New book published in the MPI Luxembourg Book Series: Protecting Privacy in Private International and Procedural Law and by Data Protection. European and American Developments

Ensuring the effective right to privacy regarding the gathering and processing of personal data has become a key issue both in the internal market and in the international arena. The extent of one's right to control their data, the implications of the 'right to be forgotten', the impact of the Court of Justice of the European Union's decisions on personality rights, and recent defamation legislation are shaping a new understanding of data protection and the right to privacy. This book, edited by B. Hess and Cristina M. Mariottini, explores these issues with a view to assessing the status quo and prospective developments in this area of the law which is undergoing significant changes and reforms.

Contents:

Further information is available here (English) and here (German).

Professor Ron Brand on "The Continuing Evolution of U.S. Judgments Recognition Law"

Professor Ronald A. Brand, the Chancellor Mark A. Nordenberg University Professor and the Director of the Center for International Legal Education at the University of Pittsburgh School of Law, has just posted a new article to SSRN regarding the "Continuing Evolution of U.S. Judgments Recognition Law." It is available for download here. It generally deals with the history of such law from *Hilton v. Guyot* to the present day, demonstrates some of the problems indicated by recent cases, and comments on the federalism concerns that are delaying the ratification of the 2005 Hague Choice of Courts Convention in the United States. A more detailed abstract is below.

> *The substantive law of judgments recognition in the United States has evolved from federal common law, found in a seminal Supreme Court opinion, to primary reliance on state law in both state and federal courts. While state law often is found in a local version of a uniform act, this has not brought about true uniformity, and significant discrepancies exist among the states. These discrepancies in judgments recognition law, combined with a common policy on the circulation of internal judgments under the United States Constitution's Full Faith and Credit Clause, have created opportunities for forum shopping and litigation strategies that result in both inequity of result and inefficiency of judicial process. These inefficiencies are fueled by differences regarding (1) substantive rules regarding the recognition of judgments, (2) requirements for personal and quasi in rem jurisdiction when a judgments recognition action is brought (recognition jurisdiction), and (3) the application of the doctrine of forum non conveniens in judgments (and arbitral award) recognition cases. Recent cases demonstrate the need for a return to a single, federal legal framework for the recognition and enforcement of foreign judgments. This article reviews the history of U.S. judgments recognition law, summarizes current substantive law on the recognition and enforcement of foreign*

judgments, reviews recent decisions that demonstrate the three specific problem areas, and proposes a coordinated approach using federal substantive law on judgments recognition and state law on related matters in order to eliminate the current problems of non-uniformity and inefficient use of the courts.

"Judicial Education and the Art of Judging"–2014 University of Missouri Symposium Publication

Last fall, the University of Missouri Center for the Study of Dispute Resolution convened an international symposium entitled "Judicial Education and the Art of Judging: From Myth to Methodology." Panelists included judges, academics and judicial education experts from the United States, Canada and Australia.

The symposium arose out of the recognition that although there is a large and ever-increasing body of literature on matters relating to judicial appointments, judicial independence, judicial policy making and the like, there is an extremely limited amount of information on how someone learns to be a judge. The conventional wisdom in the common law world holds that judges arrive on the bench already equipped with all the skills necessary to manage a courtroom and dispense justice fully, fairly and rapidly. However, many judges have written about the difficulties they have had adjusting to the demands of the bench, and social scientists have identified a demonstrable link between judicial education and judicial performance. As a result, it is vitally important to identify and improve on best practices in judicial education.

The symposium sought to improve the understanding of judicial education by considering three related issue: (1) what it means to be a judge and what it is about judging that is different than other sorts of decision-making; (2) what the goal of judicial education is or should be; and (3) how judges can and should be

educated. While most of the discussion took place within the context of common law legal systems, much of the material is of equal relevance to civil law systems.

Articles from this symposium are freely available here. The table of contents shows below.

