



Multilingualism and the Meaning of EU Law

Irene Otero Fernández

Thesis submitted for assessment with a view to obtaining
the degree of Doctor of Laws of the European University Institute

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Thesis Summary

In today's multilingual EU, with 24 official languages, as many versions of every piece of legislation of general application are produced, all of which are equally authentic. In order to comply with this legal requirement, embodied in the Treaties and in secondary law, legal translation and legal-linguistic revision become fully integrated in the law-making process. But most importantly, the multilingual nature of EU law has consequences for how the meaning of the law may be found through interpretation.

The Court of Justice of the European Union has declared that the language versions of EU legal acts should be compared in order to access the meaning of the legislation. That presumption of identity of meaning, however, conflicts with the inherent limits of language. As a result, occasional divergences in the linguistic meaning of the different language versions of EU legislation are unavoidable. These divergences in the linguistic meaning of the language versions of legislation may be bridged through interpretation. These problems of interpretation are ultimately settled by the CJEU, the only authoritative interpreter of EU law. The Court has developed certain techniques for that purpose, not without controversy.

In order to solve the puzzle of how to access the meaning of multilingual EU legislation, this thesis first reviews the multilingualism of the EU legislative machinery, subsequently moving from the production of the law to its interpretation. The ultimate goal is to produce a critical assessment of the Court's methods, in order to understand how they fit into the framework designed by the previous Chapters. That is to say, to see how uniformity of meaning, which is constructed first in the legislative procedure in one language, then deconstructed through translation into all official languages, is finally reconstructed by the Court of Justice.

Practice and all is coming

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1. Introduction

In today's multilingual European Union (hereinafter also "EU"), with 24 official languages, as many versions of every piece of legislation of general application are produced, all of which are equally authentic. In order to comply with this legal requirement, embodied in the Treaties and in secondary law, legal translation and legal-linguistic revision become fully integrated in the law-making process. But most importantly, the multilingual nature of EU law has consequences for how the meaning of the law may be found through interpretation.

So EU law-making, including translation and legal-linguistic revision, gives as a result an array of legal texts that are meant to produce a single norm. Therefore, they are presumed to have the same meaning. The Court of Justice of the European Union (hereinafter also "CJEU", "ECJ", the "Court", or the "Court of Justice") itself has declared that the language versions should be compared in order to access the meaning of the legislation. That presumption of identity of meaning, however, conflicts with the inherent limits of language. In this regard, the multilingual nature of EU legislation adds another type of linguistic indeterminacy (i.e. inter-linguistic indeterminacy), as compared to normal monolingual legislation (intra-linguistic indeterminacy). As a result, occasional divergences in the linguistic meaning of the different language versions of EU legislation are unavoidable. These divergences in the linguistic meaning of the language versions of legislation may be bridged through interpretation, assuming that the legal content distilled by the interpreter from the text is its true meaning, potentially different from its mere linguistic content. These problems of interpretation are ultimately settled by the CJEU, the only authoritative interpreter of EU law. The Court has developed certain techniques for that purpose, not without controversy.

The issue of multilingualism and the meaning of EU law is at the crossroad between EU institutional analysis, legal theory, philosophy of language, linguistics and translation studies. This thesis will thus use a multidisciplinary approach to disentangle the problems posed by the multilingual nature of EU law as solved through its interpretation by the Court of Justice of the European Union. It has indeed been claimed by experts in the field that it is not multilingualism per se that is excessively difficult, but the conflicting and unclear directions

concerning the relationship between multilingualism and the interpretation of Union law that emanate from the Court of Justice.¹

In order to solve the puzzle of how to access the meaning of multilingual EU legislation, the “multilingualism” of the EU legislative machinery will be our first object of study, in Part I of the thesis. Chapter I displays its definition and rationale and lays down the basis of the institutional practice. Chapter II then expands on how EU law is produced, giving rise to a plurality of texts in different languages through the ordinary legislative procedure, with particular regard to linguistic work. Chapter III will look in depth into the role of legal translators and legal-linguistic revisors, presenting the challenges that they encounter when figuring out how to render the meaning of EU legislation into all the official languages, together with the methodology used to face those challenges.

Moving from the production of the law to its interpretation in Part II, Chapter IV will explore how the meaning of EU legal texts may be constructed through interpretation, diving into the depths of legal theory. Subsequently, Chapter V will analyse the literature on the interpretation methods used by the Court of Justice, focusing on language-version comparison and cases of divergences (what we will call “multilingual interpretation”). These ideas will then be challenged in Chapter VI, which undertakes a qualitative-based quantitative analysis of the Court’s case law on comparison and divergences.

The ultimate goal of the thesis is to produce a critical assessment of the Court’s methods, in order to understand how they fit into the framework designed by the previous Chapters. That is to say, to see how uniformity of meaning, which is constructed first in the legislative procedure in one language, then deconstructed through translation into all official languages, is finally reconstructed by the Court of Justice. The continuity and consistency of said semantic processes will be assessed as a whole. This is where the relevance and novelty of this contribution lies.

¹ Derlén (2011), p. 143.

2. Research Question and Hypothesis

The scope of the project is to analyse how multilingual EU law is made into all the official language versions and how said language versions are interpreted by the CJEU, in order to come up with a theory about the meaning of multilingual EU law. For this purpose, I will undertake a critical assessment of how the multilingual character of the Union's legal order affects its interpretation by the Court of Justice, which I consider to be the only authority that can settle the meaning of EU law, in the quest for uniform interpretation and application.

The research question could be formulated as follows:

What are the consequences of the multilingual nature of EU law for its uniform meaning?

The nature of this question calls for a descriptive account of what the European institutions do when producing and interpreting legislation in the official languages. The aim is to produce a theory of meaning for multilingual EU law, based on said description and its assessment.

It must be noted that this analysis is limited to primary legislation and to instruments of secondary legislation of general application (regulations, directives, decisions), with a main focus on the ordinary legislative procedure. Another limitation of the scope is to judgements delivered by the Court of Justice of the European Union, as explained in the last Chapter.

My working hypothesis would be that ***although the general indeterminacy of legal language is increased by translation into such an ample amount of languages, bringing about challenges for the interpretation of the law, said interpretation ultimately allows for the flexibility needed in order to overcome the challenges to the unity of meaning of our multilingual legislation.*** The interpreter is then able to come up with the final meaning of the EU legal provision only after having analysed the array of language versions, as the Court itself has declared. In this regard, the distinctions between linguistic and legal content/meaning, as well as between legal text and legal norm, become especially relevant. By interpreting the multilingual legal texts, we can extract their linguistic content, align it or enrich it as suitable, in order to construct a common meaning, the legal content or the norm. Therefore, the plurality of legal texts does not preclude the unity of the legal norm.

3. Methodology

I draw from several theoretical backgrounds. In order of appearance: translation theory, philosophy of language, linguistics and legal theory. This will allow me to theorize upon the descriptive parts of my thesis, which are based on legal analysis and literature review from the different fields of knowledge involved (including legal doctrinal analysis), together with data collected at the legislative institutions via qualitative interviews and a case-law analysis.

From the point of view of the legal sources, I will be dealing mainly with doctrinal analysis, since the positive law in the field is very scarce. Therefore, secondary sources prevail in the bibliography. Of course, this does not mean that the relevant legislative sources will not be taken into account, together with the case law of the Court of Justice.

On that latter point, a qualitative-based quantitative study of CJEU judgments will be undertaken in the last Chapter of the thesis. For this purpose, a filtered search in the Court's database is combined with previous doctrinal work on the field. Through these methods I should be able to identify all cases of language-version comparison, classify them and extract some relevant examples from each category in order to analyse the Court's reasoning. Qualitative content analysis is used to build the classifying categories, which are then quantified for a statistical analysis.

Finally, as pointed out above, fieldwork at the European legislative institutions was undertaken in order to gain a better understanding of the issues that I am studying, through direct observation and semi-structured qualitative interviews. For this purpose, I spent five months working as a translator in the General Secretariat of the Council of the EU, within the framework of their curricular traineeship program. The interviews were thus conducted between February and June of 2017 among translators, terminologists, lawyer-linguists, legal revisers, management (translation planning, quality control, legislative planning) in the three legislative institutions in Brussels, including samples from different language communities. Representation was as wide as time and availability allowed. Interviewees will be referred to in an anonymized way, for more information on the interview data please see Annex I. This data will be used to confirm, nuance or complement doctrinal sources, as referenced in footnotes.

Part I: Multilingual EU Law on the Making

The European Communities have been multilingual since their inception. Nowadays, the legal system of the European Union is unique in having as many as 24 equally authentic official languages.² Moreover, it is the only legal order which cohabits with 28 national legal systems within the same geographical area, with which shares its linguistic vehicles of expression.³ As an expert from the Directorate for the Quality of Legislation at the Council of the EU describes it, this multilingual legal system becomes “a minefield for the unwary”,⁴ due to the complex problems that the interaction of many languages and legal systems pose when ascertaining the meaning of EU legal norms.

Indeed, since the first of July 2013 European Union law is enacted in 24 official languages for a community of peoples consisting of over 500.000.000 European citizens divided into 28 Member States. These legal-linguistic problems of the process of European integration, launched in 1958, remain less known than other issues that came up along the way.⁵ Said complexity and underrepresentation of the topic in the literature call for an in-depth study of how all 24 language versions of EU law come into being and coexist.

For the purpose of ascertaining the meaning of EU legislation, which lies at the centre of this thesis, there are two critical moments: law-making, when a certain wording is given to a legal provision, and judicial interpretation, when disputes about the meaning of said provisions are authoritatively resolved. This Part I deals with the processes through which EU law is made, which come first from both a chronological and a logical point of view. The texts that are thus produced then become the object of interpretation. There are several points of view from which we could study this process of law-making. Here we will focus on the institutional dimension, concentrating on the actors that work with the meaning of the legislation, once it is formulated by policy-makers: linguists and legal revisors (or lawyer-linguists).

² Šarčević (2013), pp. 1-2.

³ DGT (2010), p. 70. See also Doczekalska (2009b), p. 134.

⁴ Robertson (2013), p. 23.

⁵ Graziadei (2014), p. 71. See also De Witte (2004), p. 208; and Ioriatti Ferrari (2014), p. 58.

A uniform interpretation and application of EU law begin with the ways in which translators and lawyer–linguists of the EU legislative bodies translate the original legislative draft texts into the various language versions.⁶

According to Doczekalska, we may distinguish different types of multilingualism in the context of the EU, all of which refer to the same phenomenon from different perspectives.⁷ Chapter I of the thesis will elaborate on the legal basis and the rationale for multilingualism as a policy and a legal requirement in the EU institutions, i.e. on the institutional and legislative multilingualism. The latter entails the requirement to publish legal texts of general application in all official languages, which means that the same law is expressed in several language versions, all of which are equally authentic and thus have to be taken into consideration for interpretation purposes. Chapter II will then expand on legislative multilingualism, in order to examine the drafting of multilingual law throughout the ordinary legislative procedure, focusing on the linguistic work therein, composed of legal translation and legal-linguistic revision.

Legal translation, fully embedded in the drafting of EU law, faces particular challenges and requires specific strategies to cope with the complex interaction of the many legal languages and the divergent legal traditions involved in the European legal project in order to produce a common meaning.⁸ . However, the linguistic work on the EU legal acts is not exhausted by the intervention of translators, lawyer-linguists contribute too with the legal-linguistic revision. While their concrete tasks are different, the challenges that these different professionals face are similar, as are the tools at their disposal. This is why Chapter III delves into the role of linguistic work in EU law-making, elaborating on the problems regarding the meaning of EU legal texts that translators and lawyer-linguists encounter, such as ambiguity and vagueness, as well as terminology, which have repercussions for the interpretation of the law.

⁶ Baaij (2018), p. 1.

⁷ Doczekalska (2009b), p. 16.

⁸ Pommer (2012), p. 1241.

Therefore, to sum up, this Part analyses how EU law is made into all the official languages, by presenting the legal and institutional framework (Chapter I), together the structural (Chapter II) and functional (Chapter III) links across linguistic experts and institutions throughout the legislative procedure.

Finally, as a general remark, it should be borne in mind that, although EU law is generally multilingual, not all EU legal instruments are drafted, adopted and published in all official languages. As we will see below, one of the reasons for EU legal multilingualism is to ensure access for the addressees to binding legal instruments in language(s) known to them. Therefore, the only truly multilingual legal instruments are the ones that are generally binding.⁹ This is why the scope of this study is limited to primary law, regulations, directives and decisions of general application, with a special focus on the ordinary legislative procedure.¹⁰

⁹ Doczekalska (2009b), p. 237.

¹⁰ The multilingualism of the Treaties is specifically acknowledged in Article 55 TEU. Regarding directives, regulations and decisions, see Article 288 TFEU. For the different types of legislative procedure, see Articles 289-297 of the TFEU.

Chapter I: Multilingualism in EU Law

This Chapter deals with the object of inquiry, multilingualism in EU law, i.e. the multilingual legal regime for legislative action in the Union. After introducing the object, defining it and limiting its scope, it presents the legal basis for multilingualism, its rationale and the institutional practice in this regard. Fieldwork at the legislative bodies has been carried out for these purposes. The output takes the form of a descriptive account.

1. Introduction

As Kelsen once noted, sharing a common language is an important element for the emergence of a public space for democratic deliberation.¹¹ However, at the European level the playing field is much different than in the typically monolingual Member States resulting from the nation-state movements of the XIX century.¹² Unlike its Member States, the EU does not have a language of its own: its official languages are the languages of its Member States, as chosen by the latter themselves. With the exception of Luxembourgish¹³ and Turkish¹⁴, all the official languages in the Member States are also official languages of the Union. This choice of a strong multilingualism in the EU has a twofold implication: the existence of as many (equally authentic) language versions of EU law as there are official languages, together with the necessity to put into place a workable linguistic regime in order to operationalize their equal authenticity.

Although this is often forgotten in the day-to-day application and study of EU law, its written norms are indeed enacted in multiple languages.¹⁵ No multilingual State or international organisation offers a comparable precedent for the multilingualism of the EU, which numbers 24 official language since the accession of Croatia.¹⁶ For instance, the United Nations has six

¹¹ Kelsen (1995), p. 65.

¹² The identification of one State with one language was a characteristic of the nation-states of the XIX century, as claimed by theorists such as Fichte (2013), Mancini (1853), or Michelet (1861), with respect to Germany, Italy and France, respectively. For a detailed account of the topic, see e.g. Milward (2000) and Wright (2000).

¹³ Luxembourgish legislation: [Loi du 24 février 1984 sur le régime des langues..](#)

¹⁴ [Cypriot Constitution.](#)

¹⁵ De Witte (2004), p. 208. See also Ziller (2015).

¹⁶ EP (2017).

official languages,¹⁷ whilst the highest number of State languages is scored by the Republic of South Africa, with 11 official languages.¹⁸

Unquestionably, 24 is a historically and internationally unprecedented number of languages for any administration to communicate in. Nonetheless, it is still less than a third of the 80-some languages that are spoken by European citizens.¹⁹ When it comes to language use, the EU encompasses an exceptionally diverse region of the world. Amongst its more than 500 million citizens,²⁰ more than 80 national, regional and minority languages are spoken.²¹

Besides the purely linguistic aspects, the EU has the only legal order which cohabits with other 27 national legal systems within the same geographical area. And although EU law is an autonomous body of law with its own legislative instruments and legal terminology,²² it shares its linguistic vehicles of expression with the national legal systems.²³ The 27 (28 until January 31st 2020, when the United Kingdom exited the Union)²⁴ Member States of the EU have only 24 official languages at the EU level because some of them share one or more official languages with another Member State (Austria, Germany and Luxembourg share German; Belgium, France and Luxembourg share French; Ireland, the United Kingdom and Malta share English etc.).²⁵

Furthermore, the EU is the only international organisation in which at least one official language of each Member State is an official language of the organisation.²⁶ Moreover, unlike other international organizations whose resolutions are directed to governments only, the EU is the only international body that passes directly binding laws to the citizens in its Member States, so it becomes necessary for such texts to be available in the national languages of the

¹⁷ <http://ask.un.org/faq/14463>

¹⁸ [South African Constitution](#).

¹⁹ Baaij (2012c), p. 4.

²⁰ [Eurostat](#).

²¹ COM (2008) 566 final, p. 5. While this work does not deal with minority or regional languages, they actually account for the majority of languages used in Europe. For a more detailed account thereof, see: De Witte (2004) or Gálvez Salvador (2011).

²² There is a disagreement in the literature regarding the extent of the completeness and autonomy of EU terminology. For a discussion on this point, see III.2.b below.

²³ DGT (2010), p. 70.

²⁴ [Following the UK referendum of 23 June 2016, the negotiations for this country to leave the Union were completed on the 31st of January of 2020.](#)

²⁵ EC (2010), p. 55.

²⁶ EP (2017).

countries concerned.²⁷ This is not just a matter of transient political will but rests upon solid legal foundations found in the Charter of Fundamental Rights, the Treaties, and also secondary law.²⁸ Thus, the rules on multilingual treaty-making and interpretation of the Vienna Convention have been long left behind in this context.

In this context, the EU is naturally faced with the question of under which circumstances EU institutions will employ which languages. The EU policy on the use of languages by its institutions, in both internal operations and for outward communications, is normally referred to as institutional multilingualism.²⁹ This thesis focuses on both mentioned aspects of the EU institutions' linguistic regime insofar as they are related to legislation of general application. Other types of written or oral communication where the EU is involved fall outside its scope, including the multilingualism deployed by the Court of Justice in its procedure.

Therefore, institutional multilingualism includes legislative multilingualism. In the EU, the latter is indefectibly tied to the equal authenticity of all the language versions of legislation. The concept of "authenticity" carries the meaning that a text is official and may be used for all official purposes. The principle of "equal authenticity" referred to EU legislative acts, i.e. the idea of many language versions of a legal text being invoked as conveying the same meaning with equal legal force, is a differential feature of EU law.³⁰ In keeping with the principle of equal authenticity, the ultimate goal of EU multilingual law-making is to preserve the unity of the single instrument in all authentic texts with the aim of promoting the uniform interpretation and application of EU legislation.³¹ The question has been posed as to whether this principle enjoys constitutional status or whether it is simply the result of a political choice:³² as to acts of general application, it may be said that the principle of linguistic equality

²⁷ Yankova (2008), p. 131.

²⁸ EP (2017), p. 2.

²⁹ For further discussion on multilingualism and its diverse dimensions within the EU, see: Mamadouh (1999, 2002); Phillipson (2003); Doczekalska (2009b); Baaij (2012c); Baaij (2015).

³⁰ Robertson (2010b), p. 147. Also present in other multilingual systems, but with a more limited number of languages.

³¹ Šarčević (2012), pp. 86-87.

³² Lenaerts & Gutiérrez-Fons (2013), p. 8.

enjoys a “quasi-constitutional” status.³³ It is clearly expressed in the primary law of the European Union, i.e. the Treaties.³⁴

The choice of a language regime – or regimes – for the EU is increasingly recognized as a highly sensitive issue.³⁵ Since the early 2000s, a lively debate on the intricate link between language, law and culture in the EU has taken place, encouraging scholars to examine the role of multilingualism in EU law-making.³⁶ The dramatic increase of Member States in that historical moment³⁷ exacerbated the already existing debates about the feasibility for the Union to work in so many languages,³⁸ with many calls for reduction.³⁹

It is not as if the strong or full multilingualism adopted by the European Union cannot be changed, but it is a very sensitive political issue that is associated with the ideal of equality between Member States. It is no coincidence that the process necessary for defining the language rules of the Union requires a decision from the Council acting unanimously by means of regulations (Art. 342 TFEU). The general linguistic regime of strong multilingualism, however, can be derogated by the Council by means of sector-specific regulations relating to particular fields. This is what happened recently, for example, with the creation of the single European patent.⁴⁰ It can also be changed, for internal communication purposes, through the Rules of Procedure of the institutions, as we will see below.

As a result, the relationship between law and language in the process of EU law-making is one of the most challenging aspects of the EU’s institutional framework, albeit an aspect that has,

³³ Hanf & Muir (2010), p. 39.

³⁴ Article 55 of the Treaty on European Union (ex Article 53 TEU): “*This Treaty, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic...*”.

³⁵ Grin (2008), p. 74.

³⁶ Šarčević (2013), pp. 2-3. See also De Witte (2004), p. 224.

³⁷ In 2004, ten new countries joined the Union at once in the biggest enlargement up until the present time: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. For further information see the Accession Treaties on EUR-Lex.

³⁸ As Fenet (2001) puts it, some reduction of multilingualism is unavoidable for practical reasons, but it should never arrive to the extreme of monolingualism, which would endanger democracy.

³⁹ Creech (2005), p. 32. Some of the authors that are against full multilingualism: Dupont (1998); Moréteau (1999); de Swaan (2001, 2004, 2007); Schübel-Pfister (2004, pp. 484-500); Fidrmuc & Ginsburgh (2007); Van Parijs (2004, 2007, 2008); Cogo & Jenkins (2010).

