



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
WATHELET  
delivered on 22 January 2015<sup>1</sup>

**Case C-519/13**

**Alpha Bank Cyprus Ltd**  
v  
**Senh Dau Si,**  
**Alpha Panareti Public Ltd,**  
**Susan Towson,**  
**Stewart Cresswell,**  
**Gillian Cresswell,**  
**Julie Gaskell,**  
**Peter Gaskell,**  
**Richard Wernham,**  
**Tracy Wernham,**  
**Joanne Zorani,**  
**Richard Simpson**

(Request for a preliminary ruling from the Anotato Dikastirio Kyprou (Cyprus))

(Judicial cooperation in civil matters — Service of judicial and extrajudicial documents in civil or commercial matters — Regulation (EC) No 1393/2007 — Article 8 — Refusal to accept a document — Requirement to use the form set out in Annex II to the regulation to inform an addressee of his right to refuse to accept a document — Validity of service in the event of failure to use the form — Possibility of service subsequently through the addressee's lawyer)

### **I – Introduction**

1. The request for a preliminary ruling was submitted in connection with seven cases concerning the balance on a mortgage loan brought by Alpha Bank Cyprus Ltd ('Alpha Bank'), a company trading in the banking sector, against purchasers of immovable properties and against Alpha Panareti Public Ltd, another company, which had guaranteed that loan.<sup>2</sup>
2. That request 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.<sup>3</sup>

1 — Original language: French.

2 — In each of the seven cases Alpha Panareti Public Ltd is summoned in that capacity.

3 — OJ 2010 L 324, p. 79.

3. Article 8 of that regulation, entitled ‘Refusal to accept a document’ states that the addressee of a document must be informed, ‘using the standard form set out in Annex II [to the Regulation]’, that he may refuse to accept the service of that document if it is not written in, or accompanied by a translation into, a particular language.

4. The request for a preliminary ruling concerns inter alia whether or not that standard form is obligatory and the consequences of failing to use it as regards the service of a document.

## II – Regulation No 1393/2007

5. Article 8 of the regulation, entitled ‘Refusal to accept a document’, provides:

‘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;
- (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 determined pursuant to Article 9(2).

...’

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

6. The respondents in the seven appeals before the referring court are (i) purchasers of immovable properties situated in the Republic of Cyprus, and (ii) the vendor of those properties, Alpha Panareti Public Ltd.<sup>4</sup> The properties were purchased by means of a mortgage loan granted by Alpha Bank, which has brought actions before the courts in Cyprus for payment of the balance of that mortgage loan against the purchasers and the vendor, namely Alpha Panareti Public Ltd, which had guaranteed the loan.

4 — It is clear from the documents submitted to the Court that that company, incorporated in Cyprus, is not owned by Alpha Bank.

7. Since the purchasers<sup>5</sup> were permanently resident abroad, Alpha Bank obtained, following an *ex parte* application,<sup>6</sup> in each of the actions at first instance an order allowing a true copy of the document initiating the proceedings<sup>7</sup> and the notice attached to that document,<sup>8</sup> and of a translation of each, to be served outside the geographical jurisdiction of the court ('the contested order'). Each of those contested orders provided, moreover, that those documents should be served in accordance with the rules laid down in Regulation No 1393/2007.

8. The following documents were served on each of the purchasers in England:

- a true copy of the document initiating the proceedings and the attached notice, in Greek and English;
- a true copy of the contested order in Greek only, and
- a true copy of the affidavit given by the translator attesting that she had made a faithful translation of the original documents.

9. The respondents in each of the seven cases entered an appearance under protest at first instance and applied for an order for the annulment or setting aside of the contested orders and of the service itself. They contended that, in pursuance of Regulation No 1393/2007 and of the Cyprus Code of Civil Procedure, other documents should also have been served, namely, in each case:

- a copy of the *ex parte* application;
- a translation into English of the contested order;
- the standard form set out in Annex II to Regulation No 1393/2007, in accordance with Article 8 of that regulation, and
- an explanatory letter concerning the documents being served.

10. Alpha Bank argued before the court of first instance that, as the respondents had been apprised of the existence of the action and its subject-matter and of the timetable for the taking of measures on their part, they could not argue improper service. In the view of Alpha Bank, the respondents had applied to have the service set aside in a bid to avoid service.

