(5) TEU.

18 Article 24 of the Charter sets out three fundamental principles of the rights of the child: the right to express their views freely, in accordance with their age and maturity (Article 24(1)); the right to have their best interests constitute a primary consideration in all actions concerning them (Article 24(2)); and the right to maintain on a regular basis a personal relationship and direct contact with both their parents, unless that is contrary to their interests (Article 24(3)).

19 See recital 12 and Article 8 of Regulation No 2201/2003.

20 See recital 13 and Article 15 of Regulation No 2201/2003. It should also be noted that special attention is given by that regulation to the hearing of the child. See, in that regard, recital 19, Article 41(2)(c) and Article 42(2)(a) of Regulation No 2201/2003.

21 With regard to Regulation No 2201/2003, see, in particular, judgments of 11 July 2008, *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraphs 48 and 51), and of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraphs 61 and 64). See, also, View of Advocate General Sharpston in *Rinau* (C-195/08 PPU, EU:C:2008:377, point 20). See, also, judgment of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraphs 66, 81 and 85) and the Opinion of Advocate General Szpunar in *Rendón Marín and CS* (C-165/14 and C-304/14, EU:C:2016:75, point 174).

22 The European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the ECHR').

B. The question referred for a preliminary ruling

39. By its question, the referring court asks, in essence, whether the concept of 'rights of access' referred to in Article 1(2)(a) and Article 2(10) of Regulation No 2201/2003 must be interpreted as meaning that it extends to the rights of access of grandparents to their grandchildren.

40. Although the concept of 'rights of access' is expressly referred to in Article 1(2)(a) and Article 2(10) of Regulation No 2201/2003, those provisions do not specifically state whether or not those rights include the rights of access of persons other than parents.

41. It is therefore necessary, for the purposes of interpreting those provisions, to take into account not only their wording but also their context and the objectives pursued by Regulation No 2201/2003.

42. It should be noted from the outset that, as regards the concept of parental responsibility and the purpose of Regulation No 2201/2003, the Czech Government and the Commission, relying in particular on the wording of that regulation, took the view in their written observations that that regulation applies to rights of access of grandparents. The referring court also seems to concur with that view in the order for reference.[23]

1. The wording and scheme of the provisions of Regulation No 2201/2003

43. With regard to parental responsibility, Article 1 of Regulation No 2201/2003 provides that the regulation is to apply, whatever the nature of the court or tribunal, in matters relating 'to the attribution, exercise, delegation, restriction or termination of parental responsibility'. In order properly to determine the scope of Regulation No 2201/2003,[24] it was important for the EU legislature to clarify the concept of parental responsibility. That concept was defined neither by the 1998 Brussels Convention[25] nor by Regulation No 1347/2000. The legislature therefore opted for a uniform definition of the concept of parental responsibility.[26] That concept is defined in Article 2(7) of Regulation No 2201/2003 as 'all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect'. Accordingly, both natural and legal persons may be holders of parental responsibility.[27] Moreover, the concept of parental responsibility is to include rights of custody and

23 The referring court states, in paragraph 5.3 of the order for reference, that 'although this is not to be directly inferred from the wording, … it may be inferred from the structure, content and objective of the Regulation'.

24 See point 30 of the present Opinion.

25 With regard to the concept of parental responsibility in the 1998 Brussels Convention, the Borrás Report stated that that concept 'has to be defined by the legal system of the Member State in which responsibility is under consideration'. Accordingly, in that convention, the rights and obligations of parents were defined by national law.

26 Unlike the 1998 Brussels Convention, for the purpose of applying Regulation No 2201/2003 an autonomous interpretation of parental responsibility was necessary, as was ultimately confirmed by the definition of that concept provided for in Article 2(7) of that regulation. See, to that effect, Pintens, W., in Magnus, U., and Mankowski, P. (eds), *Brussels IIbis Regulation*, European Commentaries on Private International Law, Sellier European Law Publishers, 2016, Article 1(59) and Article 2(19).