Judicial Education and Regulatory Capture: Does the Current System of Educating Judges Promote a Well-Functioning Judiciary and Adequately Serve the Public Interest? S.I. Strong
What Judges Want and Need: User-Friendly Foundations for Effective Judicial Education Federal Circuit, Judge Duane Benton and Jennifer A.L. Sheldon-Sherman
Judicial Bias: The Ongoing Challenge, Kathleen Mahoney
International Arbitration, Judicial Education, and Legal Elites, Catherine A. Rogers
Towards a New Paradigm of Judicial Education, Chief Justice Mary R. Russell
Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges S.I. Strong
Judging as Judgment: Tying Judicial Education to Adjudication Theory, Robert G. Bone
Of Judges, Law, and the River: Tacit Knowledge and the Judicial Role, Chad M. Oldfather
Educating Judges—Where to From Here?, Livingston Armytage
Judicial Education: Pedagogy for a Change, T. Brettel Dawson

AG Wahl on the localisation of damages suffered by the relatives of the direct victim of a tort under

the Rome II Regulation

This post has been written by Martina Mantovani.

On 10 September 2015, Advocate General Wahl delivered his opinion in Case C-350/14, *Florin Lazar*, regarding the interpretation of Article 4(1) of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II). Pursuant to this provision, a non-contractual obligation arising out of a tort is governed, as a general rule, by the law of "the place where the damage occurred", irrespective of the country in which the event giving rise to the damage occurred "and irrespective of the country or countries in which the indirect consequences of that event occur".

The case concerns a fatal traffic accident occurred in Italy.

Some close relatives of the woman who died in the accident, not directly involved in the crash, brought proceedings in Italy seeking reparation of pecuniary and non-pecuniary losses personally suffered by them as a consequence of the death of the woman, *ie* the moral suffering for the loss of a loved person and the loss of a source of maintenance. Among the claimants, all of them of Romanian nationality, some were habitually resident in Italy, others in Romania.

Before the Tribunal of Trieste, seised of the matter, the issue arose of whether, for the purposes of the Rome II Regulation, one should look at the damage claimed by the relatives in their own right (possibly to be localised in Romania) or only at the damage suffered by the woman as the immediate victim of the accident. Put otherwise, the question was whether the prejudice for which the claimants were seeking reparation could be characterised as a "direct damage" under Article 4(1), or rather as an "indirect consequence of the event", with no bearing on the identification of the applicable law.

According to AG Wahl, a "direct damage" within the meaning of Article 4(1) does not cover the losses suffered by family members of the direct victim.

In the opinion, the Advocate General begins by acknowledging that, under the domestic rules of some countries, the close relatives of the victim are allowed to seek satisfaction in their own right (*iure proprio*) for the pecuniary and non-pecuniary losses they suffered as a consequence of the fatal (or non-fatal) injury

suffered by the victim, and that, in these instances, a separate legal relationship between such relatives and the person claimed to be liable arises and co-exists with the one already set in place between the latter and the direct victim.

In the Advocate General's view, however, domestic legal solutions on third-party damage should not have an impact on the interpretation of the word "damage" in Article 4(1), which should rather be regarded as an autonomous notion of EU law. The latter notion should be construed having due regard, *inter alia*, to the case law of the ECJ concerning Article 5(3) of the 1968 Brussels Convention and of the Brussels I Regulation (now Article 7(2) of the Brussels I*a* Regulation), in particular insofar as it excludes that consequential and indirect (financial) damages sustained in another State by either the victim himself or another person, cannot be invoked in order to ground jurisdiction under that provision (see, in particular, the judgments in *Dumez and Tracoba, Marinari* and *Kronhofer*).

That solution, the Advocate General concedes, has been developed with specific reference to conflicts of jurisdictions, on the basis of considerations that are not necessarily as persuasive when transposed to the conflicts of laws. The case law on Brussels I, with the necessary adaptation, must nevertheless be treated as providing useful guidance for the interpretation of the Rome II Regulation.

Specifically, AG Wahl stresses that the adoption of the sole connecting factor of the *loci damni* in Article 4(1) of the Rome II Regulation marks the refutation of the theory of ubiquity, since, pursuant to the latter provision, torts are governed by one law. The fact of referring exclusively to the place where the damage was sustained by the direct victim, regardless of the harmful effects suffered elsewhere by third parties, complies with this policy insofar as it prevents the splitting of the governing law with respect to the several issues arising from the same event, based on the contingent circumstance of the habitual residence of the various claimants.

The solution proposed would additionally favour, he contends, other objectives of the Regulation. In particular, this would preserve the neutrality pursued by the legislator who, according to Recital 16, regarded the designation of the *lex loci damni* to be a "fair balance" between the interests of all the parties involved. Such compromise would be jeopardised were the victim's family member systematically allowed to ground their claims on the law of the place of their

habitual residence. The preferred reading would moreover ensure a close link between the matter and the applicable law since, while the place where the initial damage arose is usually closely related to the other components of liability, the same cannot be said, generally, as concerns the domicile of the indirect victim.