11. The court of first instance held in each of those seven cases that the application was well founded. It found that the failure to serve all the necessary documents and the English translations, especially a translation of the contested orders, infringed the Cyprus Code of Civil Procedure and Regulation No 1393/2007, as it deprived the addressee of the documents of the opportunity to obtain knowledge of their contents. It also found that that regulation had been infringed because the standard form set out in Annex II to that regulation, which would have informed the respondents of their right to refuse to accept the contested orders in Greek without the necessary accompanying English translation, had not been served on them. The court of first instance, on those grounds, annulled the service of the document initiating the proceedings, the attached notice and the contested order in each of those cases.

12. Alpha Bank lodged an appeal challenging each of the seven judgments before the referring court.

5 — The vendor is established in Cyprus.

6 — That is to say, an application submitted without notice to the other party.

7 — Referred to as a 'writ of summons' in the procedural documents attached to the request for a preliminary ruling.

8 — Referred to as a 'notice of writ' in the procedural documents attached to the request for a preliminary ruling ('the notice').

13. The referring court held, in a separate judgment, that the court of first instance had erred in the part of the seven judgments at first instance that related to annulling service on grounds of irregularity under national law, as, in the circumstances of the main proceedings, any irregularities could have been remedied, in keeping with the spirit of Regulation No 1393/2007. According to that court, '[n]otwithstanding the numerous problems identified in the way in which service was effected, it is not apparent from the documents sent for service that the respondents were actually misled, as they entered an appearance before the court at the appointed time. Furthermore, the respondents did not specify how they had allegedly been misled or, more importantly, the repercussions on them of their possibly having been misled'.

14. The referring court stated that it would not annul service unless the Court were to find that service using the standard form set out in Annex II to Regulation No 1393/2007 was necessary in every case of service of documents on the basis of that regulation and that failure to serve that form could not be remedied and would lead to service being invalid.

15. In those circumstances, the Anotato Dikastirio Kyprou (Cyprus) decided to stay the proceedings and to refer the following questions to the Court 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?'

#### IV – Procedure before the Court

16. Alpha Bank, the respondents, the Cyprus, German, Greek, Spanish and Austrian Governments and the European Commission submitted written observations. Alpha Bank, the respondents, the Cyprus, German and Spanish Governments and the Commission presented oral argument at the hearing on 27 November 2014.

#### V – Analysis

##### A – *First question*

##### 1. Arguments of the parties

17. In its first question, the referring court asks in essence whether Article 8 of Regulation No 1393/2007 must be interpreted as meaning that the receiving agency<sup>9</sup> must always use the standard form set out in Annex II to that regulation when effecting service of the document to be served on the addressee.

<sup>9</sup> — Service in the cases in the main proceedings took place in accordance with Article 4(1) of Regulation No 1393/2007, namely between the designated ('transmitting' (in Cyprus) and 'receiving' (in the United Kingdom)) agencies, in pursuance of Article 2 of that regulation.

18. The respondents contend that Regulation No 1393/2007 does not contain any exception to the right to receive the standard form set out in Annex II thereto. They note that the EU legislature intentionally provided for that form in order to guarantee and protect the fundamental rights of addressees to receive information and a fair hearing. Alpha Bank contends, on the contrary, that the standard form in question has no purpose where the document initiating the proceedings has been translated into the language of the receiving agency.

19. The Greek Government is of the view that neither Article 8 nor any other article of Regulation No 1393/2007 provides for an exception which would allow the receiving agency to dispense with use of the standard form as required by Article 8(1) of that regulation. According to the Spanish Government, the wording of Regulation No 1393/2007 leaves no room for doubt. Article 8 states that the information it requires must be provided using the standard form set out in Annex II to that regulation. The Austrian Government is also of the view that service must be effected using the standard form in all cases.

20. According to the Cyprus Government, although, in principle, use of the standard form set out in Annex II to Regulation No 1393/2007 is obligatory in every case in which a judicial document is served, the Court would appear to have introduced a derogation from that general obligation in *Weiss und Partner* (C-14/07, EU:C:2008:264) where the addressee is familiar with the content of the document being served.

