



## Reports of Cases

ORDER OF THE COURT (Tenth Chamber)

28 April 2016 \*

(Reference for a preliminary ruling — Cooperation in civil and commercial matters — Service of judicial and extrajudicial documents — Regulation (CE) No 1393/2007 — Article 8 — Failure to provide a translation of the document — Refusal to accept a document — Linguistic knowledge of the addressee of the document — Review by the judge hearing the matter in the Member State of origin)

In Case C-384/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia No 44 de Barcelona (Court of First Instance No 44, Barcelona, Spain), made by decision of 22 May 2014, received at the Court on 11 August 2014, in the proceedings

**Alta Realitat S.L.**

v

**Erlock Film ApS,**

**Ulrich Thomsen,**

THE COURT (Tenth Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Erlock Film ApS and Mr Thomsen, by K. Dyekjær and H. Puggaard, advokater,
- the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the German Government, by T. Henze and B. Beutler, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,

\* Language of the case: Spanish.

— the European Commission, by A.-M. Rouchaud-Joët and S. Pardo Quintillán, acting as Agents,

having regard to the decision taken, after hearing the Advocate General, to give a decision on the action by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

### Order

- 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 proceedings between Alta Realitat S.L. ('Alta Realitat'), on the one hand, and Erlock Film ApS and Mr Thomsen, on the other, concerning the termination of a contract for the provision of services.

### Legal context

#### *EU law*

Regulation No 1393/2007

- 3 Recitals 2, 7 and 10 to 12 of 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.

...

(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.

...

(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 Regulation No 1393/2007, which defines the scope of that regulation, 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. ...'

5 In accordance with Article 1(3) of that regulation, 'in this Regulation, the term "Member State" shall mean the Member States with the exception of Denmark'.

6 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.

7 Article 4 of the regulation states:

'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. ...

...'

8 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 ...'

9 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.

10 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. ...'

11 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 ...

...'

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

'Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given [in the Member State of transmission] until it is established that:

- (a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.'

- 14 The standard form, entitled ‘Information to the Addressee about the Right to Refuse to Accept a Document’, as set out in Annex II to Regulation No 1393/2007, contains the following statement for the attention of the addressee of the document:

‘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 send it back to the address indicated below within one week stating that you refuse to accept it.’

- 15 That standard form also contains a ‘declaration of the addressee’ which the addressee is asked to sign in the event that he refuses to accept the document concerned, and it is worded as follows:

‘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.’

- 16 Finally, that standard form states that, in the same situation, the addressee must indicate the language or languages which he understands from among the official languages of the European Union.

- 17 By virtue of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, concluded in Brussels on 19 October 2005 (OJ 2005 L 300, p. 55), 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) is to apply, under international law, to relations between the European Union and the Kingdom of Denmark.

- 18 Article 3 of that agreement provides the following:

‘ ...

2. Whenever amendments to ... Regulation [No 1348/2000] are adopted Denmark shall notify the Commission of its decision whether or not to implement the content of such amendments. ...

...

6. A Danish notification that the content of the amendments has been implemented in Denmark ... creates mutual obligations under international law between Denmark and the Community. The amendments to the Regulation shall then constitute amendments to this Agreement and shall be considered annexed hereto.

...’

- 19 After Regulation No 1348/2000 was repealed by Regulation No 1393/2007, the Kingdom of Denmark notified the Commission of its decision to apply the content of the latter regulation (OJ 2008 L 331, p. 21).

Regulation (EC) No 44/2001

- 20 Article 34(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) provides that a judgment given by a court of a Member State is not to be recognised in another Member State ‘where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so’.
- 21 Regulation No 44/2001 applies to relations between the European Union and the Kingdom of Denmark by virtue of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, concluded in Brussels on 19 October 2005 (OJ 2005 L 299, p. 62).

