



## Reports of Cases

### JUDGMENT OF THE COURT (Tenth Chamber)

2 March 2017\*\*

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Articles 8, 14 and 19 — Postal service of a document instituting the proceedings — Failure to provide a 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)

In Case C-354/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Évora (Court of Appeal of Évora, Portugal), made by decision of 11 June 2015, received at the Court on 13 July 2015, in the proceedings

**Andrew Marcus Henderson**

v

**Novo Banco SA**

THE COURT (Tenth Chamber),

composed of M. Berger, President of the Chamber, E. Levits and F. Biltgen (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 7 July 2016,

after considering the observations submitted on behalf of:

- the Portuguese Government, by L. Inez Fernandes and M. Figueiredo and R. Chambel Margarido, acting as Agents,
- the Spanish Government, by M.J. García-Valdecasas Dorrego, acting as Agent,
- the Netherlands Government, by M. Bulterman and B. Koopman, acting as Agents,
- the European Commission, by M. Wilderspin and P. Guerra e Andrade, and by M.M. Farrajota, acting as Agents,

\* Language of the case: Portuguese.

after hearing the Opinion of the Advocate General at the sitting on 8 September 2016,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation 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 Andrew Marcus Henderson and Novo Banco SA concerning an action brought by the latter following the failure by Mr Henderson to perform two commercial lease agreements concluded between the parties.

### **Legal context**

#### *EU law*

#### *Regulation No 1393/2007*

- 3 With a view to the proper functioning of the internal market, Regulation No 1393/2007 has the objective, according to recital 2 thereof, of improving the efficiency and speed of judicial procedures by establishing the principle of direct transmission of judicial and extrajudicial documents.
- 4 Article 1(1) thereof provides that the regulation is to 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 Under Article 1(2) thereof, that regulation shall not apply where the address of the person to be served with the document is not known.
- 6 Article 1(3) provides that, 'in this Regulation, the term "Member State" shall mean the Member States with the exception of Denmark'.
- 7 Chapter II of Regulation No 1393/2007 contains provisions which provide for various means of transmission and service of judicial documents. It is divided into two sections.
- 8 Section 1 of that chapter deals with the transmission through agencies designated by the Member States, referred to as 'transmitting agencies' and 'receiving agencies', competent respectively for transmitting documents for service in another Member State and for receiving such documents from another Member State.

- 9 That section includes in particular Article 8 of that regulation, entitled ‘Refusal to accept a document’, which 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).

4. Paragraphs 1, 2 and 3 shall also apply to the means of transmission and service of judicial documents provided for in Section 2.

5. For the purposes of paragraph 1, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14, shall inform the addressee that he may refuse to accept the document and that any document refused must be sent to those agents or to that authority or person respectively.’

- 10 Section 2 of Chapter II of Regulation No 1393/2007 provides for ‘[o]ther means of transmission and service of judicial documents’, namely transmission by consular or diplomatic channels (Article 12), service by diplomatic or consular agents (Article 13), service by postal services (Article 14) and direct service (Article 15).

- 11 With regard to service by post, Article 14 of that regulation provides:

‘Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.’

12 Article 19 of the regulation, entitled ‘Defendant not entering an appearance’, is worded as follows:

‘1. 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 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.

2. Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- (a) the document was transmitted by one of the methods provided for in this Regulation;
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.

3. Notwithstanding paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.

4. When 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 a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled:

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
- (b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.

...’

- 13 The Portuguese Republic issued the following communication, in accordance with Article 23 of Regulation No 1393/2007:

‘Article 9 — Date of service

In accordance with Portuguese law, unless otherwise provided, documents must be served within the period of five days provided for in Article 166 of the Code of Civil Procedure.

...

Article 19 — Defendant not entering an appearance

As Portugal does not intend to make use of the option provided for in Article 19(2), the Portuguese courts may not rely on it.

Portugal fixes the time-limit within which an application may be made for relief from the effects of expiry of the period for appeal, as being one year from the date of the contested decision (see Article 19(4)).’

*Regulation (EC) No 44/2001*

- 14 Article 26(2) to (3) 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 as follows:

‘2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Article 19 of 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) shall apply instead of the provisions of paragraph 2 if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to this Regulation.’