In the end, according to AG Wahl, Article 4(1) of Regulation No 864/2007 should be interpreted as meaning that the damages suffered, in their State of residence, by the close relatives of a person who died as a result of a traffic accident occurred in the State of the court seised constitute "indirect consequences" within the meaning of the said provision and, consequently, the "place where the damage occurred", in that event, should be understood solely as the place in which the accident gave rise to the initial damage suffered by the direct victim.

Van Den Eeckhout on Regulatory Competition and on International Employment Law

The up-date version of two papers of Veerle Van Den Eeckhout has been published on SSRN.

The first up-dated paper, entitled "Choice and Regulatory Competion: Rules on Choice of Law and Forum", analyzes the Rules of Private International Law from the perspective of "Choice and Regulatory Competition". The up-dated version is to be found here.

The second up-dated paper, entitled "The "Right" Way to Go in International Labour Law – and Beyond", discusses several current issues in international employment law. The up-dated version is to be found here.
The final papers will be published each in the books of the conferences in the context of which they have been written (a conference in Maastricht and in Antwerp respectively).

An Event to Celebrate the 50th Anniversary of the 1965 Hague Service Convention and the 45th Anniversary of the 1970 Hague Evidence Convention (Washington DC)

The official program for the November 2 event in Washington DC can be found here, as well as the online RSVP link.

The event will feature remarks by Dean William Treanor, Georgetown University Law Center, an Opening Presentation by Christophe Bernasconi, Secretary General, Hague Conference on Private International Law, and a Keynote speech by the Hon. Rimsky Yeun, Hong Kong Secretary of Justice. The day will also feature panels concerning the operation of the Conventions in theory And practice, the work of the national Central Authorities, comparative insights from both common law and civil law lawyers, and consideration of the critical challenges that will face the Conventions over the next half-century.

The conference will be held on the campus of Georgetown University Law Center, 600 New Jersey Ave., NW, Washington D.C., on the 12th floor of the Gewirz Building.

The sponsor of this event is the Center on Transnational Business and the Law, Georgetown University Law Center. The event is co-sponsored by the Hague Conference on Private International Law, the American Branch of the International Law Association, the American Society of International Law, the ABA Section of International Law and the International Law Institute. Contributing co-sponsors include: Covington & Burling LLP, Jones Day, and Winston & Strawn

Schlosser/Hess EuZPR

The fourth edition of the *EU-Zivilprozessrecht: EuZPR* by Prof. Peter Schlosser and Prof. Burkhard Hess, updated and thoroughly reworked, has just been released.

The book is an answer to a well-known fact : in a ever-closer European Union mutual recognition and enforcement of judgments in the individual Member States is becoming increasingly important. In this very timely published, easy to handle commentary, the essential elements of the *EU Zivilprozessrechts* to date are comprehensively commented, with a look to the practice. The following instruments are to be found therein, annotated provision by provision: the Brussles I bis Regulation; the Regulation on the European enforcement order; the Regulation on the European order for payment; the small claims Regulation; the Regulation establishing a European Account Preservation Order procedure; the Regulation on the service of documents; the Regulation on the taking of evidence; the Hague Convention on the service of documents, as well as the one on the taking of evidence.

The book approach makes of it a very valuable tool for lawyers and notaries with an international-oriented practice, judges and other judicial authorities. Of course, also for academics.

Data sheet: in German; 623 pp. Format (B x L): 12,8 x 19,4 cm

ISBN 978-3-406-65845-7

For further information on the book and to order it on line click here.

The Hague Convention on the Choice of Court Agreements Enters into Force

Last Thursday (1 October 2015), the *Convention of 30 June 2005 on Choice of Court Agreements* (the Convention) entered into force in 28 States (Mexico and all Members of the European Union, except Denmark). This results from Mexico's accession to the Convention in 2007 and the recent approval of the Convention by the European Union. This momentum is set to encourage other States currently considering becoming a party to the Convention.