21. So far as the Commission is concerned, the standard form in question has an informative purpose and is required where service of the judicial document is effected in a language which the defendant does not understand. Consequently, in its view, where service of the document has been effected in one of the languages provided for in Article 8(1) of Regulation No 1393/2007 the standard form has no purpose and its use is not required. It adds that the addressee would not have had the right to refuse to accept the document in the present case if the standard form had been attached to the documents to be served.

22. So far as the German Government is concerned, the receiving agency is required to attach the standard form set out in Annex II to Regulation No 1393/2007 only where a document, within the meaning of Article 8(1) of that regulation, has not been translated into one of the languages provided for in Article 8(1)(a) and (b) of that regulation. The obligation to inform laid down in Article 8(1) is an obligation 'to conduct a special examination, imposed on the receiving agency', which would carry out its own investigation using its particular expertise as an authority or court. That Government therefore contends that the receiving agency must determine in each case whether the addressee referred to in Article 8(1) of Regulation No 1393/2007 should be informed of his right to refuse to accept a document by means of the standard form. In its view, the contested order constitutes a document within the meaning of Article 8(1) of Regulation No 1393/2007, since it cannot be excluded, in the absence of a translation, that its content may be essential from a procedural point of view, which would justify an autonomous obligation on the receiving agency to provide information in pursuance of that provision.

## 2. Assessment

23. To my mind, the scope of Article 8 of Regulation No 1393/2007 is clear and unambiguous. Use of the standard form set out in Annex II to that regulation is required in all cases of service of judicial documents,<sup>10</sup> without exception, irrespective of the language in which the document to be served is drafted and whether or not it is accompanied by a translation.<sup>11</sup>

24. First, the wording<sup>12</sup> of Article 8(1) of Regulation No 1393/2007 requires clearly and without exception that the receiving agency should use the form in question when effecting service of a document to be served.

25. Article 8(1) of Regulation No 1393/2007 therefore provides no opportunity for the receiving agency to decide whether or not that form should be used depending on the language of the document to be served, or languages which are understood by the addressee — information which in any event is often not available to it — or the official languages of the Member State in question, or whether or not a translation into those languages is attached to that document.

26. The phrase ‘if it is not written in, or accompanied by a translation into, either of the following languages’ applies not to the use of the form but merely to the addressee’s right to refuse to accept the document.

27. The standard form set out in Annex II to Regulation No 1393/2007 must always be used therefore for the service of a document to its addressee, even if it may prove to be redundant in view, for example, of the language skills of the addressee or, more specifically, where the document to be served is written in the official language of the Member State addressed. I would add that, even in the latter case, the routine obligation to attach that form, which is only one page, in the official language of the Member State addressed or one of the official languages of the place where service is to be effected does not, to my mind, constitute an obligation that is unduly excessive.

10 — See Article 8(4) of Regulation No 1393/2007. The questions referred to the Court concern in particular documents initiating the proceedings. As regards its scope, that regulation provides for only two circumstances in which the service of a judicial document between Member States falls outside its scope, namely (i) where the permanent or habitual residence of the addressee is unknown and (ii) where that person has appointed an authorised representative in the State where the judicial proceedings are taking place. In other situations, where the person to be served with the judicial document resides abroad, 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 also to that effect, paragraphs 24 and 25 of *Alder* (C-325/11, EU:C:2012:824).

11 — See paragraph 37 of *Alder* (C-325/11, EU:C:2012:824), in which the Court held that ‘Article 4(3) and Article 5(1) of Regulation No 1393/2007, read in the light of recital 12 in the preamble thereto, lay down the requirement that the service of judicial documents be effected using a standard form and that that form be translated into a language understood by the addressee or into the official language of the Member State addressed, or, if there are several official languages in that Member State, into at least one of the official languages of the place where that service is to be effected’.

12 — See to that effect, inter alia, the versions in Spanish ‘[e] organismo receptor informará al destinatario’, Czech ‘[p]říjemající subjekt vyrozumí adresáta’, German ‘[d]ie Empfangsstelle setzt den Empfänger [...] in Kenntnis’, Greek ‘[η] υπηρεσία παραλαβής ενημερώνει τον παραλήπτη’, English ‘[t]he receiving agency shall inform the addressee’, French ‘[l]’entité requise informe’, Irish ‘[c]uirfidh an ghníomhaireacht fála an seolaí ar an eolas’, Italian ‘[l]’organo ricevente informa il destinatario’, Dutch ‘[d]e ontvangende instantie stelt degene voor wie het stuk is bestemd [...] in kennis’, Portuguese ‘[a] entidade requerida avisa o destinatário’, Slovak ‘[p]rijímajúci orgán [...] informuje adresáta’ and Finnish ‘[v]astaanottavan viranomaisen on ilmoitettava vastaanottajalle’.