*Spanish law*

- 22 Under Article 11 of the Basic Law on the Judiciary (Ley Orgánica del Poder Judicial):
- ‘1. The rules relating to good faith shall be observed in every type of procedure. Evidence obtained, directly or indirectly, in breach of fundamental rights and freedoms is inadmissible.
2. The courts shall reject by way of a reasoned decision claims, proceedings or complaints brought as a clear abuse of rights or in circumvention of the law or procedure.
3. The Courts shall, in accordance with the principle of effective protection laid down in Article 24 of the Constitution, rule on actions brought before them and may dismiss them on procedural grounds only where the defect vitiating those actions is irreparable or cannot be corrected using legal procedures.’
- 23 Article 161(2) of the Code of Civil Procedure (Ley de Enjuiciamiento Civil) provides:
- ‘Where the addressee of the notification is at his place of residence and refuses to accept the copy or notice of the decision and refuses to sign the acknowledgement of receipt, the official process server or, as appropriate, his legal representative, shall notify the addressee that the copy or notice of the decision remains available to him at the court office, and in that way service shall be effected. The above steps shall be recorded in the statement of service.’
- 24 Article 247 of the Code states:
- ‘1. All parties to proceedings of any kind shall comply with the rules relating to good faith in all their actions.
2. The courts shall reject, by way of a reasoned decision, claims and proceedings brought as a clear abuse of rights or in circumvention of the law or procedure.
3. If the courts find that a party has acted in breach of the rules relating to procedural good faith, they may impose on him, by means of a separate instrument which is reasoned and which complies with the principle of proportionality, a fine of between EUR 180 and EUR 6 000, but which may never exceed one third of the value of the dispute.

In determining the amount of the fine, the courts shall have regard to the circumstances of the act in question and the harm which it may have caused to the proceedings or to the other party.’

25 Article 496(1) of the Code states:

‘The “Secretario judicial” shall enter a judgment in default against a defendant who does not enter an appearance on the date or within the time limit set out in the summons, except in those situations provided for in this Code where judgment in default is to be entered by the court.’

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

26 It is clear from the order for referral that Alta Realitat, a company under Spanish law, brought an action before the Juzgado de Primera Instancia No 44 de Barcelona (Court of First Instance No 44, Barcelona) seeking termination of a contract which it had concluded on 13 February 2008 with Erlock Film ApS, a company governed by Danish law, and with Mr Thomsen, who resides in Denmark.

27 That contract concerned the making of a film in which Mr Thomsen was to have a role and which was to be shot in English.

28 In support of its claim for termination of the contract, Alta Realitat alleges that Mr Thomsen did not comply with his commitments and left the production with no good cause.

29 Alta Realitat also seeks an order requiring Mr Thomsen to repay the sum of EUR 30 000 paid to him in advance, to pay damages for losses sustained as a result of the breach of that contract and to pay the costs of the proceedings.

30 After declaring Alta Realitat’s application admissible, the court seised gave Mr Thomsen notice of that decision at his residential address in Denmark.

31 Mr Thomsen then exercised his right under Article 8(1) of Regulation No 1393/2007 to refuse to accept the application, together with the annexes, on the ground that he did not understand English, the language which those documents were drafted in.

32 The Juzgado de Primera Instancia No 44 de Barcelona (Court of First Instance No 44, Barcelona), however, considered that that refusal was unjustified and that the defendant in the main proceedings had been properly served with the application. Next, that court, by judgment of 19 January 2010 given in default, allowed Alta Realitat’s claims. Since no appeal was brought against that judgment, it became final.

33 In 2012, the Danish courts, at first instance and on appeal, refused to recognise that judgment in Denmark on the basis of Article 34(2) of Regulation No 44/2001.

34 By order of 16 December 2013, the Juzgado de Primera Instancia No 44 de Barcelona (Court of First Instance No 44, Barcelona) then set aside the proceedings from the date of service of the application in the main proceedings on Mr Thomsen.

35 In that order, the court nevertheless found that service had been effected in accordance with the provisions of Regulation No 1393/2007, after observing that it was apparent from the information on the court file that Mr Thomsen did understand English. That court noted that the contract at issue in the main proceedings and various documents attributed to Mr Thomsen and annexed to the application were drafted in English, that he stated in his profile on an internet cinematic database that he can speak English fluently and that a blog which he is the author of was also drafted in English. The court seised added that DVDs in which there appeared a person, identified as being Mr Thomsen and speaking in English, were included in the court file. Therefore, according to that court, there was no objective justification for Mr Thomsen’s refusal to accept the application in English, since such a refusal, on the contrary, amounted to circumvention of the procedural rules under Spanish law.

36 Accordingly, the court seised ordered that the application be served again without an accompanying translation.

37 In addition, it decided to apply Article 161(2) of the Code of Civil Procedure which provides that, where a defendant refuses to accept the documents served on him, they are to be deemed as having been validly served where the court finds that the refusal was not objectively justified.

38 That subsequent service could not be effected, since Mr Thomsen refused to accept the application drafted in English on the ground that he understood only the Danish language.

