

The legal linguistic regime of cross-border service of documents in civil and commercial matters

Il regime linguistico delle notificazioni transnazionali nella materia civile e commerciale

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Abstract: The present paper tackles the legal linguistic regime of service abroad according to the EU Regulations on the topic that succeeded over time, and the related case law. Far from being a purely technical procedural theme, it involves the rights of the parties to a fair trial. Therefore, the contribution addresses the issues of the object of the service and the language to be used; the ascertainment of the linguistic skills of the addressee; the identification of the interested parties in the service; the (un)lawfulness of the refusal. The last remarks cannot but be devoted to the digitalisation of the service, due to the recent entry into force of a new method of transmission, the electronic service.

Keywords: Cross-border service; Linguistic Regime; Translations; Right to Fair Trial; Appearance in Transnational Proceedings.

Riassunto: Il presente contributo affronta la questione del regime linguistico della notificazione o comunicazione all'estero secondo i Regolamenti dell'Unione europea succedutisi nel tempo e la relativa giurisprudenza della Corte di giustizia. Lungi dall'essere un tema puramente procedurale, esso coinvolge il diritto delle parti a un giusto processo. Pertanto, il contributo affronta le questioni dell'oggetto della notificazione o comunicazione e della lingua da utilizzare; dell'accertamento delle competenze linguistiche del destinatario; dell'identificazione degli interessati alla notificazione o comunicazione; della (il)liceità del rifiuto. Le considerazioni finali non possono che essere dedicate alla digitalizzazione della notificazione o comunicazione, dovuta alla recente entrata in vigore di una nuova modalità di trasmissione, la notificazione o comunicazione elettronica.

Parole chiave: notificazione o comunicazione all'estero; regime linguistico; traduzioni; diritto all'equo processo; costituzione in giudizio in un procedimento transfrontaliero.

Summary: I. The starting point: Regulation 1348/2000 and the judgment in *Leffler*. II. What to notify, and in which language? III. The right to information of the right to refusal. IV. Ascertaining the linguistic skills of the addressee. V. The consequences of the unlawful refusal to accept a document. VI. The parties interested in the cross-border service. VII. Some final remarks towards the future, including digitalisation.

I. The starting point: Regulation 1348/2000 and the judgment in *Leffler*

1. The legal linguistic regime of judicial documents to be served abroad is one the cores of the right to fair trial in transnational proceedings. Indeed, it involves not only the fundamental right of the defendant to understand the content of the documents served, but also the timings of the proceedings, and

of the deadlines to be assigned to the parties for every procedural act or action, when translation is needed. The Hague Conference of Private International Law achieved already in 1965 a simplification of the services procedures, establishing a main channel of transmission via designated national Central Authorities, as well as alternative channels of transmission. The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters points mainly to the expeditiousness of the transmission. Therefore, it establishes multilingual certificates, in the form of the models annexed to the Convention, that can be now filled electronically¹. Furthermore, according to Article 5, if the document is to be served by means of the Central Authority, it may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed. The Convention does not establish any consequence of the omission of a translation. This does not even seem to be considered as an essential part of the service: indeed, the multilingual certificate for request for service abroad of judicial or extrajudicial documents, as updated and currently available in the HCCH website, does not mention the language of the document². These elements merely testify that the 1965 Service Convention aims at a strengthened cooperation among national authorities in order to notify, establishing duties to Contracting States, while procedural rights of the parties are (very reasonably) not at its core.

2. This approach, undisputable in the framework of the international cooperation, could not work well within the European Union (hereafter: EU), mainly due to two reasons. Firstly, according to Article 67 of the TFEU, the area of freedom, security and justice must develop in the frame of the respect of fundamental rights. Therefore, the focus is centered on the (substantive and procedural) rights of parties in transnational proceeding, where State's sovereignty bears lesser importance. Secondly, most of the EU measures in the field of the civil and judicial cooperation are regulations. Their direct applicability allows to formulate more precise rules, since no national transposition is needed, that can immediately regulate a specific legal situation. Consequently, it is possible to envisage even a legal linguistic regime of the service abroad, that the State must merely let apply. The legal position of the individual is highlighted, that can rely immediately on the regulations' content.

3. The consequences of this different approach is evident in the Regulation 1348/2000, the first EU enacted Regulation on cross-border service of documents³. Article 8 is devoted to the right to refuse to accept the document, focusing on the rights of the addressee to understand its content. Firstly and foremost, the recipient has a right to be informed of his/her right to refuse the service. Secondly, the refusal is legitimate if the document is not written or accompanied by a translation into a language which the addressee understands, provided that it is an official language of the State of transmission; or into the official language of the Member State addressed⁴.

4. The rationale of this rule was to avoid translations, when possible. In this perspective, it had to be welcome. However, it raised many concerns on the modalities of refusal and on its concrete consequences⁵. Not by chance, the first request for preliminary ruling for the interpretation of Regulation

¹ Funded by the European Union. Views and opinions expressed are however those of the author only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

Not surprisingly, this is the most common case nowadays: Conclusions & Recommendations (C&R) of the Special Commission (SC) on the practical operation of the Convention, July 2024, p. 4.

² Available at: <https://assets.hcch.net/docs/a3f54658-81a5-4b2e-894b-b58af54c567d.pdf>.

³ 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 L* 160, 30 June 2000, p. 37.

⁴ If there are several official languages in that Member State, the document shall be written or translated into "the official language or one of the official languages of the place where service is to be effected".

