JUDGMENT OF THE COURT (Grand Chamber)

8 November 2005 *

In Case C-443/03,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 17 October 2003, received at the Court on 20 October 2003, in the proceedings

Götz Leffler

v

Berlin Chemie AG,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur) and J. Malenovský, Presidents of Chambers, S. von Bahr, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, E. Juhász, G. Arestis, A. Borg Barthet and M. Ilešič, Judges,

* Language of the case: Dutch.

Advocate General: C. Stix-Hackl,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 April 2005,

after considering the observations submitted on behalf of:

— Mr Leffler, by D. Rijpma and R. Bakels, advocaten,

— Berlin Chemie AG, by A. Hagedorn, B. Gabriel and J.I. van Vlijmen, advocaten,

— the Netherlands Government, by H.G. Sevenster and C.M. Wissels, acting as Agents,

— the German Government, by W.-D. Plessing, acting as Agent,

— the French Government, by G. de Bergues and A. Bodard-Hermant, acting as Agents,

— the Portuguese Government, by L. Fernandes and M. Fernandes, acting as Agents,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 June 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 8 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; 'the Regulation') .

2 The reference was made in proceedings between Mr Leffler, who resides in the Netherlands, and Berlin Chemie AG ('Berlin Chemie'), a company governed by German law, for the recovery of goods owned by Mr Leffler which had been taken by way of seizure by that company.

Legal context

3 The Regulation has the objective of improving the efficiency and speed of judicial procedures by establishing the principle of direct transmission of judicial and extrajudicial documents.

4 Before the Regulation entered into force, most of the Member States were bound by the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which lays down a mechanism of administrative cooperation enabling a document to be served through a central authority. In addition, Article IV of the protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) ('the Brussels Convention'), provided for the possibility of service through more direct channels. The second paragraph of Article IV of the protocol is worded as follows:

'Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.'

5 The Council of Ministers for Justice, meeting on 29 and 30 October 1993, instructed the Working Party on Simplification of Document Transmission to draw up an instrument to simplify and speed up procedures for the transmission of documents between Member States. That work resulted in the adoption, on the basis of Article K.3 of the EU Treaty (Articles K to K.9 of the EU Treaty have been replaced by

Articles 29 EU to 42 EU), of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters ('the Convention'). The Convention was drawn up by act of the Council of the European Union of 26 May 1997 (OJ 1997 C 261, p. 1; text of the Convention, p. 2; protocol on the interpretation of the Convention by the Court of Justice, p. 17).

6 The Convention did not enter into force. Inasmuch as its wording inspired the wording of the Regulation, the explanatory report on the Convention (OJ 1997 C 261, p. 26) has been relied upon in order to clarify the interpretation of the Regulation.

7 After the Treaty of Amsterdam entered into force, the Commission, on 26 May 1999, presented a proposal for a Council Directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 1999 C 247 E, p. 11).

8 When this document was submitted to the European Parliament, the latter wished it to be adopted in the form of a regulation. In its report (A5-0060/1999 final of 11 November 1999), the Parliament observed in this regard:

'The advantage of regulations is that they allow the rapid, transparent and homogenous implementation of the Community text, in line with the intended objective. This type of instrument has already been chosen, moreover, for the "communitarisation" of other conventions currently being considered.'

9 The second recital in the preamble to the Regulation states:

'The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.'

10 The seventh to tenth recitals are worded as follows:

'(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a pre-printed form, to be completed in the language of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) To secure the effectiveness of this Regulation, the possibility of refusing service of documents is confined to exceptional situations.

(9) Speed of transmission warrants documents being served within days of reception of the document. However, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency. The expiry of this period should not imply that the request be returned to the transmitting agency where it is clear that service is feasible within a reasonable period.

(10) For the protection of the addressee's interests, service should be effected in the official language or one of the official languages of the place where it is to be effected or in another language of the originating Member State which the addressee understands.'

11 Article 4(1) of the Regulation provides:

'Judicial documents shall be transmitted directly and as soon as possible between the agencies designated on the basis of Article 2.'

12 Article 5 of the Regulation states:

'Translation of documents

1. The applicant shall be advised by the transmitting agency to which he or she forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.

2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.'

13 Article 7 of the Regulation reads as follows:

'Service of documents

1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular form requested by the transmitting agency, unless such a method is incompatible with the law of that Member State.

