Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

16 September 2015*

(Reference for a preliminary ruling — Judicial cooperation in civil or commercial matters — Service of judicial and extrajudicial documents — Regulation (EC) No 1393/2007 — Article 8 — Refusal to accept the document — Failure to provide a translation of one of the documents served — Failure to use the standard form set out in Annex II to that regulation — Consequences)

In Case C-519/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Anotato Dikastirio Kyprou (Cyprus) made by decision of 13 September 2013, received at the Court on 27 September 2013, in the proceedings

Alpha Bank Cyprus Ltd

v

Dau Si Senh,

Alpha Panareti Public Ltd,

Susan Towson,

Stewart Cresswell,

Gillian Cresswell,

Julie Gaskell,

Peter Gaskell,

Richard Wernham,

Tracy Wernham,

Joanne Zorani,

Richard Simpson,

THE COURT (First Chamber),

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

* Language of the case: Greek.

Advocate General: M. Wathelet,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 November 2014,

after considering the observations submitted on behalf of:

— Alpha Bank Cyprus Ltd, by R. Garcia and B. Sigler, Solicitors, B. Kennelly and P. Luckhurst, Barristers, and P.G. Polyviou, E. Florentiadou and G. Middleton, dikigoroi,

— Mr Si Senh, Ms Towson, Mr and Mrs Cresswell, Mr and Mrs Gaskell, Mr and Mrs Wernham, Ms Zorani, Mr Simpson, and Alpha Panareti Public Ltd, by K. Koukounis, G. Koukounis and C. Zanti, dikigoroi,

— the Cypriot Government, by D. Lysandrou and N. Ioannou, acting as Agents,

— the German Government, by T. Henze and by J. Kemper and D. Kuon, acting as Agents,

— the Greek Government, by G. Skiani and M.I. Germani, acting as Agents,

— the Spanish Government, by M.J. García-Valdecasas Dorrego, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by M. Condou-Durande and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 January 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

2 The request has been made in seven sets of proceedings between, on the one hand, Alpha Bank Cyprus Ltd ('Alpha Bank'), a bank with its principal establishment in Cyprus, and, on the other hand, respectively, Mr Si Senh, Ms Towson, Mr and Mrs Cresswell, Mr and Mrs Gaskell, Mr and Mrs Wernham, Ms Zorani, Mr Simpson, who are permanently resident in the United Kingdom ('the respondents in the main proceedings'), and Alpha Panareti Public Ltd, a Cypriot company which had guaranteed the mortgage loans concluded by the seven respondents in the main proceedings, regarding the payment of the balance of those loans.

Legal context

EU law

3 Recitals 2 and 6 to 12 in the preamble to Regulation No 1393/2007 state in particular:

‘(2) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

…

(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. …

(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) This Regulation should not apply to service of a document on the party’s authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party.

(9) The service of a document should be effected as soon as possible, and in any event within one month of receipt by the receiving agency.

(10) To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.

(11) In order to facilitate the transmission and service of documents between Member States, the standard forms set out in the Annexes to this Regulation should be used.

(12) The receiving agency should inform the addressee in writing using the standard form that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. … It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.’

4 Article 1 of that regulation, which defines the scope thereof, provides in paragraph 1:

‘This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).’

5 Under Article 2 of that regulation, the Member States are to designate the 'transmitting agencies', competent for the transmission of judicial or extrajudicial documents to be served in another Member State, and 'receiving agencies', competent for the receipt of such documents from another Member State.

6 Article 4 of that regulation provides:

'1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated pursuant to Article 2.

2. The transmission of documents … between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.

3. The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. …

…'

7 Article 5 of Regulation No 1393/2007 is worded as follows:

'1. The applicant shall be advised by the transmitting agency to which he forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.

2. The applicant shall bear any costs of translation prior to the transmission of the document …'

8 In accordance with Article 6(1) of that regulation, on receipt of a document, the receiving agency, as soon as possible and in any event within seven days of receipt, is to send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form set out in Annex I.

9 Article 7 of that regulation provides:

'1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.