28. Secondly, the standard form set out in Annex II to Regulation No 1393/2007 and the related obligation to use it constitute an innovation in relation to the earlier regulation, namely, 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.<sup>13</sup> That innovation reflects, in my view, the intention of the EU legislature to improve efficiency and speed<sup>14</sup> in the transmission of judicial and extrajudicial documents between Member States whilst respecting the addressee's rights of defence.<sup>15</sup>

29. Obligatory use of that form is designed to prevent the occurrence of unfortunate situations, such as in the present case, where a one-page document, namely a true copy of the contested order, written only in Greek and therefore not in a language which would (or could) be understood by the respondents or in the official language of the State addressed (English), is included amongst a number of other documents written in Greek, all of which, apart from the contested order, are accompanied by a translation.<sup>16</sup>

30. In my view, receiving agencies do not therefore have any discretion as regards use of the form in question.<sup>17</sup> An independent and uniform interpretation of Regulation No 1393/2007 means, moreover, that the standard form in question must always be attached whenever service of a document is effected.<sup>18</sup> That regulation applies to all the Member States of the European Union,<sup>19</sup> with documents to be served potentially in over 20 languages. Consequently, it seems to me impossible, even from a purely practical point of view, for receiving agencies to determine which documents to serve and whether translations exist in every case.

13 — OJ 2000 L 160, p. 37.

14 — See Article 4(1) of Regulation No 1393/2007, which provides that '[j]udicial documents shall be transmitted directly and as soon as possible'. See *Alder* (C-325/11, EU:C:2012:824, paragraph 34). See, by analogy, *Weiss und Partner* (C-14/07, EU:C:2008:264, paragraph 46) and *Roda Golf & Beach Resort* (C-14/08, EU:C:2009:395, paragraph 54) with regard to Regulation No 1348/2000. As the Commission observes, it 'is clear from recitals 2, 6 and 7 of Regulation No 1393/2007 that its objective is to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States which are to be served in another Member State, whilst ensuring judicial protection for the defendant'.

15 — Regarding the importance of respect for the rights of the defence during the service of documents, see *Weiss und Partner* (C-14/07, EU:C:2008:264, paragraphs 47 and 48).

16 — Moreover, as the Austrian Government observes, the 'fact of attaching the standard form to the document to be served does not delay the service procedure. On the contrary, there [would be] a risk of errors and delays were it necessary to examine whether or not there was an exception. It should be borne in mind that there are a large number of requests for service and each service procedure must therefore be simplified as far as possible'. I agree with the Spanish Government that '[u]se of that form ensures not only that a document is transmitted speedily but also that it is transmitted safely'.

17 — Moreover, where receiving agencies do have discretion Regulation No 1393/2007 makes express provision to that effect. See, for example, Article 7(1) of that regulation, which provides that the transmitting agency is not obliged to effect service of the document by a particular method requested by the transmitting agency if that method is incompatible with the law of the Member State addressed. See also, by analogy, Articles 12 to 15 of Regulation No 1393/2007.

18 — In paragraph 46 of *Leffler* (C-443/03, EU:C:2005:665) the Court held in respect of Regulation No 1348/2000, which preceded Regulation No 1393/2007, that 'the choice of the form of a regulation, rather than that of a directive initially proposed by the Commission, shows the importance which the Community legislature attaches to the direct applicability of the Regulation's provisions and their uniform application'. See also *Weiss und Partner* (C-14/07, EU:C:2008:264, paragraph 60).

19 — Paragraph 3 of Article 1 of Regulation No 1393/2007, which is entitled 'Scope', provides that '[i]n this Regulation, the term "Member State" shall mean the Member States with the exception of Denmark'. However, application of that regulation was extended to include the Kingdom of Denmark under the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, signed at Brussels on 19 October 2005 (JO 2005 L 300, p. 55).