2. All steps required for service of the document shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency by means of the certificate in the standard form in the Annex, which shall be drawn up under the conditions referred to in Article 10(2). The period shall be calculated in accordance with the law of the Member State addressed.'

14 Article 8 of the Regulation provides:

'Refusal to accept a document

1. The receiving agency shall inform the addressee that he or she may refuse to accept the document to be served if it is in a language other than either of the following languages:

(a) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected; or

(b) a language of the Member State of transmission which the addressee understands.

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.'

15 Article 9 of the Regulation is worded as follows:

'Date of service

1. Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed.

2. However, where a document shall be served within a particular period in the context of proceedings to be brought or pending in the Member State of origin, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.

3. A Member State shall be authorised to derogate from the provisions of paragraphs 1 and 2 for a transitional period of five years, for appropriate reasons.

This transitional period may be renewed by a Member State at five-yearly intervals due to reasons related to its legal system. That Member State shall inform the Commission of the content of such a derogation and the circumstances of the case.'

16 Article 19 of the Regulation states:

'Defendant not entering an appearance

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.

...'

17 The Regulation prescribes the use of various standard forms, which are annexed to it. One of those forms, completed pursuant to Article 10 of the Regulation, is headed 'Certificate of service or non-service of documents'. Point 14 of this form provides for noting the addressee's refusal to accept the document on account of the language used. Point 15 of the form indicates various reasons for non-service of the document.

18 Article 26(1) 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) is worded as follows:

'1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

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 ... Regulation (EC) No 1348/2000 ... 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.'

19 In addition, Article 34(2) of Regulation No 44/2001 provides that a judgment given in 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'.

The main proceedings and the questions referred for a preliminary ruling

20 According to the order for reference, Mr Leffler applied to the President of the Rechtbank te Arnhem (Arnhem Local Court) by writ of 21 June 2001 for interim relief against Berlin Chemie, in order to recover goods taken by way of seizure by that company and to obtain an order prohibiting further such seizure. Berlin Chemie contested the application and, by order of 13 July 2001, the President of the Rechtbank refused to grant the form of order sought by Mr Leffler.

21 By writ of 27 July 2001, served by bailiff at the office of Berlin Chemie's lawyer, Mr Leffler brought an appeal before the Gerechtshof te Arnhem (Arnhem Regional Court of Appeal). Berlin Chemie was summoned to appear at the sitting of that court of 7 August 2001.

22 However, since the case had not been entered on the Gerechtshof's cause list, Mr Leffler arranged for an amended writ to be served on 9 August 2001. By that writ, Berlin Chemie was summoned to appear at the sitting of 23 August 2001, but did not enter an appearance at that sitting.

23 The Gerechtshof decided to defer a decision on Mr Leffler's application for judgment in default against Berlin Chemie, in order to enable him to summon it to appear pursuant to Article 4(7) (former version) of the Wetboek van Burgerlijke Rechtsvordering (Netherlands Code of Civil Procedure) and to the Regulation.

24 By writ of 7 September 2001, served by bailiff at the office of the Public Prosecutor at the Gerechtshof, Berlin Chemie was summoned to appear at the sitting of 9 October 2001. However, it did not enter an appearance at that sitting.

25 The Gerechtshof again decided to defer a decision on Mr Leffler's application for judgment in default, on this occasion pending the submission of information showing that service had been effected in accordance with Article 19 of the Regulation. Certain documents were submitted at the sitting of 4 December 2001.

26 By judgment of 18 December 2001, the Gerechtshof refused to grant Mr Leffler's application for judgment in default against Berlin Chemie and held that the proceedings were closed.

27 The relevant points of that judgment, as reproduced by the referring court, are the following:

'3.1 It is clear from the information supplied that service of the writ on Berlin Chemie was effected in accordance with German legislation, but that Berlin Chemie refused to accept the documents on the ground that they had not been translated into German.

3.2 The writ served in Germany was not translated into the official language of the State addressed or into a language comprehensible for the intended recipient of that writ. This constitutes a failure to comply with Article 8 of the EU Regulation on service and has the unavoidable consequence that the application for judgment in default must be refused.'