⁴⁰ Tiberi (2014), p. 19. Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection. See also Van der Jeught (2015), pp. 171-179.

until recently, been little known outside specialist linguist and legal circles. This relationship is central to the harmonization and unification of the law in Europe. Among the institutions that have become highly specialized in the techniques of multilingual drafting, the EU is the *non plus ultra* practitioner of normative multilingualism. Partly as result of the principle of multilingualism, the process for making European law is rather complex, being regulated more by praxis than by written sources, and involving many actors.⁴¹ In this context, the very notion of multilingualism acquires a specific meaning and encompasses not only the use of more than one language but also the creation of a new language, which expresses concepts peculiar to the Union, and is then translated into all other languages.⁴² EU legal content is the result of a fusion of 27 legal orders and cultures, which has to be interpreted in the context of the EU legal order. This is the explanation for the particular nature of EU jargon, which is often misunderstood and gives rise to criticism of “bad quality” legislation. The reality is that, given the difficulties of the decision-making process in the EU, it is almost a miracle that any EU legislation is adopted at all.⁴³

2. Legal Basis

From the very beginning, the authors of the founding treaties of the European communities openly chose full multilingualism, on the basis of the principle of equality among all official languages, discarding the possibility of resorting to a single language, which would have been too delicate to choose. This principle choice was never officially called into question and it remains the fundamental principle on which the functioning of the EU institutions rests, notwithstanding the evolution of the field of action of these institutions, due to the extension of the competences of the Community. The successive enlargements didn't entail a revision of this multilingualism, regardless of the increased complexity posed by the multiplication of the official languages.⁴⁴

⁴¹ Ioriatti Ferrari (2014), p. 58. As Gálvez Salvador (2011) p. 16, puts it: no other State or organization is comparable to the EU as to the number of official languages; the Union is *sui generis* in the linguistic field as well.

⁴² Guggeis (2014a), p. 46.

⁴³ *Ibid.*, p. 56.

⁴⁴ Rideau (2007), p. 63.

The EU has built its linguistic normative framework on the basis of the concept of national language, i.e. it has recognized as official the official languages of its MS, in accordance with their constitutions. In this way, the EU has gone from 4 to 24 official languages in slightly more than 50 years, with hardly any change in the legal basis, except for legal modifications required by the enlargements themselves. However, the linguistic regime of the Union, as many other fields of EU law, had not been established for a Union with 27 members. This currently poses serious problems, notwithstanding some modifications to the framework.⁴⁵

Although multilingualism is a key element in the construction of Europe – a pillar of its democracy – there is no general legal basis for it as a principle. Translation is mentioned nowhere in the legislation, except for a brief mention in the Treaties regarding regional languages. This is the logical consequence of the principle of equal authenticity, which safeguards equal rights for all languages and, by extension, the national identities of the Member States. As the Council puts it, this reflects the desire not to have any dominant language or culture in the EU.⁴⁶ Indeed, the explicit rules on multilingualism in European Union law are limited and provide only a part of the picture. They establish the fact that all the treaties, as well as secondary legislation, are equally authentic in all 24 official languages. However, it is important to note that they do not say anything further when it comes to the impact of multilingualism on legal interpretation in a European Union context, which has been left to the European Court of Justice.⁴⁷

When it comes to rules on the use of languages, we may distinguish between language regulations regarding the protection and distribution of languages (so-called material language law) as well as procedural questions (so-called formal language law). Here we will focus on formal language law in the EU, which distinguishes between treaty languages, official languages and working languages.⁴⁸ The first category is obviously provided for in the Treaties, while the second and the third derive from the first Regulation ever approved by the Council of Ministers. There is the added *de facto* category of “procedural languages” used by

⁴⁵ Gálvez Salvador (2011), p. 16.

⁴⁶ EC (2010), p. 55.

⁴⁷ Derlén (2011), p. 144.

⁴⁸ Luttermann (2009), pp. 316-317. The author also mentions the languages of a case, which are however not relevant for the purposes of this thesis, where judicial multilingualism as such is not considered.

the Commission, which will be dealt with under the heading “Institutional Practice” below. A further distinction differentiates to the Treaty language rules from the rules applicable to the institutions of the European Union (official and working languages).⁴⁹

Once they came into force on the 1st of January 1958, the two Treaties of Rome deferred for the Council to unanimously rule on the linguistic regime of the Community.⁵⁰ As a result, the first Regulation adopted by the Council regarded the official and working languages, stipulating that the Official Journal must be published in all these languages. Therefore, it is the Treaties and the Council Regulation No. 1/1958, as amended by the successive Acts of Accession of new Member States, that set out the legal basis for multilingualism in EU Law.⁵¹ Let’s examine them in detail.

a. Treaties

The Treaty of Paris (which established the ECSC in 1951) did not mention multilingualism, but was authentic only in French.⁵² Language policy was not mentioned in the two Treaties of Rome signed in 1957 either, aside from the fact that the Treaties were equally authentic in the four official languages of the six States involved.⁵³ To these four, more were added as new States adhered to the communities and the Treaties were translated into their national languages. So after the ECSC Treaty had been originally drafted in French only, the founding Rome Treaties had four official, equally authentic, language versions: German, French, Italian and Dutch. With each successive enlargement, new national languages were gradually added

⁴⁹ Council (2016), p. 46.

⁵⁰ See Article 190 of the Euratom Treaty and Article 217 of the EEC Treaty, replaced by Article 290 of the Treaty establishing the European Community (OJ C 325, 24.12.2002, p.145), and nowadays by Article 342 of Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 193).

⁵¹ Athanassiou (2006), p. 9.

⁵² See Article 100 of the Treaty of Paris. The Treaty signed on 18 April 1951, entered into force on 23 July 1952, and expired after 50 years, i.e. in 2002. However, as Flauss (1992) tells, it was later decided that the official and working languages of the ECSC were to be the official languages of the Member States, during a Ministerial Conference in 1952. The Protocol thus establishing was never published on the Official Journal.

⁵³ Article 248 of the EEC Treaty and Article 225 of the Euratom Treaty.

through Accession Treaties, up to the current 24 treaty languages. All of them enjoy equal status and are considered to be authentic.⁵⁴

In 1973, the first enlargement brought into the EEC Denmark, Ireland and the United Kingdom, and Danish, Irish and English were added as treaty languages.⁵⁵ The advent of English, which was the language not only of the UK and Ireland but also of the United States – the western world’s political, military and economic “superpower” – was to have profound consequences.⁵⁶

Subsequent accessions included Greece (1981)⁵⁷, Portugal and Spain (1986)⁵⁸ and Austria, Finland and Sweden (1995).⁵⁹ It is often argued that the accession of these latter three countries increased the influence of English.⁶⁰ Each new Member State introduced one new language. As for Austria, it requested that 23 Austrian terms were added to the German language versions of new legal acts.⁶¹ Norway was supposed to access the EC as well in this latter enlargement, the negotiations were finished and the new treaties signed, but finally the country failed to pass the national referendum on accession.⁶²

The massive enlargement of 2004 brought 10 new Member States with 9 new languages.⁶³ In 2005, Bulgaria and Romania acceded,⁶⁴ and in 2012, Croatia became the last accession so

⁵⁴ Art. 55 TEU and Art. 358 TFEU.

⁵⁵ Treaty of Accession (OJ L 73, 27.3.1972) and Council Decision of the European Communities of 1 January 1973 adjusting the documents concerning the accession of the new Member States to the European Communities (OJ L 2, 1.1.1973).

⁵⁶ Creech (2005), pp. 15-16; Nabli (2004), p. 201. See also Baaij (2018), p. 69, and Mac Giolla Chríost & Bonotti (2018), pp. 10 and ff.

⁵⁷ Treaty of Accession (OJ L 291, 19.11.1979).

⁵⁸ Treaty of Accession (OJ L 302, 15.11.1985).

⁵⁹ Treaty of Accession (OJ C 241, 29.8.1994), Council Decision of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (OJ L 1, 1.1.1995).

⁶⁰ See, for instance, Baaij (2018), p. 69. As Mamadouh (1999), p. 134, puts it: French “lost ground” to English as the main institutional language due to the 1973 and the 1995 enlargements and the dominance of English as the major foreign language among the younger generation of civil servants and politicians. See also Nabli (2004), p. 201. For an “official” account, see EC (2010), where it is stated that “It was at this point [in 1995] that French lost its status as the most widely used language within the Commission. The arrival of generations fluent mainly in that language accelerated the switch to English, something which had not happened in 1973.”

⁶¹ Annex 5, Protocol no. 10 of the Treaty of Accession of Norway, Austria, Finland and Sweden to the European Union.

⁶² EP (2015), p. 12; EC (2010), p. 36.

⁶³ Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 236, 23.9.2003).

⁶⁴ Treaty of Accession (OJ L 157, 21.6.2005).

far.⁶⁵ Adding up all the languages until this point, the Treaties have 24 official language versions. Some EU official languages are national official languages in more than one Member State (German, English, French, Greek, Dutch, Swedish),⁶⁶ which further complicates the picture.

The official languages selected by a Member State in the negotiations for accession to the European Union must be the official language or one or the official languages of that State under its Constitution.⁶⁷ Therefore, each EU official language derived from the relevant national language of the EU MS having it as official language. At the time of accession, the national language of the acceding state in its legal form is carried over into the EU context and adapted to the EU's specialized needs.⁶⁸ However, the Parliament specifies that there is no rule to the effect that a Member State "chooses" which of its official languages should be "assigned" to it as its official language.⁶⁹

That selection criterion is in fact not exempt from criticism. It has been claimed that it sometimes results in favouring languages spoken by relatively few Europeans, while excluding languages spoken by a substantial number of citizens.⁷⁰ For example, Irish is the official first national language of Ireland and was granted the status of official EU language in 2007. Yet, only a small percentage of Irish people (estimates of native speakers range from 40,000 to 80,000 people) speak Irish as their mother tongue.⁷¹ Similarly, Maltese is spoken by less than 0.5 million people and has also become an official EU language.⁷² Conversely, Catalan, a regional co-official language in Spain, spoken by more than 10 million people,⁷³ is not recognized as an official EU language.

⁶⁵ Treaty of Accession (OJ L 112, 24.4.2012).

⁶⁶ EP (2017).

⁶⁷ EC (2010), p. 54.

⁶⁸ Robertson (2007), p. 160.

⁶⁹ EP (2017), p. 4.

⁷⁰ Baaij (2012c), p. 5.

⁷¹ [According to the 2016 Republic of Ireland census 73,803 people speak the Irish language daily in the Republic of Ireland outside the education system, making up for 4.2% of the Irish population.](#)

⁷² [There are no official statistics on the number of speakers of Maltese, only figures for the population of the island, which stands slightly under 0.5 million.](#)

⁷³ [According to data from the regional government.](#)

However, Art. 55 TEU, as well as Art. 358 TFUE, mention the possibility of having translations of the Treaties carried out by the Member States themselves into other official languages within the whole or part of their national territories. This accounts for the particular situation of regional languages, and is important for States like Spain, where Spanish (Castilian) is the only official language throughout the national territory,⁷⁴ with 3 co-official languages (Basque, Catalan and Galician) in the respective regions.⁷⁵ Declaration No. 16 attached to the Treaty of Lisbon clarifies the procedure in this regard.

Furthermore, the Treaties do mention the general linguistic regime of the institutions. Article 342 TFEU instructs the Council to determine unanimously the rules governing the languages of the institutions of the Union, without prejudice of the Statute of the CJUE. On that basis, the Council adopted its first Regulation in 1958, determining the languages to be used by the European Economic Community.⁷⁶

b. Regulation No. 1/1958

The very first Regulation adopted by the Council in 1958 defined the European Community as a multilingual entity and stipulated that legislation had to be *drafted* and *published* in its official languages, which were four at the time.⁷⁷ A principle of general linguistic equality is not explicit in regulation No. 1, although one might see it as an implicit component of the regulation. The institutions of the EU have traditionally taken such a view. It should be stressed, however, that despite the common usage of the term, the EU as such does not have any “official” languages. Regulation No. 1 does not apply to the EU generally, but only to the more limited set of “institutions” of the Community.⁷⁸

After having been amended by the successive acts of accession the same way as the Treaties, today Regulation No. 1/1958 provides for 24 official and working languages of the institutions

⁷⁴ [As sanctioned by the Spanish Constitution.](#)

⁷⁵ [As per the regional statutes of the corresponding regions.](#)

⁷⁶ Council (2016), p. 47.

⁷⁷ Articles 4 and 5 of the EEC Council Regulation No 1 determining the languages to be used by the European Economic Community, 1958.

⁷⁸ Creech (2005), pp. 14-15.

of the European Union. As a result, EU legislative texts are nowadays *published* in 24 official languages, with the special case of Irish, which is only used for regulations adopted by both the EU Council and the European Parliament.

Indeed, Irish, which has a constitutional status as the “national language” and “first official language” in Ireland,⁷⁹ initially became only a Treaty language.⁸⁰ This was the first case of a State that, upon accession to the EU, did not have its national language (understood as a language which is official on the whole territory of the State) recognized as an official and working language. It must also be noted that Ireland was the first Member State that had more than one official language for the entirety of its territory.⁸¹ Since the 1st of January 2007 Irish has acquired its status as official and working language,⁸² with a partial derogation, as it is only used for regulations adopted jointly by the European Parliament and the Council (i.e. through the ordinary legislative procedure, formerly known as co-decision).⁸³ The institutions are currently working to build the capabilities to fully lift the derogation and Irish should have full presence by January 2022, unless a new Council Regulation extending the derogation is issued.⁸⁴ An analogue derogation applied to Maltese until 2007, as a result of a compromise reached at the very end of the accession negotiations of Malta.⁸⁵ The country opted to preserve its national language, although English is an official language there as well.⁸⁶

Going back to Regulation 1/1958, it introduced the concepts of official and working languages, which are theoretically the same. Articles 4 and 5 state that regulations and other documents of general application are to be drafted and published in the official languages, all the language versions thereof being authentic. Under Article 6, the institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases. This freedom granted to the institutions acquires high importance in practice, as we will see below.

⁷⁹ [Irish Constitution.](#)

⁸⁰ Section XIV of Annex I to the Act of Accession, OJ [1972] L 73/122).

⁸¹ Milan i Massana (2002), p. 57.

⁸² Regulation No. 920/2005 and successive modifications thereof.

⁸³ Council (2016), pp. 47-48.

⁸⁴ [COM/2019/318 final, Report from the Commission to the Council on the Union institutions' progress towards the implementation of the gradual reduction of the Irish language derogation.](#)

⁸⁵ Council Regulation (EC) No 930/2004, 1.5.2004, L 169, p. 1.

⁸⁶ [Maltese Constitution.](#)

So at present, there is no official distinction between official languages and working languages.⁸⁷ However, although no legislative text makes this distinction, the latter are generally taken to refer to the communication within the institutions, whereas the former are related to the external communication, including the publication of the legislation.⁸⁸

The reality, however, is that a text is drafted originally in one of the (major) official languages, then translated into the others. Whilst those translations are diligently coordinated by a team of extremely competent legal and linguistic experts, and whilst different individual legislators will be considering the text in different language versions, it is decidedly a fiction to say that the legislature as a whole has approved all the language versions together. Such fiction becomes even stranger if one considers a text adopted before 1 January 1973 in the then four official languages, and which remains in force, unamended, now in 24 languages. By stages, it has come about that an increasing majority of the language versions are translations which the legislature as such has never considered.⁸⁹

3. Rationale

The multilingual EU legal order ensures communication by means of translation. Therefore, the role that translation has in gaining, maintaining and supporting democratic legitimacy is significant, as a limitation in the number of official languages would jeopardise transparency. Besides, favouring monolingualism would entail standardization and, over time, the disappearance of cultural identities.⁹⁰ While multilingualism is evidently onerous, owing to the difficulties of translating the ever-growing legislation produced by the Union, which has to be published in all the official languages, the advantages of this institutional choice are greater than its disadvantages. In particular, these advantages are: respect for diversity, transparency in decision-making and bringing the institutions closer to the citizens.⁹¹

⁸⁷ Gálvez Salvador (2011), p. 41; Wagner *et al* (2012), p. 10.

⁸⁸ Labrie (1993), p. 82; Ioriatti Ferrari (2013), pp. 56-57.

⁸⁹ Jacobs (2003), pp. 302-303.

⁹⁰ Pacho (2012), p. 65.

⁹¹ Gálvez Salvador (2011), p. 31.

As a preliminary remark, it should be borne in mind that not all EU legal instruments are drafted, adopted and published in all official languages. According to one rather self-evident reason for EU legal multilingualism, addressees of legal instruments should have an access in language(s) they know to instruments that bound and affect them. Therefore, in order to indicate which instruments are multilingual, it should be determined which of them are binding and who is bound by them.⁹² There are three types of binding instrument, i.e. regulations, directives and decisions. The former two are always generally binding, while the latter may or may not be so.⁹³

The choice for EU law of general application to be multilingual guarantees that these legal rules can produce direct effect through their publication in the Official Journal, in a manner which is understandable for all European citizens. This fundamental requirement stems from the principles of legal certainty and equality before the law that need to be present in every democratic system.⁹⁴

So, from a general point of view, the fact that EU legislation of general application must be published in all official languages seems undeniable. But EU legislative multilingualism goes further than that, encompassing not only the obligation of multilingual drafting and publication, but also the requirement of equal authenticity of all the resulting language versions. If only one or several versions of EU legislation functioned as originals, the other versions would always require confirmation by comparing them to the 'original' language. As a result, citizens whose mother tongue is the 'original' language would enjoy an advantage over others, which is contrary to equality and legal certainty. EU citizens should be able to rely on the language version of the law corresponding to their mother tongue (in the sense of national language), without being required to consult other language versions in order to understand the text at hand.⁹⁵

This goes as far as requiring that legal texts for new Member States become authentic "ex post", after the given legislative procedure is over, when the Member State using a different

⁹² Doczekalska (2009b), p. 237.

⁹³ Art. 288 TFEU.

⁹⁴ Milan i Massana (2002), p. 53.

⁹⁵ Baaij (2015), p. 20.

language has actually joined the Union. This is a consequence of the need for legal certainty. Publication on the Official Journal is part of the process of making the law accessible to citizens.⁹⁶

Moreover, there are political reasons of equality among Member States and democratic transparency for the citizens,⁹⁷ as the Parliament has expressly declared.⁹⁸ After all, it is a of political equality that all Member States, regardless of their size, are treated in the same way.⁹⁹

Therefore, it seems that the requirement of multilingualism for EU legislation is based on two interlinked sets of motives: the first one related to democracy, information and legal certainty; while the second refers to linguistic diversity and equality of Member States. These are the reasons put forward in official documents and in the literature, as analyzed in the following pages. The distinction between legal and political reasons is put forward as a working taxonomy, in order to facilitate the analysis. Of course, the two clusters do not work in isolation, but are interrelated to some extent.

a. Legal Reasons: Democracy, Information and Legal Certainty

This first set of motives is either directly based on EU legal instruments or case law, or derives closely from them. The normative choice to declare 24 languages to be official not only has an impact on the internal functioning of the institutions, but it also has constitutional relevance for the Union, as it creates rights for the citizens in their relationship with the Union and its institutions, involving democratic values such as legal certainty, judicial protection and non-discrimination.¹⁰⁰

The special legal nature of the EU differentiates it from any other international organization and justifies its multilingualism. The EU has supranational competences, which means

⁹⁶ Ferreri (2015), pp. 2-3.

⁹⁷ Isaac, (2001), p. 102. See also Baaij (2015), pp. 5-6.

⁹⁸ Art. I(1) of the European Parliament Resolution on the use of the official languages in the institutions of the European Union (1995).

⁹⁹ COM (2001) 428 final, p. 6.

¹⁰⁰ Gálvez Salvador (2011), p. 16.

Member States have voluntarily handed over part of their sovereignty and the EU has the capacity to legislate under the principle of subsidiarity.¹⁰¹ Therefore, unlike other international organisations, the EU addresses not only States but also individuals, i.e. natural persons or legal entities in the Member States. Under the principle of direct effect, individuals can invoke a provision of the EU before a national court. Not only can treaties, regulations and decisions produce direct effect but also directives, under special requirements.¹⁰²

It is often said that EU legal texts of general application need to be multilingual in order to ensure that the authorities and populations in the Member States can read them directly and understand them, as well as for requirements of equality before the law connected with these direct effects of EU law in the national legal systems.¹⁰³

Absent a fully multilingual legal regime, neither the principle of direct effect nor the doctrine of the supremacy of EU law could effectively operate. It follows that multilingualism is a necessary corollary to the principle of direct effect and, ultimately, to the doctrine of supremacy and that, without it, EU law would only remotely resemble what it currently stands for. The commitment to multilingualism is also legally significant as a guarantee of legal certainty and as a democratic accountability tool. The obligation to present Union law to the citizens of Europe in a language that they can comprehend is so fundamental that, without it, not only legal certainty but, ultimately, the rule of law itself would be at stake. At the same time, the EU's commitment to multilingualism guarantees democratic accountability and public access to documents: restrictions in the number of languages that the institutions use, either internally or for their external communication including law-making purposes, would adversely affect the public's ability to invoke EU law in their everyday dealings.¹⁰⁴

The obligation to publish legislation in all the official languages could also be considered to go beyond the sheer legislative texts and include general information about said legislation, for the sake of democracy and equality of citizens across the Union. The relationship between language and access to democratic processes is of paramount importance. Democracy is a

¹⁰¹ De Lange *et al* (2007), p. 39.