⁵ A. PANZAROLA, "La notificazione degli atti giudiziari ed extragiudiziari negli Stati membri dell'Unione Europea", *Nuove leggi civili commentate*, vol. 23, 2000, p. 1161; G. DE CRISTOFARO, "La nuova disciplina delle notificazioni infracomunitarie in materia civile", *Studium iuris*, vol. 7, 2001, p. 517; M. FRIGO, "Il regolamento comunitario sulle notificazioni in materia civile o commerciale", *Rivista di diritto processuale*, vol. 56, 2002, p. 102; W. LINDACHER, "Europaisches Zustellungsrecht", *Zeitschrift für Zivilprozess*, vol. 114, 2001, p. 179 ss.; N. ESCALONA MARCHAL, *El nuevo regimen de la notificacion en el espacio judicial europeo*, Granada, Marcial Pons, 2002; B. HEIDERHOFF, "Verordnung (EG) Nr 1348/2000 des Rates vom 29. Mai 2000 über

1348/2000 had as specific object Article 8. In the *Leffler* case⁶, the Dutch Supreme Court asked firstly whether it was possible to rectify the failure of service due to linguistic reasons. If the answer was in the negative, which was the effect of the exercise of the right to refusal; if affirmative, how must the translation of the document be made available to the addressee and to what extent national procedural law was applicable. As known, the CJEU confirmed the possible rectification, by serving the translation through the means established by the Regulation as soon as possible. National law played a residual role, for all the problems not resolved by the Regulation itself⁷.

5. The CJEU reasoned here also on the timing of the service. It deemed Article 9(2) applicable, so that, if proceedings are pending in the Member State of origin, the date of the service of the document in respect to the applicant shall be determined by the law of this Member State. The rule allows the identification of two different dates of service, one in favour of the applicant, to be established according to the law of the State of origin where proceedings are pending; one in respect of the defendant, according to the law of the Member State addressed.

6. However, further practical difficulties remained in interpreting the Regulation and the ruling, such as the management of continuous service over time, from the first transmission of the documents in a language which has not been accepted to the final service of the documents in one of the languages listed in Article 8, which risks creating a time lag in the completion of service within a trial; the responsibility for translation; the verification of linguistic knowledge; and the consequences of an unlawful refusal⁸. The judgment was released while negotiations on a new service Regulation were in progress and where these issues were also discussed. The subsequent Regulation, 1393/2007⁹, considered the recent CJEU's judgment, partially innovating Article 8. Since then, further case law aimed to clarify the impact of the linguistic regime and the mutual obligations of the parties, and one more new Regulation, 2020/1784¹⁰, on transnational service have followed. This quick development is striking, because the discipline has been modernised twice in 20 years, with an uncommon alacrity in civil and commercial matters¹¹. These developments have progressively refined the rules governing language regimes and the completion of the service procedure. The present contribution follows these changes through the analy-

die Zustellung gerichtlicher und außergerichtlicher Schriftstücke in Zivil- oder Handelssachen in den Mitgliedstaaten", in T. RAUSCHER (Hrsg.), *Europäisches Zivilprozessrecht: Kommentar*, München, Beck, 2004, p. 779.

⁶ CJEU 8 November 2005 *Leffler*, C-443/03.

⁷ In general, Italian case law is consistent with this principle: Court of First Instance of Rovereto 18 June 2008, *Rivista italiana di diritto internazionale privato e processuale*, vol. 44, 2008, p. 1103; Supreme Court (Corte di Cassazione) 16 July 2014, n. 16272, *Rivista italiana di diritto internazionale privato e processuale*, vol. 51, 2015, p. 629. Therefore, the rectified service is prompt: Supreme Court (Corte di Cassazione) 18 novembre 2018, n. 28509, *Rivista italiana di diritto internazionale privato e processuale*, vol. 56, 2020, p. 632), with some misunderstanding: Court of First Instance of Viterbo 24 March 2025, *Banca del merito online*.

⁸ L. DANIELE/S. MARINO, "Momento perfezionativo e regime linguistico delle notificazioni intracomunitarie: dalla sentenza *Leffler* alla proposta modificata di regolamento n. 1348/2000", *Rivista di diritto internazionale privato e processuale*, vol. 43, 2007, p. 969.

⁹ 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 L* 324, 10 December 2007, p. 79.

¹⁰ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), *OJ L* 405, 2 December 2020, p. 40.

¹¹ Such readiness can be found in the Regulations of family matters and parental responsibility. As known, in this subject matter, the EU adopted a first Regulation in 2001, followed by an immediate innovation in 2003 and a recast in 2019 (Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, *OJ L* 160, 30 June 2000, p. 19; Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *OJ L* 338, 23 December 2003, p. 1; Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, *OJ L* 178, 2 July 2019, p. 1). Even if the EU Regulations in civil and commercial matters are generally subject to innovations and recasts, and they normally contain a revision clause, in other cases these changes are not that frequent and briskly.

sis of both the case law and the pieces of legislation, focusing on the right of the parties to a fair trial, when judicial documents are to be served.

II. What to notify, and in which language?

7. The three Regulations on cross-border service do not impose the sender a duty to translate the documents. The approach is quite pragmatical. He/she has a right to be informed that the addressee can refuse the service, if the documents are not drafted nor translated in the languages listed in Article 8 (in this sense, already Article 5(1) of the Regulation 1348/2000). Therefore, the translation is not an essential part of the process of service, neither a necessary tool for granting the effective right to defence¹². The choice is even more practical with Article 8 of the Regulation 1393/2007: indeed, since then, any language understood by the addressee can be used, even if it is not an official language of the EU, nor of any Member State. This rule centres the service on the person, that must understand the document, regardless (of the officiality) of the language used.

8. The definition of “document” to be served becomes crucial, since only the “document” must meet linguistic requirements. The main difficulty depends on the fact that judicial acts introducing proceedings bear different forms and contents in the Member States, and are sometimes different even within the very same Member State that provides for different instituting acts. In some cases, the judicial acts must be accompanied by a high number of other documents, as, for example, those serving as (initial) evidence. The need to grant the full understanding for the addressee risks imposing a heavy burden of translation of all the acts and the documents, that may discourage him/her to file the claim. On the other side, the absence of any translation risks making it impossible to the addressee/defendant to understand what he/she is receiving.