27 An entirely separate matter is the identity of the person who has parental responsibility. Regulation No 2201/2003 does not determine which person has parental responsibility but refers to the Member States the question of who has, in particular, rights of custody and rights of access. See, to that effect, judgment of 5 October 2010, *McB.* (C-400/10 PPU, EU:C:2010:582, paragraphs 40 to 43).

rights of access, which means that that concept may be split up into those two elements.[28] As a result, within the meaning of Regulation No 2201/2003, both persons having rights of custody and persons having rights of access as determined by national law may be described as having parental responsibility, which includes both those rights.[29]

44. As regards rights of access, the definition in Article 2(10) of Regulation No 2201/2003 states that they are to 'include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time'. That definition therefore refers to only one part of the content of rights of access, without making any reference to the persons capable of holding those rights.[30]

45. Article 2(8) of Regulation No 2201/2003 defines, for its part, a holder of parental responsibility as 'any person having parental responsibility over a child'.[31]

46. In my view, it is clear from a reading of Article 2(7), (8) and (10) of Regulation No 2201/2003 that the EU legislature intentionally used broad definitions in order to cover a number of situations. That intention is apparent from the use of general terms such as 'all rights and duties' or 'any person' as well as the adverbial phrase 'in particular'. Specifically, the use of that adverbial phrase in the definition of the concept of rights of access in Article 2(10) of Regulation No 2201/2003 is, in my opinion, evidence of the intention of the EU legislature to opt for a broad definition of those rights.

47. Consequently, although the concept of parental responsibility, in the light of Article 2(7) and (8) of Regulation No 2201/2003, covers any natural or legal person having rights of access — the latter also being broadly defined in Article 2(10) of that regulation — it seems clear to me that both parental responsibility (as an overarching concept) and rights of access (as an element of that overarching concept) may be conferred on any natural or legal person for the purposes of that regulation.[32]

48. It is true that the definition of the concept of parental responsibility in Article 2(7) shows that rights of access are only one element of parental responsibility.[33] In particular, in a situation such as that in the case in the main proceedings, where parental responsibility is, according to national law, exercised jointly by the parents, only one parent (the father, in this case) has custody of the child while the other parent (the mother, in this case) normally has rights of access. In that context, if a third person requests rights of access, the question which arises is whether, for the purposes of determining jurisdiction, Regulation No 2201/2003 also covers rights of access distinct from those which have been conferred by national law on one of the two parents (the mother, in this case) and whether, accordingly, the exercise of those rights may also be sought by third persons, such as grandparents.

28 Rights of custody are defined in Article 2(9) of Regulation No 2201/2003 as 'rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence'. With regard to that concept, see judgment of 5 October 2010, *McB.* (C-400/10 PPU, EU:C:2010:582, paragraphs 40 to 43).

29 See, in that regard, Francq, S., 'La responsabilité parentale en droit international privé. Entrée en vigueur du règlement Bruxelles II bis et du Code de droit international privé', *Revue trimestrielle de droit familial*, 2005, No 3, pp. 691 to 711. See, also, Pintens, W., loc. cit., Article 2(23). Moreover, those authors consider that a grandparent who has rights of access to his or her grandchild also has parental responsibility within the meaning of Regulation No 2201/2003. However, it should be noted that in some national legal systems only parents have parental responsibility whereas third persons have only limited powers, even if they have been granted rights of access.

30 In Regulation No 2201/2003, that definition is limited only *ratione temporis* ('a limited period of time'), and no limitation *ratione personae* is apparent from that definition.

31 That definition specifies that persons other than parents may also be holders of parental responsibility. That term includes not only holders who have acquired parental responsibility as a consequence of parenthood, guardianship and curatorship or similar institutions, but also holders who have acquired parental responsibility as partners of a parent having parental responsibility. See Pintens, W., 2016, loc. cit., Article 2(22).

32 In that regard, see Pintens, W., op. cit., p. 88: 'Since the Brussels IIbis Regulation has a broader scope — third persons can be holders of parental responsibility — there is no reason to exclude rights of access from the scope of the Regulation when the holder is a third person.'

33 See point 43 of the present Opinion.

49. In order to answer that question, it must be recalled that it is apparent from the wording and the scheme of the provisions of Regulation No 2201/2003 that the intention of the EU legislature was to cover the largest number of arrangements allowing a child to maintain contact not only with his or her parents but also with other family members or persons close to the child.[34] In my view, nothing in the definitions under consideration or in their context prevents, in principle, a grandmother from relying on the rules of jurisdiction of the regulation for the purpose of applying for rights of access.

50. It must be ascertained whether that interpretation is also supported by the purpose of Regulation No 2201/2003.

2. A teleological reading of the provisions of Regulation No 2201/2003

51. An interpretation taking into account the purpose of Regulation No 2201/2003 also confirms the application of that regulation to rights of access of grandparents.