¹⁰² See Case 41/74 *Yvonne van Duyn v. Home Office* [1974] E.C.R. 1337.

¹⁰³ Pacho (2015), p. 105; Robertson (2013), p. 20.; Kjaer & Adamo (2011), p. 6; Dengler (2010), p.97; Felici (2010a), p. 95; Wagner (2001), p.67.

¹⁰⁴ Athanassiou (2006), pp. 6-7.

complex, ambiguous, and manifold concept and therefore needs defining in the context of an EU language policy, not least because, as we have already noted, it is often acknowledged that the EU suffers from a vast democratic deficit.¹⁰⁵

Article 255 of the Treaty of Amsterdam (current Article 15 TFEU) introduced the right of access for all European citizens to Commission, Council and Parliament documents, which has obvious implications for multilingualism, as said documents need to be readily available in all languages for the right of access to be effective. The last sentence of Article 15 TFEU also places the European Parliament and the Council under an obligation to ensure the publication of the documents relating to the legislative procedures.¹⁰⁶ In this context, the multilingualism of EU law becomes even more essential for respecting democracy, as access to legal documents means that versions must be produced in a language that citizens can understand.¹⁰⁷

Indeed, one of the goals of the EU is to allow the democratic participation of European citizens in EU affairs, that is, full access for EU citizens to the content of EU documents, such as legally binding texts and/or policy debates.¹⁰⁸ There exist further provisions emphasising open-decision making, citizen participation and the role of transparency and good administration in building up the democratic credentials of the EU. The right of access to documents, and its nature as a fundamental right, is further emphasised by Article 42 of the EU Charter of Fundamental Rights. Regulation No 1049/2001 on public access to documents held by the EU institutions (Access Regulation) builds on the principle of 'widest possible access', and has together with case law been instrumental in operationalising the right of citizen access by establishing procedures and standards for the exercise of their democratic rights.¹⁰⁹

Nonetheless, challenges remain in the arena of public access to documents in the legislative sphere, mostly in relation to early stage agreements (trilogues¹¹⁰). The new Interinstitutional agreement (IIA) on better regulation places the three institutions under an obligation to

¹⁰⁵ Vanting Christiansen (2006), p. 28. On the democratic deficit of the EU, see e.g. Habermas (2001); Smith & Wright (1999).

¹⁰⁶ EP (2016a), p. 7.

¹⁰⁷ EC (2010), p. 53.

¹⁰⁸ Gazzola & Grin (2013), p. 102.

¹⁰⁹ EP (2016a), p. 4.

¹¹⁰ For further information on trilogues, see Chapter II.2 below.

‘ensure the transparency of legislative procedures, on the basis of relevant legislation and case-law, including an appropriate handling of trilateral negotiations’. It also refers to the need to develop ‘platforms and tools to that end, with a view to establishing a dedicated joint database on the state of play of legislative files.’¹¹¹

The Charter of Fundamental Rights of the EU sets out the right to access Parliament’s, Council’s and Commission’s documents, as part of the principle of good administration. These dispositions are linked to the legal principle of transparency, to which are attached the rights to access and understand EU law. This is why Declaration no. 39 of the Treaty of Amsterdam contains the principle of good drafting. This qualitative concern has generated a series of common rules, reunited in the Joint Practical Guide, which aims at simplifying the style of legislative texts so that they are easier to understand by the citizens.¹¹²

So far we have presented general considerations of democracy and requirements of information and access rights. As regards legal certainty in particular, the CJEU made it clear in the *Skoma-Lux* case, where it denied legal force to language versions of EU legislation not published in the Official Journal, that the principle of legal certainty and equality required official publication; unofficial forms of publication are not sufficient.¹¹³ Therefore, if, following *Skoma-Lux*, no obligation can be imposed on an individual on the basis of a Community regulation unpublished in one official language irrespective of what the other 21 language versions state, then why should the individual feel obliged to care for any comparison with the other language versions? On the other hand, *Skoma-Lux* did not exonerate the administrative authorities and the courts from the duty to compare the various language versions. It just states that whatever the issue of the comparison of the various language versions of a piece of Community legislation, carried out by the administrative authority, would be, it cannot negatively affect the individuals concerned, provided that the Community regulation was not duly published in the language of that Member State.¹¹⁴

¹¹¹ EP (2016a), p. 23.

¹¹² Nabli (2004), pp. 204-205.

¹¹³ Case C-161/06, *Skoma-Lux*, [2007] ECR I-10841.

¹¹⁴ Bobek (2009), p. 959.

The link between the principle of legal certainty, part of the EU legal order, and linguistic comprehension has been highlighted by the Court of Justice itself.¹¹⁵ According to Tridimas the exact content of the principle of legal certainty is “by its nature diffuse” and difficult to determine in the context of EU law. It has been used with creativity in the case-law to support different propositions both with regard to substantive and procedural law.¹¹⁶

Thus, the requirement to interpret law in the light of all language versions does not mean that all of them must actually be considered but that, in the case of divergence, none of them can be rejected. This approach ensures that EU law is interpreted and applied uniformly. Therefore, the requirement of the principle of equal authenticity that all language versions must be compared and that the text of a legal provision cannot be considered in isolation does not imply that a citizen must read EU law in all languages to understand its meaning. On the contrary, a citizen can base his knowledge on one language version, since no version can be excluded from interpretation, and consequently, uniform interpretation is ensured.¹¹⁷

Multilingualism could then be seen as a guarantee of legal certainty, which in its turn requires the greatest clarity and precision in the drafting of legal texts. The fact that EU law is rendered in 24 languages can alleviate or exacerbate divergences. On the one hand, a comparison of different texts may help to resolve an ambiguity inherent in a term or phrase used in one language, making clearer the intention of the drafters. What might appear as a costly hindrance can be turned into a valuable opportunity for improving the quality and comprehensibility of the law. In addition, since multilingualism forces the Court of Justice to look beyond words in individual language versions when reconciling diverging texts, one could say that multilingualism represents a possibility for dialogue among legal systems, legal rules and legal principles as well as their underlying values and policies, instead of a risk to legal certainty.¹¹⁸

¹¹⁵ C-66/74.

¹¹⁶ Tridimas (2006), p. 243.

¹¹⁷ Doczekalska (2014), p. 15.

¹¹⁸ Pachó (2012), p. 64.

b. Political Reasons: Linguistic Diversity and Equality of Member States

Various EU institutions have invoked over the years principles of equality and linguistic diversity to ground the policy of institutional multilingualism. Europe's linguistic diversity has been said to be "part and parcel of the European cultural identity"; a "core value"; and a "founding" and "basic principle of the EU"¹¹⁹. According to the European Parliament, language is a "unique way of perceiving and describing reality."¹²⁰ The Commission adds that language must be considered the "most direct expression of culture" and a potential "bridge" between cultures.¹²¹

This cultural account of language makes linguistic diversity an essential element of the EU motto, "United in Diversity".¹²² The Laeken declaration of 2001 defined "diversity" as meaning "respect" for differences, as opposed to simply referring to the existence of differences. In expounding on the centrality of democratic values in the Union, the declaration stated that the multilingual nature of the Union must be borne in mind. The use of a particular language is very much a key factor, if not the crucial one, in constituting the identity of a people. This is why multilingualism presents a challenge, which is compounded in the EU setting, obviously more linguistically varied than a single Member State.¹²³

Languages having official status in a Member State form an inherent part of the cultural identity of the country concerned. They have both a symbolic and practical significance. As a symbol of national identity, they claim equal treatment with all other official languages of the other Member States in all respects.¹²⁴ Institutional and legislative multilingualism embodies, in a symbolic and practical way, the equality between the Union's Member States, big and small.¹²⁵

A historical overview of the linguistic regime of the institutions clearly shows that equality was, from the outset, the prime objective of EU language policy. All languages presented by

¹¹⁹ COM (2003) 68 final; COM (2005) 596 final; EP 2006/2083 (INI); Council (2008).

¹²⁰ EP 2006/2083 (INI).

¹²¹ COM (2005) 596 final, p. 2; COM (2008) 566 final, p. 3.

¹²² [Official website of the European Union](#).

¹²³ Creech (2005), pp. 4-5.

¹²⁴ Somssich (2016), p. 64.

¹²⁵ De Witte (2004), p. 219.

the EU Member States were granted Treaty, official and working language status. In a way, one could qualify this as an appeasement policy, aimed at reducing potential (nationalistic) tensions which could harm the European project. Legal language equality has thus contributed to European integration, and the aim is as such comparable to the proclamation of language equality in multilingual national States. Language equality is, first of all, enshrined in the Treaties. In addition, all European legislation in the Official Journal of the EU have to be published in all official languages.¹²⁶

However, it must be noted that, as mentioned above, the equality of the Member States and their citizens when it comes to official EU languages is dependant on the choice of language that the Member States themselves effectuate at the time of their accession. Only the languages that have been claimed by them, which are normally the state-wide official language of the Member State concerned,¹²⁷ are recognized by the Union. This means that "minority" languages which are spoken by many people in the EU, in some cases even more people than those who speak certain official EU languages, do not have any recognition, be it because of their regional character or because they belong to immigrated communities.¹²⁸ In any case, we remain at the level of formal equality between Member States regardless of their size, which may end up contradicting the substantive equality between the citizens considered as linguistic groups.

The extremely significant example of the symbolic function of a language, however, can be found in the case of the Irish language. At the Irish accession to the European Union in 1973, Ireland did not mention the language issue. The Irish considered that the English language which was also an official language in the European Union and, at the same time one of the two official languages in Ireland, was fulfilling all language functions in a sufficient way. However, as the European Union was acknowledging ever more official languages that are in most cases mother tongues of their citizens, Ireland began asking the introduction of the Irish language as one of the official EU languages. As a result, Irish became an official language of the European Union in 2007. That was a unique case because in the Republic of Ireland less

¹²⁶ Van der Jeught (2015), p. 68.

¹²⁷ EC (2010), p. 54.

¹²⁸ For more information on the regional and minority languages spoken in the EU, see EP (2016).

than a half of population speaks Irish. Until 2007, all official languages of the European Union had been the most wide-spread speaking languages in at least one Member State of the European Union.¹²⁹

Thus the EU remains firmly committed to its founding principle of multilingualism based on language equality, notwithstanding the proliferation of official languages. Since a reduction in the official and/or working languages would require a unanimous vote of the Council of Ministers, any radical change was clearly out of question. Moreover, any change in the official status would amount to an outright act of discrimination, undoubtedly against the least populous Member States. In light of the political sensitivity of the language issue, the politicians willingly agreed to retain the old language policy, which can now be considered non-negotiable.¹³⁰

In the end, EU language policy features internal contradictions, further fuelled by the presence of two seemingly irreconcilable core values of the EU: language diversity and EU integration. The former being implemented mainly as a multilingualism policy, the latter requiring a limited set of languages of communication or even just one common language.¹³¹ Therefore, although 24 official and working languages are equal on the basis of the “one State, one language” principle, this equality is not always kept in practice. The legal implications of the practical inequality require a differentiation at the level of concepts such as official and working language, which stems from the institutional practice in Brussels.¹³²

4. Institutional Practice

Indeed, those internal contradictions become evident when we focus on the practice of the EU institutions regarding language. The formal principle of language equality that applies to

¹²⁹ Bandov (2013), p. 68.

¹³⁰ Šarčević (2007), p. 39.

¹³¹ Van der Jeught (2015), p. 264.

¹³² Gálvez Salvador (2011), pp. 15-16.

the publication of legislation was never really applied as regards their internal working languages. Restricted language regimes are, in fact, the general rule there.¹³³

Still, despite the institutional practices, informal arrangements, and limited exceptions mentioned above, the European Union is an extraordinarily polyglot organization, and it continues to operate the most elaborate and sophisticated machinery of translation and interpretation in the whole world. Thousands of European Union officials operate this machinery and the system manages to facilitate comprehension, despite the unavoidable delays in decision-making that it causes, and despite occasional errors and legal ambiguities. For the actors of the system, multilingualism has subtle consequences. It forces participants in meetings of the Commission, the Council, or the Parliament to be brief and simple, and it hinders intensive discussion. This may be a source of misunderstandings, but may also, paradoxically, help to defuse the conflicts and cultural tensions that might arise if all actors had easy access to each other's languages.¹³⁴

Even now, the exponential increase of translation and interpretation costs, and the growing danger of communication failures between actors in the European policymaking and implementation process, could not outweigh the commitment to linguistic diversity and equality among the Member States. Between 1958 and now, the commitment to linguistic diversity has, in fact, radically changed in its tone and its implications. In 1958, it was a pragmatic solution that the EEC took in the same way as other international organizations that must decide on their language regime. The rather liberal option adopted then in the EEC, which did not sacrifice any of its Member States' national languages, was taken at a rather low cost, because it meant that official status was being given to four languages only. Today, the commitment to the equality of Europe's national languages has become a constitutional principle of paramount importance, which is extended to 24 languages, and therefore lays a heavy burden on the Union's institutional machinery.¹³⁵

Every addition to this number makes it harder and harder. Each time, further pragmatic solutions will need to be thought up, which will all more or less be in conflict with the

¹³³ Van der Jeught (2015), p. 67.

¹³⁴ De Witte (2004), p. 223.

¹³⁵ De Witte (2004), pp. 220-221.

fundamental equality that again and again is solemnly proclaimed with regard to the national languages brought in by the member states. Many experts say that something needs to be done about it. Some of them are convinced that ‘muddling on’ will no longer do, and that alternatives to the principle of equality will need to be considered. Therefore, the European Union’s multilingualism is regarded – with some irony – as one of the most fascinating challenges in current language politics. On the other hand, the EU itself shows considerable hesitancy when it comes to bringing its official policy up for discussion.¹³⁶ The absence of (and fear for) public debate on the language issue has led to an EU public language policy which presents, first of all, a huge gap between the *de iure* and the *de facto* situation and lacks coherence and transparency. In particular, clear friction may be noticed between, on the one hand, the need to create restricted language regimes and, on the other, the formal principle of equality of languages.¹³⁷

From the outset, the discrepancy between the equality principle and the practical situation, where adequate language solutions were required, was a fact. In 1958, a general and rather vague legal basis was provided for *ad hoc* solutions within each and every institution, in Article 6 of Regulation No 1. It is in fact well-known that the principle of institutional multilingualism has two dimensions in the EU: *de iure* multilingualism, related to the reasons set out above, and *de facto* multilingualism, based on pragmatic considerations for the organization of the EU institutions. Some authors believe that distinction caused the difference between the definitions of “official languages” and “working languages”, which are not legal definitions, but relate to the practice of the institutions. The literature has in fact elaborated an operational distinction between both concepts. “Official languages” are those used by the institutions to communicate outwards, whereas “working languages” are only used within the institutions.¹³⁸ This lack of official definition poses several problems as to legal certainty.¹³⁹ More clarity in this regard has been revindicated.¹⁴⁰

¹³⁶ Van Els (2001), p. 312.

¹³⁷ Van der Jeught (2015), p. 231.

¹³⁸ Labrie (1993), p. 82; Ioriatti Ferrari (2013), pp. 56-57.

¹³⁹ Gálvez Salvador (2011), p. 41.

¹⁴⁰ Heuse (1999), Gálvez Salvador (2011).

Ultimately, the establishment of working languages is merely practical and its repercussions are limited to the intra-institutional aspects.¹⁴¹ The working languages are determined by the institutions in accordance with their needs.¹⁴²

Many authors agree with the unworkability of a fully multilingual internal regime.¹⁴³ In fact, the silence of Article 6 of Regulation No 1 on the criteria to be taken into account when regulating internal language use of the institutions can be explained by the fact that linguistic equality must have a logical limit in order to ensure the efficient functioning of not only the institutions themselves, but also the EU policies. However, this kind of efficiency-guided approach is not exempt from criticism, and it provokes resistance from the Member States whose languages would be victims of the limitation.¹⁴⁴

The leeway of Article 6 has been used extensively by the institutions. The day-to-day reality of the European Union shows a rather different picture than the principles outlined under the previous headings.¹⁴⁵ Since the Treaty of Lisbon, there are seven EU institutions and each of them has applied the language regime differently. The focus of this thesis rests on the three legislative institutions: the Commission, the Council and the Parliament.

The Commission's Rules of Procedure provide in Article 17 that any instruments adopted must be in the authentic language or languages, i.e. in all official languages of the European Union (without prejudice to the derogation for Irish) in the case of instruments of general application, and the language or languages of those to whom they are addressed, in other cases.¹⁴⁶ English, French and German are generally known as the "procedural" languages of the Commission, but this is not formally recognized by its Rules of Procedure. However, it is widely known that the internal working languages of the Commission services (known as "procedural languages) are English and French, with German as the third working language, very seldom used.¹⁴⁷

¹⁴¹ Gálvez Salvador (2011), p. 45.

¹⁴² *Ibid*, p. 41.

¹⁴³ Baaij (2015), pp. 65-66

¹⁴⁴ Somssich (2016), p. 66.

¹⁴⁵ De Witte (2004), p. 221.

¹⁴⁶ EP (2017).

¹⁴⁷ EC (2010), pp. 56-57; De Witte (2004), p. 221.

Under Article 14(1) of the Rules of Procedure of the Council, it '[...] shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages' (i.e. the abovementioned Council Regulation No. 1). The term 'draft' refers in particular to Commission proposals that must be submitted to the Council in the 24 – or, where the derogation for Irish applies, 23 – official languages.¹⁴⁸ Although no mention is specifically made to language limitation in its Rules of Procedure, English and French are again the most widely used languages in the day-to-day work within the Council.

As the most democratic institution, the Parliament firmly defends multilingualism. The EP has also opposed any attempt to discriminate between the official and the working languages of the European Union.¹⁴⁹ However, it has developed a policy of 'controlled multilingualism' for a more effective use of resources, whilst maintaining equality among languages.¹⁵⁰ Its recently amended Rules of Procedure contain a number of provisions concerning languages. The most important among them is Rule 158, which provides that all EP documents must be drawn up in all EU official languages and all MEPs have the right to speak in the EP in the official language of their choice. Rule 159 provides for a derogation thereof if, despite adequate precautions, interpreters or translators for an official language are not available in sufficient numbers. Rule 158(5) – as amended in January 2017 – contains a provision specifically addressing the problem of discrepancies between different language versions, stating that 'After the result of a vote has been announced, the President shall rule on any requests concerning alleged discrepancies between the different language versions'. The previous version of the rule specifically provided that the original version cannot be taken as the official text as a general rule, since a situation may arise in which all the other languages (translations) differ from the original text.¹⁵¹

¹⁴⁸ Council (2016), p. 48.

¹⁴⁹ Pacho (2015), p. 43.

¹⁵⁰ [Code of Conduct on multilingualism](#) adopted by the Bureau, November 2008.

¹⁵¹ EP (2017).

a. Cost of Multilingualism

The limited number of languages in which EU Institutions operate and the primacy of English as vehicular and drafting language respond to budgetary and efficiency constraints. To put it bluntly, multilingualism costs money. The budgetary constraints on translation and interpretation services have a definite effect on the degree of multilingualism of the institutions' internal operations. They have adopted internal cost- efficiency policies, capping translation and interpretation services.¹⁵²

The last years have seen an increasing focus on cost-efficiency in public administrations, and the Union has been no exception. Specifically to the EU context, the addition of thirteen new languages following the big enlargement of 2004 and the subsequent accession of Romania, Bulgaria and Croatia, combined with the financial crisis, have underlined the importance of ensuring that the best possible use is made of taxpayer's money. A number of internal and external audits have been carried out (e.g. European Court of Auditors in 2006) aiming to ensure that translation is performed in an efficient way. Although with each enlargement the number of official languages has obviously increased, the enlargements have also triggered reductions in the number of in-house translators per language. The increasing resource constraints have put the Directorate General for Translation (DGT) of the Commission under mounting pressure to ensure efficiency. At the same time, the role of quality assurance in the context of efficiency gains has come to the fore. Processes have been analyzed and best practices identified. Technology and tools, and the expectations put on them, have played an important role. As for all sectors of public administration, the buzzword has been to do more with less.¹⁵³

Each legislative institution in the EU has its own translation service. The Commission's Directorate-General for Translation employs 2,300 people, from which around 1,550 are translators, the rest are support staff.¹⁵⁴ In the General Secretariat to the Council of the UE and the European Council, there are around 650 translators and 250 support staff.¹⁵⁵ Last but

¹⁵² Baaij (2018), pp. 66-67.

¹⁵³ Strandvik (2018), p. 53.

¹⁵⁴ [Commission's statistics on staff.](#)

¹⁵⁵ Council SG (2012), p. 8.

not least, the Parliament's Directorate-General for Translation hosts more than 1,000 staff, of which more than 600 are translators.¹⁵⁶

The activity of these translation services is heavily monitored in terms of production and cost. The need for continuous justification of their activities seems to be related to the widespread calls for reduction of the languages used in the EU institutions (either controlled multilingualism or use of a single *lingua franca*), together with the general requirements of austerity that the economic crisis has imposed upon us. While the figures that follow in the next paragraphs are widely known and discussed, it must be noted that they represent the cost of both translation and interpretation, the latter being excluded from the scope of this thesis and that, even within translation itself, many of the documents included in the figures are not related to legislation. With these caveats in mind, let's find out how much multilingualism actually costs to the EU and its citizens.