9. In the *Weiss* judgment¹³, on the interpretation of Article 8 of the Regulation 1348/2000, the CJEU made it clear that in the service of an act instituting proceedings, the addressee must understand not only the cause of action and the judicial petition, but also all annexes that form integral part of the summon. These are those documents that allow the defendant to understand the object and the allegations of the claim and the existence of pending proceedings where the defendant can exercise his/her right to defence. Documents that serve as evidence do not fulfil this requirement¹⁴: the possibility to refuse the service is not granted, if only the pieces of evidence are written in a different language than those listed in Article 8. Therefore, the addressee might still need the translation of a very important part of the parcel received and necessarily accepted.

10. This need of understanding the essential parts of the documentation is confirmed in the *Catlin* case¹⁵, on the service of a European order for payment. According to the Regulation 1896/2006¹⁶, the application for a European order for payment constitutes the formal act instituting the special proceedings. The order of payment must be served together with the standard form for application, following the linguistic regime established by Article 8(1) of the Regulation 1393/2007. The need to grant the correct understanding of both documents, the order and the form, in favour of the defendant is extre-

¹² T. RAUSCHER, *Art. 8 EG-ZustellVO*, in W. KRÜGER/T. RAUSCHER (Hrsgs.), *Münchener Kommentar zur Zivilprozessordnung*, München, Beck, 2022, p. 1083.

¹³ CJEU 8 May 2008, *Weiss*, C-14/07.

¹⁴ This formulation is also challenging. In case of litigation, the seised judge must decide if a document annexed to the act initiating the proceedings is integral part thereof, or a piece of evidence: M. AGUILERA MORALES/I. CUBILLO LOPEZ, *Transmisión de documentos judiciales y extrajudiciales a efectos de notificación y traslado*, in A. DE LA OLIVA SANTOS (coord.), *Derecho Procesal Civil Europeo*, vol. II, Cizur Menor, Thomson Reuters Aranzadi, 2011, p. 211; M.A. CEBRIÁN SALVAT, *La notificación internacional en materia civil y mercantil en la Unión Europea*, Granada, Editorial Comares, 2018, p. 139.

¹⁵ CJEU 6 September 2018, *Catlin*, C-21/17.

¹⁶ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, *OJL* 399, 30 December 2006, p. 1.

mely important in this hypothesis, because the procedure is initially unilateral, without the appearance of the defendant. The first opportunity to become aware of the procedure is that of the service of the payment order. The fact that the standard form for the application is a multilingual model, partly to be filled through codes or multiple choices, does not exempt the applicant from the transmission in one of the languages of Article 8. Indeed, this module contains also free spaces for further clarifications on the facts of the case and on evidence, that the defendant must properly understand¹⁷.

11. Furthermore, the addressee cannot require the translation of documents he/she had already knowledge, such as, for example, documents exchanged during precontractual negotiations, or contracts duly signed. This is again a very pragmatical solution, that avoids useless translations for those documents, whose content is already known.

12. The linguistic regime does not refer to the admissibility of summaries. From a substantive perspective, a summary of high legal and linguistic quality could be considered sufficient¹⁸, provided that it enables a correct understanding of all fundamental elements of the pending proceedings. Nevertheless, the use of abstracts is risky: its quality can be challenged, with potential litigation on this point only.

III. The right to information of the right to refusal

13. Article 8 of the Regulation 1348/2000 simply required that the receiving authority informed the recipient of the right to refuse, without specifying the procedural methods, nor the timing. Only by Regulation 1393/2007 the use of a standard multilingual form, annexed to the Regulation itself, was provided for. In the last Regulation on cross-border service, 2020/1784, this is the form L as per Annex I. This module must be delivered together with the documents to be served. This immediacy is not always easy: in some transmission methods¹⁹, as for example the postal service, the parcel might be delivered to a person who is different from the formal addressee, who risks therefore delaying his/her awareness of the right of refusal, even if the notification has been formally completed²⁰.

14. Article 12(2) of the Regulation 2020/1784 faces a further issue on the awareness of the right to refusal, establishing for the first time a linguistic regime of the form L. This can be transmitted in up to three linguistic versions, which are the official language of the Member State of origin, or of the Member State addressed, and, if there is an indication that the addressee understands an official language-

¹⁷ Some EU Regulations in civil and commercial matters establish a special linguistic regime for specific acts during the enforcement of foreign judgments (art. 43(2) of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJL* 351, 20 December 2012, p. 1; art. 55(3) of the Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, *OJL* 178, 2 July 2019, p. 1; art. 49 of the Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, *OJL* 189, 27 June 2014, p. 59). However, these provisions do not affect the right of refusal provided for by the Regulations on transnational service.

¹⁸ G. CUNIBERTI, *Article 12. Refusal to accept a document*, in A. ANTHIMOS/M. REQUEJO ISIDRO (eds.), *The European Service Regulation. A Commentary*, Cheltenham, Edward Elgar, 2023, p. 119.

¹⁹ Since Regulation 1393/2007 the linguistic regime is extended to all service means. This extension is to be welcome, because it makes perfectly clear the perfect alternativity of the service and the transmission tools, as already stated by the CJEU 9 February 2006, *Plumex*, C-472/04 (J.J. FORNER I DELAYGUA, "La cooperación en materia de notificación y de obtención de pruebas cooperación internacional de autoridades: problemas generales de cooperación", *Anuario Español de Derecho Internacional Privado*, vol. 8, 2008, p. 167). Before this express extension, the Audiencia Provincial de Las Palmas, 30 March 2009 stated that the service by post is completed under Article 14, despite the lack of translations and not granting the addressee the right to information of the right to refusal. More recently, the Court of Appeal of Torino 23 July 2024, *Banca del merito online* had to admit that it is almost impossible to ascertain if the form was included in the documentation in the service by post.