28 Mr Leffler brought an appeal on a point of law against the judgment of 18 December 2001. He maintains that the Gerechtshof erred in law in point 3.2 of the grounds of that judgment. In his submission, that court should have granted judgment in default; in the alternative it ought to have set a new hearing date and ordered that Berlin Chemie be summoned to appear on that day, after rectification of any errors in the previous writ.

29 The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) found that Article 8 of the Regulation does not prescribe the consequences of a refusal to accept service. It observed in particular:

'... It may be possible to assume that, once the addressee has for good reasons refused to accept the document, no service at all has in fact taken place. However, it is also conceivable that it must be assumed that, following refusal by the addressee to accept the document, it is permissible to rectify the defect by subsequently providing the addressee with a translation. In the latter case, the question accordingly arises as to the period of time and the manner in which the translation must be brought to the attention of the addressee. Must the manner of service of documents indicated in the Regulation also be followed for the purpose of sending the translation, or can the manner of dispatch be decided freely? It is also important to determine, in the event that rectification is possible, whether national procedural law applies in that regard.'

30 The Hoge Raad der Nederlanden accordingly decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 8(1) of the Regulation be construed as meaning that, in the event of refusal by an addressee to accept a document on the ground of failure to comply with the language requirement laid down in Article 8(1), it is possible for the sender to rectify that failure?

(2) If the answer to Question 1 is in the negative: must refusal to accept the document be deemed to have the effect in law of rendering the service inoperative in its entirety?

(3) If the answer to Question 1 is in the affirmative:

(a) Within what period of time and in what manner must the translation be brought to the attention of the addressee?

Must notification of the translation satisfy the conditions which the Regulation imposes on the service of documents or can the manner of dispatch be freely determined?

(b) Does national procedural law apply in respect of the possibility of rectifying the failure?'

Consideration of the questions

Question 1

31 By its first question, the referring court asks whether, on a proper construction of Article 8(1) of the Regulation, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, it is possible for the sender to remedy the lack of translation.

Observations submitted to the Court

32 The German and Finnish Governments submit that the consequences of refusal of the document must be determined in accordance with national law. In support of this proposition they cite the comments on Articles 5 and 8 appearing in the explanatory report on the Convention, the reference by the Court, in Case C-305/88 *Lancray* [1990] ECR I-2725 at paragraph 29, to national law in order to determine whether defective service could be cured, and the Regulation's drafting history, as described by a commentator, showing that the delegations of the Member States did not wish the Regulation to interfere with national procedural law. The approach adopted by the applicable national rules determines whether or not it is permitted to remedy the lack of translation.

33 Mr Leffler, the Netherlands, French and Portuguese Governments and the Commission in its oral observations maintain that the consequences of refusal of a document must be inferred from an autonomous interpretation of the Regulation

and that, in accordance with such an interpretation, remedying the lack of translation must be permitted. They highlight the Regulation's objective of speeding up and simplifying procedures for service of documents and stress that not to permit the lack of translation to be remedied renders Article 5(1) of the Regulation redundant since, in that case, businesses will take no risk and systematically have documents translated. They add that there is a logical reason for the presence of the words 'of which a translation is requested' in Article 8(2) of the Regulation only if it is possible to remedy the lack of translation and point out that certain passages in the explanatory report on the Convention suggest that such a possibility exists.

34 The Commission additionally puts forward a number of matters which in its submission warrant a lack of translation not being regarded as a basis for absolute nullity of service. In particular, the standard forms distinguish between mention of the lack of due service (point 15 of the form completed in accordance with Article 10 of the Regulation) and mention of refusal of the document on language grounds (point 14 of that form). Furthermore, Article 8(2) of the Regulation deals with returning the documents of which a translation is requested, and not all the documents, as would be the case if service had had no effect whatsoever. The Commission emphasises that no enactment provides for automatic nullity of service should there be no translation and that to allow such nullity is contrary to the principle that nullity must be provided for by an enactment ('no nullity without an enactment'). It submits finally that absolute nullity exceeds what is necessary to safeguard the addressee's interests, while nullity is not conceivable without a grievance ('no nullity without a grievance').