Translation costs are part of the administrative costs, which represent $\pm 6\%$ of the total EU budget. Administrative costs have been stable for a long time. The overall cost for delivering translation and interpretation services in the EU institutions is around €1 billion per year, which represents less than 1 % of the EU budget or just over €2 per citizen.¹⁵⁷

However, there are other professionals that are necessary for the elaboration of EU law multilingually, such as lawyer-linguists and legal revisers. Therefore, if we consider legislative multilingualism only, these figures are not only under-inclusive in that they do not cover legal revisers and lawyer-linguists, but they are also over-inclusive in that not all translation costs are related to the legislative procedures.

New strategies have been implemented to cut costs.¹⁵⁸ For example, translations of the Commission's legislative draft text into all official language versions do not occur until the final stages of the conception of the legislative draft proposal. The reason is to avoid the need

¹⁵⁶ [European Parliamentary research service blog](#).

¹⁵⁷ EP (2019).

¹⁵⁸ EC (2010), pp. 55-56.

of translating each modification or amendment of the original draft proposal or amendment into all of the other languages.¹⁵⁹

Even if considerable internal efficiency gains have been achieved thanks to the use of IT tools and the streamlining of working methods, they have not been sufficient to cope with the increased translation demand paired with the successive (and still projected) cuts in the number of in-house translators per language. The solution has therefore been to resort more and more systematically to outsourcing, first for “less important” documents, but gradually also for policy documents and legislation. This, in turn, has led to a need to ensure consistency in quality evaluation and quality assurance so that the outsourced documents are up to the same standards as the documents translated in-house.¹⁶⁰

As the EU continues to expand and the number of official languages correspondingly grows, the costs of multilingualism – both the direct financial costs of providing translation and interpreting services and the costs and inconvenience due to delays and errors that arise during translation – may outweigh the benefits. The decision on the optimal number of official languages in the EU will inevitably be a political one. Economic considerations, however, should play an important role as well and we attempt to lay the analytical foundations for such a decision. However, as long as the decision on linguistic regime requires unanimity, a linguistic reform is unlikely to pass.¹⁶¹ There is a myth that to reduce the number of working languages would be easy underestimates the political importance of multilingualism and the difficulty of altering the language system. All proposals for reductions of the number of languages have been rejected not only by the Member States’ political will but also for legal reasons. The same applies to attempts to introduce a formal distinction between “official languages” (for legislation etc.) and “working languages” (for internal use at meetings, etc.).¹⁶²

¹⁵⁹ Baaij (2015), p. 62.

¹⁶⁰ Strandvik (2018), pp. 53-54.

¹⁶¹ Fidrmuc & Ginsburgh (2007), p. 22.

¹⁶² EC (2010), pp. 56-57.

In any case, the linguistic regime of the EU is the exclusive competence of the Council and, therefore and ultimately, of the Member States. Any change in this regard would require a unanimous vote, as such a politically sensitive, national-sovereignty related, issue calls for.

b. Role of English

The main challenge for the EU in this respect is thus to find the right balance between its endeavour to guarantee multilingualism and equality of languages, on the one hand, and the practical, institutional and budgetary implications on the other. Thereby it is running several risks: if the EU puts forward a legislative proposal to limit multilingualism, it might be confronted with the national sensitivity of those Member States whose languages are disadvantaged by the proposal.¹⁶³ Nonetheless, many argue that there is also a need for a common language of communication to which the majority of Europeans have access.¹⁶⁴ At present, this role is filled by English, since it is currently recognised as the most widely used *lingua franca* within Europe and in many other parts of the world.¹⁶⁵

English is indeed the *primus inter pares* of the EU's linguistic realm.¹⁶⁶ The privileged status of English, especially within the Commission, has been reinforced by the strategic decisions of using English in all negotiations with applicant Member States.¹⁶⁷

Within the context of European integration and governance, English occupies an exceptional place as an intra- and inter-institutional *lingua franca*, as the most utilised drafting language for the Commission and as a widely used medium of communication between civil society and the European institutions. It could be argued that this rise of English as a global *lingua franca* has positive outcomes, increasing cross-cultural communication and promoting transnational understanding. Within the context of increased European interdependence in political, civic and social domains, a *lingua franca* becomes a profoundly important medium of integration. Without doubt, European economic integration and interdependence is facilitated by a

¹⁶³ Somssich (2016), p. 65.

¹⁶⁴ We find a strong defender of English as *lingua franca* in Van Parijs (2004, 2007, 2008).

¹⁶⁵ Cogo & Jenkins (2010) p. 271.

¹⁶⁶ Creech (2005), p. 44.

¹⁶⁷ Nabli (2004) and Phillipson (2011).

language of Europe-wide communication, and given that English is already by far the most known foreign language, and the most widely taught in schools across Europe, it would seem that English is the ideal candidate for this role.¹⁶⁸

Habermas believes that the widespread use of English offers Europeans the possibility of realizing the goal of forming a collective identity within the EU.¹⁶⁹ In terms of the language policy of the EU institutions, a reduction in the number of languages could very well improve its efficiency. However, as Habermas has also stated, there is always a trade-off between efficiency and legitimacy, and the democratic legitimacy of the EU has long been a sore point of contention for Europe's citizens and a conundrum for its political theorists.¹⁷⁰ Reducing the number of languages used would create a significant communication barrier between the EU and the vast majority of EU citizens who can only express themselves effectively in their native tongue, and the EU has committed itself to strengthening, not weakening, its connections with its diverse citizenry.¹⁷¹

Therefore, it seems commonly agreed that if we had to use a single language it would be English. However, there are factors that explain why the adoption of a common currency was possible whereas the adoption of a common language is unthinkable. The common currency is a new currency, separate from the earlier national currencies, whereas a common language could, realistically speaking, only be one of the existing languages—in fact, only English. Only eccentrics keep dreaming of adopting Esperanto, Latin, or some other "neutral" language in order to replace the national languages of Europe. Moreover, whereas the shift to a common currency was a costly but relatively painless operation that was successfully accomplished in a time span of a few months, the shift to a common language would take at least two generations. All this explains why the adoption of a common European language is not, and has never been, a goal of European federalists.¹⁷²

In fact, the arguments that are given for the formal adoption of a single European *lingua franca* seem to be unsustainable. The use of a single official language, most probably English,

¹⁶⁸ Longman (2007), pp. 190-191.

¹⁶⁹ Habermas (1995).

¹⁷⁰ Habermas (2001).

¹⁷¹ Creech (2005), p. 41.

¹⁷² De Witte (2004), p. 205.

would imply moving backwards in the process of European integration. As we have seen above, there are strong legal and political arguments that justify multilingualism. The only way of achieving monolingualism in the EU would be through linguistic imperialism, by imposing a single language on the peoples of Europe, which seems far-fetched.¹⁷³

On the other hand, some argue that the *lingua franca* version of English in the EU cannot be said to carry an exclusively British character.¹⁷⁴ In fact, English is shaping itself differently in European contexts from the official languages of the English-speaking Member States, i.e. more as a *lingua franca* than as a symbol of national identity. Officially, however, its role is not that of a supranational language or *lingua franca*, but remains an official and working language like any other. Its role is not, in fact, sanctioned by EU laws or regulations but is a practice which is, for some people, accepted and carried out in EU quarters as well as international and intranational communication. This *laissez-faire* attitude towards language policy, and especially its relation to English, is portrayed by some as potentially undermining that same linguistic diversity which the EU officially defends and supports. Others maintain that the more languages that are used in EU institutions and in international relations among EU countries, the more English as a *lingua franca* is needed.¹⁷⁵

In any event, multilingualism has been proven to be the most effective language regime to convey information to EU citizens. We must note that it is not just a blanket reduction in the number of languages that would be exclusionary; even reducing the current domains of use of the working language entails analogous effects. The rates of linguistic exclusion associated with a monolingual and/or a trilingual policy are going to increase after the withdrawal of the UK from the EU.¹⁷⁶ As a result of the referendum held on the 23 June 2016, the negotiations to formalise the withdrawal of the UK from the EU could last up to two years, and we do not know what the future EU is going to look like. Hence, any attempt to describe the language regime of the EU after “Brexit” is necessarily exploratory. Some people may be tempted to claim that Brexit solves the problem of equity and efficiency in the Union's communication. English could become the only working language of the Union, lowering translation costs, and

¹⁷³ Pacho (2015), p. 51.

¹⁷⁴ Rindler-Schjerve & Vetter (2007), p. 51.

¹⁷⁵ Cogo & Jenkins (2010), p. 273.

¹⁷⁶ Gazzola (2016), p. 8.

putting everyone on an equal footing as regards communication between the European institutions and citizens. Data, nevertheless, present a different picture. Brexit is likely to increase the importance of a multilingual language regime.¹⁷⁷

Nonetheless, the question remains: is English suitable for the task of standardizing a common legal terminology for Europe? English is a forced choice, but we should not forget the contradiction behind it: English is – at the same time – the widest spoken language and (arguably) the least suitable to translate civil law concepts. Although we often hear that English is threatening official languages, English as well is under threat. The cost of becoming a lingua franca will be to create a continental legal English which differs very much from British legal English.¹⁷⁸ Indeed, the advantage of English as the EU lingua franca for the citizens who speak English as their native language, and for their representatives within the EU Institutions, should not be overstated. The kind of English used within the EU Institutions is not generally known to be the kind that native speakers would recognize as proper English or the most familiar to them.¹⁷⁹

EU legal languages are loaded with foreignizing elements, including EU legal English, which is a mixed and hybrid language. As Robertson reminds us of, EU legal English started its life in translation, mainly from French, and the terminology, syntax and general structure of EU legal texts derive from a French base.¹⁸⁰ For the sake of continuity and legal certainty, the established legal and linguistic parameters are for the most part irreversible. The product of multilingual discussions and amendments, the English in the base text of EU legislation is shaped by the legal and cultural background and even languages of the drafters, who are mostly non-native speakers, thus resulting in a high degree of hybridity, which makes the translator's task even more challenging.¹⁸¹

¹⁷⁷ Gazzola (2016), pp. 35-36.

¹⁷⁸ Pozzo (2012), p. 200.

¹⁷⁹ Baaij (2018), p. 103.

¹⁸⁰ Robertson (2012).

¹⁸¹ Šarčević (2018), p. 20; Kjaer (2015), p. 93.

5. Conclusions

In conclusion, multilingualism has been a legal requirement on EU legislation since the inception of the European project. Although its founding fathers could not have predicted the exact consequences of its unfolding, up to the 24 official languages that we count nowadays, both primary and secondary EU law must be published in all language versions. The rationale for this does not only stem from legal principles and rights, such as democracy, the right to information and legal certainty for citizens; but also from political reasons, including supporting linguistic diversity and upholding the equality among all Member States, regardless of their size or population.

Therefore, and notwithstanding the necessity to simplify the institutional language arrangements for communication purposes, including within the legislature procedure, all language versions of EU legislation remain equal once published. The fact that English has become the *de facto* working language at the legislative institutions, including for negotiation and drafting purposes, does not mean that this language version acquires any formal preeminent role, or that it would be politically or legally feasible to implement this. Conversely, it would not be politically acceptable to get rid of it as an official language either, taking into account that this would require a unanimous vote by all Member States reunited in the Council. In fact, regardless of Brexit, English remains the mother tongue of an important number of EU citizens from Ireland and Malta.

This obviates the need to reply to those who argue that multilingualism should be limited, be it through the imposition of one single working language (English), or a restricted multilingual regime. For the reasons presented in the paragraph above, this could not be applied to EU legislation, which clearly needs to be translated into all the official languages in order for it to be binding on EU citizens.¹⁸² The fact that the language versions other than English are drafted by linguists is thus a negligible anecdote that cannot affect their validity, necessary for a fair and certain operationalization of EU law.

¹⁸² C-339/09, *Skoma-Lux*.

However, the existence of a multitude of language versions brings along, as it often does, both advantages and disadvantages. While the abundance of textual referents for single legal norm may help to clarify vague or ambiguous passages in one of the language versions, guaranteeing that all EU citizens have access to EU legislation in their national languages, this is only helpful insofar as said textual referents do not diverge among themselves, in which case legal certainty is hindered by the differences across languages.

In order to tackle this potential danger, which is one of the arguments multilingualism sceptics use (together with the cost, as explained above), translation work must be done with utmost care and integrated organically into the legislative procedure. Costs should be secondary and quality should prime, taking into account that bad quality of translations could bring about not only democratic concerns linked to the lack of legal certainty, but also litigation costs, sustained only by some private parties but with externalities for all the system. Let us now proceed to the details of the legislative process, in order to see how the task of the legal translation in the EU is operationalized.

Chapter II: EU Law-making: Co-drafting?

Overview of the legislative procedure from a linguistic perspective. Consideration of the institutional practice against the legal background. Involvement of the different institutions and experts, with a special focus on linguistic work by translators and lawyer-linguists. Empirical data from qualitative interviews is taken into account.

1. Introduction

As we have seen above, when it comes to the question of the languages used in the EU legislative procedure, one can look at what is done as a matter of practice or at what is laid down as rules of law.¹⁸³ While Regulation No. 1/1958 requires that EU legislation is drafted in all the official languages, co-drafting as simultaneous drafting has become impossible, due to the high number of official languages.¹⁸⁴ However, this is not the only way to meet the legal requirement of drafting and publication in all official languages, as there are alternative methods available.¹⁸⁵ A close examination of the drafting process, especially in the ordinary legislative procedure,¹⁸⁶ reveals that, while legal acts in the EU are not co-drafted in the strict sense of the term, neither are they merely translated from one language into 23 target languages. Multilingual law-making is based, instead, on a mixed system where drafting, translation and legal-linguistic revision alternate and become deeply intertwined.¹⁸⁷

¹⁸³ Robertson (2013), p. 20. In fact, as we noted above, although Regulation 1/1958 equates working languages to official languages, the working languages used by the institutions are in practice English, to a lesser extent French, and very residually German (see Wagner *et al* (2012), p. 10).

¹⁸⁴ This point is not only self-evident, but many experts have raised it: see e.g. Piris (2005), p. 480; Guggeis (2014a), p. 51; Gallas (2001), p. 115.

¹⁸⁵ Doczekalska (2009b) explores these methods in the EU context. Moreover, she is not alone in claiming that simultaneous drafting is not required by EU law: see e.g. Sin (2013), and Felici (2010a).

¹⁸⁶ Articles 289 and 294 TFEU.

¹⁸⁷ DGT (2010), p. 151; Gallas (2006), p. 124.

Given the impracticability of drafting 24 language versions contemporaneously, the equal authenticity of all language versions of EU law is ensured (at least partially) by translation, which finds no mention in EU legislation.¹⁸⁸ While some jurists maintain that only the ‘original’ text can be authentic,¹⁸⁹ which supports a traditional conception of the term ‘co-drafting’, the very reality of the EU drafting process of amending, correcting and rewriting a single document countless times in different languages strengthens the hypothesis of the absence of a real original version.¹⁹⁰

In this complex environment, it becomes of special importance to ensure the good quality of legal language in the frame of the Union legislative institutions, both for the ‘original’ language version and for its translations. As Mattila notes, a text resulting from translation may easily become heavy, even artificial.¹⁹¹ In fact, the Union’s multilingual legislation has been accused of being obscure and badly drafted.¹⁹² After a period of intense law-making that had raised criticism, when the internal market generated plenty of legislative acts in a short period of time, at the beginning of the 90s the EU institutions started to adopt measures in order to face the problem of insufficient drafting quality of legislation. The first refusal of the Maastricht treaty in the referendum of 1993, partially due to the difficulties in comprehending the text, made the institutions reacted immediately.¹⁹³

At the time, the only drafting guidelines available were those of the Commission’s and Council’s drafting manuals and style guides. In 1998, many of these drafting requirements were enshrined into the Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation.¹⁹⁴ The Parliament, the Council and the Commission

¹⁸⁸ The only reference is in Article 55 TEU of the Treaties, with a different purpose, unrelated to officiality.

¹⁸⁹ Cfr. for instance Solan (2014), p. 15: “This fiction will hide distortions that result from a particular language version propagating similar versions when they are the source language for translation in actual practice.” A similar stance can be found in McAuliffe (2009), p. 100. Correia (2003), p. 40 has taken this a step further: “in practice Community law is inconceivable without translation, whereas in strictly legal terms Community law is inconceivable with it”. For a more nuanced approach, cfr. Łachacz & Mańko (2013), pp. 80-81. Here the term ‘original’ is used as it would in translation studies, in opposition to ‘translations’.

¹⁹⁰ Felici (2010b), p. 155. This challenges not only traditional approaches to legal drafting by jurists, but also traditional concepts of translation studies.

¹⁹¹ Mattila (2006), p. 102.

¹⁹² EP (2012), p. 5. For a more detailed account of the topic of the allegedly problematic quality of EU legislation, see Voermans (2009).

¹⁹³ Piris (2005), p. 483; Voermans (2009), pp. 68-69.

¹⁹⁴ OJ 1999C73/1.

agreed on 22 guidelines covering general principles, the different parts of Union acts, drafting techniques and amendment and repeal. The institutions also agreed on several organisational measures with the aim of increasing drafting quality and interinstitutional cooperation.¹⁹⁵

This ongoing concern for the quality of legislation led to the conclusion of another interinstitutional agreement, this time on better law-making, in 2003.¹⁹⁶ The agreement was updated in 2016.¹⁹⁷ It has introduced a better coordination of the three legislative institutions throughout the legislative procedure, which is essential for the quality of EU legislation.¹⁹⁸

Parallely to the concerns about the quality of legislation, a demand for more transparency and democracy led to a transformation of the EU legislative procedure over the last three decades. As part of the ‘Community method’ established by the first European Treaties, basic legislation was adopted by the Council on the basis of a proposal from the Commission. With successive amendments to the Treaties, the role of Parliament has been reinforced. Since the latest amendment by the Lisbon Treaty, almost all basic legislation is adopted jointly by the Parliament and Council on the basis of a proposal from the Commission.¹⁹⁹ This, which was formerly known as ‘codecision’ procedure, is now the ‘ordinary legislative procedure’, under Article 294 of the TFEU. There are just a few fields where the ordinary legislative procedure does not apply, such as taxation, common foreign and security policy, and conclusion of international agreements.²⁰⁰

In the following pages, we will take a look into the ordinary legislative procedure, together with the special legislative procedures and the non-legislative procedures, in order to verify how the concept of co-drafting applies to EU law-making. Much has been written on the subject; however, as we have seen above, authors still disagree. Let us see how this could be settled.

¹⁹⁵ EP (2012), p. 18.

¹⁹⁶ OJ C 321, 31.12.2003, pp. 1–5.

¹⁹⁷ OJ L 123, 12.5.2016, pp. 1–14.

¹⁹⁸ Piris (2005), p. 489.

¹⁹⁹ EP (2012), p. 6.

²⁰⁰ See Article 113 TFEU, Article 24 of the TEU, and Article 218 TFEU, respectively.

2. Ordinary Legislative Procedure

The Lisbon Treaty established three main categories of EU legal acts: legislative, delegated, and implementing, introducing a hierarchy between legislative and non-legislative (executive) acts.²⁰¹ Although the bulk of EU legislation actually consists of non-legislative acts drafted and approved by the Commission,²⁰² the ordinary legislative procedure (formerly known as codecision) is emblematic for being the default interinstitutional law-making scheme. As from the entry into force of the TFEU, most of the legislative acts of the European Union are to be adopted jointly by the European Parliament and the Council under the ordinary legislative procedure, governed by Articles 293 to 299 TFEU. During the last legislative term (2014-2019), with the entry into force of the Treaty of Lisbon, almost 90% of legislative proposals adopted by the Commission were subject to the ordinary legislative procedure.²⁰³

From the point of view of drafting, the text of an ordinary legislative act is a joint product of the three institutions concerned, the Commission submitting the proposal, and the European Parliament and the Council adopting the act. The text submitted to this procedure is, however, neither co-drafted in the usual sense of the term, nor is it merely translated from one language version into 22 target languages. The drafting approach followed during the decision-making process varies according to the relevant stage of the procedure, alternating drafting, translation and legal-linguistic revision, first at the Commission, and then at the Parliament and the Council.²⁰⁴

All legislative proposals, with the necessary translations, are therefore approved several times in the three institutions: Commission, Council and Parliament.²⁰⁵ Indeed, the Treaty suggests that the procedure is sequential: one institution takes a decision on the text and the other institution "reacts" by accepting, rejecting or modifying the decision. What happens in practice is that, upon the presentation of the Commission's proposal, the other two institutions start negotiating with each other as soon as the respective political positions are

²⁰¹ Curtin (2018), p. 10.

²⁰² For non-legislative acts, please see the next section. According to Voermans *et al* (2014), "more than 75% of EU legislation is currently enacted by the European Commission". Up-to-date data on the legal acts produced by the Union, which supports this affirmation, may be found on [Eurlex](#).

²⁰³ [Official data from the European Parliament](#).

²⁰⁴ DGT (2010), pp. 18-19.