²⁰ M. FRIGO, *op. cit.*, p. 115; P. FRANZINA, *La notificazione degli atti giudiziari e stragiudiziali in ambito comunitario*, in A. BONOMI (a cura di), *Diritto internazionale privato e cooperazione giudiziaria in materia civile*, Torino, Giappichelli, 2009, p. 245.

ge of another Member State, the form in that language is also released. The cumulation shall grant the addressee the understanding of the form²¹.

15. In the realm of the Regulation 1393/2007, the CJEU clarified the mandatory nature of the standard form in any case²². Its omission risks undermining the exercise of the right to refuse and consequently the right to defence and to a fair trial. The receiving authority is not granted with any margin of appreciation²³, and cannot conduct any preventive evaluation on the knowledge of the used language. This ascertainment would complicate or slow down the whole service, without any responsibility for the delays to be charged to the sender or to the addressee. The objectives of expeditiousness and efficacy of the transmission, typical in the Service Regulations, would be jeopardised²⁴. The decision on the acceptance or the refusal of the documents lies exclusively with the addressee²⁵.

16. The violation of the duty to inform does not result in the nullity of the service. This solution would again run counter the expeditiousness of the service²⁶. A national provision establishing the nullity is incompatible with the Regulation and shall be set aside²⁷. Furthermore, the lack of information of the right to refusal does not produce any legal consequence. Indeed, the omission produces the same prejudices of the transmission of the document in a language not listed in Article 8, and the lack can be filled by the receiving authority by the delivery of the form²⁸.

17. This approach has direct consequences on the functioning of other EU Regulations, establishing special proceedings in cross-border cases. Since the violation of the duty to inform is a procedural irregularity, the European order for payment is not enforceable and the deadline given to the defendant to file an objection cannot begin to run, as long as the service is not completed with the transmission of the translation²⁹. However, the suspension of the effects of the service does not prevent the full applicability of Articles 13 and 15 of the Regulation 1896/2006, that establish minimum requirements of the service of the European order: indeed, if these requirements are not met, the national court seized with an opposition to the order can annul it³⁰.

18. The same logic applies to the service of a European enforcement order for uncontested claims pursuant to the Regulation 805/2004³¹. If the information on the right to refusal has not been correctly conveyed, nor rectified, the addressee has a right to judicially protect his/her right to information. In the case of the European order, this entails that the judgment handed down in those proceedings cannot meet the requirements of the minimum standards set out in Chapter III of the Regulation 805/2004 and cannot be certified. A certificate issued in such circumstances will therefore be wrongly granted within the meaning of Article 10(1)(b) of the Regulation 805/2004 so that it must be withdrawn by the court of origin, if so requested. On the other side, the court requested for the enforcement can limit or stay proceedings only according to Articles 21 and 23 of the same Regulation. The default of appearance

²¹ The provision furthermore provides for the transmission to the Commission of form L, if translated into an official language of a third country by a Member State. The same provision would have been even more useful with regard to the official languages of Member States that are non-official of the Union, since, by express provision of the Regulations, the official language of the Member State used at the place of notification is also relevant.

²² CJEU *Catlin*, cit.; CJEU 5 May 2022, *ING*, C-346/21; CJEU 7 July 2022, *LKW*, C-7/21.

²³ CJEU 16 September 2015, *Alpha Bank*, C-519/13.

²⁴ CJEU *Weiss*, cit.

²⁵ CJEU 28 April 2016, *Alta Realitat*, C-384/14.

²⁶ CJEU 2 March 2017, *Henderson*, C-354/15.

²⁷ CJEU *LKW*, cit.; consistent: Anotato Dikastirio Kyprou (Cyprus Supreme Court) 16 April 2016, ECLI:CY:AD:2016:A194.

²⁸ CJEU *Alta Realitat*, cit.

²⁹ CJEU *Catlin*, cit.; consistent: Luxembourg Court of Appel 11 July 2019, CAL-2019-00047.

³⁰ In this hypothesis, indeed the recipient “is not properly informed of the existence or basis of the European order for payment issued against him or her” (CJEU 5 December 2024, *Bulgarfrukt – Fruchthandels GmbH*, C-389/23, para. 54), so that the annulment of the order would be consistent with the objectives of the Regulation.

³¹ 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 L* 143, 30 April 2004, p. 15.

in the proceedings on the merits, due to the omission of the information on the right to refusal of the service is not contemplated therein. The procedural mistake occurred during the proceedings on the merit, and can be challenged in the State of origin³².

19. These important guarantees on the awareness of the existence of the right have been surprisingly limited the field of the Regulation 2020/1784³³. Indeed, form L must be delivered only if the document to be served is not written nor translated into the official language of the Member State addressed³⁴. This provision grants the receiving authority with a margin of appreciation³⁵, since it must ascertain the language used in the document and in the attachments, as integral part of the document, or in the translation thereof. This assessment is far from immediate and may be complex, because the receiving authority must decide if each attachment, clearly not written on the official language of the Member State addressed, is integral part of the judicial document. Only if the answer is in the negative, then it may be exempted from submitting the form L. A cautious approach suggests submitting form L if the documentation to be notified is multilingual.