2. The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt …'

10 Under Article 8 of that regulation, entitled 'Refusal to accept a document':

'1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

(a) a language which the addressee understands; or

(b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

3. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document …

…’

11 The standard form set out in Annex II to Regulation No 1393/2007 is as follows:

INFORMATION TO THE ADDRESSEE ABOUT THE RIGHT TO REFUSE TO ACCEPT A DOCUMENT

(Article 8(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (1))

EN:

The enclosed document is served in accordance with Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

You may refuse to accept the document if it is not written in or accompanied by a translation into either a language which you understand or the official language or one of the official languages of the place of service.

If you wish to exercise this right, you must refuse to accept the document at the time of service directly with the person serving the document or return it to the address indicated below within one week stating that you refuse to accept it.

ADDRESS:

1. identity
2. address
2.1. street and number/PO box
2.2. place and post code
2.3. country
3. tel.
4. fax (*)
5. e-mail (*)

DECLARATION OF THE ADDRESSEE:

I refuse to accept the document attached hereto because it is not written in or accompanied by a translation into either a language which I understand or the official language or one of the official languages of the place of service.

I understand the following language(s)

Bulgarian	☐	Lithuanian	☐
Spanish	☐	Hungarian	☐
Czech	☐	Maltese	☐
German	☐	Dutch	☐
Estonian	☐	Polish	☐
Greek	☐	Portuguese	☐
English	☐	Romanian	☐
French	☐	Slovak	☐
Irish	☐	Slovene	☐
Italian	☐	Finnish	☐
Latvian	☐	Swedish	☐
Other	☐	(please specify):	

Done at: .....

Date: .....

Signature and/or stamp: .....

(*) This item is optional.

12 Article 10(1) of Regulation No 1393/2007 provides:

‘When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency …’

13 Article 19(1) of that regulation provides that, where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service and the defendant has not appeared, judgment is not to be given until it is established that the document was served by a method prescribed by the internal law of the Member State addressed, or the document was actually delivered to the defendant or to his residence by another method provided for by that regulation, and that in either of these cases the service was effected in sufficient time to enable the defendant to defend.

Cyprus law

14 Article D.48 of the Code of Civil Procedure provides, inter alia:

'(12) Every order shall from the date thereof be binding on the person on whose application the same was made and on all parties to the action on whom notice of the application was duly served. Where any party to the action has not been duly served with notice of the application, such order shall be binding on him from the date of the service of an office copy thereof upon him.

(13) Where an order made pursuant to an *ex parte* application is served under the present Code, the *ex parte* application and any accompanying affidavit must be served together with it.'

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

15 It is apparent from the order for reference that Alpha Panareti Public Ltd sold to the respondents in the main proceedings immovable property situated in Cyprus. That property was purchased by means of bank loans granted by Alpha Bank.

16 For the purpose of obtaining payment of the balance of each of the loans granted, Alpha Bank sued before a Cyprus court both the respondents in the main proceedings and the vendor, who had guaranteed each of the loans by mortgaging the immovable property.

17 Since the respondents in the main proceedings were permanently resident in the United Kingdom, the Cyprus court of first instance, following an application by Alpha Bank, made an order relating to the service on the vendors of the *ex parte* application outside the territory of Cyprus, in accordance with Regulation No 1393/2007.

18 The following documents were therefore served on the respondents in the main proceedings:

— a true copy of the document initiating the proceedings and a notice relating thereto ('notice of writ') in Greek and English;

— a true copy of the court order authorising service outside of Cyprus, solely in Greek, and

— a true copy of the affidavit given by the translator attesting that the English-language translation of the document initiating the proceedings is a faithful translation of the original.

19 While declaring that they were appearing under protest, the respondents in the main proceedings then appeared before the Cyprus court of first instance to request that the service be declared invalid by claiming that it did not satisfy the conditions set out in Article 8 of Regulation No 1393/2007 and Article D.48, Rule 13, of the Cyprus Code of Civil Procedure, since the following had not been served:

— a copy of the *ex parte* application under Article D.48, Rule 13;

— an English-language translation of the order relating to service outside of Cyprus;

— the standard form as referred to in Article 8(1) of Regulation No 1393/2007, and

— an explanatory letter relating to the documents to be served.