²⁰⁵ Yankova (2008), p. 131.

established and try to agree on the text before the formal final vote, so that the adoption of the text by one institution will simply be confirmed by the other institution. This practice has proved to be extremely effective.²⁰⁶ It has been formalized in the “Joint declaration on practical arrangements for the codecision procedure” of 13 June 2007.²⁰⁷ For this purpose, trilogues are held, where representatives of the three main institutions negotiate compromises behind closed doors, which has raised controversies about transparency.²⁰⁸ There are both ‘informal trilogues’ and ‘formal trilogues’, which may be convened for particularly sensitive negotiations. Meetings of the trilogues are generally also attended by staff of the Parliament and by staff of the General Secretariat of the Council. Meetings continue at intervals for months or years. In the majority of cases, the trilogues proceed smoothly and the act is nowadays usually adopted at first reading.²⁰⁹

We must not forget that one language version is generally taken as the base language to work on, draft, consult and negotiate the text; with translation into other languages following. However, there is no obligation to stay with the same language as base text throughout the process of preparation. The Commission may work in one language, say French, and the Council presidency may choose to work on the English translation as base, or vice versa.²¹⁰ This further complicates the process, which must be monitored closely. Drafting (approximating views on the substance of the proposed legislative act and elaborating the compromise text) is normally carried out at all procedural stages in the source language of the proposal, including discussions in the Council working groups and the trilogue negotiations. Within the parliamentary committee, only the working languages of the committee are used for drafting. Translation and legal linguistic revision will take place in all institutions when the substance of the draft act is settled. However, the system is more than a mere ‘source-text—subsequent translations’ system, where an original unchangeable text is to be transposed as such into other languages. The source text might have to be modified

²⁰⁶ Guggeis (2014b), p. 216.

²⁰⁷ OJ 102E of 24 April 2008, p. 111.

²⁰⁸ Brandsma (2019).

²⁰⁹ EP (2012), p. 12,

²¹⁰ Robertson (2012), p. 7.

retroactively according to other language versions if these reveal errors or ambiguities in the original.²¹¹

This linguistically complicated process is indeed difficult to disentangle. The following pages will delve into the stages that have been outlined above, based on a fundamental twofold division: the Commission phase, where the legislative proposal is prepared, and the joint phase where Parliament and Council must agree on a common (potentially amended) version thereof.

a. Commission

The ordinary legislative procedure starts with the submission of the Commission's proposal to the Parliament and Council, according to Article 293 TFEU. Said proposal is drafted by the Directorate-General (DG) of the Commission competent in the subject area concerned. The drafting language of the proposal (for the purposes of this study, this language is also called the source language, as in translation studies) is usually English. Proposals are, in most cases, drafted by non-native speakers.²¹² Let's have a look into the technicalities of the process.

Drafts of legislative proposals of the Commission are initially prepared at a middle tier of administration of the competent Directorate-General, as well as the Secretariat General of the Commission.²¹³ At this stage English, French and German may be used as working languages of the Commission,²¹⁴ but in practice almost all acts are originally drafted in either French or English.²¹⁵ However, as had been pointed out above, the presence of French as a drafting language has been decreasing, to the point where all proposals seem to have been drafted in English in the past years. According to employees of the three legislative institutions, English has been the only drafting language for codecision files for at least the last decade.²¹⁶ This does not mean that the language of the negotiations always has to be

²¹¹ Gallas (2006), p. 124.

²¹² DGT (2010), p. 19. See also EP (2012), p. 9.

²¹³ Doliwa-Klepcka (2016), p. 38.

²¹⁴ Szapiro & Kaeding (2013), pp. 133–134.

²¹⁵ Robinson (2005).

²¹⁶ Interviews (Commission, Council, Parliament).

English. In fact, they sometimes take place in French, regardless of the language of the original.²¹⁷

After those technical experts produce a first draft, the latter is the subject of numerous interventions by other Commission staff before the proposal is adopted by the Commission.²¹⁸ These first drafters are normally technical experts without a legal background,²¹⁹ who usually write in English, which in most cases is a foreign language to them. This results in a tendency to follow precedent linguistic formulae, which may not be best suited to the new circumstances. Besides, overreliance on precedents tends to perpetuate past flaws.²²⁰

Moreover, the experts do not rely on the assistance of experts in legal drafting, which generates problems even for native English speakers trying to approach EU legal English.²²¹ Indeed, a survey carried out by the Commission's DGT in November 2009 showed that while 95% of Commission drafters wrote mainly in English, only 13 % of them were of English mother tongue. It also revealed that 54 % of them rarely or never had their documents checked by a native speaker. As a result, the linguistic quality of the first drafts may be poor. The linguists in the Translation DG have long recognized the problem and offered an editing service to address the issue. The service undertakes to revise a text to a fit standard quickly and without altering the substance. As part of the Inter-Service Consultation – or at an earlier stage - any DG may ask the DGT's Editing Service to check the linguistic quality of the text. That linguistic check is not compulsory, and unfortunately too few drafters avail themselves of the service. A campaign has recently been launched by the DGT, the Secretariat-General, the Legal Service and others to encourage all Commission staff to pay more attention to their writing. The Clear Writing Campaign comprises a booklet of ten guidelines for writing clearly,

²¹⁷ Interview (lawyer-linguist from Council).

²¹⁸ EP (2012), p. 5.

²¹⁹ *Ibid.*, p. 6.

²²⁰ Robinson (2005), p. 5. Nowadays the most used language is English, as the following authors tell us: Dragone (2006), p. 100; Frame (2005), p. 22, and Šarčević (2013), p. 8. This has been confirmed by the interviews carried out at the legislative institutions in 2017.

²²¹ Graziadei (2014), p. 72.

which is publicly available, an internal website, training courses, and seminars and other initiatives to make all Commission staff aware of the issue.²²²

The draft proposal is submitted to inter-service consultation once the competent DG finalises it, with or without language editing. At this point, the role of the Legal Service of the Commission is important, since it will check the original version of the draft proposal not only for legality issues and legal content, but also for the drafting style. The Legal Service works on the draft proposal in the source language version, since no other language versions are available at this stage. Thus, its comments can affect that version of the text only. Its contribution is, however, important for language aspects as well, because any linguistic improvements to the original text can help to create good quality texts in other language versions. This practice corresponds to the requirements of the Joint Practical Guide. In complicated cases, the Legal Service may intervene in the drafting of the original text at an earlier stage, that is, before the document is sent to inter-service consultation.²²³

As a general rule, it is only after the text of the draft proposal was finalised following the inter-service consultation and is to be submitted to the Commissioners' College for approval that it is sent to translation to the DGT, which produces all language versions of the text. The Rules of Procedure of the Commission require that the Commission must have all the language versions available when adopting instruments. Practice also allows for a legislative proposal to be available in three procedural languages only by the time of its adoption by the College of Commissioners, so that the text of the proposal is submitted for translation into all official languages after its adoption, but before its transmission to the legislating institutions.²²⁴ After the adoption, the translations may take up to one or two weeks to be ready. The Parliament and the Council only consider to be officially notified when all the language versions of the proposal have reached them.²²⁵

However, in practice, the draft proposal may start being translated already during the inter-service consultation. Translation planning decides when, based on the general workload and

²²² EP (2012), p. 9. Regarding the editing service at the DGT, see also Murphy (2009), p. 6, and DGT (2010), p. 19.

²²³ Dragone (2006), pp. 101-102.

²²⁴ DGT (2010), p. 20.

²²⁵ Interview (DGT translation planning).

the status of the proposal. These interim translations serve to anticipate some of the work, which would be too heavy otherwise. It is desirable that a translation is done by a single translator and not split, and this anticipation helps to manage the workload more efficiently.²²⁶

So once the College of Commissioners adopts a proposal, it is submitted in all the official languages simultaneously to the Parliament and the Council in accordance with Article 294(2) TFEU. Following submission, the Commission has a limited impact on the wording of the draft act, as its actual role is to facilitate informal contacts between the two institutions (during the trilogues) and to give its opinion on the positions of the Council and the Parliament with a view to reconciling them. It can, however, alter its proposal (for instance by including some of the Parliament's amendments in a modified proposal) any time during the procedures leading to the adoption of the act until the Council intervenes. In such a case, the Commission regains its influence on the wording of the text of the proposal.²²⁷ The Commission's representatives (drafters) do not always follow the file after it has been sent to the Council and Parliament. Therefore, their presence at the trilogues is very important for the other two institutions to have contact with the drafters.²²⁸

b. Parliament and Council

In many respects, the problems inherent in the process of drafting legislation in the Commission are replicated in the procedure in the European Parliament and the Council. There are again large numbers of interveners, all pursuing their own agendas. Those agendas may differ considerably as between the 28 Member States and the 750 Members of the European Parliament. Only a minority of those interveners are specialists in legislative matters and yet they have to interpret the legislative text in the proposal and suggest textual amendments to it. Almost all the negotiations are on the basis of the English text and so, once again, most of the interveners have to work in a foreign language when understanding the

²²⁶ Interview (DGT translation planning).

²²⁷ DGT (2010), p. 27.

²²⁸ Interview (legislative quality control from Council).

proposal and formulating and discussing amendments to it.²²⁹ In the rare cases when the English version is not used for negotiations, the French version will.²³⁰

In the codecision procedure, over 70% of legislative acts are now adopted at first reading.²³¹ If the Parliament and the Council do not agree on the Commission proposal at first reading, it passes to a second reading,²³² after which, if there is still no agreement, a conciliation procedure is launched.²³³

Concluding a legislative procedure on first reading necessitates an intensive exchange of information, and the availability of the Council Presidency for negotiations with the European Parliament. After the Commission's proposal has been received by the two institutions, work starts on the text in parallel, at the competent parliamentary committee and at the competent Council working group. Thus, at some stages of the procedure, there is no clearly identifiable 'master version' available of the proposal.²³⁴

In the Council, working groups usually work on the text in its source language version (English). Nevertheless, experts representing the Member States in the working groups have the Commission's proposal in their own languages at hand and thus, at certain key stages of the procedure, amendments agreed on at working group meetings are reflected in all language versions. Although experts do not generally check their own linguistic versions during working group meetings, they have the possibility of tabling linguistic remarks and make linguistic reservations as early as at this phase. Interpretation problems will first emerge when the proposed modifications to the Commission's proposal are translated into other official languages and later, when they are revised by the Council's lawyer-linguists. However, neither translators nor lawyer-linguists participate in working group meetings, so they meet the text out of context, without being aware of how, why and for what purpose a certain wording was chosen during the negotiations at working group meetings. In order to bridge

²²⁹ Robinson (2014), pp. 266-267.

²³⁰ EP (2012), p. 12.

²³¹ See Article 294(3) to (6) TFEU. Concerns have been expressed that the pressure to reach agreement quickly at first reading undermines transparency of the process and reduces the scope for full scrutiny of the legislation, with negative implications for its quality (see amongst many others, for example: [the Seventeenth Report of the UK House of Lords European Union Committee](#); [Statewatch analysis no 84](#)).

²³² See Article 294(7) to (9) TFEU.

²³³ See Article 294(10) to (12) TFEU.

²³⁴ DGT (2010), p. 20.

this information gap and to contribute to the enhancing of the quality of the original text, the Directorate for the Quality of Legislation (DQL) of the Council's Secretariat General's Legal Service, which is responsible for the legal revision of Council acts, established so-called *équipes qualité* (quality teams) involving a legal adviser and a *conseiller qualité* (quality adviser) being both in charge of the dossier. The task of the *conseiller qualité* is to advise the working group on drafting aspects in order to improve the quality of the text and to facilitate subsequent translation work.²³⁵ So as soon as a Commission proposal reaches the Council, a quality advisor is named to follow the file. This person will later become the *chef de file*, when the legal-linguistic revision phase starts formally at the Council.²³⁶

The same happens at the Parliament. As soon as a legislative proposal is allocated to the relevant committee, a "file coordinator" is appointed by the Directorate of Legislative Acts. The file coordinator is a lawyer-linguist who is responsible for the quality of the drafting during the whole legislative procedure. The Parliament being the most multilingual institution, all amendments proposed by MEPs will be reviewed by lawyer-linguists and then sent to the translators, although only some of those amendments will eventually be adopted by the committee.²³⁷

The Parliament's file coordinator thus works together with a native speaker lawyer-linguist (called the language coordinator) to assist the committee secretariat on drafting issues. The draft report and the amendments to the Commission proposal in their original version (ie., in the language in which they are tabled) are verified by the file coordinator and the language coordinator before being sent for translation. The texts are translated into the working languages of the committee and after the committee has voted on the amendments and these are entered into the report of the committee, the final report in its original version is verified again by the lawyer-linguists and translated into all official languages, before it is sent for an examination in the plenary session of the Parliament. This is where the work begins in all official languages.²³⁸

²³⁵ DGT (2010), pp. 21-22. See also Guggeis (2014b), p. 221.

²³⁶ Interview (lawyer-linguist from Council).

²³⁷ Guggeis (2014b), p. 221.

²³⁸ DGT (2010), pp. 22-23.

Whichever institution translates is then in charge of the legal-linguistic revision as well.²³⁹ This is decided discretionally, on a case-by-case basis, in accordance with the workload of each institution.²⁴⁰ Translation planning units at the Parliament and the Council follow the advancement on Commission proposals and keep track of the files in order to decide the right moment to translate a legislative text. Once the file is ready to be translated, the two institutions agree on who will translate it. There may be interim translations to anticipate some work. The aim is to have the translation ready once the trilogues are finished, so translation is normally started before this happens. When the time for the final trilogue comes, the translation is almost ready.²⁴¹

Before the vote in Plenary, the lawyer-linguists work to revise in all the languages the consolidated text comprising the Commission's proposal, together with any amendments agreed by Parliament and Council. Ideally, therefore, the lawyer-linguists of the Parliament and of the Council must start to work together to agree a final text as soon as political agreement has been reached between the two institutions on a reasonably finalised text and said text has been translated. The task of leading the finalisation work by the lawyer-linguists is shared equally between the two institutions, as is the work of translating the final amended text into all the languages. During the legal-linguistic revision phase the text is passed to and fro between the Parliament and the Council lawyer-linguists in a procedure that takes some six to eight weeks. For each text, the Parliament's 'file coordinator' collaborates with the Council's 'chef de file' to coordinate the work. This stage starts with final revision meeting, known as the 'jurist-linguists meeting', attended by Member States representatives, Parliament and Council representatives, and a Commission representative (generally the expert who drafted the Commission's proposal). The jurist-linguists meeting goes through the whole text in English and agrees on the final English text which is then distributed to the lawyer-linguists for all the other languages. By this stage it is difficult to improve the quality of drafting significantly because of the risk of undoing a delicate political compromise. Furthermore, changes may be opposed by the Member States' representatives. The jurist-linguists meeting does not consider any points that are specific to other languages, unless

²³⁹ Guggeis (2014b), p. 222.

²⁴⁰ Interview (legislative quality control from Council).

²⁴¹ Interview (Translation planning from Council).

they raise issues that can be resolved only by changing the original. After the jurist-linguists meeting each Council lawyer-linguist goes through the text in his or her own language with the national experts for Member States which use that language to produce the final versions, which they send to their Parliament counterparts for final checking.²⁴²

Since the legal-linguistic verification has to be done before the EP votes, and it is of paramount importance that the political agreement reached in the trilogues is sealed as soon as possible by the EP plenary, the two co-legislating institutions have committed themselves to limit this phase to six weeks. In practice, after the last trilogue has produced an agreement, the text is translated by one of the two institutions within a maximum of two weeks. In the meantime, the file coordinator and the quality adviser prepare together the final version of the base text. As soon as the translations are available, the second part of the legal-linguistic work starts: ensuring that all the linguistic versions correspond exactly. This work is done jointly by the EP and the Council but in a sequential manner: at first the text prepared by the file coordinator and the quality adviser is submitted to a team, composed of one lawyer-linguist per language, of the institution which has provided the translation. Each lawyer-linguist has to compare their own language version with the base text. All language versions are then sent to the experts of the working party and the team of lawyer-linguists of the other institution who carry out the same checks. An intense exchange of observations and “negotiations” amongst experts and lawyer-linguists of both institutions culminates in the jurist-linguist meeting mentioned above, where the final base text is agreed upon.²⁴³

This total of 8 weeks for translation and legal-linguistic revision, which is not always respected, is therefore normally allocated as follows: two weeks would correspond to translation, two to revision at the Council, two for checks by the Parliament (or vice versa) and two for checks by the Member States.²⁴⁴

The final text must be adopted by the plenary of Parliament in all the official languages.²⁴⁵ Likewise, the formal position of the Parliament must be translated into all of official EU

²⁴² EP (2012), p. 14.

²⁴³ Guggeis (2014b), p. 222.

²⁴⁴ Interview (legislative quality control from Council).

²⁴⁵ Rule 146 of the Rules of Procedure of the European Parliament.

languages before it can be submitted to the Council.²⁴⁶ At the Council, before any decision can be taken on the legislative proposal on the table, the base text must be available in all of the other official language versions as well.²⁴⁷

If the Council does not approve the Parliament's position, it shall adopt its position at first reading. According to Article 294(7) TFEU, the Parliament still has the possibility to approve the Council's position in first reading. The Joint Declaration of 2007 considered this possibility as being part of the first reading, but the TFEU is quite clear on this point under its heading Second reading. As far as the linguistic aspects of this kind of adoption are concerned, the Treaty specifies that the act shall be deemed to have been adopted "in the wording which corresponds to the position of the Council". As such, the finalisation of the text to be adopted by the lawyer-linguists of the two institutions must take place before the position of the Council is adopted and the 'master' of the text in this phase is the Council. Again, if an agreement is reached, it is through informal negotiations in trilogues. If approved, the act in question shall be deemed to have been adopted and the lawyer-linguists of both institutions would intervene again. Should the Council not approve the amendments, a meeting of the Conciliation Committee is convened. According to Article 294(7) TFEU, the Parliament has three months to approve the Council's position at first reading or to reject it or to propose amendments to it. Then the Council has another three months to approve or reject the amendments of the Parliament. The Conciliation Committee must be convened within six weeks following a refusal by the Council of the Parliament's amendments.²⁴⁸

If an agreement is confirmed by the institutions at any stage of the procedure (should it be the first, the second or third reading after conciliation), the Presidents of the Parliament and of the Council sign the proposed act and arrange for its publication in the Official Journal of the European Union. The case law of the Court of Justice has made it clear that no alteration to the text is allowed after it has been approved by the legislator. After the act has been sent to the Publication Office of the European Union, language versions of the text remain

²⁴⁶ Rule 138(1) of the Rules of Procedure of the European Parliament.

²⁴⁷ Article 14(1) of the Rules of Procedure of the Council.

²⁴⁸ DGT (2010), p. 27.

unchanged with the exceptions of formatting and linguistic correction requirements, of which the Publication Office is in charge.²⁴⁹

3. Other Procedures (Special Legislative Procedures and Non-legislative Procedures)

Although not much is said in the literature about special legislative procedures, as their statistical occurrence is rare and their linguistic intricacies are nothing new with regard to the ordinary legislative procedure, they will be mentioned for the sake of completeness.

Special legislative procedures (Article 289(2) TFEU), as their name implies, are the exception from the ordinary legislative procedure. These are used in certain more sensitive policy areas. Unlike in the case of the ordinary legislative procedure, the TFEU does not give a precise description of special legislative procedures. The rules for these are therefore defined on a case-by-case basis by the Treaty articles that lay down the conditions for their implementation. The Council is, in practice, the sole legislator, while the Parliament's role is limited to consultation (such as under Article 89 TFEU concerning cross-border police operations) or consent (such as under Article 86 TFEU concerning the European Public Prosecutor's Office), depending on the case.²⁵⁰ The initiative rests with the Commission.²⁵¹

The instruments are again regulation, directive or decision. Whatever the procedure in place the texts follow generally a similar process, being initiated in the Commission, translated, and all language versions transmitted for further work in the other institutions (unless it is a Commission act). Each text undergoes extensive scrutiny in the competent institutions and further translation takes place as they are amended. Currently the texts are mainly drafted in English and then translated into the other languages, as with the ordinary legislative procedure.²⁵²

²⁴⁹ DGT (2010), p. 30.

²⁵⁰ [EUR-Lex](#).

²⁵¹ [Council official website](#).

²⁵² Robertson (2013), p. 24.

As for non-legislative procedures, their result takes the form of implementing and delegated acts. While the primary responsibility for implementing EU law lies with EU countries, in areas where uniform conditions for implementation are needed (such as taxation, agriculture, the internal market, health and food safety, etc.), the Commission (or exceptionally the Council) adopts an implementing act. The Commission may adopt delegated acts on the basis of a delegation granted in the text of a legislative act. The difference between these two types of binding acts reflects a differentiation regarding the nature of the tasks given to the Commission by the EU legislator (that is, the Parliament and the Council) and the consequent requirements in terms of accountability.²⁵³ Delegated acts given by the Commission are governed by Article 290 TFEU; while implementing acts, given either by the Commission or the Council, go under Article 291 TFEU.

What is relevant about non-legislative acts is that they constitute the bulk of EU legislation.²⁵⁴ Moreover, we should keep in mind that Commission's autonomous acts, unlike interinstitutional acts, do not normally undergo further quality control after release by DGT. Consequently, particular attention should be paid to the quality of translations, since correction of language versions during the period when the Council and Parliament can exercise their powers of scrutiny (the so-called «objection period») should be avoided.²⁵⁵

4. Co-drafting: Linguistic Work at the EU Legislative Institutions

As we have seen, co-drafting as simultaneous drafting in different languages is impossible for the Union, due to the high number of official languages. We cannot imagine more than 20 drafters working on more than 20 different language versions at the same time, without a first draft that serves as the common basis. The method used by the Union in order to ensure that the same rule is applied to all the population is somewhere in between, i.e. on one hand, the authenticity of a single text (with translations) and, on the other hand, the simultaneous

²⁵³ Best (2016), p. 61.