52. I would point out, first of all, that one of the objectives of Regulation No 2201/2003 is to promote mutual recognition of judicial decisions. That is apparent from recital 2 of that regulation which states that that mutual recognition of judicial decisions is 'the cornerstone for the creation of a genuine judicial area'.[35] For that reason, the recognition and enforcement of judgments given in a Member State 'should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required', as stated in recital 21 of Regulation No 2201/2003. Moreover, it is apparent from recital 2 of that regulation that rights of access are a priority to the EU legislature.

53. Next, as regards ensuring equality for all children, recital 5 of Regulation No 2201/2003 states that that regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.[36] In that regard, as is apparent from the examination of Article 2(7), (8) and (10), Regulation No 2201/2003 adopts a broad concept of holders of parental responsibility, which encompasses not only any natural person exercising parental responsibility for a child, but also third persons or legal persons, such as child protection authorities.

54. Lastly, I would point out, as is apparent from points 35 to 37 of this Opinion, that the rules deriving from Regulation No 2201/2003 in matters of parental responsibility, and in particular its rules of jurisdiction, are shaped — and, therefore, must be interpreted — in the light not of the interests of the applicant but of the best interests of the child, in particular given the criterion of proximity.[37] Thus, a teleological interpretation of Regulation No 2201/2003 must be carried out in the light of the primacy of the best interests of the child, as a guiding principle enshrined both in its recitals and in its provisions.[38]

55. In view of the foregoing, what conclusions can be drawn from the examination of the objectives of Regulation No 2201/2003?

34 As is the case, in particular, of the partner of a parent with parental responsibility. Indeed, a child may have established a very close, strong and stable personal relationship with the partner of his or her mother or father. See point 45 of this Opinion and footnote 31.

35 See, also, recital 23 of Regulation No 2201/2003; Conclusions of the Tampere European Council of 15 and 16 October 1999, paragraph 34, available at the following internet address: http://www.europarl.europa.eu/summits/tam_en.htm, and Commission working document 'Mutual recognition of decisions on parental responsibility', COM(2001) 166 final, p. 3.

36 If Regulation No 2201/2003 extends to all decisions in matters of parental responsibility, it must also include all decisions concerning rights of access not only of parents but also of third persons, 'e.g. grandparents'. See, to that effect, Pintens, W., loc. cit., Article 1(70).

37 See recital 12 of Regulation No 2201/2003.

38 See points 73 and 74 of the present Opinion.

56. To me the answer now seems clear. Admittedly, there are no particular provisions applicable to the situation, such as that in the case in the main proceedings, of a grandparent seeking rights of access to his or her grandson. Nevertheless, there is, in my view, no legal vacuum. It is clear from the objectives of Regulation No 2201/2003 that there is no justification for rights of access to be excluded from the scope of that regulation where the applicant seeking rights of access is a person other than the parents, who has family ties to the child based on law or on fact, as is the case here. Moreover, the granting of rights of access to a person other than the parents could interfere with the rights and duties of those parents (here, the father's rights of custody and the mother's rights of access). It is therefore necessary, in order to avoid conflicting measures and in the best interests of the child, for the same court, that of the child's habitual residence, to rule on rights of access. [39]

57. Accordingly, I agree with the Commission's argument that, if applications for rights of access by persons other than parents are to be excluded from the scope of Regulation No 2201/2003, jurisdiction in respect of those applications will be determined by non-harmonised national rules. The risk that a child might be involved in a dispute before a court with which that child has no close link and the likelihood of parallel proceedings and irreconcilable decisions would increase, contrary to the purpose of Regulation No 2201/2003, which aims to lay down uniform rules of jurisdiction in accordance with the principle of proximity in judicial proceedings.

58. It therefore follows from points 43 to 57 of the present Opinion that an interpretation of the provisions of Regulation No 2201/2003 according to which that regulation applies to an application for rights of access by a grandparent does not run counter to the objective pursued by the EU legislature in the context of that regulation.

59. As I shall explain below, that interpretation is supported by the history of Regulation No 2201/2003.

3. A historical reading of the provisions of Regulation No 2201/2003

60. Before proposing an answer to the question raised by the referring court, it seems to me appropriate to examine not only the historical background of Regulation No 2201/2003 but also the legislation predating that regulation.

(a) The travaux préparatoires for Regulation No 2201/2003

61. With regard, in the first place, to the travaux préparatoires, it should be recalled, as is apparent from points 30 and 43 of the present Opinion, that the scope of Regulation No 1347/2000, the measure which preceded Regulation No 2201/2003, was limited, as regards parental responsibility, solely to disputes concerning parents. That limitation also applied to proceedings relating to rights of access (rights of access of one of the parents).