- 15 Article 34(2) of that regulation 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’.

*Regulation (EC) No 805/2004*

- 16 Article 14(1) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15), entitled ‘Service without proof of receipt by the debtor’ provides that:

‘Service of the document instituting the proceedings or an equivalent document and any summons to a court hearing on the debtor may also have been effected by one of the following methods:

- (a) personal service at the debtor’s personal address on persons who are living in the same household as the debtor or are employed there;

...'

*Portuguese law*

- 17 In accordance with Article 188(1)(e) of the Código de Processo Civil ('the Code of Civil Procedure', or 'the Code'), service is not valid where it is shown that the addressee of personal service, through no fault of his own, was not aware of the document to be served, in other words where the person concerned has rebutted the presumption laid down in Article 230 of that Code.
- 18 Nevertheless, pursuant to Article 189 of the Code of Civil Procedure, invalid service is remedied if the defendant participates in the proceedings but fails to invoke that defect.
- 19 It is apparent from Article 191(1) of the Code that, without prejudice to Article 188 thereof, service is invalid where the formalities prescribed by law have not been complied with.
- 20 Under Article 191(2) of the Code, such invalidity must be invoked within the period laid down in the letter of service for the purpose of contesting the claims of the applicant in the document instituting the proceedings or, in the absence of such a period, at the first intervention in the proceedings.
- 21 In the main proceedings, it is common ground that that period was 20 days from the date on which the document instituting the proceedings is deemed to have been served, that is to say 10 days, applicable in respect of an application for interim measures, plus 10 days on account of distance.
- 22 Under Article 191(4) of the Code, an application for a declaration of invalidity shall only be taken into consideration if the defect in question is such as to compromise the defence of the person to be served.
- 23 Article 228 of the Code of Civil Procedure, entitled 'Personal service by post' provides:
- '1. Personal service by post is effected by sending a registered letter with acknowledgment of receipt, following an officially approved model, addressed to the person to be served, his domicile or his place of work. It includes all the elements mentioned in the preceding article, together with a notice to the third party who receives it, informing him that he shall be liable, under conditions similar to those used in respect of bad faith, if he does not deliver the letter to the addressee as soon as possible.
2. The letter may be delivered, after signature of the acknowledgment of receipt, to the addressee or to any other person at his place of residence or at his place of work and who declares that he is in a position to deliver it promptly to the addressee.
3. Before the signature of the acknowledgment of receipt, the agent effecting the postal service shall verify the identity of the addressee of the service or of the third party to whom he is delivering the letter and note the information set out in the identity card or any other official identification document.'
- 24 Under Article 230(1) of that code, postal service, by registered letter with acknowledgement of receipt, is deemed to have been effected on the day when the acknowledgement of receipt is signed. The dispatch containing the document to be served shall then be deemed to have been delivered to the person served, even if the acknowledgment of receipt has been signed by a third party. That dispatch is deemed to have been delivered to the addressee on the date which appears on the acknowledgment of receipt, unless proof of the contrary is provided by the latter.
- 25 It is clear from the documents before the Court that, in practice, the addressee of the document must therefore demonstrate that the document was not served on him or that, through no fault of his own, it was served on a date later than the presumed date.