The Convention has been designed to provide more legal certainty and predictability in relation to choice of court agreements between parties to international commercial contracts. It ensures three things: a court chosen by the parties must, in principle, hear the case; any other court before which proceedings are brought must refuse to hear them; and the judgment rendered by the chosen court must be recognised and enforced in other Contracting States.

As consistently recognised by judges, practitioners and other key players within the international legal community, the application of the Convention will deliver adequate responses to the increasingly pressing need in international transactions for enforceable choice of court agreements and their resulting judgments.

For further information on the Convention click here.

Recent comments on the entering into force by Prof. Pedro de Miguel (Universidad Complutense, Madrid) can be seen here.

25th Meeting of the GEDIP, Luxembourg 18-20 September 2015

Last weekend the GEDIP (Group européen de droit international privé / European Group for Private International Law) met in Luxembourg. The GEDIP defines itself as "a closed forum composed of about 30 experts of the relations between private international law and European law, mainly academics from about 18 European States and also members of international organizations". Nevertheless, as the meeting was hosted by the MPI -together with the Faculty of Law of Luxembourg- I had the privilege of being invited to the deliberations.

The history and purpose of the Group are well known: founded in 1991 (which means that it has just celebrated its 25fh anniversary), the Group has since then met once a year as an academic and scientific think tank in the field of European Private International Law. During the meetings the most recent developments in the area are presented and discussed, together with proposals for improving the European PIL legal setting. Actually, while the latter activity is at the core of the GEDIP gatherings, the combination with the former results in a well-balanced program. At the same time it shows the openness and awareness of the Group to what's happening in other fora (and vice versa): the Commission -K. Vandekerckhove joined as observer and to inform on on-going activities-; the Hague Conference -represented this time by M. Pertegás, who updated us on the work of the Conference-, or the ECtHR -Prof. Kinsch summarized the most relevant decisions of the Strasbourg Court since the last GEDIP meeting.

In Luxembourg we enjoyed as *hors d'oeuvre* a presentation by Prof. C. Kohler on the CJEU Opinion 2/13, Opinion of the Court (Full Court) of 18 December 2014, on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedom. Prof. Kohler started recalling the principle of mutual trust as backbone of the Opinion. From this he moved on to focus on the potential impact of the Opinion on PIL issues, in particular on the public policy clause in the framework of the recognition and enforcement of judgements in civil and commercial matters (here he recalled the recently published decision on C-681/13, where the Opinion is expressly quoted);

and on cases of child abduction involving Member States, where the abolition of exequatur may elicit a doubt on the compliance with the ECHR obligations (see ad.ex. the ECtHR decision on the application no. 3890/11, *Povse v. Austria*). A second presentation, this time by Prof. T. Hartley, addressed the very much disputed issue of antisuit injunctions and the Brussels system in light of the Gazprom decision, case C-536/13. Prof. Hartley expressed his views on the case and explained new strategies developed under English law to protect the effects of choice of court agreements, like the one shown in *AMT Futures Limited* v. *Marzillier,* where the latter is sued for having induced the clients of the former to issue proceedings in Germany and to advance causes of action under German law, and thereby to breach the terms of the applicable exclusive jurisdiction and choice of law clauses. AMT claims damages against Marzillier for their having done so, its claim being a claim in tort for inducement of breach of contract

The heart of the meeting was the discussion on two GEDIP on-going projects: a proposal for a regulation on the law applicable to companies, and another on the jurisdiction, the applicable law, the recognition and enforcement of decisions and the cooperation in divorce matters. The first one is at its very final stage, while the second has barely started. From an outsiders point of view such a divergence is really interesting: it's like assisting to the decoration of a baked cake (companies project), or to the preparation of the pastry (divorce project). Indeed, in terms of the intensity and quality of the debate it does not make much difference: but the fine-tuning of an almost-finished legal text is an amazing *encaje de bolillos* task, a hard exercise of concentration and deploy of expertise to manage and conciliate a bunch of imperative requisites, starting with internal consistency and consistency with other existing instruments. I am not going to reproduce here the details of the argument: a *compte-rendu* will be published in the GEDIP website in due time. I'd rather limit myself to highlight how impressive and strenuous is the work of finalizing a legal document, making sure that the policy objectives represented by one provision are not belied by another (the moment this happens the risk is high that the whole project, the underlying basics of it, is unconsciously being challenged), checking the wording to the last adverb, conjunction and preposition, deciding on what should be part of the text and what should rather be taken up in a recital, and so on. By way of example, let me mention the lively discussion on Sunday on the scope and drafting of art. 10 of the proposal on the law applicable to companies, concerning the overriding mandatory rules: I am really eager to see what the final outcome is after the

heated debate on how to frame them in the context of a project where party autonomy is the overarching principle, at a time when companies are required to engage in the so-called corporate social responsibility whether they want it or not. Only this point has remained open and has been reported to the next meeting of the GEDIP next year.