39 In its order for reference, the Juzgado de Primera Instancia No 44 de Barcelona (Court of First Instance No 44, Barcelona) asks whether it is compatible with Regulation No 1393/2007 for the national court to assess whether the defendant understands a given language by relying on evidence at its disposal in that respect and, thus, to decide to serve him with both the document instituting the proceedings and the annexes drafted only in that language.

40 The referring court states that such a question concerns the functioning of the internal market and the proper conduct of judicial proceedings, and adds that those proceedings would be accelerated if, where the circumstances allow, certain documents did not have to be translated into languages for which finding translators is difficult and expensive, particularly where the court was able, as in the present case, to satisfy itself that the party concerned understands the language in question and that that language is widely used. In that regard, the national court observes that the film in which Mr Thomsen was due to play a role was to be shot in English, the language in which the application brought by Alta Realitat was drafted.

41 The referring court states that Regulation No 1393/2007 is silent in that regard as to the scope of the powers of assessment of the court seised.

42 In addition, it considers it necessary to determine whether national legislation such as Article 161(2) of the Code of Civil Procedure is compatible with EU law.

43 In those circumstances, the Juzgado de Primera Instancia No 44 de Barcelona (Court of First Instance No 44, Barcelona) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 8(1) of Regulation No 1393/2007 be interpreted to the effect that the national court hearing the action may determine, on the basis of all the information in the court file at its disposal, whether an addressee understands a particular language?’

If Question 1 is to be answered in the affirmative:

(2) Must Article 8(1) of Regulation No 1393/2007 be interpreted to the effect that, where the national court hearing the action has determined, on the basis of all the information in the court file at its disposal, that the addressee does understand a particular language, the person effecting service in such a situation does not have to offer the addressee the option of refusing the document?’

(3) Must Article 8(1) of Regulation No 1393/2007 be interpreted to the effect that, if the addressee of a notice refuses a document drafted in a certain language, following a declaration from the court hearing the action that that person has a sufficient level of understanding of that language, the refusal of the document is not justified, and the court hearing the action may apply the consequences provided for in the legislation of the State of transmission to this type of unjustified refusal of a document and, if the procedural rules of the State of transmission so provide, treat the document as having been served on the addressee?’



### Consideration of the questions referred

- 44 Pursuant to Article 99 of its Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, give its decision by reasoned order.
- 45 That provision must be applied in the present case.
- 46 By its three questions, which it is appropriate to examine together, the referring court asks, in essence, which rules a national court, seised in the Member State of transmission, is required to comply with under Regulation No 1393/2007 where it decides to have a document instituting proceedings served on its addressee residing in the territory of another Member State, in a language other than the language which he understands or is deemed to understand, for the purposes of Article 8(1) of Regulation No 1393/2007.
- 47 In that regard, it must be observed at the outset that the Court has already held that Regulation No 1393/2007, which was adopted on the basis of Article 61(c) EC, seeks, as is apparent from recital 2 thereof, 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 29 and the case law cited).
- 48 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, which has the effect of simplifying and accelerating the procedures. Those objectives are recalled in recitals 6 to 8 of that regulation (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 30 and the case-law cited).
- 49 However, 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 31 and the case-law cited).
- 50 It is therefore 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 32 and the case-law cited).
- 51 With this in mind, it is thus 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 33 and the case-law cited).
- 52 For the purposes of achieving those objectives, Regulation No 1393/2007 has put in place a system by which the transmission of documents is effected, as a rule, between the ‘transmitting agencies’ and the ‘receiving agencies’ designated by the Member States. 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 (see, to that effect, judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 34 and the case-law cited).

- 53 In accordance with Article 5(1) of Regulation No 1393/2007, it is for the transmitting agency to inform the applicant that the addressee may refuse to accept the document if it is not in one of the languages provided for in Article 8 of that regulation. Under Article 5(2) of that regulation, it is generally the applicant who must bear the costs of translation prior to the transmission of the document (see, to that effect, judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 35).
- 54 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 he 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 deemed to understand. Where the addressee in fact refuses to accept the document, 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 36).
- 55 The role of the transmitting agency and that of the receiving agency, for the purposes of applying Regulation No 1393/2007, are thus limited to ensuring, in practical terms, the transmission and service of the document concerned and to taking steps to facilitate those operations. On the other hand, those agencies do not have any power 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 indicated in Article 8(1) of Regulation No 1393/2007, nor is it for them to assess whether the refusal of the addressee of the document is justified or not (see, to that effect, judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 37).
- 56 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, where they are disputed by the applicant and the defendant (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 41).
- 57 More specifically, 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. 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 and, secondly, decide whether, in view of the nature of the document at issue, a translation of it is required (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 42 and the case-law cited).
- 58 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 (see judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 43).
- 59 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 and that it does not contain any exceptions to the use of those forms. On the contrary, as is apparent from recital 11 of 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 of that regulation, they contribute to simplifying and making more transparent the transmission of documents, thereby guaranteeing both their legibility and the security of their transmission (see judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 44 to 46).