31. In its report of 4 December 2013 to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation No 1393/2007<sup>20</sup> ('the report') the Commission mentions the need to use the standard form set out in Annex II to that regulation in cases where the document to be served is in the language of the Member State addressed and where, therefore, the addressee cannot validly refuse service under Article 8(1)(b) of that regulation. The report states that attaching the standard form in such circumstances might mislead the addressees into thinking that they do have the right to refuse.

32. However, I consider that the standard form set out in Annex II to Regulation No 1393/2007 contains very clear guidance for the addressee of the document to be served and that its precise wording is not likely to mislead. That form expressly provides that the addressee may 'refuse to accept the document *if* it is not written in or accompanied by a translation into either a language which he understands or the official language or one of the official languages of the place of service'.<sup>21</sup> The right to refuse is not therefore linked in any way to the presence of the standard form in question.<sup>22</sup>

33. In the light of those considerations, I consider that Article 8 of Regulation No 1393/2007 must be interpreted as meaning that use of the standard form set out in Annex II to that regulation when effecting service on the addressee of the document to be served is required in all cases without exception, irrespective both of the language in which the document to be served is written and whether or not it is accompanied by a translation into a language understood by the addressee or into the official language of the Member State addressed or, if there are several official languages in that Member State, into the official language or one of the official languages of the place where service is to be effected.

#### B – *Second and third questions*

34. In its second and third questions, raised in case the first question is answered in the way I suggest, the referring court asks the Court, first, whether failure to use the form constitutes a reason why service of the document to be served is invalid and, secondly, how that failure may be remedied.

35. Regulation No 1393/2007 says nothing about the legal consequences which flow from failure to use the standard form set out in Annex II to that regulation. *A fortiori*, it does not provide that such failure constitutes a reason why service of the document to be served is invalid.<sup>23</sup> Since Regulation No 1348/2000 is silent concerning the consequences of service in a language other than one of those it provides for in the same way as Regulation No 1393/2007 is silent concerning failure to use the standard form, the case-law relating to the former of those two regulations contains valuable information in that regard.

20 — COM(2013) 858 final. In that report the Commission assesses the application of Regulation No 1393/2007 during the period from 2008 to 2012. Article 24 of that regulation provides that no later than 1 June 2011, and every five years thereafter, the Commission must assess the application of the regulation and, if need be, propose adaptations. The Commission states in the report that it launched a study in 2011 in order to collect data and assess the application of Regulation No 1393/2007. The matter was also discussed at meetings of the European Judicial Network in Civil and Commercial Matters, and the Commission states that it took into account citizens' letters, complaints and petitions, and preliminary rulings by the European Court of Justice concerning that regulation.

21 — Emphasis added.

22 — See point 26 of this Opinion.

23 — See, by analogy, judgment in *Leffler* (C-443/03, EU:C:2005:665, paragraphs 37 and 39).



36. In paragraph 51 of *Leffler* (C-443/03, EU:C:2005:665) the Court held that, since Regulation No 1348/2000 (which Regulation No 1393/2007 replaced) did not prescribe the consequences of certain facts, it was for the national court to apply, in principle, its national law while taking care to ensure the full effectiveness of EU law. The Court added that the regulation's silence might 'lead [the national court] to refrain from applying, if need be, a national rule preventing that or to interpret a national rule which has been drawn up with only a purely domestic situation in mind in order to apply it to the cross-border situation at issue'.<sup>24</sup>

37. Moreover, in paragraph 65 of the same judgment, the Court held that, in order to uphold the effectiveness of the regulation, it was important for the national court to ensure that the rights of the various parties to the case are accorded maximum, and balanced, protection.<sup>25</sup>

38. As regards the rights of the addressees of a document to be served, it is apparent from settled case-law that the objectives of efficiency and speed set out in Regulation No 1393/2007 cannot be attained by undermining in any way the rights of defence of those addressees, which derive from the right to a fair hearing guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union,<sup>26</sup> which means inter alia that they must have 'sufficient time to prepare [their] defence'.<sup>27</sup>

39. As regards the rights of the serving party and the objectives of efficiency and speed set out in Regulation No 1393/2007, I consider that they should not be compromised for purely formal reasons that would not affect the rights of defence of the addressees.