²⁵⁴ According to Voermans *et al* (2014), "more than 75% of EU legislation is currently enacted by the European Commission". Up-to-date data on the legal acts produced by the Union, which supports this affirmation, may be found on [EUR-Lex](#).

²⁵⁵ DGT (2015), p. 6.

co-edition in all languages.²⁵⁶ There are several characteristics, however, that still allow us to speak of co-drafting. The first is the fact that the text in the base language used during the negotiations can always be changed as a consequence of the observations made in the light of the translations, the process known as “retroaction”.²⁵⁷

Then, once the base text is approved, it is revised and translated into all the official languages of the Union. This final product is a “hybrid” text, the nature of whose source and original has become more and more blurred. The legal status of the authenticated official text *prima facie* suggests that the process of translation has not occurred, even though its occurrence cannot be denied.²⁵⁸ The matter has generated much debate in recent years, mainly by linguists and translators who have pointed out at the difficulties of translation, the illusion of language equality and, consequently, the problems in defining the translator’s role.²⁵⁹ However, a careful look at the principle of equal authenticity shows that it does not necessarily apply to the genesis of the legal text.²⁶⁰ According to speech act theory,²⁶¹ the performance of EU legal acts is identified with their utterance, which only takes place when the 24 language versions are authenticated and published in the Official Journal.²⁶² Moreover, Regulation 1/1958 granted the institutions some flexibility in choosing their working language.²⁶³ Consequently, what the principle of equal authenticity calls for is simultaneous multilingual publication of the law, while multilingual drafting does not need to be simultaneous.

Interesting implications follow from this multilingual law-making. Legislation is a collective enterprise also in monolingual contexts, but even more so in multilingual ones, since the different political and technical inputs at the level of drafting and negotiating, amending and redrafting legal proposals is mediated by translations. There is a constant interaction between language versions at all levels of law-making. The end result is not any specific language, but a combination of all. This is sometimes expressed by the term “co-drafting”, which acquires a

²⁵⁶ Piris (2005), p. 480.

²⁵⁷ Guggeis (2014a), p. 51.

²⁵⁸ Felici (2010a), p. 102.

²⁵⁹ For some examples cfr. Correia (2003), p. 40, Koskinen (2000), p. 83, and Tosi (2002), p. 179. Also, see the discussion in Chapter III.

²⁶⁰ Sin (2013), p. 933. In Felici (2010a), p. 104, we find a similar view. See also Doczekalska (2009b), p. 18.

²⁶¹ For a full account of the theory, see Searle (1969).

²⁶² Felici (2010a), p. 104.

²⁶³ Article 6 of the Regulation states that: “The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.”

specific sense in the EU context: sharing linguistic inputs at all stages of the law-making process rather than following different parallel tracks for each language and then contrasting the final outcome.²⁶⁴

On that basis, “drafting” equates to “translating” and there is no parallel rendering of EU law.²⁶⁵ Nonetheless, EU law-making includes a constant process of translation and legal-linguistic revision. First, it is not only the final version of an act that is translated, but translation is used throughout the whole multi-stage process of drafting. The function of translation here is not only drafting law, but also providing versions to participants of the legislative process in their mother tongues. Furthermore, during the revision of multilingual drafts carried out by lawyer-linguists in all institutions participating in the legislative process, and at various stages of this process, an original version can be changed to make it easier to translate.²⁶⁶

The linguists who work on the language versions of EU legislation, that is, the drafters of the target texts, include both translators and lawyer-linguists. Although neither partake directly in the political negotiations leading to the original legislative draft texts, and even though translators and lawyer-linguists have distinct tasks and responsibilities relating to the wording of the target texts, they both make translation decisions and ultimately determine how the source text will be drafted.²⁶⁷

The following pages will look into the actors that carry out linguistic work at the EU legislative institutions: translators and lawyer-linguists. They will delve into what their tasks are and how they relate to one another. The final purpose of this is to understand what contribution linguists make to the endeavour of EU law-making.

²⁶⁴ Bengoetxea (2015), p. 209.

²⁶⁵ Felici (2010b), p. 155.

²⁶⁶ Doczekalska (2009b), p. 381.

²⁶⁷ Baaij (2018), p. 136.

a. Translators

EU translation is a multi-faceted category which may be defined as translation rendered by and for European Union institutions. In the most prototypical sense, it is translation provided in-house by the translation services of EU institutions. However, EU translation also covers translations outsourced to external contractors, paid for and, to some extent, controlled by EU institutions.²⁶⁸ The translation that takes place in this setting is institutional translation and multilingual law-making. Translators are the institutional voice for their respective languages, as they produce equally authentic texts. Consequently, the existing drafting guidelines are not only relevant for the drafters of the original texts, but also for the translators and revisers, as specified in the DGT's Translation Quality Guidelines. A key quality desideratum is to produce texts that read like originals in all languages.²⁶⁹

The Commission's DGT is one of the largest translation services in the world with 2,500 staff, 1,474 of them translators. It also has a network of free-lance translators who translate almost 30% of its output.²⁷⁰ About one-third of its work is the translation into all the official languages of legislation and policy documents of major public importance. For its translations of legislative proposals, however, it does not have specialist teams of legal translators; in fact, only a small minority of its translators have legal qualifications. They have only limited access to the authors of the text, who in any case may no longer be altogether sure of its precise meaning, as a result of the input of others during the internal procedures. When translating a complex and lengthy legislative proposal, the translators cannot always know when one of the choices made by them will alter some nuance in the text or undo a carefully crafted compromise.²⁷¹

As well as translation proper, the individual language departments also take charge of terminology and documentation and are responsible for keeping linguistic standards high and consistent in the DGT's output in each of the official languages. There are three other

²⁶⁸ Biel (2017), p. 32.

²⁶⁹ DGT (2015), p. 2.

²⁷⁰ DGT (2012), p. 9.

²⁷¹ EP (2012), p. 10. See also Robinson (2014), pp. 261-262, who differs in that 60% of the translators' workload is related to legislation. These figures vary as does the composition of the total workload, with a policy trend of translating less and less.

directorates dealing with administrative issues and strategy, and providing support for translators. Geographically, the DGT is split approximately half and half between Brussels and Luxembourg. Except for the Estonian, Latvian, Lithuanian, Polish, Hungarian, Slovenian, Maltese, Czech and Slovak language departments, whose staff are located only in Luxembourg, and the Irish unit, whose staff are in Brussels, all language departments are split between Brussels and Luxembourg.²⁷² As we can see, communication across departments and with the drafters (located in Brussels) is not always easy.

As it is only in exceptional cases that the final texts in all the official languages will be checked by the legal revisers in the Commission Legal Service (unlike the position at the European Parliament and the Council, where the final texts in all the languages are checked by the lawyer-linguists), DGT takes a range of measures to be able to guarantee the quality of its translations. Its staff translators are all familiar with EU institutions, procedures and terminology and they have good IT systems and terminological and documentation backup. Although they are not required to have legal qualifications, they are offered various training possibilities and they do develop considerable expertise in legislative matters. Efforts are also made to allow translators to specialise in certain fields of Commission activity so that they can become more familiar with the subject, the existing rules and the terminology. Moreover, legislation is not normally sent out to free-lance translators, but budgetary pressures are leading to departures from that rule.²⁷³ The effective and projected increases in the used of outsourcing have meant that DGT has had to pay even closer attention to its practices in evaluating freelance translations.²⁷⁴

The specialization by subject matter is operationalized through informal teams of translators that are used to working together (sometimes called “functional groups”) in order to translate big files in a short time. However, revision is then assigned to a single person, if possible, for the sake of uniformity. A coordinator or “chef de file” is named for complicated files. This person coordinates the contact with the drafters for all languages.²⁷⁵

²⁷² DGT (2012b), p. 4.

²⁷³ Robinson (2014), pp. 261-262. See also Strandvik (2014, 2017, 2018), and Biel (2017), pp. 47-48.

²⁷⁴ Strandvik (2018), pp. 59-60.

²⁷⁵ Interviews (DGT management and translators).

At the Parliament, the source languages are more evenly spread than in any other institution, since any MEP can table amendments in their own language.²⁷⁶ The Parliament employs circa 600 translators, while outsourcing approximately 30% of its translation volume.²⁷⁷ In order to cope with the ever-increasing level of demand, DG TRAD has recourse to external contractors for non-priority texts. The outsourcing of translation assignments is based on document type and workload. Documents of the highest priority, i.e. legislative documents and documents to be put to the vote in plenary are, as far as internal resources permit, translated in-house.²⁷⁸ DG TRAD is located in Luxembourg,²⁷⁹ far from the legislative negotiations. Their translators do not have formal specialization, but they may specialize based on personal preferences through functional groups, as with the Commission.²⁸⁰

With approximately 600 translators and 300 other management and support staff, the General Secretariat of the Council of the EU's Translation Service is a little smaller than the European Parliament's Directorate-General for Translation and about half the size of the European Commission's Directorate-General for Translation.²⁸¹ In addition to the language units, the Language Service of the Secretariat has its own management team to give guidance, foster best practices and ensure communication and cohesion across the language units. To this end, it is supported by a CAT Tools Coordinator, a Quality Policy Coordinator, Terminology and Documentation Coordinators, and a Project Coordinator. Language units usually have a staff complement of 26 translators and approximately 10 assistants. Each of the language units also has its own internal management team, comprising a Head of Unit, a Quality Controller, a Resources Manager and a Coordinator, in charge of all administrative tasks and the distribution of work.²⁸² GSC's translators have also formed functional groups, mirroring the most important Council configurations — economy and finance, environment (which also includes agriculture and energy), foreign and security policy, justice and home affairs.²⁸³

²⁷⁶ Wilson (2003), p. 4.

²⁷⁷ [European Parliament official website.](#)

²⁷⁸ [European Parliament briefings.](#)

²⁷⁹ [European Parliament notices.](#)

²⁸⁰ Interview (Parliament translator).

²⁸¹ Hanzl & Beaven (2017), p. 139.

²⁸² Council (2012).

²⁸³ Hanzl & Beaven (2017), pp. 145-146.

All translators are also revisers, either of their own translations or of those done by others, and are well aware of the principles governing good translation and accurate revision.²⁸⁴ Some of them also carry out terminological work, other than for the translation at hand. This is the responsibility of the language departments, but coordinated by a central body in each institution and across institution. Terminologists respond to requests from fellow translators, research terminology for technically demanding documents prior to translation, manage the EU's interinstitutional terminology database (IATE) and liaise with terminologists from the other EU institutions and beyond (national bodies, other international organizations).²⁸⁵

Each language department has one main terminologist, who is also responsible for interinstitutional and external contacts, and a varying number of staff working on terminology, according to upcoming needs. Overall, more than a hundred of staff in the language departments are involved in terminology work. This includes also tasks beyond the directly IATE-related terminology work, such as the coordination of terminology projects, Euramis (the institutional translation memories) sentence management, internal advice and training related to terminology tools, participation in weekly unit/department meetings, tasks related to quality management, information tasks etc.²⁸⁶

In general, EU translators must hold a university degree and have a complete mastery of one of the official languages of the EU (usually their mother tongue) plus an excellent command of at least two others. As a general rule, they work into their mother tongue, but when necessary they may also translate from their mother tongue into another language. Their work involves both translation and revision of other translators' work. The role of the assistants is to coordinate and provide administrative and technical support for the work of translation and document preparation. They also prepare and format texts before and after the translation and revision process and ensure that finished translations conform to layout and technical requirements.²⁸⁷

²⁸⁴ DGT (2010), p. 5.

²⁸⁵ EC (2012).

²⁸⁶ EC (2011), p. 24.

²⁸⁷ Council (2012).

b. Lawyer-linguists

It is necessary to make a distinction between translation revision, which includes the revision of a target text to remove errors and inconsistencies, and legal-linguistic revision, which goes beyond a purely linguistic revision of a target text to include legal and linguistic revision of the base text as well.²⁸⁸

Lawyer-linguists, also known as jurist-linguists or J-Ls, are a relatively new type of professional who came into existence following the creation of the EEC, EC and EU. Originally there were lawyers and there were linguists. The lawyers prepared the texts with the negotiators, administrators and politicians. The linguists interpreted orally at meetings and translated the texts into the other languages needed for publication in the Official Journal. With time it was discovered that there was a 'gap' between the lawyers and the linguists and a concern arose about quality of the texts and equivalence between language versions. Lawyers with language skills were recruited with the specific task of examining all language versions to ensure legal and linguistic equivalence between them. Lawyer-linguists are nowadays employed by all legislative institutions: in the Commission they are called legal revisers, while Council and Parliament call them lawyer-linguists as such.²⁸⁹

Legal-linguistic revision has a fundamental role in the legislative procedure, as the Joint Declaration of the three institutions on practical agreements for the co-decision procedure subjects all agreements to it. However, legal linguistic finalisation may by no means be used to reopen discussions on substantive issues.²⁹⁰

In each of the three institutions, the task of J-Ls is twofold: to ensure, firstly, that the legal texts in the "source" language are in conformity with the formal and substantial rules of legal drafting and, secondly, that all linguistic versions have the same legal content. If the contribution of translators to that goal is considerable, the ultimate responsibility and last word are for the lawyer linguists.²⁹¹

²⁸⁸ Burr & Gallas (2004), p. 199.

²⁸⁹ Robertson (2010a), p. 53.

²⁹⁰ DGT (2010), p. 24.

²⁹¹ Guggeis (2014a), p. 53.

The 60 lawyer-linguists who are part of the Quality of legislation team in the Commission Legal Service are generally referred to as legal revisers. Since the legislative process normally begins in the Commission, as detailed above, the Commission legal revisers intervene in EU legislative texts at an earlier stage than their colleagues in the Council and the Parliament. Their two main tasks are: (1) to monitor the legislative quality and revise 'autonomous' draft legislation of the Commission, as well as draft legislative proposals for transfer to the Council and the Parliament with a view to their adoption, and (2) to ensure consistency of terminology and legal effects between the various language versions of these drafts. In light of the successful results and increasing concerns about the quality and legal certainty of EU multilingual legislation, the legal revisers are sometimes called upon to intervene in the initial drafting phase prior to the inter-service consultation. Early intervention definitely facilitates the translation of the base text into the other languages, which commences following the inter-service consultation.²⁹² Although the Commission legal revisers are drafting technicians, they are not part of the negotiating process and are neutral in that respect; their main task is to address the quality of the texts and language efficiency.²⁹³

While at this stage the draft exists in just one language, almost always English, the legal revisers also seek to ensure that the draft will be capable of being translated into all the other official languages. The changes suggested by the legal revisers are sometimes substantial. But the Legal Service will focus on legal aspects leaving matters of policy to the department responsible, although it is a strong position to influence the draft text because of its role as the Commission's legal adviser and because its agreement is necessary for any text to be adopted by the written procedure.²⁹⁴

Setting up mechanisms and techniques to enhance the linguistic quality of the original text is based on the presumption that high quality original texts further the production of high quality translations. Practices aiming at improving the quality of the original text have received much attention within the institutions recently. At the Commission, quality improvement is provided for during the inter-service consultation by the Legal Service and by

²⁹² Dragone (2006), pp. 100-101. See also EP (2012), pp. 8-9.

²⁹³ Šarčević & Robertson (2013), pp. 185-188.

²⁹⁴ Robinson (2014), pp. 258-259.

the Editing Service, the approaches of which are different as regards the drafting quality of the Commission proposals. The former ensures the appropriate legal wording and style while the latter enhances the linguistic quality of the original text through the intervention of native speakers of the drafting language. Since 2001, legal revisers at the Commission have frequently organised courses in drafting techniques for several Directorates-General.²⁹⁵

As the outcome of the ordinary legislative procedure is an act adopted jointly by Parliament and Council, collaboration in the field of the drafting of different language versions is inevitable. The Joint Declaration states in its General Provisions that where an agreement is reached at first or second reading, or during conciliation, the agreed text shall be finalised by the lawyer-linguist services of the European Parliament and the Council acting in close cooperation and by mutual agreement.²⁹⁶ At the Council and Parliament, J-Ls intervene, in the codecision procedure, at two different stages; firstly, during the negotiation leading to the political agreement and, secondly, after the political agreement. The lawyer-linguists' opinion is not binding; their proposals can never alter the political substance of the text; lawyer linguists submit to the legislator their proposals in order to improve the readability of the text, but the final decision belongs to the legislator. When the political agreement is reached, the second stage of the legal-linguistic procedure begins: together, the quality adviser from the Council and the file coordinator from the parliament finalize the text of the political agreement, which is then distributed in each institution to a team composed of one lawyer linguist for each language. Each lawyer linguist verifies his own linguistic version in comparison with the base text and has to agree with the counterpart from the other institution on the final text, following the concept of codecision.²⁹⁷

Therefore, the *chef de file* from the Council's lawyer-linguists not only follows the negotiations on the file, but she also works on its "original" English version in collaboration with the English language department at the DQL. This is called MAP (*mise à point*) of the legislative

²⁹⁵ DGT (2010), pp. 37-38.

²⁹⁶ *Ibid.*, p. 24.

²⁹⁷ Guggeis (2014a), p. 53.

proposal.²⁹⁸ In Parliament, the file coordinators follow the political negotiations and attend the trilogues, and their MAP is called “MEF” (*mise en forme*).²⁹⁹

In particular, jurist-linguists at both the Council and the Parliament carry the final responsibility for the choice of terminology. They have the task to ensure that the language versions have the exact identical legal scope and that there is complete concordance between these versions.³⁰⁰

The Parliament has some ninety lawyer-linguists, who belong to the Legislative Quality Units of the Directorate for Legislative Acts in the Directorate-General for the Presidency of the Parliament. The ninety lawyer-linguists in the General Secretariat of the Council are part of its Directorate for Legislative Quality (DQL), within the Legal Service.³⁰¹ The Parliament’s J-Ls have a broader role than their counterparts in the Council, in that they check not only draft legislative texts but also amendments and other texts submitted in the parliamentary processes, which have been translated into all languages by the Parliament’s translators.³⁰²

Member States’ administrations, which officially received the texts from the Council’s General Secretariat, have the possibility to channel their legal linguistic remarks to the lawyer-linguists or to the translation unit of their language at the Council. Lawyer-linguists of the Parliament do not receive comments from Member State experts.³⁰³

c. Interactions and Synergies

At the heart of the process of multilingual text production lie drafting, translation and revision. The drafter needs to pay attention to translation implications and the translator and reviser need to understand clearly what the drafter intends. There is an interplay between all actors involved, so it is best to think of EU legislative text creation as an exercise in

²⁹⁸ Interview (lawyer-linguist from Council).

²⁹⁹ Interview (lawyer-linguist from Parliament).

³⁰⁰ Baaij (2015), p. 101.

³⁰¹ EP (2012), p. 13.

³⁰² Šarčević & Robertson (2013), pp. 188-190.

³⁰³ DGT (2010), p. 24.

cooperation between professionals and experts, mutually interdependent.³⁰⁴ For organizational purposes, we can sum up the main traits of translators and lawyer-linguists, the “linguistic workers” detailed above, in the following way:

| | Translators (any degree) | Lawyer-linguists (law degree) |
|------------|---|--|
| Commission | <ul style="list-style-type: none"> • Around 1,500 translators • Located in Brussels & Lux • Including terminologists | <ul style="list-style-type: none"> • Around 60 legal revisers • Part of Legal Service • Located in Brussels • Legislative + non-legislative acts |
| Parliament | <ul style="list-style-type: none"> • 600+ translators • Located in Lux • Including terminologists | <ul style="list-style-type: none"> • Around 90 J-L • Located in Brussels • DG for Legislative Acts |
| Council | <ul style="list-style-type: none"> • Around 600 translators • Located in Brussels • Including terminologists | <ul style="list-style-type: none"> • Around 90 J-L • Located in Brussels • Part of Legal Service (DQL) |

J-Ls check compliance with the legal technical drafting guidelines before and after translation, respectively. In principle, and in theory, they check all the language versions, to ensure that they are consistent from a legal point of view and that they comply with the legal-technical drafting guidelines. In practice, however, the legal revisers and the lawyer-linguists do not

³⁰⁴ Robertson (2013), p. 30.

have the means to take care of all relevant aspects of drafting, terminological work and translation but intervene rather as quality control, to fine-tune and improve what translators have done.³⁰⁵

Therefore, informal personal contacts between linguistic workers participating in different phases of the procedure can and, in practice, do contribute to the improvement of the quality of the texts. Such contacts can be established also with draftspersons. At the level of the Council, these contacts involve Members States' experts, too, either when they contact the lawyer-linguists finalising the text or when they participate in the work of the Council working group of lawyer-linguists. Translators and lawyer-linguists at all institutions may also communicate if it is necessary to clarify the meaning of a certain term or in order to receive information on why a certain term was selected by the translator. The ELISE system created by the Commission aims to facilitate this cooperation by enabling translators/lawyer-linguists to comment on drafting and linguistic aspects of draft texts and to contact each other if they have specific terminology- or translation-related questions. In addition, important informal collaboration can be established for each official language where translators, terminologists and lawyer-linguists of different institutions using the same language work together in an informal or, sometimes, even in a formalised manner. Some of these informal groups issue terminology newsletters or other informative notes. This kind of collaboration clearly enhances the quality of the legal texts in the given language and raises awareness regarding the fact that, in the EU, law is a coherent corpus of legislative texts regardless of which institution(s) are to issue the relevant act in question and that this coherence must be reflected at the level of legal terminology with respect to each official language.³⁰⁶

While merging all translation services at EU level has been ruled out due to difficulties in implementation, other options for closer interinstitutional cooperation have been taken forward in the framework of the Interinstitutional Committee for Translation and Interpretation ("ICTI").³⁰⁷ However, in practice, each language community and/or institution is organized in a different way, not to speak about different services within a single institution.