60 In addition, those forms constitute, as is stated in recital 12 of that regulation, instruments by means of which addressees are informed of their ability to refuse to accept the document to be served (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 47).

61 With regard to 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, the Court has already pointed out that, as is apparent from the very wording 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 (see, to that effect, judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 49).

62 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 that regulation, 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 50).

63 In that regard, the standard form in Annex II to Regulation No 1393/2007 is one of the salient innovations introduced by that regulation, specifically in order to improve the transmission of documents and provide the addressee of those documents with greater protection, given that that form makes it possible for the addressee of a document, in a situation where he refuses to accept it because it is not drafted in or accompanied by a translation in a language which he understands or in the official language or one of the official languages of the place of service, to indicate the language or languages which he understands.

64 The Court has explained in that context that Article 8(1) of Regulation No 1393/2007 contains two statements, admittedly 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 which he is deemed to understand and, secondly, the formal information about the existence of that right brought to his knowledge by the receiving agency. In other words, 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. 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 51 and 52).

65 In those circumstances, 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. As is apparent from paragraph 57 of the present order, 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 53).

- 66 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. Therefore, the receiving agency, where it serves 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; that obligation does not create particular difficulties for the receiving agency, given that it suffices that that agency encloses 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 (see, to that effect, judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 54 to 56).
- 67 Therefore, the above interpretation is such as both 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, without creating any delay in the service of that document, but, on the contrary, contributing to simplifying and facilitating that service (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 57).
- 68 The Court concluded from this that the receiving agency is required, in all circumstances and without 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 (judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 58).
- 69 It is clear from the above considerations, in the first place, that, in a case such as that at issue in the main proceedings where the document to be served is not drafted in or accompanied by a translation in one of the languages referred to in Article 8(1) of Regulation No 1393/2007, that is to say, either a language understood by the addressee, or the official language of the Member State addressed, or, as the case may be, one of the official languages of the place where service is to be effected — languages which the party concerned is deemed to understand — the receiving agency's obligation to inform the addressee, through the standard form in Annex II to that regulation, of his right to refuse to accept the document must always be respected (see paragraphs 59 and 68 above).
- 70 That is the case irrespective of whether the addressee has or has not refused to accept the document. In that regard, it must be pointed out that, in the judgment in *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603), the Court concluded that use of that standard form was mandatory in a case in which the addressee of a document had effectively exercised his right to refuse the document, even where he had received no prior notice regarding the existence of that right.
- 71 Thus, in a situation where the receiving entity called upon to effect service of the document in question on its addressee has not attached the standard form in Annex II to Regulation No 1393/2007, that omission must be remedied in accordance with the provisions laid down by that regulation (see, to that effect, judgment in *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 59 to 76).
- 72 Therefore, it is for the court seised in the transmitting Member State to ensure that those rules are complied with.
- 73 In the second place, it must be stated that the right to refuse to accept service of a document, which is expressly provided for in Article 8(1) of Regulation No 1393/2007, stems from the need, recalled in paragraphs 49 and 50 above, to protect the rights of the defence of the addressee of that document, in accordance with the requirements of a fair hearing.
- 74 It follows that neither the national transmitting authorities, nor the court seised in the transmitting Member State may in any way prevent the exercise of such a right by the party concerned.