40. That would be the case if failure to use the standard form in question led to service of a document being invalid where it could be proved, for example, that the addressee of that document understands the language in which it is written or the document is written in the official language of the State addressed. In paragraph 52 of *Leffler* (C-443/03, EU:C:2005:665), the Court speaks, with regard to comparable situations, of 'a refusal ... which purely seeks to delay matters and manifestly constitutes an abuse'.<sup>28</sup>

41. Consequently, in the event of failure to attach the standard form set out in Annex II to Regulation No 1393/2007 to the document to be served, it is for the national court<sup>29</sup> to determine whether that document was written in a language understood by the addressee or an official language of the State addressed.<sup>30</sup>

42. As was noted in point 9 above, the respondents stated that in each of the seven cases in the main proceedings certain documents and translations which ought to have been served on them had not been served.

24 — See also, to that effect, judgments in *Simmenthal* (106/77, EU:C:1978:49, paragraph 16); *Factortame and Others* (C-213/89, EU:C:1990:257, paragraph 19); *Courage and Crehan* (C-453/99, EU:C:2001:465, paragraph 25); and *Muñoz and Superior Fruticola* (C-253/00, EU:C:2002:497, paragraph 28). Moreover, in paragraph 39 of *Leffler* (C-443/03, EU:C:2005:665) the Court adds that 'several of [the regulation's] provisions suggest that the lack of translation may be remedied'. I note that although the earlier regulation required a translation it made no mention of a form.

25 — See also the judgments in *Leffler* (C-443/03, EU:C:2005:665, paragraph 52) and *Weiss und Partner* (C-14/07, EU:C:2008:264, paragraph 76).

26 — See to that effect *Weiss und Partner* (C-14/07, EU:C:2008:264, paragraph 47) and *Alder* (C-325/11, EU:C:2012:824, paragraph 35).

27 — See paragraph 52 of *Leffler* (C-443/03, EU:C:2005:665).

28 — It is clear from the wording of Article 8(1) of Regulation No 1393/2007 that the addressee of the document to be served has the right to refuse to accept the document only if it is not written in or accompanied by a translation into one of the languages provided for. See also recital 10 in the preamble to Regulation No 1393/2007, which states that in order to 'secure the effectiveness of [that] Regulation, the possibility of refusing service of documents should be confined to exceptional situations'.

29 — See, by analogy, Article 19 of Regulation No 1393/2007.

30 — In the present case, English.

43. It remains for me to consider the term ‘document to be served’, which Regulation No 1393/2007 does not define, nor does it make any reference to annexes, the number and nature of which vary considerably according to the national legal system concerned.<sup>31</sup>

44. In paragraph 73 of *Weiss und Partner* (C-14/07, EU:C:2008:264) the Court held that where the document to be served is, as in the cases in the main proceedings, a document instituting the proceedings, the document or documents to be served must enable the addressee to assert his rights in legal proceedings in the State of transmission, to identify with a degree of certainty at the very least the subject-matter of the claim and the cause of action as well as the summons to appear before the court.<sup>32</sup> The Court goes on to state that ‘documents which have a purely evidential function and are not necessary for the purpose of understanding the subject-matter of the claim and the cause of action do not form an integral part of the document instituting the proceedings’.

45. At first sight and subject to verification by the referring court, service on the respondents of a true copy of the document instituting the proceedings, both in Greek and in English, enabled them to identify with a degree of certainty the subject-matter of the claim and the cause of action in the cases in the main proceedings.

46. However, as regards the summons to enter an appearance before a court, it appears that there was a significant difference between the time-limits set in the document instituting the proceedings and the contested order<sup>33</sup> in the cases in the main proceedings. For example, so far as Mr Si is concerned, the time-limit set in the document instituting the proceeding appears to have been 10 days, whilst the time-limit set in the contested order — which was served only in Greek — appears to have been 60 days, which the respondents claim was misleading. However, it was not disputed at the hearing and it is clear from the documents lodged at the Court (which it is for the referring court to confirm) that, in each of the cases in the main proceedings, the time-limit set in the contested order is the same as that set in the attached notice.<sup>34</sup> That ‘notice’ was served on the respondents both in Greek and in English.