20 It is apparent from the documents before the Court that, in the court order referred to above, which authorises service of the *ex parte* application outside the territory of Cyprus and which was not translated, first, the time-limit within which the defendants were to appear before the Cyprus court was significantly longer than that stated in that regard in the document instituting the proceedings. Secondly, that order specified that where a notice to attend was not submitted within the time-limit stated in that order, any later application was deemed to have been served on the party at issue since a copy thereof was posted on the notice board of the District Court, Paphos (Eparchiako Dikastirio, Paphos) for five days.

21 Although Alpha Bank responded that the service performed by it in this case was in order, since the parties being sued were aware of the existence of the court proceedings brought and the subject of them, the Cyprus court of first instance declared that service invalid by holding that the omissions complained of by the respondents in the main proceedings constituted an infringement both of the Cyprus Code of Civil Procedure and of Regulation No 1393/2007. The addressees were denied the possibility to familiarise themselves with the content of all the relevant documents and they were also not informed, by means of the form set out in Annex II to that regulation, of their right to refuse to accept the order in Greek and which was not accompanied by an English-language translation.

22 Ruling on an appeal brought by Alpha Bank, the referring court held that the invalidity of the service which had been declared by the court of first instance was not justified in so far as it was based on the infringement of national law.

23 The referring court raises the point however of the consequences in the present case of the fact that the competent authorities of the United Kingdom did not consider it useful to serve on the respondents in the main proceedings the standard form referred to in Article 8(1) of Regulation No 1393/2007 and set out in Annex II thereto.

24 Indeed, that regulation seeks to balance the rights of applicants and defendants in order to ensure the right to a fair trial, so that it is important that the defendants have full knowledge of the document instituting the proceedings, but it does not appear that in the main proceedings the respondents in those proceedings were denied their rights, since they appeared in good time before the Cyprus court and failed to state either the nature or the concrete consequences of the 'deception' of which they claim to have been victims. Nevertheless, according to the referring court, Regulation No 1393/2007 does not state which documents must be served in all circumstances. Moreover, that court states that the Court has not yet ruled on the question whether service of the standard form set out in Annex II to that regulation is required in all cases and whether the omission of that service necessarily results in the procedure being declared invalid.

25 In those circumstances the Anotato Dikastirio Kyprou (Supreme Court of the Republic of Cyprus) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is service of the standard form pursuant to Regulation No 1393/2007 necessary in every case or can there be exceptions?

(2) If it is considered that service is necessary in every case, does the omission in the present case constitute a reason why service is invalid?

(3) If not, can it be effected, in keeping with the spirit of Regulation No 1393/2007, by service on the lawyer acting for the respondents appearing under protest, who is under an obligation vis-à-vis his clients to accept service, or must service be effected anew under the procedure provided for in Regulation No 1393/2007?'

The questions referred for a preliminary ruling

26 By its three questions referred for a preliminary ruling, which need to be examined together, the referring court asks, in essence, whether Article 8 of Regulation No 1393/2007 must be interpreted as meaning that the addressee of the document to be served must in all circumstances be informed, using the standard form set out in Annex II to that regulation, of his right to refuse to accept that document and, where appropriate, of the legal consequences of a failure to provide information using that form.

The binding nature of the standard form set out in Annex II to Regulation No 1393/2007

27 As regards that first point raised by the questions referred, as reformulated, it must be noted that the wording of Article 8 of Regulation No 1393/2007 does not, as such, provide a useful reply.

28 The scope of that provision must therefore be determined having regard to its context. To that effect, it is necessary to examine the objectives pursued by Regulation No 1393/2007 and the system established by it, of which Article 8 forms part (see, to that effect, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 45).

29 As far as concerns, in the first place, the objectives of Regulation No 1393/2007, it should be noted that that regulation, which was adopted on the basis of Article 61(c) EC, seeks, as is apparent from recital 2 in the preamble thereto, to establish a system for intra-Community service of judicial and extrajudicial documents in civil or commercial matters, for the purpose of the proper functioning of the internal market (see judgments in *Alder*, C-325/11, EU:C:2012:824, paragraph 29, and *Fahnenbrock and Others*, C-226/13, EU:C:2015:383, paragraph 40).

30 Therefore, with the aim of improving the efficiency and speed of judicial procedures and ensuring proper administration of justice, that regulation establishes the principle of direct transmission of judicial and extrajudicial documents between the Member States (see judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 3), which has the effect of simplifying and accelerating the procedures. Those objectives are noted in recitals 6 to 8 in the preamble to that regulation.