39 That is particularly necessary since the conflict-of-law rules which determine the law applicable to matters of parental responsibility are not harmonised. Therefore, if the courts of different Member States rule that parental responsibility is held by several persons (parents and grandparents), they would apply national conflict-of-law rules. However, there may be major differences in those rules. Different courts, under substantially different laws, could take decisions relating to the parental responsibility exercised by several persons, even though those decisions were, in essence, concerned with a single child. By contrast, the adoption of a broad interpretation of the concepts determining the scope of Regulation No 2201/2003 allows for some harmonisation of decisions, at least as far as the applicable laws are concerned, and avoids complications arising from the absence of harmonised conflict rules.

62. In 2000, in view of the large number of family disputes concerning the inability of one of the parents to enforce his or her rights of access in another Member State, the French Republic had presented an initiative with a view to adopting a Council regulation on the mutual enforcement of judgments on rights of access to children.[40] In examining that initiative, the Council of the European Union had concluded that the initiative could proceed only in parallel with the extension of the scope of Regulation No 1347/2000. That guaranteed equality of treatment for all children, thus taking into account social realities, such as the diversification of family structures.[41]

63. In 2001, during the drafting phase of the Commission's proposal for a regulation on parental responsibility, that institution published a working document which clearly showed that the Commission intended to adopt a far broader definition of rights of access than that contained in Regulation No 1347/2000.[42] In that working document, the Commission stated that 'contrary to … Regulation [No 1347/2000] which leaves the issue to national law, it has been suggested that new legislation should delve into the regulation of the exercise of access rights, for instance by mandating that any former member of the child's family, such as a former spouse of one of the parents, has the right of access or the right to apply for such rights'.[43] The Commission also took the view in that document that substantive considerations relating to the holders of rights of access could be framed by some Member States as requirements, which would have to be fulfilled for the judgment to benefit from recognition in other Member States. Moreover, it pointed out in the same document that the inclusion of such matters posed a real risk of leading to the review of the substance of the judgment by the Member State of recognition, which would frustrate the very objective of mutual recognition. The Commission therefore came to the conclusion that an extension of the mechanism of the new legal instrument to all decisions on parental responsibility, 'irrespective of their subject matter, the children affected, or the persons who may exercise [rights of custody and rights of access]', would best fulfil the mandate of the Council in relation to that new instrument and implement the first stage of the programme of mutual recognition, the aim of which was the abolition of *exequatur*.[44]

64. In its written observations, the Commission points out that the working document also refers to the draft European Convention on Contact concerning Children.[45] The Commission states that that draft convention recognises the right of a child to contact not only with his or her parents but also with other persons with whom the child has family ties, as is the case with grandparents.[46]

65. In my view, it is clear from points 61 to 63 of the present Opinion that the travaux préparatoires for Regulation No 2201/2003 confirm the intention of the EU legislature to extend the scope of Regulation No 1347/2000, which was limited to disputes concerning parents. That intention is supported by the fact that those travaux préparatoires clearly contemplated all decisions concerning parental responsibility and therefore concerning rights of access, irrespective of the persons capable of exercising those rights and without excluding grandparents.

40 OJ 2000 C 234, p. 7. See, also, recital 4 of Regulation No 2201/2003. That initiative concerned only the exercise of rights of access by one of the parents.

41 See point 29 of the present Opinion and COM(2001) 166 final, pp. 1 and 2.

42 COM(2001) 166 final, p. 1.

43 Ibid., p. 18.

44 Ibid., pp. 5 and 18. See, also, Council (Justice, Home Affairs and Civil Protection) of 30 November and 1 December 2000, pp. 4 and 5, 'Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters' (OJ 2001 C 12, p. 1).

45 COM(2001) 166 final, p. 15, footnote 33. Concerning that convention, see point 72 of the present Opinion.

46 The Commission working document also refers to the definition of the concept of 'family ties' in that draft convention. See COM(2001) 166 final, p. 15, footnote 33.