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

- 26 It is apparent from the decision to refer that, in 2008, Banco Espírito Santo SA, which subsequently became Novo Banco, a banking institution with its head office in Portugal, and Mr Henderson, residing in Ireland, concluded two financial lease contracts for two shop premises in a building located in the municipality of Portimão (Portugal), owned by that bank.
- 27 The leased properties were delivered to Mr Henderson, who took possession of them on the date when the abovementioned contracts were signed.
- 28 As Mr Henderson failed to pay the rent for the property leased in 2012 and did not pay the subsequent instalments, Novo Banco ordered him, on 28 February 2014, to make the payments due, failing which the contracts in question would be terminated.
- 29 By registered letter dated 4 April 2014, Novo Banco informed Mr Henderson of the termination of the contracts concluded between the parties.
- 30 On that date, the unpaid amount was EUR 20437.03, but Mr Henderson refused to return the use of the properties concerned to their owner.
- 31 Novo Banco applied to the Tribunal de Comarca de Faro (Faro District Court, Portugal) an interim measure seeking the return, through the courts, of the leased property.
- 32 The Tribunal de Comarca de Faro (Faro District Court) served that application on Mr Henderson by registered letter with acknowledgment of receipt addressed to the latter in Ireland.
- 33 As the acknowledgment of receipt was not returned, the Tribunal de Comarca de Faro (Faro District Court) requested information from the Portuguese postal service. That service replied that, according to the computerised registers of the postal operator in Ireland, the Member State of destination, the letter in question had been delivered to the addressee on 22 July 2014.
- 34 Finding that Mr Henderson had not responded by appearing and contesting the measure sought in the application, the Tribunal de Comarca de Faro (Faro District Court) gave judgment granting Novo Banco's application.
- 35 On 7 October 2014, Mr Henderson appealed against that judgment before the referring court, the Tribunal da Relação de Évora (Court of Appeal of Évora, Portugal), on the ground that the service of the document instituting the proceedings was null and void.
- 36 First, it is claimed, the acknowledgment of receipt of the registered letter was not included in the file, which constituted a breach of a formal requirement laid down by Portuguese legislation. Moreover, it is claimed, Mr Henderson did not personally accept service of the document instituting proceedings before the Tribunal de Comarca de Faro (Faro District Court) and did not know who had accepted the letter of service in question, so that he was not aware of the proceedings brought against him. Secondly, the standard form referred to in Annex II to Regulation No 1393/2007 was not transmitted to him. He was, therefore, not informed of his right to refuse to receive service of a judicial document drawn up solely in the Portuguese language, whereas, in the present case, a translation into English or Irish would have been required. In accordance with the case-law of the Supremo Tribunal de Justiça (Supreme Court, Portugal), such a defect rendered the service invalid. According to Mr Henderson, each of those two defects constituted not only infringement of a substantial procedural requirement but also a breach of his rights of defence. Only renewed service, in lawful form, would have compensated those shortcomings.

- 37 By judgment of 29 January 2015, the referring court rejected all those arguments, thus upholding the judgment delivered at first instance.
- 38 On 13 February 2015, Mr Henderson requested a review of that judgment, claiming that the judgment was contrary to EU law and, in particular, the requirements of Regulation No 1393/2007.
- 39 The referring court considers, first, that the purpose of the acknowledgment of receipt, which was not returned in the present case, is to establish that the judicial document was served on its addressee and to establish with certainty the date of service. Secondly, that court notes that the registered letter addressed to Mr Henderson was not accompanied by the standard form provided for in Annex II to Regulation No 1393/2007, so that the defendant was not informed of his right to refuse to accept the document served on him.
- 40 In that regard, that court asks, in the first place, whether the document provided in the present case by the postal services of the Member State of residence of the addressee of the service is such as to compensate for the absence of acknowledgment of receipt, since it bears the signature of the person who received the registered letter and the date on which it was received.
- 41 In the second place, that court asks whether a provision of national law according to which postal service is deemed to have been validly effected when the acknowledgment of receipt is signed and dated, albeit by a third party, complies with Regulation No 1393/2007, since it is presumed, unless proof to the contrary is provided by the addressee of the document, that the letter was actually delivered by that third party to the addressee on the date appearing on the acknowledgment of receipt, in this case on 22 July 2014.
- 42 In the third place, the referring court asks whether national rules, which provide that the omission of a substantial procedural requirement, such as the absence of the standard form referred to in Annex II to Regulation No 1393/2007, must render the service invalid, but that such invalidity may be declared only if it is invoked within the period prescribed by those rules, namely within 20 days from the date on which service is deemed to have taken place, comply with the requirements of Regulation No 1393/2007.
- 43 In those circumstances, the Tribunal da Relação de Évora (Court of Appeal of Évora) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Where a Portuguese court hearing a civil action against an individual residing in another Member State of the European Union has ordered that those proceedings be served on that individual by registered letter with acknowledgment of receipt, and the corresponding acknowledgment of receipt has not been returned, may the Portuguese court consider, in the light of Regulation [No 1393/2007] and the principles underlying it, that such service was effected, on the basis of a document of the postal authority of the State in which the addressee of the letter resides which proves that the registered letter with acknowledgment of receipt was delivered to the addressee?
- (2) Does the application of Article 230 of the Portuguese Code of Civil Procedure, in the case referred to in the first question, infringe [Regulation No 1393/2007] and the principles underlying it?
- (3) Does the application of Article 191(2) of the Portuguese Code of Civil Procedure in the present case infringe [Regulation No 1393/2007] and principles underlying it?’