31 However, as the Court has already held on numerous occasions, those objectives cannot be attained by undermining in any way the rights of the defence of the addressees, which derive from the right to a fair hearing, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, inter alia, judgment in *Alder*, C-325/11, EU:C:2012:824, paragraph 35 and the case-law cited).

32 In that regard, it is important not only to ensure that the addressee of a document actually receives the document in question, but also that he is able to know and understand effectively and completely the meaning and scope of the action brought against him abroad, so as to be able effectively to assert his rights in the Member State of transmission (see, to that effect, judgment in *Alder*, C-325/11, EU:C:2012:824, paragraphs 36 and 41, and, by analogy as regards Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37), which preceded Regulation No 1393/2007, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraphs 64 and 73).

33 With this in mind, it will thus be necessary to interpret Regulation No 1393/2007 so as, in each specific case, to guarantee a fair balance between the interests of the applicant and those of the defendant, the addressee of the document, by reconciling the objectives of efficiency and speed of the service of the procedural documents with the need to ensure that the rights of the defence of the addressee of those documents are adequately protected (see judgments in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 48, and *Alder*, C-325/11, EU:C:2012:824, paragraph 36).

34 As far as concerns, in the second place, the system established by Regulation No 1393/2007 in order to attain those objectives, it should be noted that, as results from a combined reading of Articles 2 and 4(1) of that regulation, read in the light of recital 6 in the preamble thereto, the service of documents is, in principle, to be effected between the 'transmitting agencies' and the 'receiving agencies' designated by the Member States (see judgment in *Alder*, C-325/11, EU:C:2012:824, paragraph 30). Under Article 4 of that regulation, the document or documents to be served are to be transmitted directly and as soon as possible, by any appropriate means, by the transmitting agency to the receiving agency.

35 In accordance with Article 5(1) of that regulation, it is for transmitting agency to inform the applicant that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8 of that regulation. It is nevertheless for the applicant to decide whether the document at issue must be translated, the cost of which he must also bear, in accordance with Article 5(2) of that regulation.

36 As regards the receiving agency, it is required to effectively serve the document on the addressee, as provided for by Article 7 of Regulation No 1393/2007. In that context, it must, first, keep the transmitting agency informed of all the relevant aspects of that operation by returning the standard form set out in Annex I to that regulation and, secondly, in accordance with Article 8(1) thereof, inform the addressee that it may refuse to accept the document if it is not translated into one of the languages referred to in that provision, namely either a language which the interested party understands, or the official language of the receiving Member State or, where appropriate, one of the official languages of the place where that document must be served, languages which the addressee is expected to understand. Where such a refusal is effectively given by the latter, he is in addition required, under Article 8(2) and (3) of that regulation, to immediately inform the transmitting agency and return the request and the document of which a translation is requested.

37 By contrast, those agencies are not required to rule on questions of substance, such as those concerning which language(s) the addressee of the document understands and whether the document must be accompanied by a translation into one of the languages stated in Article 8(1) of Regulation No 1393/2007.

38 Any other interpretation would raise legal problems likely to create legal disputes which would delay or make more difficult the procedure for transmitting documents from one Member State to another.

39 In the main proceedings, it is however apparent from the file submitted to the Court that the receiving agency considered that the order authorising service of the document abroad should not be translated and deduced from that that it was not required to enclose with the document at issue the standard form set out in Annex II to Regulation No 1393/2007.

40 However, that regulation does not confer on the receiving agency any competence to assess whether the conditions, set out in Article 8(1), according to which the addressee of a document may refuse to accept it, are satisfied.

41 On the contrary, it is exclusively for the national court before which proceedings are brought in the Member State of origin to rule on questions of that nature, since they oppose the applicant and the defendant.

42 In that regard, after initiating the procedure for service by defining the relevant documents to that effect, that court will rule only after the addressee of a document has effectively refused to accept it on the ground that it was not drafted in a language which he understands or is expected to understand. Therefore, that court will be required to determine, at the request of the applicant, whether such a refusal was justified (see, by analogy, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 85). To that effect, it must take due account of all the evidence in the file in order to, first, determine the linguistic knowledge of the addressee of the document (see judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 80) and, secondly, decide whether, in view of the nature of the document at issue, a translation of it is required.