35 Berlin Chemie contends that service must not be simplified to the detriment of legal certainty or the addressee's rights. The addressee must be able to understand rapidly what type of proceedings he is involved in and to prepare his defence properly. Berlin Chemie states that, where there is doubt as to whether the proceedings in question might be a matter of urgency, the addressee of the document will, as a precaution, have the document translated himself, whereas it should not be for him to bear the risk and the cost of the lack of translation. On the other hand, the sender is aware of the risks attaching to a lack of translation and can take measures to avoid

them. Finally, to permit the lack of translation to be remedied would slow down procedures, in particular if the court must first determine whether the refusal to accept the untranslated document is justified. That could give rise to certain abuses in this regard.

36 Mr Leffler and the Netherlands Government argue that Article 19 of the Regulation provides adequate protection for an addressee who is the defendant in a case. Like the French Government, they submit that the court has the power to adjust time-limits in order to take account of the interests of the parties to the case and, in particular, enable the defendant to prepare his defence. As to the procedural delay caused by the need to remedy the lack of translation, the Netherlands Government contends that that would essentially prejudice the applicant and not the defendant addressee.

The Court's answer

37 Article 8 of the Regulation does not lay down the legal consequences which flow from refusal of a document by its addressee on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands.

38 However, the other provisions of the Regulation, the objective noted in the second and sixth to ninth recitals in its preamble of ensuring that documents are transmitted rapidly and efficiently and the practical effect which must be accorded to the possibility, provided for in Articles 5 and 8 of the Regulation, of not having the document translated into the official language of the State addressed, justify precluding nullity of the document where it has been refused by the addressee on the ground that it is not in that language or in a language of the Member State of

transmission which the addressee understands and, on the other hand, accepting the possibility of remedying the lack of translation.

39 First of all, no provision of the Regulation lays down that refusal of a document because Article 8 thereof has not been complied with results in nullity of the document. On the contrary, while the Regulation does not specify the precise consequences of refusing the document, at the very least several of its provisions suggest that the lack of translation may be remedied.

40 Thus, the reference to 'documents of which a translation is requested' in Article 8(2) of the Regulation signifies that it is possible for the addressee to request a translation and, accordingly, for the sender to remedy the lack of translation by sending the translation required. This reference differs from the words 'documents transmitted' used in Article 6(2) and (3) of the Regulation to designate all the documents forwarded by the transmitting agency to the receiving agency and not only some of them.

41 Likewise, the standard form certifying service or non-service, completed in accordance with Article 10 of the Regulation, does not include refusal of the document because of the language used as a possible reason for non-service, but provides for that information as a separate entry. This supports the conclusion that refusal of the document is not to be regarded as non-service.

42 Furthermore, if that refusal could never be remedied, the sender's rights would be prejudiced in such a way that he would never take the risk of serving an untranslated document, thereby undermining the usefulness of the Regulation and, in particular, its provisions relating to the translation of documents, which contribute to the objective of ensuring that documents are transmitted rapidly.

43 This interpretation cannot be successfully countered by the submission that the consequences of refusal of a document should be determined by national law. The comments in the explanatory report on the Convention, the Court's decision in *Lancray*, cited above, and the Regulation's drafting history cannot properly be relied upon in this connection.

44 To let national law determine whether the very principle that it is possible to remedy a lack of translation is accepted would prevent any uniform application of the Regulation, since it is possible for the Member States to provide for different solutions in this respect.

45 The objective pursued by the Treaty of Amsterdam of creating an area of freedom, security and justice, thereby giving the Community a new dimension, and the transfer from the EU Treaty to the EC Treaty of the body of rules enabling measures in the field of judicial cooperation in civil matters having cross-border implications to be adopted testify to the will of the Member States to establish such measures firmly in the Community legal order and thus to lay down the principle that they are to be interpreted autonomously.

46 Likewise, the choice of the form of a regulation, rather than that of a directive initially proposed by the Commission, shows the importance which the Community legislature attaches to the direct applicability of the Regulation's provisions and their uniform application.

47 It follows that although the comments in the explanatory report on the Convention, an instrument adopted before the Treaty of Amsterdam entered into force, are useful, they cannot be relied upon to contest an autonomous interpretation of the Regulation demanding a uniform consequence for refusal of a document on the ground that it is not in an official language of the Member State addressed or in a

language of the Member State of transmission which the document's addressee understands. Similarly, the Court's case-law in *Lancray* was formulated in the context of interpretation of a legal instrument of a different nature which, unlike the Regulation, did not seek to establish an intra-Community system of service.