47. If, contrary to the evidence contained in points 45 and 46 above, the referring court were to find (quod non?) that the failure to use the standard form set out in Annex II to Regulation No 1393/2007 and the absence of a translation of the contested order, or the uncertainty regarding the time-limits for entering an appearance did indeed infringe the respondents’ rights of defence, that situation should be remedied as soon as possible,<sup>35</sup> by sending the standard form and the missing translation in accordance with the rules for the service of documents laid down by Regulation No 1393/2007,<sup>36</sup> which would confirm automatically the time-limit for entering an appearance contained in the contested order.

31 — See, to that effect, *Weiss und Partner* (C-14/07, EU:C:2008:264, paragraphs 41 to 45).

32 — ‘[I]t can take a long time to translate supporting documents and, in any event, such translation is not necessary for the purposes of the action which will take place before the court of the Member State of transmission and in the language of that State’ (see paragraph 74 of *Weiss und Partner* (C-14/07, EU:C:2008:264). The objectives of Regulation No 1393/2007 to improve and expedite the transmission of documents would be undermined if a translation of ‘secondary’ documents was required.

33 — It should be noted that service of the contested order to the respondents is provided for under Cyprus law.

34 — Therefore, the contested order and the notice attached to the document instituting the proceedings set a time-limit for entering an appearance of 60 days in the case of Mr Si.

35 — See, to that effect, *Leffler* (C-443/03, EU:C:2005:665, paragraph 64).

36 — See, to that effect, *Leffler* (C-443/03, EU:C:2005:665, paragraph 63). See, by analogy, Article 8(3) of Regulation No 1393/2007.

48. In that regard, I concur with the observations of the Spanish Government that it is appropriate to revert, so far as possible, to the situation existing prior to the irregularity.<sup>37</sup> None of the possible failures at issue can be remedied by effecting service of the document to be served and the standard form at issue on the respondents' lawyer. Service in that way would not comply with the rules laid down by Regulation No 1393/2007.<sup>38</sup>

49. In my view, to find otherwise would jeopardise the independent and uniform interpretation and application of Regulation No 1393/2007.<sup>39</sup>

50. In the light of the foregoing, I consider that failure to use the standard form set out in Annex II to Regulation No 1393/2007 when effecting service of a document instituting proceedings does not constitute a ground of invalidity of such service if the addressee of the document is enabled to assert his rights in legal proceedings in the State of transmission. Failures which infringe the rights of defence of the addressee of the document to be served must be remedied as soon as possible in accordance with the rules for the service of documents laid down by Regulation No 1393/2007.

## VI – Conclusion

51. In the light of all the above considerations, I propose that the Court should answer the questions referred by the Anotato Dikastirio Kyprou as follows:

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, must be interpreted as meaning that use of the standard form set out in Annex II to that regulation when effecting service on the addressee of the document to be served is required in all cases without exception, irrespective both of the language in which the document to be served is written and whether or not it is accompanied by a translation into a language understood by the addressee or into the official language of the Member State addressed or, if there are several official languages in that Member State, into the official language or one of the official languages of the place where service is to be effected.

Failure to use the standard form set out in Annex II to Regulation No 1393/2007 when effecting service of a document instituting proceedings does not constitute a ground of invalidity of such service if the addressee of the document is enabled to assert his rights in legal proceedings in the State of transmission. Failures which infringe the rights of defence of the addressee of the document to be served must be remedied as soon as possible in accordance with the rules for the service of documents laid down by Regulation No 1393/2007.

37 — I note in that regard that at the time the judicial documents at issue in the main proceedings were served the respondents were residing abroad. Given that the latter had not at that time appointed an authorised representative in the Member State where the judicial proceedings are taking place, namely Cyprus, service of those documents necessarily fell, and still falls, within the scope of Regulation No 1393/2007, as provided for by Article 1(1) thereof. See, by analogy, *Alder* (C-325/11, EU:C:2012:824, paragraphs 24 and 25).

38 — *Alder* (C-325/11, EU:C:2012:824, paragraphs 29 to 32). The means of transmission within Member States of judicial documents in civil or commercial matters are laid down in an exhaustive manner in the scheme established by Regulation No 1393/2007.

39 — See, also, recital 8 in the preamble to Regulation No 1393/2007, which states that that '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'.