## Consideration of the questions referred

### *Preliminary observations*

- 44 At the outset, it should be noted that the referring court found that the registered letter addressed to Mr Henderson, for the purposes of serving the application initiating proceedings before the Tribunal de Comarca de Faro (Faro District Court) at his residence in Ireland, was not accompanied by the standard form referred to in Annex II to Regulation No 1393/2007.
- 45 On the one hand, the third question concerns the consequences which the court hearing the case in the Member State of transmission must draw from such a defect.
- 46 On the other hand, should that question be answered to the effect that such a defect renders the service procedure invalid, in accordance with what Portuguese legislation, in principle, provides in that regard, it would no longer be necessary for the Court to rule on the first two questions referred for a preliminary ruling, which relate to particular procedural aspects in the event of postal service.
- 47 Accordingly, the third question must be examined first.

### *The third question*

- 48 By its third question, the referring court asks, essentially, whether Regulation No 1393/2007 must be interpreted as meaning that it precludes 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, such invalidity must nevertheless be invoked by that defendant within a specified period or at the beginning of the proceedings and before any defence on the merits.
- 49 In that regard, it must be borne in mind that Article 8(1) of Regulation No 1393/2007 expressly provides that the addressee of the document to be served may refuse to accept it, on the ground that the document in question is not drafted or accompanied by a translation in a language which he is deemed to understand.
- 50 In that context, the Court has already decided that the right to refuse to accept the document to be served constitutes a right of the addressee of that document (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 49, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 61).
- 51 As the Court has already pointed out, the right to refuse to accept service of a document stems from the need to protect the rights of the defence of the addressee of that document, in accordance with the requirements of a fair hearing, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, to that effect, order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 73). While the main aim of Regulation No 1393/2007 is to improve the efficiency and speed of judicial procedures and to ensure the proper administration of justice, the Court has held that those objectives cannot be attained by undermining in any way the rights of the defence of the addressees

of the documents in question (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 30 and 31, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraphs 48 and 49).

- 52 It is important, therefore, 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 to effectively prepare his defence and assert his rights in the Member State of transmission (judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 32 and the case-law cited, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 50).
- 53 In order for the right of refusal set out in Article 8(1) of Regulation No 1393/2007 to usefully produce its effects, it is necessary that the addressee of the document has been duly informed, in advance and in writing, of the existence of that right (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 50 and 54, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraphs 62 and 66).
- 54 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 (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 50, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 62).
- 55 As regards the scope which must be given to that standard form, the Court has already held that Regulation No 1393/2007 does not contain any exceptions to its use (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 45, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 59).
- 56 From that consideration and the aim pursued by the standard form set out in Annex II to Regulation No 1393/2007, as described in paragraphs 53 and 54 of the present judgment, the Court has inferred that the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose that standard form (judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraph 58, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 68).
- 57 Furthermore, where the receiving agency, which is required to serve the document concerned on its addressee residing in another Member State, has not enclosed the standard form in Annex II of Regulation No 1393/2007, that omission cannot render invalid either the document to be served or the procedure for service, as that consequence would be incompatible with the objective pursued by that regulation, which consists in providing a means of direct, rapid and effective transmission between Member States of documents in civil and commercial matters (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 60 to 66).
- 58 On the other hand, as communication of that form constitutes an essential formality, intended to safeguard the rights of defence of the addressee of the act, its omission must be corrected by the receiving agency in accordance with the provisions laid down by Regulation No 1393/2007. The receiving agency must therefore immediately inform the addressee of the document of his right to refuse to accept it, by submitting to him, pursuant to Article 8(1) of that regulation, that standard form (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 67, 70, 72 and 74, and order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 71).

