



## Reports of Cases

**Case C-354/15**

**Andrew Marcus Henderson**

**v**

**Novo Banco SA**

(Request for a preliminary ruling from the Tribunal da Relação de Évora)

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Service of judicial and extrajudicial documents — Regulation (EC) No 1393/2007 — Articles 8, 14 and 19 — Postal service of a document instituting the proceedings — No translation of the document — Annex II — Standard form — None — Consequences — Service by registered letter with acknowledgement of receipt — Failure to return acknowledgement of receipt — Receipt of document by a third party — Conditions of validity of the proceedings)

Summary — Judgment of the Court (Tenth Chamber), 2 March 2017

1. *Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Refusal to accept a document — Rules relating to transmission of judicial documents between the transmitting and receiving agencies designated by the Member States — Applicability to the methods of service of judicial documents referred to in Section 2 of Chapter II of that regulation*

*(European Parliament and Council Regulation No 1393/2007, Chapter II, Section 1, Art. 8(4), and Section 2, Art. 14 and Annex II)*

2. *Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Service without informing the addressee of a document of his right to refuse to accept that document using the standard form set out in Annex II resulting in the invalidity of that service — Unlawful — Requirement that invalidity be invoked within a specified period or at the beginning of the proceedings and before any defence on the merits — Irrelevant — Obligation to rectify that omission by communicating that form*

*(European Parliament and Council Regulation No 1393/2007, Annex II)*

3. *Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Service by postal services — Registered letter with acknowledgement of receipt or equivalent — Concept of equivalent transmission*

*(European Parliament and Council Regulation No 1393/2007, Art. 14)*

4. *Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Defendant not entering an appearance — Document actually delivered to the defendant or to his residence — Concept of residence*

*(European Parliament and Council Regulation No 1393/2007, Art. 19)*

5. *Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Service by postal services — Lawfulness — Replacement of the acknowledgment of receipt of the registered letter containing the document to be served by another document — Irrelevant — Conditions — Document to be served not delivered to the addressee thereof in person — Irrelevant — Conditions*

*(European Parliament and Council Regulation No 1393/2007, Art. 14)*

1. Although the cases giving rise to the judgment of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603) and to the order of 28 April 2016, *Alta Realitat* (C-384/14, EU:C:2016:316) concerned a procedure for service of a document under Section 1 of Chapter II of Regulation No 1393/2007, relating to transmission of the document between the transmitting and receiving agencies designated by the Member States, the fact remains that, as is clear from the wording of Article 8(4) of that regulation, those rules apply for the means of service of judicial documents referred to in Section 2 of that chapter.

Accordingly, on the one hand, the mandatory nature and systematic use of the standard form set out in Annex II to Regulation No 1393/2007 applies to the methods of service referred to in Section 2 of Chapter II of that regulation and, on the other, failure to comply with that obligation does not render invalid either the document to be served or the procedure for service. This is the case, in particular, where, as in the main proceedings, service is effected by the postal services under Article 14 of that regulation, set out in Section 2 of Chapter II thereof.

(see paras 59-61)

2. 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 precluding national legislation, such as that at issue in the main proceedings, according to which, in the event that a judicial document, served on a defendant residing in the territory of another Member State, has not been drafted or accompanied by a translation either in a language which that defendant understands, or in the official language of the requested Member State or, where 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, the omission of the standard form set out in Annex II to that regulation renders such service invalid, even if such invalidity must be invoked by that defendant within a specified period or at the beginning of the proceedings and before any defence on the merits.

That regulation requires, on the contrary, that such an omission be corrected in accordance with the provisions laid down therein, by means of communication to the person concerned of the standard form set out in Annex II to that regulation.

(see paras 67, 68, operative part 1)

3. However, as is clear from the wording of Article 14 of Regulation No 1393/2007, postal service does not necessarily have to be effected by registered letter with acknowledgment of receipt. That provision provides that such service may also be effected by means of transmission 'equivalent' to a registered letter with acknowledgment of receipt. In order to determine the meaning and scope of the term

‘equivalent’ within the meaning of Article 14, it must be stated that it follows from the purpose of that provision, as described in paragraphs 75 to 77 above, that an ‘equivalent’ transmission may be described as any means of service of a judicial document, and proof thereof, which provides guarantees comparable to those of transmission by registered letter with acknowledgment of receipt.

More specifically, the alternative means of transmission of the document must have the same level of certainty and reliability as a registered letter with acknowledgment of receipt with regard to both the receipt of the document by its addressee and the circumstances in which it was received. In the interests of expeditious judicial proceedings, it is necessary to ensure, as far as possible, that the addressee actually receives the document to be served and that such receipt can be reliably established by the sender.

(see paras 78-82)

4. As the Advocate General pointed out in point 36 of his Opinion, the question whether the document instituting the proceedings was served in such a way as to ensure that the defendant was actually aware of those proceedings is therefore decisive when determining whether the subsequent judicial decision can be regarded as enforceable. In those circumstances, if a third party can validly accept a judicial document in the name and on behalf of the addressee, that possibility must nevertheless be reserved for clearly defined situations, to ensure that the rights of the defence of that addressee are observed as fully as possible.

Consequently, the concept of ‘residence’, within the meaning of Regulation No 1393/2007, must be understood as referring to the place where the addressee of the document habitually resides.

(see paras 92-94)

5. Regulation No 1393/2007 must be interpreted as meaning that postal service of a document instituting proceedings is valid, even if:

- The acknowledgment of receipt of the registered letter containing the document to be served on the addressee has been replaced by another document, provided that such document provides equivalent guarantees as regards information provided and evidence. It is for the court hearing the matter in the Member State of transmission to satisfy itself that the addressee has received the document in question in such a way as to ensure that his rights of defence have been respected;
- The document to be served has not been delivered to the addressee thereof in person, provided that it has been served on an adult person who is inside the habitual residence of that person and who is either a member of his family or an employee in his service. Where appropriate, it is for the addressee to establish, by all admissible forms of evidence before the court hearing the matter in the Member State of transmission, that he could not effectively take account of the fact that judicial proceedings were being brought against him in another Member State, that he could not identify the subject-matter and grounds of the claim, or that he did not have sufficient time to prepare his defence.

(see para 99, operative part 2)