48 As regards, finally, the conclusions drawn by the German Government from the drafting history described by a commentator, it need merely be observed that the supposed will of the delegations of the Member States did not materialise in the Regulation itself. It follows that the alleged drafting history cannot be relied upon to contest an autonomous interpretation of the Regulation which seeks to give practical effect to the provisions it contains, with a view to its uniform application in the Community, in compliance with its objective.

49 To interpret the Regulation as demanding the possibility of remedying the lack of translation as a uniform consequence of refusal of a document on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the document's addressee understands does not call into question the importance of national law and the role of national courts. As is apparent from settled case-law, in the absence of Community provisions it is for the domestic legal system of each Member State to determine the detailed procedural rules governing actions at law intended to safeguard the rights which individuals derive from the direct effect of Community law (see, inter alia, Case 33/76 *Rewe* [1976] ECR 1989, paragraph 5).

50 The Court has, however, made it clear that those rules cannot be less favourable than those governing rights which originate in domestic law (principle of equivalence) and that they cannot render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see *Rewe*, cited above, paragraph 5, Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 27, and Case C-231/96 *Edis* [1998] ECR I-4951, paragraph 34). As the Advocate General has

observed in points 38 and 64 of her Opinion, the principle of effectiveness must lead the national court to apply the detailed procedural rules laid down by domestic law only in so far as they do not compromise the raison d'être and objective of the Regulation.

51 It follows that, where the Regulation does not prescribe the consequences of certain facts, it is for the national court to apply, in principle, national law while taking care to ensure the full effectiveness of Community law, a task which may lead it to refrain from applying, if need be, a national rule preventing that or to interpret a national rule which has been drawn up with only a purely domestic situation in mind in order to apply it to the cross-border situation at issue (see inter alia, to this effect, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 16, Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 19, Case C-453/99 *Courage and Crehan* [2001] ECR I-6297, paragraph 25, and Case C-253/00 *Muñoz and Superior Fruiticola* [2002] ECR I-7289, paragraph 28).

52 It is also for the national court to ensure that the rights of the parties to the case are safeguarded, in particular the ability of a party to whom a document is addressed to have sufficient time to prepare his defence or the right of a party who sends a document not to suffer, for example in urgent proceedings where the defendant fails to appear, the adverse consequences of a refusal to accept an untranslated document which purely seeks to delay matters and manifestly constitutes an abuse, when it can be proved that the addressee of that document understands the language of the Member State of transmission in which the document is written.

53 The answer to the first question must therefore be that, on a proper construction of Article 8(1) of the Regulation, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, it is possible for the sender to remedy that by sending the translation requested.

Question 2

54 The second question, asked if Article 8 of the Regulation is to be interpreted as precluding a lack of translation from being remedied, is designed to ascertain whether refusal of the document has the effect of rendering service inoperative in its entirety.

55 In light of the answer given to the first question, there is no need to answer the second question.

Question 3

56 By the third question, asked if the answer to the first question is in the affirmative, the referring court essentially seeks to ascertain within what period of time and in what manner the translation must be brought to the attention of the addressee of the document and whether national procedural law applies to the possibility of remedying the lack of translation.

Observations submitted to the Court

57 So far as concerns the period within which the lack of translation may be remedied, the Netherlands and Portuguese Governments refer to Article 7(2) of the Regulation. They submit that the translation must be sent as soon as possible and that a period of one month may be regarded as reasonable.

58 As to the effect that sending the translation has on time-limits, the Netherlands Government submits that, even if the addressee of the document was fully justified in refusing the latter, the time-limit-preserving effect of Article 9(2) and (3) of the Regulation must in any event be maintained. The Commission observes that the dates of service will be determined in accordance with Article 9. For the addressee, only service of the translated documents will be taken into consideration, a fact which explains the words 'without prejudice to Article 8' that appear in Article 9(1). For the applicant, the date remains determined in accordance with Article 9(2).

59 The French Government points out that procedural time-limits must be capable of adjustment by the court in order to allow the addressee of the document to prepare his defence.

60 So far as concerns the manner in which the translation is sent, Mr Leffler and the French and Portuguese Governments submit that the translation should be communicated in accordance with the requirements of the Regulation. The Netherlands Government contends, on the other hand, that transmission may be effected informally but that, to avoid any misunderstanding, it is desirable to avoid direct dispatch from the transmitting agency to the addressee, and it is preferable to go through the receiving agency.