- 75 More specifically, if, before initiating the procedure for serving the document, the court hearing the matter is required to conduct a preliminary interim assessment of the addressee's linguistic knowledge for the purposes of determining, with the applicant's agreement, whether or not a translation of the document is necessary, the decision not to prepare such a translation does not in any way affect either the addressee's right to refuse to accept the document or the exercise of that right. In other words, even though that court is already satisfied at that stage that the addressee understands the language in which the document is drafted and that a translation is therefore not necessary, it cannot infer from that that the addressee may not validly challenge the service procedure, and thus prevent him from exercising his right to refuse to accept that document under Article 8(1) of Regulation No 1393/2007, otherwise his rights of defence would be affected.
- 76 On the other hand, once the addressee has exercised that right, the court seised may validly make a ruling on the merits of that refusal.
- 77 To that end, as was stated in paragraph 57 above, that same court must give proper consideration to all the relevant information on the court file in order to determine whether the addressee who refused to accept the document was, nevertheless, able to understand it and to exercise his rights effectively, or whether, having regard to the nature of that document, a translation is required.
- 78 It is essential, on the one hand, that, in order for the addressee to be able to exercise his right to defend himself effectively, the document concerned is drafted in a language he understands, which ensures that the party concerned will be in a position to identify, in good time, 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 or, as the case may be, to be aware that it is possible to appeal (see, to that effect, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraphs 64 and 73). On the other hand, the applicant must not suffer the adverse consequences of a refusal to accept an untranslated document which purely seeks to delay matters and manifestly constitutes an abuse, where it is established that the addressee of that document understands the language in which it is written (judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 52).
- 79 It is therefore for the court before which the action is pending in the Member State of origin to preserve the interests of each party as well as possible, in particular by examining all the conclusive facts and evidence specifically demonstrating the linguistic knowledge of the addressee, without relying, in that regard, on any presumption (see, to that effect, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 85).
- 80 In the event that, after that examination, the court seised should conclude that the addressee's refusal to accept the document to be served is well founded, since that document was written in a language which does not satisfy the requirements of Article 8(1) of Regulation No 1393/2007, it is clear from Article 8(3) of that regulation that the document, together with a translation in one of the languages referred to in Article 8(1), should then be served on the addressee.
- 81 On the other hand, in a converse situation, nothing in principle precludes that court from applying the consequences, under its national procedural law, of the addressee unjustifiably refusing to receive the document, provided that the court ensures the full effectiveness of that regulation, in compliance with its objective (see, to that effect, judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 69).
- 82 Regulation No 1393/2007 itself does not make provision for the inferences which must be drawn from an unjustified refusal to receive a document.
- 83 As is apparent from settled case-law of the Court, in the absence of provisions of EU law, it is for the domestic legal system of each Member State to determine the detailed procedural rules governing actions at law intended to safeguard the rights which individuals derive from the direct effect of EU law (judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 49).

- 84 Those rules cannot, however, be less favourable than those governing rights which originate in domestic law (principle of equivalence) and they cannot render in practice impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 50).
- 85 In that regard, the principle of effectiveness must lead the national court to apply the detailed procedural rules laid down by domestic law only in so far as they do not compromise the *raison d'être*, the objective and the full effectiveness of Regulation No 1393/2007 (see judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraphs 50 and 51).
- 86 In a case such as that at issue in the main proceedings, where the defendant does not enter an appearance, Regulation No 1393/2007 requires, as is clear specifically from Article 19(1), a guarantee that the party concerned actually and effectively received the document instituting the proceedings (see, to that effect, judgment in *Alder*, C-325/11, EU:C:2012:824, paragraphs 36 and 41), enabling him to be aware of the judicial proceedings brought against him and to identify the subject matter of the claim and the cause of action (see, to that effect, judgment in *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraphs 73 and 75), and that he has had sufficient time to defend himself (see, to that effect, judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 52). Furthermore, such an obligation is consistent with the requirements of Article 34(2) of Regulation No 44/2001 (see, to that effect, judgments in *Leffler*, C-443/03, EU:C:2005:665, paragraph 68, and *Weiss und Partner*, C-14/07, EU:C:2008:264, paragraph 51).
- 87 In any event, as is apparent from the above reasons, Regulation No 1393/2007 authorises the application of national legislation, such as that described in paragraph 37 above, only after the steps laid down in that regulation have been completed, that is to say, the provision of information to the addressee, through the standard form in Annex II to that regulation, that he has the right to refuse to accept the document to be served and, in the case of a refusal, the adoption of a judicial decision that has become final, declaring that refusal to be unjustified.
- 88 It falls, therefore, to the referring court to assess whether the detailed rules concerning the application of the national provision at issue in the main proceedings comply with the requirements and objectives of Regulation No 1393/2007.
- 89 In the light of all the foregoing considerations, the answer to the three questions referred is that Regulation No 1393/2007 must be interpreted to the effect that, when serving a document on its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official language of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected:
- the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that regulation, of his right to refuse to accept that document;
  - where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that regulation;
  - it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document;

- it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and
- where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation No 1393/2007 is preserved.

### Costs

- <sup>90</sup> 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 (Tenth Chamber) hereby orders:

**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 to the effect that, when serving a document on its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official language of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected:**

- the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that regulation, of his right to refuse to accept that document;
- where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that regulation;
- it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document;
- it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and
- where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation No 1393/2007 is preserved.

[Signatures]