³⁰⁵ Strandvik (2014), p. 218.

³⁰⁶ DGT (2010), pp. 39-40.

³⁰⁷ EC (2009), pp. 93-94.

Therefore, we could speak of vertical division (language communities) and horizontal division of two orders (institutions and services). While terminologists work at the Translation Services, some terminology is agreed on at the J-L stage, sometimes through contacts with national experts. Interinstitutional cooperation may or may not involve several (or all) language communities. In this sense, there are many different platforms and projects that are being launched in order to improve coordination and cooperation at different levels, with different degrees of success.³⁰⁸ While building this kind of synergies is necessary, it is also time-consuming,³⁰⁹ which may discourage investment.

Interviews across institutions have shown that translators at the Parliament and the Council sometimes contact J-L with legal doubts or remarks. The opposite way of communication seems to be rarer. In the Commission, translators do not have much contact with the legal revisers.³¹⁰ Moreover, the influence of Member States on EU legal terminology is greater when the Council is in charge of legal-linguistic revision. This is because, while Council takes onboard some MS comments during the translation and legal-linguistic revision phases, Parliament does not have that kind of contacts.³¹¹ Council's J-L are in contact with MS' Permanent Representations and receive their comments. Therefore, national expertise about terminology in EU law goes through these institutional actors. However, their interests are different, so communication is not always easy.³¹² Council's J-L receive MS comments even when Parliament deals with the legal-linguistic revision.³¹³

As pointed out above, J-Ls have the final word. Before the adoption of the act, all the versions are edited in a meeting with the J-L of all languages and the national experts in the relevant policy area from all MS. At this stage, it is still possible to modify the base text, if it contains errors or the drafting was so bad that it caused divergent translations. In general, in these meetings drafting experiences are exchanged between the national and the European level. After them, there is normally an exact terminology, agreed on after taking into account the

³⁰⁸ Interviews (Translation planning from Council, translators from different Council language units engaged in said projects). More will be said on the issue of tools and working methods for linguistic work in the EU legislative institutions in Chapter III.3.

³⁰⁹ Interview (management of Council Translation Service).

³¹⁰ Interviews (Commission, Parliament, Council).

³¹¹ Interview (legislative quality control from Council).

³¹² Interview (Terminologist in Council Translation Service).

³¹³ Interview (lawyer-linguist from Council).

experiences and the interests of all the parties involved. This enrichment is the upside of multilingualism. The comparison of the different language versions and the subsequent discovery of divergences can reveal problems in the base text. Comparison exposes interpretive difficulties, which otherwise would have been hidden until the legislation came into force, which is too late. Therefore, the responsibility of the quality in the EU legislation rests not only with translators, but the base text must be also subject to a detailed examination by drafters and lawyer-linguists, thanks to the interactions throughout the process.³¹⁴

5. Conclusions

After having looked into the ordinary legislative procedure, the default law-making process at the EU institutions, it seems that EU legislation may very well be said to be co-drafted, both in the sense of a multi-actor collaborative process and of multilingual parallel rendering. The following summary traces all the inflection points in the linguistic work that contribute to EU legislation being co-drafted.

To start with, experts in the Commission produce the base text of a proposal, normally in English, which may or may not be edited by English translators for clarity, before or during the intervention of other experts in the interservice consultations. Another linguistic check embedded in that phase is the work of the Commission's legal revisers, who must check and can change the final base text as part of the interservice consultation. The final text is then submitted to the Commission's translators. The translation planning unit decides when it is the optimal time to start translating a text, aiming to balance anticipation and efficiency, which sometimes gives rise to interim translations. The translated legislative text, which is normally produced in-house and may be split among various translators in case of time constraints, is then revised by a single translator.

This translated proposal is forwarded to Parliament and Council, who will work in parallel in order to reach a political agreement and conclude the procedure at first reading, which

³¹⁴ Piris (2005), pp. 480-481.

happens in close to 90% of the files. Translators in Parliament work with MEP amendments, which can be tabled in any language and must be translated to be discussed, while negotiations in the Council normally focus on the base language (English, rarely French). Lawyer-linguists from both institutions follow the political negotiations and assist with the drafting of amendments and the quality of the base text.

When the trilogues are close to an end, the translation planning service in one of the two institutions, which take turns to lead the translation and legal-linguistic revision, triggers the translations of the legislative act. As with the Commission, this is translated in-house and may be split among several translators in case of time constraints, but revised by a single one. Then, the lawyer-linguists take over and carry out their final revision, which is finalized at a meeting where representatives from the Commission, Parliament, Council and Member States sit together and page through the base version, while looking at all the other language versions to align their meaning.

This overview, stemming from bibliographical sources and institutional reports, has been confirmed and enriched by first-hand interviews at the three legislative institutions. The result is a flexible procedure, whose details have been time and again adapted to practical requirements for the sake of efficiency, in order to allow the Union to produce legislation of adequate quality within time constraints in an increasing number of official languages. This, together with the budgetary concerns mentioned in the previous Chapter, puts linguistic workers at the EU legislative institutions under mounting pressure not only to do more with less, but to also do it better.

As we can see, however, the responsibility for the quality of the final language versions is joint. From the technical drafters at the Commission, through the language editors and legal reviser that check the proposal in the original language, to Commission translators, including the Parliament's and Council's political actors, translators and lawyer-linguists, together with MS experts, all contribute to the final text in one way or another. While translators' do quality control of the base text, language version production and terminological work; J-Ls do not only carry out legal-linguistic revision, but also terminological work, for which they have the last word.

Therefore, it is important to note that the linguistic work on the EU legislative institutions is not exhausted by the intervention of translators, but includes lawyer-linguists as well. Notwithstanding the many initiatives already undertaken and the tight time constraints, as pointed out above, anything that can be done to improve their collaboration and tap on their synergies would result in quality gains. This applies not only to contacts across language communities, but also institutions and exchanges with drafters and the “legislator” as such. Interviewees among those linguistic workers never ceased to point out how important this was. While their concrete tasks are different, the challenges that these professionals of language face are similar, as are the tools at their disposal. The next Chapter will delve into both, to finally consider how their role may best be conceptualized, in order to reflect the reality of their work and overcome the mistrust that lawyers’ and policy-makers sometimes experience in their regard (take the example of the refusal of editing services mentioned above). As McAuliffe and Trklja point out, it is essential to increase lawyers’ awareness of the multilingual character of EU law.³¹⁵

³¹⁵ McAuliffe & Trklja (2018).

Chapter III: Language Problems in EU Law-making

Presentation of the challenges and methodology of linguistic activity in EU Law-making. Conceptualization of EU linguistic work, including legal translation and legal-linguistic revision, as a sui generis activity, deeply embedded in the drafting of the law and building bridges towards legal interpretation.

1. Introduction

Linguistic uncertainty is most often discussed in relation to one language, i.e., intra-lingual uncertainty. There is also inter-lingual uncertainty, i.e., uncertainty arises when two languages are considered or when one language is translated into another language. In such cases, a word, phrase or sentence in one language may or may not be uncertain, but additional uncertainty may become present when they are considered across two or more languages.³¹⁶ Therefore, compared with unilingual legal systems, language problems are said to be multiplied in the EU. Due to multilingualism, linguistic indeterminacy can become relevant for legal interpretation in different places in the same text, depending on which language version is analysed. In other words, in addition to the linguistic indeterminacy inherent to all languages, i.e. intra-lingual uncertainty, multilingualism adds problems of inter-lingual uncertainty.³¹⁷

Indeed, the base text from which all other language versions originates is not exempt from language risks. There are many reasons for the imperfections of the base text, such as drafters in the Commission drafting in languages that are not their mother tongue, or amendments being proposed in the Parliament and the Council in different languages, then translated back and forth. Moreover, EU legislation is often the result of delicate political compromises, so its wording may not be the most elegant or clear. The negotiated nature of EU legislation is as important as its multilingual nature for its final textual characteristics.³¹⁸

³¹⁶ Cao (2007), p. 71.

³¹⁷ Paunio & Lindroos-Hovinheimo (2010), p. 410.

³¹⁸ Piris (2005), p. 481.

Translations, on the other hand, are an input to the legislative process - raw material for discussion and amendment at various levels - and an output of the process, in the form of the language versions that are needed before EU law can take effect. We sometimes hear criticisms to the effect that EU legislation don't 'sound natural' and translators are to blame for this. If 'sounding natural' means sounding like national legislation, then this 'unnaturalness' is inevitable.³¹⁹ Moreover, translation is largely a question of making choices. As Pym puts it, there are translation choices that are correct or incorrect (binary errors), but mostly translation issues are not a matter of right or wrong but of making more or less appropriate choices (non-binary errors).³²⁰ The problem for translators, revisers and evaluators alike is that most quality issues are of the non-binary type.³²¹ Any institutional translation context will therefore necessarily trigger quality concerns and reflections on house style in order to agree on choices that in a number of recurring issues are to be considered preferable, to make the institutional translation possible at all and to ensure consistency over time.³²²

As pointed out in the previous Chapter, it appears that for many years the quality of the multilingual EC Law was just taken for granted. It was only in relation to the qualitative leap of the European integration that took place in 1992, with the Maastricht Treaty and the creation of the political union, that the quality of the legislation was put on top of the political agenda.³²³ In an attempt to respond to growing criticism of the EU's "democratic deficit", the Danish 'No' to the Maastricht Treaty in 1992 and the results of the 2005 referenda in France and the Netherlands on the EU Constitution, the EU has taken a number of actions to address the "lack of legitimacy" and to "bridge the gap" between the EU and its citizens.³²⁴ These actions include the "Better Lawmaking" and "Better Regulation" initiatives, as well as the most recent Communication on Smart Regulation in the European Union,³²⁵ and the concrete measures to improve the drafting quality of legislation such as the interinstitutional

³¹⁹ Wagner (2001), p. 267.

³²⁰ Pym (1992).

³²¹ Strandvik (2017), p. 127.

³²² Strandvik (2018), p. 51.

³²³ Strandvik (2014), pp. 212-213.

³²⁴ DGT (2012a), p. 19.

³²⁵ COM(2010) 543 final, adopted on 8 October 2010.

agreement on legislative drafting quality,³²⁶ and a Joint Practical Guide for the drafting of legal acts.³²⁷

As the institutions are well aware of, translation errors and discrepancies create risks of litigation and financial, political and image-related damage. They may entail considerable extra work later in the legislative process, in working groups and in other EU institutions, including the cumbersome processing of corrigenda requests. They may also result in difficulties and problems -- and potentially errors -- of interpretation and implementation at the national level.³²⁸

Theories and categories usually applied in translation studies cannot account adequately for translation problems, translation solutions, and interpretation methods adopted within the legal framework of the EU.³²⁹ Owing to its unprecedented multilingualism, institutionality and hybridity, EU translation has challenged some central concepts of Translation Studies with its fluid and non-final source texts, concurrent drafting and translation, collective translation processes, and the replacement of source text and target texts by authentic language versions.³³⁰ This is why the following pages will analyse the challenges and solutions that linguistic workers, as defined in the previous Chapter, face in the context of EU law-making.

2. Challenges

According to Robinson, EU translators working on legislation have to accomplish various balancing acts. On the substance, their translations of EU legislation have to be vague enough for the diplomats, precise enough for the lawyers and technical specialists in the sector concerned, and clear enough for the ordinary user. At the same time the language they use has to be true to the original but accessible to the reader in the Member States.³³¹ As EU law

³²⁶ Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of Community legislation, OJ C 73, 17.3.1999, p.1.

³²⁷ Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, 2003.

³²⁸ DGT (2015), p. 6.

³²⁹ Kjaer (2007), p. 89.

³³⁰ Biel & Engberg (2013), p. 6.

³³¹ Robinson (2014).

extends to cover almost all fields of law, albeit to a different extent, legal languages are duplicated whereby each legal language expressed by the same natural language must be construed respectively in its own context. EU law thus cannot be separated from the national legal systems since, with regard to directly applicable regulations, it becomes part of the national law. This feature makes the interaction between the national legal languages and the EU language more complicated.³³²

Owing to the open texture of language,³³³ indeterminacy inevitably forms an integral part of legal practices, even when law is expressed in one single language.³³⁴ By “indeterminacy”, it is meant such properties of natural languages as vagueness, generality and ambiguity. Indeed, in EU law, multilingualism adds to intra-lingual indeterminacy the problem of inter-lingual indeterminacy, i.e. additional uncertainty as to the meaning of a text when it is considered across several languages.³³⁵ Cao identifies three sources of inter-lingual uncertainty in multilingual legislative texts: ambiguity that arises from the grammatical or syntactical features of languages; lexical uncertainty that arises from the non-correspondence between words and phrases in two or more languages, and uncertainty arising from errors and variations found in different language versions of laws, including translation errors.³³⁶ Here we won't consider translation errors in relation to the two previous categories, as, rather than part of the challenges of multilingual law-making, they are the result of deficiencies in the processes of facing said challenges, or attributable to lack of attention and normal human fallibility. Therefore, the three main challenges to the linguists' work at the EU legislative institutions may be considered to be ambiguity, terminology and other textual features such as fundamental differences in grammatical structure across languages or punctuation.

³³² Gallas (2006), p. 122.

³³³ Waismann (1951) coined the term, as “something like possibility of vagueness. Vagueness can be remedied by giving more accurate rules, open texture cannot”. It was then most famously introduced in legal theory by Hart (1994), pp. 124 *et seq.*

³³⁴ Paunio (2013), p. 11.

³³⁵ Paunio & Lindroos-Hovinheimo (2010), pp. 396-397. Cao (2007), p. 71. The comparison of texts in different languages may, however, also remove uncertainty in language. For this view, cfr. Solan (2014).

³³⁶ Cao (2007), p. 73.

a. Ambiguity and Vagueness

There are two kinds of semantic indeterminacy that may be deliberate or inadvertent. These are the uncertainty stemming from ambiguity and the uncertainty stemming from vagueness and generality. In legal writing, the uncertainty from vagueness and generality tends to be more deliberate than inadvertent, but the uncertainty from ambiguity tends to be more inadvertent than deliberate.³³⁷ Following Solan, vagueness encompasses borderline cases in which it is difficult to tell whether a concept is a member of a particular category, while ambiguity is present in situations in which an expression has two or more perfectly clear meanings.³³⁸

Vagueness, unlike linguistic ambiguity, which is more or less language-specific, is language-universal, resulting from a language practice of referring to objects, actions, properties and states of affairs that have a continuous range of values as if they have absolute values. The only way for a user of language to give to a vague term a precise meaning is by providing a stipulative definition.³³⁹ EU concepts are often intentionally vague in order to facilitate their application in the different legal and political systems of the Member States,³⁴⁰ or to reflect a political compromise.³⁴¹ And although the proper functioning of EU law presupposes their autonomy, which has been established by case law,³⁴² the idea of EU-specific concepts and an autonomous EU conceptual system tend to be considered as not fully realistic.³⁴³

While vagueness may be found in all text types, it is most characteristic of legal provisions embodying compromises between divergent views in the framework of negotiation. After the drafters of originals, translators are the first to be exposed to utterances with more than one possible interpretation in the making of multilingual law.³⁴⁴

Linguistic difficulties are thus accompanied by the constraints of international negotiation, which often contribute to the opacity of the legislation that has often been pointed out to.

³³⁷ Allen (1980), p. 75. See also Bhatia *et al* (2005), p. 12.

³³⁸ Solan (2005), p. 73.

³³⁹ Azar (2007), p. 127.

³⁴⁰ Bratanić & Lončar (2015), p. 209; Cosmai (2014), p. 77. On the value of vagueness, see Endicott (2011), p. 29.

³⁴¹ Biel (2010), p. 11; Marmor (2014), p. 97.

³⁴² C-238/81, *CILFIT v Ministero della Sanità*, 1982.

³⁴³ Bratanić & Lončar (2015), p. 209.

³⁴⁴ Prieto Ramos (2014), pp. 321-322.

This explains the initiatives undertaken by the European institutions to improve the quality of the legislation, such as interinstitutional agreements. This improvement of the quality of legislation obviously aimed at facilitating translation and interpretation of the law.³⁴⁵ Some say that the English language is more indeterminate than French for drafting purposes, because of the former having less marks for grammatical characteristics, such as gender and number. Therefore, translating from English leaves a bigger scope for divergences of language versions, since some more flexive languages may have to disambiguate.³⁴⁶

b. Terminology

Regarding lexical uncertainty, we must first distinguish two categories of words in legal texts: words with ordinary, non-technical meaning, and legal words with technical legal meaning. For ordinary words, inter-lingual lexical uncertainty mainly derives from the basic linguistic differences found in different languages. Conversely, for legal concepts and legal terms, the major cause of the inter-linguistic uncertainty comes from the systemic differences found in different legal orders and cultures.³⁴⁷ In fact, the legal language of a given system reverberates with specific taxonomies which have been developed over time and which are an intrinsic part of its historical development. The result is often untranslatable.³⁴⁸

The presumption of equal meaning of language versions of EU legislation implies the existence of absolute equivalence, as it is called in translation theory.³⁴⁹ Therefore, it is presumed that absolute equivalence exists between all the authentic texts of EU legislation.³⁵⁰ However, it is commonly agreed that two different languages can hardly convey the exact same meaning.³⁵¹ Since law is strongly dependent both on its textuality and on a particular kind of contextuality, generated by the relevant legal order, it is not easy to find

³⁴⁵ Rideau (2007), p. 92.

³⁴⁶ Interviews (lawyer-linguists from Council)

³⁴⁷ Cao (2007), pp. 73-74.

³⁴⁸ Pozzo (2006), p. 9. Ajani (2007), pp. 29-30.

³⁴⁹ Kjaer (2007), p. 84; Sandrini (1996), p. 347.

³⁵⁰ Šarčević (2012), p. 87; Kjaer (2007), pp. 83-85; Cosmai (2007), p. 138.

³⁵¹ Glanert (2005), p. 4; Lindroos-Hovinheimo (2007), p. 371; Schilling (2010), p. 50; Biel (2007), pp. 146-147; Doczekalska (2009a), p. 353.

the linguistic equivalent to a legal concept in another language, if possible at all.³⁵² The more languages are included and the more those legal systems differ from each other, the harder the equivalence is to establish.³⁵³ The Sapir-Whorf hypothesis,³⁵⁴ also known as “linguistic relativity”,³⁵⁵ focuses on these differences between languages at the conceptual system level.³⁵⁶ Moreover, in knowledge theory, a majority trend coming close to unanimity points into the direction that language informs or influences formation of thought.³⁵⁷

EU law is very special in this regard, as translation happens within the same legal system. The question as to the way in which EU translators and lawyer– linguists are to translate legal terminology touches upon the very nature of the relationship between the EU legal system and national legal systems.³⁵⁸ The terminological situation in the EU is very complex and translators are very often faced with significant problems which cannot be solved easily. EU texts, as already pointed out, are produced in a multilingual and multicultural environment and aim at expressing new and pan-European concepts. No matter how demanding the task, all of these supranational and new concepts need to be expressed in all the official languages of the EU. This is achieved primarily with the use of Europeak, with its neologisms and loan words. The understanding of these terms and concepts is a demanding task, requiring a profound knowledge of EU history and law. With new terms and concepts literally appearing every day, translators are constantly faced with new challenges.³⁵⁹

When it comes to legal terms, it must be noted that the EU is creating a common legal culture of its own on the basis of the *acquis communautaire*. In fact, it has developed – or at least purports to develop - a distinct supranational conceptual network. What is problematic is that EU legislation is drafted in languages whose legal terms already have fixed connotations. In addition to newly coined terms, the EU conceptual network thus relies on old national terms

³⁵² Pozzo (2006), p. 9.

³⁵³ Sagri (2010), p. 2.

³⁵⁴ The term “Sapir–Whorf hypothesis” was introduced by Sapir’s student Hoijer, although linguists Sapir and Whorf never co-authored any work and never stated their ideas in the form of a hypothesis. See Hoijer (1954), pp. 92-105.

³⁵⁵ For a more detailed account of the hypothesis and the lively debate it has triggered within different academic disciplines, see: Blackburn (2016); Sampson (2005); Key & Kempton (1984).

³⁵⁶ Engberg (2004), p. 1164.

³⁵⁷ Wittgenstein (1922) and (1953); see also Goldman (2002), pp. 154 and ff.

³⁵⁸ Baaij (2018), p. 138.