I wouldn't like to end this post without referring to the commitment of the GEDIP and its members with the civil society concerns. On Saturday Prof. Van Loon presented a document drafted in light of the plight of migrants, refugees, and asylum seekers in Europe. The text, addressed to the Member States and Institutions of the EU, aims to raise awareness of the immediate needs of these groups in terms of civil status and of measures to protect the most vulnerable persons within them. Reworked to take up the comments of the members of the GEDIP, a second draft was submitted on Sunday which resumes the problematic and insists on the role of PIL instruments in that context.

All in all, this has been an invaluable experience, for which I would like to thank the GEDIP and in particular the organizers of the event here, Prof. Christian Kohler and Prof. Patrick Kinsch.

The proceedings of the working sessions and the statements of the Group will soon be posted on its Website and published in various law reviews.

The ECJ on the binding use of standard forms under the Service Regulation

In a judgment of 16 September 2015, in the case of *Alpha Bank Cyprus Ltd* v. *Dau Si Senh* and others (Case C?519/13), the ECJ clarified the interpretation of Regulation No 1393/2007 on the service of judicial and extrajudicial documents in civil or commercial matters (the Service Regulation).

The judgment originated from a request for a preliminary ruling submitted by the Supreme Court of Cyprus in the framework of proceedings initiated by a Cypriot bank against, *inter alia*, individuals permanently resident in the UK.

The latter claimed that the documents instituting the proceedings had not been duly served. They complained, in particular, that some of the documents they had received (namely the order authorising service abroad) were not accompanied by a translation into English and that the standard form referred to in Article 8(1) of Regulation No 1393/2007 was never served on them.

Pursuant to Article 8 of the Service Regulation, the "receiving agency", *ie* the agency competent for the receipt of judicial or extrajudicial documents from another Member State under the Regulation, must inform the addressee, "using the standard form set out in Annex II", that he has the right to refuse to accept a document if this "is not written in, or accompanied by a translation into, either of the following languages: (a) a language which the addressee understands; or (b) the official language of the Member State addressed".

In its judgment, the ECJ held that the receiving agency "is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document", and that this requirements must be fulfilled "by using systematically … the standard form set out in Annex II". The Court also held, however, that, where the receiving agency fails to enclose the standard form in question, this "does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation".

The ECJ based this conclusion on the following remarks.

Regarding the binding nature of the standard form, the Court noticed that the wording of Article 8 of the Regulation is not decisive, and that the objectives of the Regulation and the context of Article 8 should rather be considered.

As regards the objectives of the Regulation, the Court stated that the uniform EU rules on the service of documents aim to improve the efficiency and speed of judicial procedures, but stressed that those objectives cannot be attained by undermining in any way the rights of the defence of the addressees, which derive from the right to a fair hearing, enshrined in Article 47 of the Charter of

Fundamental Rights of the EU and Article 6(1) of the ECHR.

The Court added, in this regard, that "it is important not only to ensure that the addressee of a document actually receives the document in question, but also that he is able to know and understand effectively and completely the meaning and scope of the action brought against him abroad, so as to be able effectively to assert his rights in the Member State of transmission". It is thus necessary to strike a balance between the interests of the applicant and those of the defendant by reconciling the objectives of efficiency and speed of the service of the procedural documents with the need to ensure that the rights of the defence of the addressee of those documents are adequately protected.

As concerns the system established by the Service Regulation, the ECJ began by noting that the service of documents is, in principle, to be effected between the "transmitting agencies" and the "receiving agencies" designated by the Member States, and that, in accordance with Article 5(1) of the Regulation, it is for the transmitting agency to inform the applicant that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8, whereas it is for the applicant to decide whether the document at issue must be translated.

For its part, the receiving agency is required to effectively serve the document on the addressee, as provided for by Article 7 of Regulation No 1393/2007. In that context, the receiving agency must, among other things, inform the addressee that it may refuse to accept the document if it is not translated into one of the languages referred to in Article 8(1).