20. The new provision reduces the concrete possibility to exercise the right to refusal, when the judicial document is written or translated in one of the above-mentioned official languages. Indeed, the use of the official language of the Member State addressed is not a presumption of knowledge with respect to the addressee³⁶: the right to refusal is maintained in this case. The recipient takes therefore a risk, in accepting the transmission, when the documents are written in the official language of the Member State addressed, even if he/she does not know the language, but supposes that he/she must accept it, not being aware of the right to refusal in lack of service of form L. New litigation may arise, probably against the receiving authority or the Member State addressed³⁷, where the recipient claims he/she has been prevented from exercising fully the right to refuse. This claim does not jeopardise the legal position of the sender, who does not play any role in the transmission of the information to the addressee; however, the completion of the service – that has been initially accepted - risks being postponed, to the detriment of the interest of the sender/applicant.

IV. Ascertaining the linguistic skills of the addressee

21. The assessment of the linguistic knowledge of the addressee is clearly a fundamental and extremely sensitive issue. Since the Regulation 1393/2007 the standard forms introduce the possibility for the recipient to indicate the languages he/she knows. However, this statement is useful only at the stage of rectification of a service that has been refused. For the first tentative transmission, Recital 26 of the Regulation 2020/1784 essentially codifies the previous CJEU's case law.

22. The court of the Member State of origin shall ascertain the linguistic competences of the addressee, in order to decide on the lawfulness of the refusal. A previous assessment, even if requested

³² CJEU 27 November 2025, *Manuel Costa Filhos Lda.*, C-643/24.

³³ V. RICHARD, "La refonte du règlement sur la notification des actes judiciaires et extrajudiciaires", *Revue critique de droit international privé*, vol. 110, 2021, p. 357.

³⁴ The main purpose of the limitation is to avoid or at least to reduce delays or abuses (N. MARCHAL ESCALONA, "La notificación electrónica en el Espacio Judicial Europeo. Retos y problemas", *Cuadernos de derecho transnacional*, 2023, vol. 15, no 2, p. 757).

³⁵ G. CUNIBERTI, *op. cit.*, p. 108.

³⁶ *Contra*: N. MARCHAL ESCALONA, *op. cit.*, p. 757, because preserving the right to refusal in contradictory.

³⁷ The Luxembourg Court of Appeal, *cit.* excludes it, but the Metz Court of Appeal 17 September 2024, 12/02269 does not derive from the lack of information legal consequences, because no losses were to be identified in the case at stake. This clarification does not seem to exclude a possible non-contractual liability. Further: G. DE LEVAL/M. LEBOS, "Signifier en Europe sur la base du règlement 1348/2000: bilan après un an e demi d'application", in P. MARCHAL (dir.), *Imperat lex: liber amicorum Pierre Marchal*, Bruxelles, Larcier, 2003, p. 261; P. FRANZINA, *op. cit.*, p. 245.

by the national law of the court seised, before the start of the notification procedure, does not impact on the right to refusal³⁸: only after the refusal, the court can decide on its validity³⁹.

23. There are no legal presumptions on the linguistic knowledge. Therefore in *Weiss* the CJEU clarified that the previous signature of a contractual clause that points to the use of the German language in the future commercial relationships between the parties, is only a clue of the linguistic knowledge. It must be supported with other elements, such as the language used in the correspondence with public authorities, the existence of choice of court clauses in favour of German courts and the choice of the German law as applicable to the commercial relationship between the parties. In the case *Alta Realitat*, the CJEU further made it clear that the court must consider all the relevant elements in order to assess the linguistic competences of the addressee, as so to balance the conflicting rights of the parties. In the case at stake, hints pointing to the knowledge of the English language – in which the writ of summons was written - were the use of this language in the challenged contract and in documents drafted and signed by the recipient; the fact that the addressee indicated it as known in his CV published online and that in some videos for sale he expressed himself in this language. Recital 26 recalls some of these elements⁴⁰ and adds the citizenship of the natural person⁴¹.

24. For the purposes of the correct understanding, a good quality translation shall be offered (Recital 25 of the Regulation 2020/1784)⁴². Its certification or asseveration can be useful⁴³, in order to grant the quality of the translated text⁴⁴ and its consistency with the original text. Finally, it would avoid further delays of the whole transmission procedure due to scarce linguistic quality of texts that are in any case written in a language which is known by the recipient⁴⁵.

25. The use of English, as *lingua franca* in international commerce, for the service of documents is discussed⁴⁶. German case law has inferred a presumption of knowledge, if the parties had previous written contacts in English. The intervention of third parties in the understanding of this communication, as for example, translators, is not relevant. Indeed, the interested parties implicitly accepted the use of the language. However, this case law does not distinguish between the understanding of basic text or of complex legal issues⁴⁷, as appropriate. Greek case law follows a different approach⁴⁸. In the opinion

³⁸ CJEU *Alta Realitat*, cit.

³⁹ According to Oberlandesgericht Frankfurt 1 July 2014, 6 U 104/14, the fact that the sender/future applicant sent messages to the addressee/future defendant before the start of the service procedure, foreboding a legal claim, using the same language as that used in the documents to be served, does not undermine the operability of Article 8.

⁴⁰ In these cases, the addressee shall give evidence of the lack of the linguistic knowledge, reversing the burden of the proof (N. MARCHAL ESCALONA, *op. cit.*, p. 758).

⁴¹ However, a long-term habitual residence seems more meaningful (N. MARCHAL ESCALONA, *op. cit.*, p. 758). The citizenship has been taken into account by Court of first instance of Milan, 29 January 2018, *Banca del merito online*, together with other elements; in the case at stake, the proxy of the defendant was written in Italian.

⁴² England and Wales High Court (Chancery Division) 23 October 2015, *Bank St Petersburg*, [2015] EWHC 2997 (Ch).