(b) The 1996 Hague Convention

66. It should be noted that the provisions of Regulation No 2201/2003 concerning jurisdiction in matters of parental responsibility were to a large extent modelled on the Hague Convention of 19 October 1996.[47] Regulation No 2201/2003 was based on the principle of a single jurisdiction,[48] that is to say the jurisdiction of the authorities of the State of the child's habitual residence, enshrined in that convention.[49]

67. Article 3 of the 1996 Hague Convention defines the measures falling within its scope. They include, in particular, measures relating to parental responsibility and measures relating to rights of access.[50] Article 2(7) of Regulation No 2201/2003 essentially reproduces the definition of parental responsibility set out in the 1996 Hague Convention, but that definition,[51] contrary to the definition of the concept of parental responsibility in Regulation 2201/2003, does not expressly refer to rights of access. That silence makes it possible, in principle, to consider that, in the context of that convention, the holder of rights of access is not necessarily the holder of parental responsibility.[52]

68. The definition of rights of access in Article 2(10) of Regulation No 2201/2003 was, for its part, drafted in the same way as that in the 1996 Hague Convention.[53] However, the Lagarde Report is silent as to whether applications for rights of access made by persons other than parents, in particular grandparents, fall within the scope of the 1996 Hague Convention.

69. The subsequent directions adopted by the Member States of the Hague Conference on Private International Law nevertheless point out that it is widely recognised as important for children to maintain contact with other persons to whom they are connected by family ties and state that 'rights of access are not confined to those existing between parents and children either under the 1980 Hague Convention or the 1996 Hague Convention'.[54]

70. In view of all those considerations, and in particular the primacy of the best interests of the child as the guiding principle of any interpretation of the provisions of Regulation No 2201/2003 in matters of parental responsibility, I am convinced that that regulation also applies to a request for rights of access by grandparents.

47 Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children ('the 1996 Hague Convention'), available at the following internet address: https://www.hcch.net/en/instruments/conventions/full-text/?cid=70.

48 Under Article 8(2) of Regulation No 2201/2003, paragraph 1 thereof is to be subject to the provisions of Articles 9, 10 and 12.

49 Article 8 et seq. See also points 6, 9 and 34 of the present Opinion. On the need to provide a uniform interpretation of the identical concepts of the 1996 Hague Convention and of Regulation No 2201/2003, see Opinion of Advocate General Kokott in *A* (C-523/07, EU:C:2009:39, points 24 to 26).

50 Article 3(a) and (b) of that convention provides that 'the measures referred to in Article 1 may deal in particular with: the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation; … rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence'.

51 Under Article 1(2) of that convention, '... the term "parental responsibility" includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child'. See Explanatory Report by Paul Lagarde on the 1996 Hague Convention, available at the following internet address: https://assets.hcch.net/upload/expl34.pdf.

52 According to the Lagarde Report, loc. cit., p. 542: 'the definition [of parental responsibility] is broad. … This responsibility is exercised normally by the parents but it may be exercised in whole or in part by third persons under conditions set by the national legislation in case of death, incapacity, unsuitability or unfitness of the parents or in case of the abandonment of the child by his or her parents.'

53 On the relationship between Regulation No 2201/2003 and the 1996 Hague Convention, see Article 61 of that regulation.

54 *Transfrontier Contact Concerning Children. General Principles and Guide to Good Practice*, Hague Conference on Private International Law, Family Law, 2008, p. 5, footnote 38. Moreover, it should be noted that references to rights of access of grandparents are to be found in Examples 5B and 8A of the *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention*, 2014, pp. 64, 65 and 86, available at the following internet address: https://www.hcch.net/en/instruments/conventions/publications1/?dtid=3&cid=70.

4. Other international instruments concerning contact with children

71. The broad interpretation of rights of access is not specific to Regulation No 2201/2003. Other international instruments concerning contact with children adopt a broad concept of rights of access.

72. In that regard, I note, in the first place, that Article 5(1) of the Convention on Contact concerning Children provides that 'subject to his or her best interests, contact may be established between the child and persons other than his or her parents having family ties with the child'.[55] Article 2(d) of that convention defines 'family ties' as meaning 'a close relationship such as between a child and his or her grandparents or siblings, based on law or on a de facto family relationship'.

73. In that regard, the explanatory report to that convention states, first of all, that the determination of the persons, in addition to parents, with whom a child may have contact, subject to the best interests of the child, is 'of crucial importance'.[56] It then points out that in some Member States, legislation has tended to broaden the circle of persons who are given or who may apply for contact. It recalls that, 'in certain of these laws grandparents have a right to contact while in other laws they have only a right to apply for contact'.[57] Finally, that report notes that the case-law relating to the ECHR has recognised that the protection afforded by Article 8 ECHR extends to the maintenance of contact between a grandparent and his or her grandchildren.[58]