- 59 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.
- 60 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.
- 61 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.
- 62 National legislation, such as that at issue in the main proceedings, cannot, therefore, without infringing Regulation No 1393/2007, provide that the penalty for omission of the standard form set out in Annex II to Regulation No 1393/2007 is invalidity, even if it is also provided that such omission may be remedied by the effect of the lapse of a certain period or the absence of a response by the addressee of the document.
- 63 Despite those qualifications, the fact remains that such legislation, which lays down, in principle, invalidity as the consequence of omission of the standard form set out in Annex II to Regulation No 1393/2007, is incompatible with the system established by that regulation and the aim pursued by it, as was stated in paragraphs 57 and 60 above.
- 64 Moreover, as the Advocate General pointed out in point 58 of his Opinion, no inferences can be validly drawn from the fact that the addressee of the document did not, within a given period of time, object to such an omission, since it cannot be certain, having regard specifically to the fact that that form was absent, that the person concerned was actually aware of his right to refuse service.
- 65 Consequently, the lack of information resulting from that omission can only be validly remedied by the delivery, as soon as possible and in accordance with the provisions of Regulation No 1393/2007, of the standard form set out in Annex II thereto.
- 66 In any event, and as the European Commission correctly pointed out, national legislation such as that at issue in the main proceedings is incompatible with the provisions of Article 19(4) of that regulation.
- 67 In the light of all the foregoing considerations, the answer to the third question must be that Regulation No 1393/2007 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, 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 or notification 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.
- 68 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.

*The first and second questions*

- 69 In view of the answer to the third question, it is appropriate for the Court to rule also on the first and second questions referred.
- 70 By those questions, which it is appropriate to examine together, the referring court asks essentially whether Regulation No 1393/2007 must be interpreted as meaning that postal service of a document instituting proceedings is valid, even though the acknowledgment of receipt of the registered letter has not been returned to the sender and it appears that the letter was received not by the addressee of the document, but by a third party.
- 71 In order to answer those questions, it should be noted at the outset that Regulation No 1393/2007 exhaustively provides for various means of service of judicial documents, in respect of which it lays down the applicable rules, without establishing a hierarchy between them (see, to that effect, judgments of 9 February 2006, *Plumex*, C-473/04, EU:C:2006:96, paragraphs 20 to 22, and of 19 December 2012, *Alder* (C-325/11, EU:C:2012:824, paragraphs 31 and 32). Those means of transmission include postal service, at issue in the main proceedings, which is essentially the subject of Article 14 of that regulation.
- 72 As the Court has already held, the provisions of Regulation No 1393/2007 must be interpreted so as to guarantee, in each specific case, 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, through, inter alia, the guarantee of actual and effective receipt of those documents (judgment of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603) paragraph 33 and the case-law cited).
- 73 The latter requirements are particularly important in relation to service of a document instituting proceedings, as in the main proceedings, in so far as it is necessary for the addressee of the document to be informed of the existence of legal proceedings instituted against him in another Member State and to understand the meaning, scope and procedural modalities of the action brought against him, in particular concerning limitation periods, so that he can properly defend himself.
- 74 As regards the first aspect of the first two questions raised, relating to the fact that the acknowledgment of receipt of the registered letter effecting service of the document instituting the proceedings was not returned to the agency which, in the Member State of transmission, caused that service to be effected, it should be pointed out that Article 14 of Regulation No 1393/2007 provides that a judicial document may, in principle, be served by postal services on a person residing in another Member State by registered letter with acknowledgment of receipt.
- 75 The EU legislature regarded such formalities to be such as to offer the addressee the guarantee that he actually receives the registered letter containing the document served, while constituting reliable evidence of the lawfulness of the procedure for the sender.
- 76 In particular, a registered letter allows tracing of the various stages of its route to the addressee. As regards the acknowledgment of receipt, which is completed when that addressee, or, where appropriate, his representative, receives the letter, it indicates the date of delivery, the place of the delivery and the qualities and signature of the person who received that letter. The acknowledgment of receipt is then returned to the sender, bringing that information to his knowledge and allowing him to prove them in the event of a dispute.
- 77 The acknowledgment of receipt of the registered letter, therefore, constitutes evidence of receipt of service of the judicial document by the addressee thereof in the requested Member State, and of the means whereby that document was delivered.