⁴³ The dual-date system for the completion of the service allows the sender to avoid the expiration of deadlines or procedural limitations: indeed, a proper translation requires time. This fact cannot go against the interest of the sender and jeopardise his/her rights. Therefore, a first transmission would protect him/her from deadlines, and a second service meeting linguistic requirements allows the recipient to accurately understand the documentation. According to the Court of first instance of Alessandria 23 January 2023, *Banca del merito online*, the sole document with legal value for the recipient/defendant is the translation, if the original document is missing, also for the exercise of the right to defence in the proceedings.

⁴⁴ B. BAREL, “Le notificazioni nello spazio giuridico europeo dopo il Regolamento (UE) 2020/1784”, *Rivista di diritto internazionale privato e processuale*, vol. 58, 2022, p. 549. On the duty of accuracy in the translation: J.-P. RELMY, “Règlement (CE) n. 1393/2007 du 13 novembre 2007 relatif a la signification et a la notification dans les États membres”, in L. CADIET/E. JEULAND/S. AMRANI-MEKKI (dirs.), *Droit processuel civil de l’Union européenne*, Paris, Lexis Nexis, 2011, p. 226.

⁴⁵ A translation mistake that does not undermine the correct understanding of the text, does not compromise the translation itself and does not legitimise a right to refusal: Court of First Instance of Torino 13 April 2018, no 1733, *Ca. Au.*, https://www.ilcaso.it/sentenze/processo_civile/19740.

⁴⁶ S.A. VILLATA, “Il Regolamento C.E. n. 1393/2007 sulle notificazioni di atti giudiziari nell’ambito degli Stati membri”, *Rivista di diritto processuale*, vol. 63, 2009, p. 157.

⁴⁷ Landgericht Bonn 30 November 2010, 10 O 502/09, *IPRax*, vol. 33, 2013, p. 80.

⁴⁸ On which, further: A. ANTHIMOS, *Can Service in English be Refused in Litigation Between Businesses Engaged in*

of the present author, the correct application of the CJEU's case law does not allow to infer any legal presumption of the knowledge of English only because the addressee is active in the international commerce, as such. This can be only one of the elements to be considered, and must be supported by other clues, as the existence of previous communication in English.

26. A related difficulty is the assessment of the linguistic knowledge of a legal person. This ability is indeed connatural to natural persons; however, the reference to any natural persons that work for the legal person, even more specifically in the department that is charged with the challenged issue or with the litigation⁴⁹, seems casual and unstable in time⁵⁰. The linguistic competence shall be somehow attributed to the legal persons as such, even if fictitiously, giving relevance to any objective element and behaviour of the legal person on the market and directly with the sender. Once more, previous correspondence or contracts, former commercial relations, the working language inside the legal person⁵¹, or the website can amount to important clues to assess the linguistic knowledge.

27. The consequent challenge is the level of linguistic knowledge required. In the *Weiss* case the CJEU stated that the useful skills to exchange a correspondence, also having a commercial nature, are not the same as those needed to exercise the right to defence before a court. Therefore, the judge must ascertain that the addressee can understand the documents in a proper way, in order to be able to stand before the court. The difference in the understanding is unobjectionable. However, this reasoning proves too much, because it presupposes that the addressee perfectly understands the legal document and the attachments, so that he/she can promptly exercise the right to defence. Such a deep knowledge of a language is rather impossible to assess, because the judicial document probably contains legal terms, references to pieces of legislation and case law, legal reasonings. For example, if the addressee is a weak contractual party, which benefits in EU Law from a presumption of scarce legal understanding and from a protection in EU private international law, it is impossible to conclude that he/she has the necessary linguistic skills to understand the served document, even when it is written in his/her native language⁵².

28. Rather, the level of the linguistic skills must be pondered with the object that must be understood⁵³: not necessarily the addressee must be able to understand literally everything. Indeed, he/she does not need to exercise the right to defence immediately and personally before a court sitting in another Member State, but only to decide if he/she needs to avail him/herself of a legal expert. Only at that point, if needed, documents and attachments will be properly translated.

29. For these reasons, the extension of the period within which the right of refusal can be exercised to 14 days, established by Regulation 2020/1784, appears excessive. Indeed, the assessment of the complete impossibility to understand the kind of documents received in their fundamental parts requires a much shorter time. Even if the documentation has been materially transmitted to another person, who is not the addressee, a period of 7 days, as granted by the Regulation 1393/2007, appears proper. It is important to stress that this period (7 or 14 days) is safeguarded in its entirety: in the *LKW* case, the CJEU made it clear that any procedural deadlines start to run not from the date of notification, but from the expiry of the deadline for exercising the right of refusal. The addressee does not incur in any limitation or shortening of procedural deadlines in the national proceedings, if he/she takes advantage of the whole time granted to him/her in order to decide about the refusal. In the 14 day-period, on the opposite, the addres-

International Trade?, <https://eapil.org/2024/09/18/can-service-in-english-be-refused-in-litigation-between-businesses-engaged-in-international-trade/>.

⁴⁹ Oberlandesgericht Frankfurt 1 July 2024, cit.

⁵⁰ B. SUJECKI, "Das Annahmeverweigerungsrecht im Europäischen Zustellungsrecht", *Europäische Zeitschrift für Wirtschaftsrecht*, vol. 18, 2007, p. 365; T. RAUSCHER, *op. cit.*, p. 1087; G. CUNIBERTI, *op. cit.*, p. 113.

⁵¹ T. RAUSCHER, *op. cit.*, p. 1084.

⁵² If the recipient is a consumer, special hints for the ascertainment of the linguistic skills shall be used (B. SUJECKI, *op. cit.*, p. 382).