43 In essence, that court will be required, in each individual case, to ensure that the respective rights of the parties concerned are upheld in a balanced manner, by weighing the objective of efficiency and of rapidity of the service in the interest of the applicant against that of the effective protection of the rights of the defence on the part of the addressee.

44 That said, it should be added, concerning the system established by Regulation No 1393/2007, that the latter provides also for the use of two standard forms which are set out, respectively, in Annexes I and II to that regulation.

45 In that regard, it must be pointed out, first, that Regulation No 1393/2007 does not contain any exceptions to the use of those forms.

46 On the contrary, as is apparent from recital 11 in the preamble to that regulation, the standard forms provided for therein 'should be used' since, while respecting the respective rights of the parties concerned and as follows from recital 7 in the preamble to Regulation No 1393/2007, they contribute to simplifying and making more transparent the transmission of documents, thereby guaranteeing both the legibility thereof and the security of their transmission.

47 Secondly, those forms constitute, as is stated in recital 12 in the preamble to that regulation, instruments by means of which addressees are informed of their ability to refuse to accept the document to be served.

48 It is in the light of those considerations that it is necessary to determine the exact scope which must be given to the standard form set out in Annex II to Regulation No 1393/2007 and, consequently, to Article 8(1) thereof, which relates to the notification of that form to the addressee of the document.

49 In that regard, as is apparent from the wording itself of the title and contents of that form, the ability to refuse to accept the document to be served, as provided for in Article 8(1), is defined as a 'right' of the addressee of that document.

50 In order for that right conferred by the EU legislature to usefully produce its effects, the addressee of the document must be informed in writing thereof. In the system established by Regulation No 1393/2007, that information is provided to him using the standard form set out in Annex II to Regulation No 1393/2007, in the same way that the applicant is, from the beginning of the procedure, informed of the existence of that right on the part of the addressee of the document by means of the standard form set out in Annex I to that regulation.

51 Accordingly, it must be held that Article 8(1) of Regulation No 1393/2007 contains two statements which admittedly are connected, but nevertheless distinct, namely, first, the substantive right of the addressee of the document to refuse to accept it, on the sole ground that it is not drafted in or accompanied by a translation in a language he is expected to understand and, secondly, the formal information about the existence of that right brought to his knowledge by the receiving agency. In other words and contrary to what the receiving agency seems to have admitted in the main

proceedings, the condition relating to the languages used for the document relates not to the information given to the addressee by the receiving agency, but exclusively to the right to refuse reserved to that addressee.

52 Moreover, the standard form set out in Annex I to that regulation makes a clear distinction between those two points, by making reference, in different sections, to the information given to the addressee in writing of his right to refuse to accept that document and the effective exercise of that right.

53 In those circumstances, it appears that the refusal itself is indeed clearly conditional, in so far as the addressee of the document may validly make use of the right only where the document at issue is not drafted in or accompanied by a translation either in a language he understands or in the official language of the receiving Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected (see, to that effect, recital 10 in the preamble to Regulation No 1393/2007). As is apparent from paragraph 42 of the present judgment, it is ultimately for the court seised to decide whether that condition is satisfied, by checking whether the refusal by the addressee of the document was justified.

54 The fact remains that the exercise of that right to refuse presupposes that the addressee of the document has been duly informed, in advance and in writing, of the existence of his right.

55 Therefore, the receiving agency, where it serves or has served a document on its addressee, is required, in all circumstances, to enclose with the document at issue the standard form set out in Annex II to Regulation No 1393/2007 informing that addressee of his right to refuse to accept that document.

56 It should also be noted that such an obligation does not create particular difficulties for the receiving agency, given that it suffices that that agency enclose with the document to be served the preprinted text as provided for by that regulation in each of the official languages of the European Union.

57 Therefore, the above interpretation is such as to guarantee transparency by enabling the addressee of a document to know the extent of his rights and to allow uniform application of Regulation No 1393/2007 (see, by analogy, judgments in *Leffler*, C-443/03, EU:C:2005:665, paragraph 46, and *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 60), without creating any delay in the service of that document, but, on the contrary, contributing to simplifying and facilitating that service.

58 It must therefore be held that the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by systematically using for that purpose the standard form set out in Annex II to Regulation No 1393/2007.