By contrast, the said agencies "are not required to rule on questions of substance, such as those concerning which language(s) the addressee of the document understands and whether the document must be accompanied by a translation into one of the languages" specified in Article 8(1). Any other interpretation, the ECJ added, "would raise legal problems likely to create legal disputes which would delay or make more difficult the procedure for transmitting documents from one Member State to another".

In the main proceedings, the UK receiving agency considered that the order authorising service of the document abroad should not be translated and deduced from that that it was not required to enclose with the document at issue the relevant standard form.

In reality, according to the ECJ, the Service Regulation "does not confer on the receiving agency any competence to assess whether the conditions, set out in Article 8(1), according to which the addressee of a document may refuse to accept it, are satisfied". Actually, "it is exclusively for the national court before which proceedings are brought in the Member State of origin to rule on questions of that nature, since they oppose the applicant and the defendant".

The latter court "will be required, in each individual case, to ensure that the respective rights of the parties concerned are upheld in a balanced manner, by weighing the objective of efficiency and of rapidity of the service in the interest of the applicant against that of the effective protection of the rights of the defence on the part of the addressee".

Specifically, as regards the use of the standard forms, the ECJ observed, based on the Preamble of the Regulation, that the forms "contribute to simplifying and making more transparent the transmission of documents, thereby guaranteeing both the legibility thereof and the security of their transmission", and are regarded by the Regulation as "instruments by means of which addressees are informed of their ability to refuse to accept the document to be served".

The wording of the Regulation and of the forms themselves makes clear that the ability to refuse to accept a document in accordance with Article 8(1) is "a 'right' of the addressee of that document". In order for that right to usefully produce its effects, the addressee of the document must be informed in writing thereof.

As a matter of fact, Article 8(1) of the Regulation contains two distinct statements. On the one hand, the substantive right of the addressee of the document to refuse to accept it, on the sole ground that it is not drafted in or accompanied by a translation in a language he is expected to understand. On the other hand, the formal information about the existence of that right brought to his knowledge by the receiving agency. In other words, in the Court's view, "the condition relating to the languages used for the document relates not to the information given to the addressee by the receiving agency, but exclusively to the right to refuse reserved to that addressee".

The ECJ went on to stress that the refusal of service is conditional, in so far as the addressee of the document may validly make use of the right only where the document at issue is not drafted in or accompanied by a translation either in a

language he understands or in the official language of the receiving Member State. It is ultimately for the court seised to decide whether that condition is satisfied, by checking whether the refusal by the addressee of the document was justified. The fact remains, however, that the exercise of that right to refuse "presupposes that the addressee of the document has been duly informed, in advance and in writing, of the existence of his right".

This explains why the receiving agency, where it serves or has served a document on its addressee, "is required, in all circumstances, to enclose with the document at issue the standard form set out in Annex II to Regulation No 1393/2007 informing that addressee of his right to refuse to accept that document". This obligation, the Court stressed, should not create particular difficulties for the receiving agency, since "it suffices that that agency enclose with the document to be served the preprinted text as provided for by that regulation in each of the official languages of the European Union".

Moving on to the consequences of a failure to provide information using the standard form, the ECJ noted, at the outset, that it is not apparent from any provision of that regulation that such a failure leads to the invalidity of the procedure for service.

Rather, the Court reminded that, in *Leffler* — a case relating to the interpretation of Regulation No 1348/2000, the predecessor of Regulation No 1393/2007 — it held that the non-observance of the linguistic requirements of service does not imply that the procedure must necessarily be declared invalid, but rather involves the necessity to allow the sender to remedy the lack of the required document by sending the requested translation. The principle is now laid down in Article 8(3) of Regulation No 1393/2007.

According to the ECJ, a similar solution must be followed where the receiving agency has failed to transmit the standard form set out in Annex II to that regulation to the addressee of a document.

In practice, it is for the receiving agency to inform "without delay" the addressees of the document of their right to refuse to accept that document, by sending them, in accordance with Article 8(1), the relevant standard form. In the event that, as a result of that information, the addressees concerned make use of their right to refuse to accept the document at issue, it is for the national court in the

Member State of origin to decide whether such a refusal is justified in the light of all the circumstances of the case.