⁵³ V. *supra*, para. II.

see could already obtain a first translation of the documents (in case, even with digital instruments), and abusively exercise the right to refusal not because of legitimate linguistic reasons, but as a delaying tactic to the detriment of the sender, in favour of the addressee. If it is true that the former is informed about the consequences of not translating the documents, according to Article 9(1) of the Regulation 2020/1784, so that the language used is a conscious choice⁵⁴, at the same time the sender might also be exercising a right, that to judicial protection, that must not be undermined by purely delaying tactics of the addressee.

V. The consequences of the unlawful refusal to accept a document

30. Against the right to refuse to accept the service, the sender must not suffer the negative consequences of an illegitimate or abusive refusal⁵⁵, if the linguistic skills are assessed⁵⁶. In the case *Alta Realitat* the CJEU has stated that the seised court can apply its national law in order to determine the consequences of an unlawful refusal, always granting compliance with EU law. In particular, the principles of equality and effectivity must be respected. The correct service of a writ of summon or of any judicial act instituting proceedings is integral part of the right fair trial. It produces effects on the correct appearance, on the start of the judicial proceedings (Article 22 of the Regulation 2020/1784), and on the future cross-border recognition and enforcement of the judgments (as envisaged, for example, in Article 45(1)(b) of the Regulation 1215/2012). The assessment of the linguistic skills of the addressee may lead to the full completion and efficacy of the service, even if a subsequent transmission of a translation is missing, as if the service was not refused⁵⁷. Consequently, deadlines and statutes of limitations run, and the proceedings are correctly introduced.

VI. The parties interested in the cross-border service

31. In the *SR*⁵⁸ judgment the CJEU clarified who are the parties involved in the service, when the court seised on the merits had ordered the translation of the writ of subpoenas to appear as witness, for those domiciled in another Member State. The CJEU stressed that in the general system of the Regulation, the term *applicant* identifies the party who is interested in the service and cannot refer to the seised court. If it were to be considered an interested party, its impartial role would be undermined.

32. Further doubts arose in the identification of the addressee. The premise is that the exclusiveness of the service methods established by the Regulation set aside national rules that allow the transmission through other means. Therefore, the representatives of addressees appearing before the court seised in the Member State of origin, solely for the purpose of contesting the lawfulness of the procedure, cannot be considered the addressee⁵⁹, even if the national procedural law allows for this method of service.

⁵⁴ The receiving authority cannot require the transmitting authority to translate the document (Audiencia Provincial Barcelona, 21 November 2019, ECLI: ES: APB: 2019: 9450A).

⁵⁵ In case of a service of an act instituting proceedings, the claimant shall object the abusive nature of the refusal immediately, in the subsequently first judicial defence after the refusal, in order to proceed in default of the defendant, or, if the refusal proves legitimate, not to lose the possibility of rectification of the service (B. BAREL, *Le notificazioni nello spazio giuridico europeo*, Padova, Cedam, 2008, p. 227).

⁵⁶ If the right to refusal is not exercised, no judicial remedy is established by the Regulation against the fact that the document cannot be understood (J. ECHEBARRIA FERNÁNDEZ, “Commentary on the Judgment of the Provincial Audience of Barcelona of 21 November 2019 [Notification of Non-Translated Judicial Document] [ECLI: ES: APB: 2019: 9450A]”, *Cuadernos de derecho transnacional*, 2020, vol. 12, no 2, p. 983). According to the French Cour de Cassation, civ. 18 October 2012, 11-22.673, if the information on the right to refusal is correctly conveyed, the expiry of any judicial deadline or limitation depends on the negligence of the addressee and not on the language used.

⁵⁷ G. CUNIBERTI, *op. cit.*, p. 117.

⁵⁸ CJEU 2 June 2022, *SR v. EW*, C-196/21.

⁵⁹ CJEU *Alpha Bank*, *cit.*

33. The well-established concept of economic unit, used within the enforcement of EU Competition Law⁶⁰, is not applicable in the identification of the addressee. In the *Volvo*⁶¹ case, the CJEU held that that concept cannot be interpreted so extensively as to allow the service of judicial documents to the subsidiary, when the action is directed against the parent company. The claimant has the possibility to choose the defendant (between the subsidiary and the parent company), providing that they form an economic unit, and the competent court by relying on the alternative rules on jurisdiction established by the Regulation 1215/2012. Once these choices are made, the claimant must pursue proceedings accordingly, serving the documents to the defendant, and cannot “mix” the defendant and the addressee, by choosing to sue the parent company while serving the summons to the subsidiary. This is a fundamental limit safeguarding the defendant’s rights of defence⁶². Nor is the longer time required for service in another Member State compared to purely domestic service a valid argument. The unified methods established by EU Law aim to grant the objective of celerity. Any longer timeframe for transnational service do not constitute a violation of the reasonable duration of the process, which must be assessed in light of the circumstances of each case. Therefore, in the service of documents initiating proceedings, the defendant is generally the formal and material addressee. This holds true unless the subsidiary has been delegated or at least authorised to receive judicial documents in the place of the parent company.

VII. Some final remarks towards the future, including digitalisation

34. The content of Article 12 of the Regulation 2020/1784 is much more precise and complex than the original Article 8 of the Regulation 1348/2000, in order to face the challenges and difficulties of the practice. Some concerns, however, remains.

35. First of all, the limitation of the right to information on the right to refusal grants a margin of appreciation to the receiving authority and risks undermining the right to defence of the addressee, who might not understand the official language of the Member State addressed, or that used in that administrative part of this State.

36. Secondly, in case of refusal, the receiving authority must transmit to the sending authority only the form K, which is the standard certificate of “service or non-service of documents” pursuant to Articles 11(2), 12(4) and 14 of the Regulation, together with the documents to be translated. Nothing is indicated with respect to form L, that seems indispensable for the purposes of the rectification of the service, since it contains the addressees’ declaration on their linguistic skills. The sender can be left in doubt on the language for translation.