- 78 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.
- 79 That provision provides that such service may also be effected by means of transmission 'equivalent' to a registered letter with acknowledgment of receipt.
- 80 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.
- 81 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.
- 82 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.
- 83 In the event of a dispute, it will therefore be for the sender to establish, by means of substantive evidence relating to the transmission of the document, the lawfulness of the service procedure, it being for the court of the Member State of transmission to assess the relevance of that evidence in the light of the specific circumstances of each case.
- 84 It follows that the fact that, in the present case, the acknowledgment of receipt was not returned does not, in itself, vitiate the postal transmission procedure, as that formality may be replaced by a document which provides equivalent guarantees.
- 85 The referring court hearing the case in the Member State of transmission must, however, ensure that the evidence relied on for that purpose establishes that the addressee has been served with the document in question under conditions that ensure that his rights of defence have been respected.
- 86 As regards the second aspect of the first and second questions, concerning the fact that, in the present case, the registered letter containing the document to be served was received in the requested Member State, not by the addressee of that document, but by a third party, it should be noted that Article 14 of Regulation No 1393/2007 contains no express indication in that regard.
- 87 However, the fact remains that it can be deduced from Article 19(1)(b) of that regulation that the document to be served may be delivered not only to the addressee in person but also, in his absence, to a person present at his place of residence.
- 88 In practice, delivery by hand to the defendant is not always possible. Regulation No 1393/2007 does not, therefore, exclude the possibility that, in certain circumstances, a third party may receive the document in question.
- 89 In such a case, however, it is necessary to ensure that all the guarantees necessary for the effective protection of the rights of the defence of the addressee are respected.
- 90 A fortiori, in a situation such as that in the main proceedings, where the defendant did not appear at the hearing initiating proceedings, the date of which was specified in the document served on him by post, it is of paramount importance to ensure, first, that the defendant has actually received the

document instituting the proceedings, so that he is aware that judicial proceedings have been brought against him in another Member State and can identify the subject-matter and the grounds of the claim, and, secondly, that he had sufficient time to prepare his defence.

- 91 Such protection of the defaulting defendant's rights, more particularly referred to in Article 19(1) of Regulation No 1393/2007, is consistent with the aim pursued by the requirements of other European Union acts relating to judicial cooperation in civil and commercial matters, such as Regulation No 44/2001, Article 34(2) of which also presupposes that the document in question has previously been served on the defendant (see, to that effect, order of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316, paragraph 86 and the case-law cited, and the judgment of 7 July 2016, *Lebek*, C-70/15, EU:C:2016:524, paragraph 41 and the case-law cited).
- 92 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.
- 93 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.
- 94 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.
- 95 Furthermore, as provided for in Article 14(1)(a) of Regulation No 805/2004, as regards service of documents instituting proceedings regarding uncontested claims, the possibility for a third party to accept a judicial document instead of his addressee can only apply to adults who are inside the residence of the addressee, whether they are members of his family living at the same address as him or persons employed by him at that address.
- 96 It is reasonable to consider that such persons will actually deliver the document in question to the addressee.
- 97 However, that is not necessarily the case with regard to other third parties, such as an inhabitant of a neighbouring building or a person residing in the same building in which the addressee occupies an apartment. Since acceptance of a document by such a third party does not provide sufficient guarantees that the addressee will be properly informed within the required time limits, it cannot be considered sufficiently reliable for the purposes applying Regulation No 1393/2007.
- 98 In any event, even if the conditions set out in paragraphs 93 to 96 of this judgment are fulfilled and therefore the service appears to be lawful, the addressee of the document retains the possibility of establishing, 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. It is for that court to assess the relevance of that evidence by taking due account of all the circumstances of the case.



- 99 In the light of all the foregoing considerations, the answer to the first two questions is that 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.

### Costs

- 100 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 rules:

1. **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.**

The regulation requires, on the other hand, that such an omission be corrected in accordance with the provisions laid down in that regulation, by communicating the standard form set out in Annex II of that regulation to the person concerned.
2. **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 its addressee in person, provided that it has been served on an adult person who is inside the habitual residence of that person and 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.**

[Signatures]