61 Berlin Chemie argues that, if the Court were to decide that it is possible to send a translation, in order to guarantee legal certainty the consequences of that possibility should be harmonised, in accordance with the Regulation's objectives.

The Court's answer

62 Although Article 8 of the Regulation contains no specific provision relating to the rules which should be followed when there is a need to regularise a document

refused on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the document's addressee understands, general principles of Community law and the other provisions of the Regulation allow some guidance to be provided to the national court, in order to give practical effect to the Regulation.

63 For reasons of legal certainty, the Regulation is to be interpreted as meaning that the lack of translation must be remedied in accordance with the procedure laid down by the Regulation.

64 When the transmitting agency has been informed that the addressee has refused to accept the document for want of translation, and having heard the views of the applicant where appropriate, it is incumbent upon it, as may be inferred from Article 4(1) of the Regulation, to remedy that by sending a translation as soon as possible. In this regard, as suggested by the Netherlands and Portuguese Governments, a period of one month from receipt by the transmitting agency of the information relating to the refusal may be regarded as appropriate but this period can be determined by the national court according to the circumstances. Account should be taken, in particular, of the fact that certain texts may be unusually lengthy or have to be translated into a language for which there are few translators available.

65 The effect that sending a translation has on the date of service should be determined by analogy with the double-date system developed in Article 9(1) and (2) of the Regulation. In order to uphold the effectiveness of the Regulation, it is important to ensure that the rights of the various parties to the case are accorded maximum, and balanced, protection.

66 The date of service may be important for an applicant, for example when the document served constitutes the bringing of proceedings that must be instituted within a mandatory time-limit or is designed to interrupt the running of a limitation

period. In addition, as has been stated in paragraph 38 of this judgment, failure to comply with Article 8(1) of the Regulation does not result in nullity of service. In view of those factors, it is to be held that the applicant must be able to benefit, as regards the date, from the effect of the initial service in so far as he has displayed diligence in regularising the document by sending a translation as soon as possible.

67 However, the date of service may also be important for the addressee, in particular because it constitutes the point at which time starts to run for having recourse to a remedy or preparing a defence. Effective protection of the document's addressee entails taking into account, in his regard, only the date on which he was able not only to have knowledge of, but also to understand, the document served, that is to say the date on which he received the translation of it.

68 It is for the national court to take into account and to protect the interests of the parties to the case. Thus, by analogy with Article 19(1)(a) and (b) of the Regulation, if a document has been refused on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the document's addressee understands and the defendant has not appeared, judgment is not to be given until it is established that the document in question has been regularised by the sending of a translation and that this took place in sufficient time to enable the defendant to defend. Such an obligation also results from the principle laid down in Article 26(2) of Regulation No 44/2001 and compliance therewith is to be checked before a judgment is recognised, in accordance with Article 34(2) of that regulation.

69 In order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by the Regulation as interpreted by the Court, it is incumbent on the national court, as indicated in paragraphs 50 and 51 of this judgment, to apply national procedural law while taking care to ensure the full effectiveness of the Regulation, in compliance with its objective.

70 It should also be remembered that when a question relating to the interpretation of the Regulation is raised before it, the national court may, under the conditions laid down in Article 68(1) EC, make a reference to the Court in that regard.

71 In view of all of the foregoing matters, the answer to the third question must be that:

— on a proper construction of Article 8 of the Regulation, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, that situation may be remedied by sending the translation of the document in accordance with the procedure laid down by the Regulation and as soon as possible;

— in order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by the Regulation as interpreted by the Court, it is incumbent on the national court to apply national procedural law while taking care to ensure the full effectiveness of the Regulation, in compliance with its objective.

Costs

72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

1. **On a proper construction of Article 8(1) 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, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, it is possible for the sender to remedy that by sending the translation requested.**

2. **On a proper construction of Article 8 of Regulation No 1348/2000, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, that situation may be remedied by sending the translation of the document in accordance with the procedure laid down by Regulation No 1348/2000 and as soon as possible.**

   In order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by Regulation No 1348/2000 as interpreted by the Court, it is incumbent on the national court to apply national procedural law while taking care to ensure the full effectiveness of that regulation, in compliance with its objective.

[Signatures]