37. Thirdly, codifying the case law, Article 12(5) makes it clear that it is possible to remedy the service of the refused document through another service of the document together with the translation. However, the provision does not dictate the timing, not even in a general wording such as that used by the CJEU in the case *Leffler*. The ongoing lack of discipline on this point risks jeopardising the interests of the addressee. If the document to be notified is any act instituting proceedings, the recipient can be unaware of the willingness of the sender to continue the process of service through rectification, and thus the proceedings to be initiated; or to renounce the service and consequently the litigation⁶³.

⁶⁰ CJEU 10 September 2009, *Akzo Nobel and o. v. Commission*, C-97/08 P; CJEU 27 April 2017, *Akzo Nobel and o. v. Commission*, C-516/15 P; CJEU 1 July 2010, *Knauf Gips v. Commission*, C-407/08 P; with specific regard to the private enforcement and the relationship between the subsidiary and the parent company: CJEU 6 October 2021, *Sumal*, C-882/19.

⁶¹ CJEU 11 July 2024, *Volvo*, C-632/22.

⁶² In the light of the CJEU’s reply, STS Tribunal Supremo, Sala de lo Civil, 12 February 2025, claim no 45/2021, decision no 239/2025, ES:TS:2025:566 declared that the claimant’s behaviour was a “maquinación fraudulenta que justifica la rescisión de la sentencia firme” (Fundamentos de Derecho, Cuarto, para. 6), leading to new proceedings on the merits.

⁶³ If the sender does not continue the transmission of documents and translations, the service must be considered as non-existent (G. DE LEVAL/M. LEBOS, *op. cit.*, p. 276; G. CUNIBERTI, *op. cit.*, p. 117) or null and void (J.-P. RELMY, *op. cit.*, p. 239).

38. Finally, the most sensitive issue still remains the ascertainment of the linguistic skills. This remark shall not lead to the conclusion that an EU Regulation shall provide for specific provisions on this topic, while the development of the CJEU's case law helps the national courts to ponder and balance all the relevant elements. Neither it means that the flexibility of the current regime is not to be appreciated: by not imposing translations, it is not centred on State's sovereignty but rather on the rights of the parties, that must understand the documents, the legal act, the proceedings, regardless of the language used. However, this flexibility risks undermining legal certainty⁶⁴, or at least (unreasonably?) extending the duration of the proceedings, when a related litigation on the linguistic skills starts.

39. The increasing digitalisation of the judicial cooperation can change again the system of the service abroad⁶⁵. On 1st May 2025 Regulation 2023/2844⁶⁶ on digitalisation has become applicable. Article 25 introduces innovations (again) on the text of Regulation 2020/1784, after only few years of application. The most important is the addition of a new Article 19a in Section 2, that introduces a new method of service: the "electronic service through the European electronic access point". This tool can be used only insofar as the addressee had previously and expressly accepted its use. The acknowledgment of receipt contains the date of the receipt, which serves as the legal date of service. The same rule applies if the refusal to accept the document has been remedied to according to Article 12(5). This provision on the date of service is an exception to the general rule of the dual-date system with reference to national laws, still contemplated in what is now Article 13 of the Regulation⁶⁷.

40. The legal linguistic regime is fully applicable to the electronic service. Only Article 12(7) is modified in order to include the new authorities obliged to inform the addressee of the right to refusal at the time of the transmission.

41. The dematerialisation of service ensures increased expeditiousness to this process. Furthermore, it shall simplify the determination of the relevant date of service with a very pragmatical solution, that does not refer back to the national laws of the Member States of origin and addressed. It is consequently welcome in terms of celerity and greater effectiveness in protecting the right to a fair trial of both interested parties. This system must however be tested in practice in order to assess its good functioning, or the rise of new litigation.

42. The growing use of technological means in judicial proceedings allows us to envision overcoming linguistic challenges in the near future. The last remarks go, needless to say, to the artificial intelligence. In the field discussed here, and improving these systems – exactly as they are created for – these tools could facilitate the dematerialised transnational service⁶⁸ with full compliance with linguistic requirements and with the opposed right of the parties involved: a correct legal translation is today possible, in the most used languages and with the proofread of a professional translator; in the next future, the potentialities will amplify (at least, concerning the possible linguistic combinations). Looking ahead, but maybe not too much, as these technological systems are refined, we can envision an automatic translation system as a filter for the transmission of documents. The possibility of obtaining a reliable trans-

⁶⁴ J.P. SCHMIDT, "Europäisches Zustellungsrecht und nationale Rechtsmittelfristen – keine Aushöhlung der Übersetzungsregelung", *IPRax*, vol. 44, 2024, p. 382.

⁶⁵ C. GRIECO, "Il processo telematico italiano e il regolamento (CE) n. 1393/2007 sulle notifiche transfrontaliere", *Rivista di diritto internazionale privato e processuale*, vol. 50, 2014, p. 587.

⁶⁶ Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023, on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, *OJ L*, 27 December 2023.

⁶⁷ However, if a rectification is needed, and proceedings are pending in the Member State of origin, a dual-date system seems still useful. This could work with reference to the two dates – of the service of the documents and of the service of the translation – instead of with reference to the two national laws. Indeed, the relevance of one date only would be detrimental to the right of one party: the addressee, if the date of the first service were to be taken into consideration; the sender, if the relevant date were that of the transmission of the retranslation

⁶⁸ J.P. SCHMIDT, *op. cit.*, p. 382.

lation at an acceptable cost and in a short time, almost automatically at the beginning of the electronic service procedure, would certainly reduce the importance of the linguistic flexibility currently envisaged by Regulation 2020/1784, but it would benefit the applicant, in terms of service times and costs, and the recipient, who would more likely receive the documentation translated into a known language.