74. Accordingly, it should be noted, in the second place, that Article 8 ECHR recognises that 'everyone has the right to respect for his private and family life'. As was stated in the preceding point, the ECtHR has held that 'the ties between grandparents and grandchildren are family ties for the purposes of Article 8 of the Convention'.[59] In particular, in a case concerning the suspension of the parents' parental responsibility, that court held that 'it was common ground that issues relating to the relations between the [grandmother] and her grandchildren were covered by Article 8 of the Convention'. That court also pointed out that '"family life" within the meaning of Article 8 includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life. "Respect" for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally'.[60]

75. In my view, it is clear from points 43 to 74 of the present Opinion that the textual, teleological, systematic and historical analysis of the provisions of Regulation No 2201/2003 supports the view that the rule of jurisdiction of Article 8 of that regulation also applies to an application for the exercise of rights of access by persons other than parents, including other *de jure* or de facto family members.

76. Accordingly, I consider that it is necessary to the answer the question referred for a preliminary ruling to the effect that the concept of 'rights of access' referred to in Article 1(2)(a) and Article 2(10) of Regulation No 2201/2003 must be interpreted as meaning that it extends to the rights of access of grandparents to their grandchildren.

55 Convention on Contact concerning Children, Council of Europe, *European Treaty Series*, No 192, Strasbourg, 15 May 2003. That convention has been ratified, so far as concerns Member States, only by the Czech Republic, the Republic of Croatia, the Republic of Malta and Romania. However, it remains important in that it primarily codifies the case-law of the European Court of Human Rights ('the ECtHR') interpreting the right to respect for family life enshrined in Article 8 ECHR, which is binding in all Member States.

56 Explanatory Report to the Convention on Contact concerning Children, Council of Europe, *European Treaty Series*, No 192, Strasbourg, 15 May 2003, paragraphs 9 and 34. That report also refers to the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children, Council of Europe, *European Treaty Series*, No 105, Luxembourg, 20 May 1980, which refers to the 'person' claiming rights of access.

57 Explanatory Report to the Convention on Contact concerning Children, op. cit., paragraphs 9 and 47. On comparative law in matters of parental responsibility, see Granet, F., 'L'exercice de l'autorité parentale dans les législations européennes', *La documentation française*, 2002.

58 Explanatory Report to the Convention on Contact concerning Children, op. cit., paragraph 9.

59 In a case concerning suspension of the rights of access of grandparents on account of criminal proceedings against their son, the child's father, see ECtHR, 20 January 2015, *Manuello and Nevi v. Italy*, CE:ECHR:2015:0120JUD000010710, § 53 and the case-law cited.

60 ECtHR, 13 July 2000, *Scozzari and Giunta v. Italy*, CE:ECHR:2000:0713JUD003922198, § 221, and ECtHR, 13 June 1979, *Marckx v. Belgium*, CE:ECHR:1979:0613JUD000683374, § 45.

C. By way of epilogue

77. As I have explained in the foregoing considerations, it follows not only from the wording, objectives and scheme of Regulation No 2201/2003, but also from its origin that that regulation extends to a request concerning rights of access by grandparents.

78. It is also apparent from my analysis that Regulation No 2201/2003 does not exclude from the concept of rights of access of persons other than parents but who have family ties to the child based on law or on fact (including siblings or the former spouse or former partner of a parent). Indeed, in view of the constant changes in our society and the existence of new forms of family structures, the possibilities, with regard to the persons concerned by the exercise of rights of access within the meaning of Regulation No 2201/2003, could be numerous.[61] The case of the former partner of the parent with parental responsibility and, consequently, the parents of the former partner — regarded by the child as grandparents —, or the case of an aunt or uncle responsible, in the temporary absence of one or both parents, for caring for the child, are but a few examples of cases in which the Court might be requested to interpret that regulation.[62]

79. It is true that Regulation No 2201/2003 concerns only rules of jurisdiction, recognition and enforcement of judgments in matters of, inter alia, parental responsibility. Therefore, at this stage in the development of EU law, the issue of the persons to whom rights of access will, or will not, be granted is a matter of national law. That is why it is particularly important to have a single and uniform rule of jurisdiction, that is to say the jurisdiction of the authorities of the Member State of the child's habitual residence, in order to ensure the recognition and enforcement of judgments given in the various Member States.

V. Conclusion

80. In the light of all the foregoing considerations, I propose that the Court give the following answer to the question referred by the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria):

The concept of 'rights of access' referred to in Article 1(2)(a) and Article 2(10) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that it extends to the rights of access of grandparents to their grandchildren.

61 See point 29 of the present Opinion.

62 See points 31, 32, 49, 64, 69 and 75 of the present Opinion.