The consequences of a failure to provide information using the standard form set out in Annex II to Regulation No 1393/2007

59 As regards the second point raised by the questions referred, as reformulated, it should be noted that Article 8 of Regulation No 1393/2007, concerning the refusal to accept the document, does not contain provisions relating to the legal consequences of a failure to provide the addressee of a document with information, using the standard form set out in Annex II to Regulation No 1393/2007, concerning his right to refuse to accept that document.

60 In addition, it is not apparent from any provision of that regulation that such a failure leads to the invalidity of the procedure for service.

61 Moreover, concerning the consequences of the refusal by the addressee of a document to accept it on the ground that that document was not accompanied by a translation in a language which he understands or in the official language of the receiving Member State, the Court has already held, with respect to Regulation No 1348/2000, which preceded Regulation No 1393/2007, that it was necessary not to declare the procedure invalid, but to allow, by contrast, the sender to remedy the lack of the required document by sending the requested translation (see, to that effect, judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraphs 38 and 53).

62 That principle is now laid down in Article 8(3) of Regulation No 1393/2007.

63 A similar solution must be reached where the receiving agency has failed to transmit the standard form set out in Annex II to that regulation to the addressee of a document.

64 The lack of that standard form and the refusal to accept a document in the absence of an appropriate translation are closely linked in so far as, in both situations, the exercise, by the addressee of such a document, of his right to refuse to accept the document at issue could be impeded.

65 It appears therefore appropriate to conclude that identical legal consequences must be applied to those two situations.

66 Moreover, to declare either the document to be served or the procedure for service invalid would be incompatible with the objective pursued by Regulation No 1393/2007, which consists in providing a means of direct, rapid and effective transmission between Member States of documents in civil and commercial matters.

67 In those circumstances, it must be possible to remedy the failure to provide information using the standard form set out in Annex II to Regulation No 1393/2007.

68 With regard to the details of such a solution, it should be noted that there are only two circumstances in which the service of a judicial document between Member States falls outside the scope of Regulation No 1393/2007: first, where the permanent or habitual residence of the addressee is unknown and, secondly, where that person has appointed an authorised representative in the Member State where the judicial proceedings are taking place (see judgment in *Alder*, C-325/11, EU:C:2012:824, paragraph 24).

69 By contrast, in other situations, where the person to be served with the judicial document resides in the territory of another Member State, the service of that document necessarily comes within the scope of that regulation and must, therefore, be carried out by the means put in place by the regulation to that end, as provided for by Article 1(1) thereof (see judgment in *Alder*, C-325/11, EU:C:2012:824, paragraph 25).

70 Consequently, it is necessary to rely only on Regulation No 1393/2007 in order to remedy an omission, such as that at issue in the main proceedings.

71 Such a solution is, in addition, supported by the need for uniform application of that regulation (see, to that effect, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 60 and the case-law cited).

72 In a situation such as that in the cases in the main proceedings, it is therefore for the receiving agency to inform without delay the addressees of the document of their right to refuse to accept that document, by sending them, in accordance with Article 8(1) of Regulation No 1393/2007, the standard form set out in Annex II to that regulation.

73 It should be added that, in the event that, as a result of that information, the addressees concerned make use of their right to refuse to accept the document at issue, it is for the national court in the Member State of origin to decide whether such a refusal is justified in the light of all the circumstances of the case, as set out in paragraphs 41 to 43 of the present judgment.

74 In the event that court holds that the refusal to accept the document at issue is well founded, the translated version of that document must still be submitted to the addressees, in accordance with the procedure laid down in Regulation No 1393/2007 and, in particular, Article 8(3) thereof.

75 By contrast, Regulation No 1393/2007 does not provide that a document may be validly served on the representatives of addressees appearing under protest before the court before which proceedings are brought in the Member State of origin, solely for the purpose of contesting the lawfulness of the procedure.

76 It must therefore be held that the fact that the receiving agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation.

77 In the light of all the foregoing considerations, the answer to the three questions referred is that Regulation No 1393/2007 must be interpreted as meaning that:

— the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that regulation, and

— the fact that that agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation.

Costs

78 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, must be interpreted as meaning that:

— the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that regulation, and

— **the fact that that agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation.**

[Signatures]