³⁵⁹ Sosoni (2011), pp. 92-93.

with completely or partially overlapping boundaries. Thus, a given legal term may have several meanings: the one peculiar to the national legal system and the one peculiar to the EU legal order.³⁶⁰ Each legal norm using a concept contributes to characterising the meaning of that concept, and different legal norms exist in different legal systems, then different systems may have different concepts under a single term.³⁶¹

Therefore, the problem is that the legal terminology of the currently twenty-four official languages of the EU is rooted in, and derives its meaning, from national legal systems of the Member States. Hence, it is an oversimplification to say that only one legal system is involved in the translation of the EU texts.³⁶² Because of the technical complexity of legislation and the leaner organization, translators increasingly need to consult national experts on terminology issues. Such contacts depend on the counterpart's preferences and cannot be organized in the same way for large and small countries. It also matters if a language is official in more than one Member State (as is the case for Dutch, English, French, German and Swedish).³⁶³

It has been stated that EU law, characterized by both its purported conceptual uniformity across 24 official languages and its use of vague expressions, partly resolves the issue by providing a common context, a background against which meaning can be assigned.³⁶⁴ However, due to its numerous conceptual and terminological gaps, EU law is still dependent on the terms and concepts of the national legal systems of the Member States.³⁶⁵ The influence of the national concepts on terms used simultaneously by national and EU acts is almost inevitable. This is why, in the case of the EU legislation, we can witness a mutual and continuous interaction between the national legal language use and the legal language use of the EU with regard to the very same natural language.³⁶⁶

The Court of Justice has generally been reluctant to draw comparisons with concepts, their definitions, or doctrinal argumentation in other legal systems, mainly those of the Member States. As a matter of general principle, concepts in the EU Treaties and EU legislation have

³⁶⁰ Biel (2007), p. 150.

³⁶¹ Sartor (2007), pp. 49-50.

³⁶² Bednárová-Gibová (2014), p. 120.

³⁶³ Strandvik (2018), p. 56.

³⁶⁴ Cosmai (2014), p. 156. Sin seems to share the same view: cfr. Sin (2013), p. 943.

³⁶⁵ Kjaer (2007), p. 76; Kühnecke (2013), p. 248. See also Šarčević (2015), p. 185.

³⁶⁶ DGT (2010), p. 70.

their own autonomous meaning in the EU legal order and are not be defined on the basis of the meaning given to them in one or more national legal systems without express provision to this effect. In particular, the meaning given by national law to a term employed in a provision of EU law cannot be used if such an interpretation would be incompatible with the objectives of EU law or it would threaten or undermine the uniform application and effectiveness of EU law.³⁶⁷

As regulations often apply in conjunction with national laws, the concepts of the regulations must be reflected by a wording that renders this application clear. This vigilance leads in some cases to a distortion of the ‘one word—one underlying concept’ approach, where a term is translated by several terms into one and the same target language. This constraint, however, might pose difficulties for languages used by more than one Member States, which might have several national equivalents varying according to the national systems. Here opting for using one equivalent would be erroneous, and therefore these languages often use more neutral terms in EU Regulations.³⁶⁸

As the Commission itself acknowledges, the importance of correct terminology cannot be underestimated; often Member States request a corrigendum due to what they consider to be incorrect terminology.³⁶⁹ Terminology must be internally and externally consistent, i.e. it must be used coherently within the act itself (without synonyms or reformulations) and in line with any basic act(s) and any parallel acts. New terms should be created only as a result of a conceptual analysis. The conceptual scope of the terms must remain unchanged. In view of the special nature of EU law, concepts or terminology specific to particular national legal systems are to be used with care.³⁷⁰

Term creation in European policy making has been studied from several perspectives in legal translation studies for a long time.³⁷¹ The creation of EU terminology can be described as a two-step process: primary term-creation for a working language (English or French or German) followed by a secondary activity, an intra-conceptual term-transfer to all other EU

³⁶⁷ Beck (2012), p. 216.

³⁶⁸ DGT (2010), pp. 77-78.

³⁶⁹ EC (2011), p. 23.

³⁷⁰ DGT (2015), p. 5.

³⁷¹ See Fischer (2010) for an overview.

languages. Whereas politicians, experts and drafters (depending on the stage of decision-making) carry out the process of understanding and designation and create European primary neologisms, secondary terms are often created in the translation process by the translators-terminologists and lawyer-linguists in the EU institutions. The terminological dependency of all official languages is primarily on English nowadays. However, the first drafting language used to be French. The EU jargon still has several remnants of French terms that were borrowed by most other languages.³⁷²

Conceptually, EU law aims at being a self-coherent system of legal rules where there is only one instruction as to how to act in any given situation. This is inherent in the concept of a single legal system, as conflicts in the message create problems and require resolution (often through the courts).³⁷³ However, time pressures often rule out terminological work proper, along with coordinating solutions for the various institutions, despite the existence of terminological databanks. Further, the Union institutions can sometimes consciously end up with diverging terminological solutions.³⁷⁴

For EU terminology to be clear and understood by addressees and stakeholders from all EU Member States, the conceptual content of a term must be clear and there must be clear definitions. Establishing such new EU terminology requires closer cooperation between translators, lawyer-linguists and terminologists, as well as good cooperation with national experts, to explain to them the reasons for certain terminological choices. Experience has shown that lack of coordination and revision of the translation of the *acquis communautaire* for acceding countries can lead to inconsistencies in terminology that are perpetuated by subsequent translations by the Commission and the Council. The best solution is to establish the correct terminology in as early a stage as possible, in cooperation with the Member States

³⁷² Temmerman (2018), pp. 12-13.

³⁷³ Robertson (2010a), p. 56.

³⁷⁴ Mattila (2006), p. 117. This has been confirmed by the interviews at the legislative institutions: the main problem for translators at the DGT seems to be the lack of time to work on big legislative files. As a result, work is often split among a team of translators. As much as they may used to be working together and coordinated, some terminology ends up being inconsistently used. This may not be an error per se, but it affects legal certainty.

and other stakeholders (such as experts in the subject field concerned), so as to limit corrigenda requests because of incorrect terminology to a minimum.³⁷⁵

In the absence of written rules dictating methods of term formation, it is up to EU translators and terminologists to decide whether transnational communication is best served by aligning a term on other language versions, often resulting in foreignization; or by creating a term with domestic roots in the interest of satisfying user expectations. Today, the main unwritten rule in EU term formation is to use designations that can be easily recognized as EU terms, thus enabling users to distinguish them from national terms. Priority is given to literal equivalents, which has the advantage of making them recognizable as EU terms across languages, regardless of the degree of domestication.³⁷⁶

However, finding and making choices between alternative neologisms requires knowledge of the national legal systems of the Member State or Member States that use that language of a particular version. When EU translators and jurist-linguists find that the target language offers no suitable legal neologisms or neologisms proper, a selection may be needed to opt for the least inopportune term amongst existing national legal terms, which requires some expertise with the national legal language.³⁷⁷ Moreover, notwithstanding their usefulness in avoiding diverging national interpretations of EU legal concepts, neologisms might also jeopardize a uniform interpretation and application because they are harder to understand and to apply than terms that already have a lively history of judicial interpretation and application.³⁷⁸

In any case, it is critical to ensure that both the interinstitutional terminological database IATE and the Euramis translation memories are updated and corrected for terminological consistency. All language departments have sentence managers who are in charge of updating the translation memories. Cooperation between them and the terminologists in charge of updating IATE is essential.³⁷⁹

³⁷⁵ EC (2011), p. 24.

³⁷⁶ Šarčević (2018), p. 22.

³⁷⁷ Baaij (2015), p. 163.

³⁷⁸ *Ibid.*, p. 156.

³⁷⁹ EC (2011), p. 25.

c. Other Textual Features

Punctuation is a vital component of EU multilingual legal texts, because it helps to break the text into smaller segments of meaning, which in turn helps to narrow down any areas where there may be divergences between language versions. Punctuation is particularly important in amending texts as it serves to differentiate the text of the act which is the vehicle for making the amendments from the text of the acts which are being amended. The translator must follow the codes rigidly and the drafter must write with the translator firmly in mind.³⁸⁰ This synchronicity is referred to by the Publications Office of the EU in its Interinstitutional Style Guide as the “synoptic” approach. Each language version of a text has the same number of pages, the same textual structure, the same sentence length; so the same information is given at the same point. Using punctuation to chop up text into smaller units of meaning assists synchronicity, citation and interpretation.³⁸¹

However, the synoptic approach and need for standardisation and uniformity have consequences. Other languages are put into the ‘mould’ of the source language text and at the same time there is pressure to ‘bend’ the source text to suit other languages. This can extend to inventing new terms and altering the grammar or traditional meaning of existing terms.³⁸²

To ensure intertextual uniformity, each institution has its own drafting and style guidelines and established format for each type of instrument or document produced within the particular institution. For instance, the Interinstitutional Style Guide of the Publications office and the Manual of Precedents for Acts established within the Council, which have been reproduced with equivalent formulations in all official languages, prescribe standard formats for all EU instruments.³⁸³ Each standard format dictates not only the structure and constituent element of each part but also the layout of the page, including spacing, paragraphing and even typographic characteristics. As a result of mandatory adherence to the standard format,

³⁸⁰ Robertson (2013), p. 26.

³⁸¹ *Ibid.*, p. 21.

³⁸² Robertson (2012), pp. 11-12.

³⁸³ Guggeis & Robinson (2012), p. 56.

the visual appearance of the authentic texts of a given instrument is basically the same in all languages.³⁸⁴

But it seems that the risks of misalignment are greater than those of forced alignment. Allowing language versions to diverge syntactically bears risks of divergence in interpretation and application. Stated differently, creating improved fluency in each language version may reduce the degree of uniformity in interpretation and application. In fact, syntactic correspondence facilitates semantic equivalence. That is to say, parallel sentences that use nouns and verbs at grammatically parallel positions help assessing and establishing meaning equivalence between legal terms, technical terms, or even words of ordinary language.³⁸⁵ All this has consequences for translation techniques, as we will see in the next section.

3. Solutions

As we have already hinted above, the Legal Services of the three institutions involved in the legislative process have played an important role in proposing and implementing guidelines on the quality of drafting Community legislation. Improving the quality of the basic texts of draft legislation is bound to have an impact on the work of the translators, ultimately bringing about a marked improvement in the quality of the authentic texts of all language versions.³⁸⁶ In 1998, the existing drafting requirements were forged and enshrined into the Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation.³⁸⁷ Although the guidelines were solemnly adopted by the three institutions and published in the Official Journal in all the official languages, they are not legally binding. Pursuant to that Agreement, the three legal services of the institutions drew up a guide (the Joint Practical Guide) to develop the content and explain the implications of those guidelines, by commenting on each and illustrating them with examples. The Guide is intended to be used by everyone who is involved in the drafting of the most common types of Community acts. The three institutions have their own guides too: see the Council's Manual of

³⁸⁴ Šarčević (2001), p. 90.

³⁸⁵ Baaij (2015), p. 157.

³⁸⁶ Šarčević (2007), p. 42.

³⁸⁷ OJ 1999C73/1.

Precedents, the Commission's Manual on Legislative Drafting, the Interinstitutional Style Guide published by the Office for Official Publications of the European Communities or the models in LegisWrite. The Joint Practical Guide intends to supplement and not to replace these manuals.³⁸⁸

It goes without saying that all institutional translators must adhere to the rules set forth in the drafting, translation and editing guidelines of the particular institution, as well as manuals of precedents prescribing standard formats and style manuals for harmonizing language usage. This, however, touches only the surface of the normative behaviour of legal translators, thus implying that there is little to no room for independent decision-making and translational creativity.³⁸⁹

It is interesting that some of the keenest promoters of a review of the translation system in EU institutions are the translators themselves. The search for technical solutions, especially those provided by modern technology, has made technological support for multilingualism an important priority.³⁹⁰ That is why we will now have a look at the tools at the disposal of linguistic workers at the EU legislative institutions, followed by an overview of how said tools are actually integrated in their working methods.

a. Tools

The Publications Office produces a style guide for each language in the form of an Inter-Institutional Style Guide. This is an invaluable source of guidance for the EU translator because it provides a mine of information, in particular as regards historical information relating to past texts which is otherwise difficult to access. However, the task for a new language is to work from the existing EU languages and texts and construct new patterns, terminology and templates in the new language. English language versions are frequently used for that purpose, but older ones derive mainly from prior French texts.³⁹¹

³⁸⁸ DGT (2010), pp. 38-39.

³⁸⁹ Šarčević (2018), p. 14.

³⁹⁰ Tosi (2005), p. 287. Confirmed by interviews in Brussels (translation quality control from Council).

³⁹¹ Robertson (2007), p. 1600.

Aside from general drafting guidelines and style manuals,³⁹² the translation tools that DGT has at the disposal of translators are of three main types: terminology tools, translation memory technology, and machine translation. An example of a terminology tool is IATE, an interinstitutional terminology database. TRADOS Translator's Workbench (TWB) is an example of the second type of tool: translation memory technology. It is an integrated translation support tool with multilingual capability, a text recognition and replacement programme enabling translators to incorporate phrases, sentences, paragraphs translated before, checking for matching units and particularly useful for texts in accession negotiations. When an original text is fed, similar or identical fragments from previously translated texts appear as translation suggestions. Finally, machine translation is only used for informational purposes, not for legislative translation, for the time being.³⁹³

Many of the CAT (computer-assisted translation) and terminology tools in everyday use for EU linguists are the result of interinstitutional cooperation. Since 1995, cooperation in tools development has been steered by the Interinstitutional Committee for Translation and Interpretation (ICTI), set up with a view to exploiting synergies and economies of scale. In addition to the interinstitutional terminology database IATE, the main tools developed include Euramis, the interinstitutional translation memory; ELISE, the interinstitutional translation note on legislative files, and EUR-Lex, the publicly available online database of all EU legislation and case law.³⁹⁴

IATE (InterActive Terminology for Europe) is available not only to staff of the European institutions, but also to the general public, with a different interface. It combines terminological data from all the European institutions and bodies, containing more than 8 million terms and 560,000 abbreviations. It covers all the official languages of the EU plus Latin. The development and maintenance of the database is the responsibility of an

³⁹² Svoboda (2017), pp. 75-76 : « As of the first half of 2017, a total of 793 links to individual translation manuals and style guides were available encompassing all the 24 official languages of the EU. However, it has been shown for the European Commission's Directorate-General for Translation (DGT) that there is enormous divergence among language departments both in the topics covered by translation manuals (TMs) and style guides (SGs) as well as in the level of detail of such resources ».

³⁹³ Yankova (2008), p. 138. Although machine translation is a feature included in TRADOS, its use is discouraged at the legislative institutions. Moreover, even when this is used, the translator has to manually select this input and integrate it within the rest of the text, which will then be revised by a human.

³⁹⁴ Council (2012).

interinstitutional team, whereas its language-specific content is built up and updated by the language departments.³⁹⁵ Every translator can create entries in any language in the database. Mother-tongue terminologists then validate the entries to ensure that the contents of the database are of high quality.³⁹⁶ In operation since 2004, its use is highly recommended not only to translators, but also to lawyer-linguists.³⁹⁷

Euramis (European advanced multilingual information system) is a system developed at the Commission. It consists of a set of web applications combined with electronic mail to give access to a whole range of services in the area of language processing. Its most important service is the central translation memory. Whenever a translation request is accepted, the original document is sent automatically to Euramis, and any previous translations are extracted from the central memory. The result can be imported directly into a local memory. Once the translation has been completed, the translator uploads the local memory into the Euramis central translation memory.³⁹⁸ However, since not only legislative translations go into Euramis, it is important to check translation memories in order to avoid inconsistencies over time. The origin of the documents is also important to check and bear in mind, as the OJ is not the same as press releases. It is not clear that this is always managed thoroughly, as it is time consuming. At least some units try to control what goes into Euramis.³⁹⁹

ELISE has been developed by DGT, along with the translation services of the European Parliament and the Council. Its documentation note accompanies any legislative text throughout the procedure in the three institutions so that information on resources found, language problems encountered and other comments can be shared with others working on the same text at other stages of the procedure.⁴⁰⁰ Although the number of users of the ELISE system gradually increases, its use is still sub-optimal and could be further encouraged in order to profit from the advantages the system offers.⁴⁰¹

³⁹⁵ DGT (2012b), p. 14.

³⁹⁶ DGT (2012c), p. 9.

³⁹⁷ DGT (2010), p. 38.

³⁹⁸ DGT (2012b), p. 12.

³⁹⁹ Interviews (translation quality control management from Council).

⁴⁰⁰ Robinson (2014), pp. 261-262.

⁴⁰¹ DGT (2010), pp. 39-40.

EUR-Lex is consulted regularly by most translators for their work. Moreover, this system, available since 2004, is used in an indirect way more and more through the translation memories and other CAT tools. These allow to retrieve previous legislative texts, as they were published in the OJ, or parts thereof. Indirect utilization of EUR-Lex through the translation memories provides greater phraseological and terminological coherence, thus best quality of translations, as well as a quicker workflow.⁴⁰²

Finally, the efforts aimed at developing ever more efficient tools for terminology searches find their most accomplished synthesis in Quest, a centralizing tool allowing simultaneously browsing of a dozen documentary and terminological databases, but also terminological portals. This is why it is defined here as a “metasearch tool”. Quest has at least three strongpoints: the ability to probe, with a single command, all the main lexical databases and corpora, its remarkable speed of execution, and its ease of use.⁴⁰³

b. Working methods

In the last five to ten years, the methods of translation for drafting the equally authentic language versions of EU legislation have come under considerable discussion. Considering the multidisciplinary complexity of this issue, until now relatively few words have dealt with a particularly fundamental aspect: translatability, in the sense of equivalence of meaning.⁴⁰⁴

This may be explained by EU translators having limited freedom to choose a technique for selecting an equivalent and their duty being to identify an established equivalent. One of the qualitative assessments of EU translations is their compliance with institutional terminological resources, IATE and the DGT in-house glossary, as well as equivalents used in earlier versions of an act or related instruments as evidence in EUR-Lex.⁴⁰⁵ For the sake of consistency and continuity, the wording of previously translated legislation must be dutifully

⁴⁰² EC (2006), p. 85.

⁴⁰³ Cosmai (2014), p. 138.

⁴⁰⁴ Baaij (2014), p. 103.

⁴⁰⁵ Biel (2014), p. 44.

repeated word for word whenever reference is made to any of its provisions, even if it contains errors and inconsistencies.⁴⁰⁶ Most importantly, as a means of ensuring terminological consistency within a given language, drafters and translators are always obliged to use established equivalents in a given text and in all texts where that concept is used.⁴⁰⁷

Out of the three basic criteria used by EU translators to guide their choices (consistency, accuracy and clarity), consistency is indeed the most important. Consistency refers to the lack of terminological discrepancies, accuracy means using correct and precise terms in a given context, and clarity is the degree to which the translation is understandable and fluent. Above all, the target text has to be internally consistent. Consistency applies not only to terminology, but also to recurrent sentences and phrases; however, the consequence of the lack of terminological consistency tends to be much more serious. Various translations of the same term, especially in legal acts, may mislead the reader to think that these terms denote different concepts and make it difficult to interpret legislation. For the same reason translation has to be consistent with other EU legal acts, so that there is consistency within the EU legal order. This means that, when translating a regulation implementing a directive, consistency has to be kept with the respective language version of that directive and not with the national legislation transposing it, even though it is the regulation that will be directly applicable in a given Member State.⁴⁰⁸

Therefore, EU translators employ literal and occasionally even verbatim methods of translation, in a source-oriented approach. The underlying notion is that each language version must be a faithful and accurate rendition of the original legislative document.⁴⁰⁹ As Koskinen puts it after her investigation of the ethnographic aspects of institutional translation at the European Commission, translators there are not free to use just any strategy, but their code of practice dictates a literal translation strategy, in order to achieve a surface-level similarity, which is assumed to guarantee that readers of the various translations all get the

⁴⁰⁶ Prieto Ramos (2014); Šarčević (1997), p. 118.

⁴⁰⁷ Šarčević (2015), pp. 199; Šarčević (2001), p. 87; Guggeis & Robinson (2012), p. 63.

⁴⁰⁸ Stefaniak (2017), p. 116.

⁴⁰⁹ Baaij (2015), pp. 100-101. See also Yankova (2008), p. 142.

same message. The primary task of the translators is to institutionalize uniformity by striving to achieve surface-level similarity.⁴¹⁰

With respect to the translation of legal terminology, current EU translation practices also display source-oriented features regarding the concordance between terminologies that the various language versions use in order to refer to legal concepts.⁴¹¹ In general, the institutions emphasize that “identical concepts shall be expressed in the same terms” and that terminology is “consistent both internally and with acts already in force, especially in the same field.”⁴¹² Terminology has to be consistent throughout a single act, including its annexes, but also with related acts already in force, especially in the same area.⁴¹³ This is why it is good practice that J-Ls inform quality controllers of translation units when they change terminology, so that the new choices are enforced in future acts.⁴¹⁴

In order to take responsibility for the texts they produce, EU translators would have to have the possibility of choice while translating. The conditions in which they work, including among others the quality of the source text and time available for translation, considerably limit this possibility, forcing them to make decisions based on formal fidelity and consistency rather than adequacy of meaning and uniformity of intent. Additionally, the unclear role of translators in the process of legal drafting results in conflicting demands being placed upon them. EU translators are not allowed to deviate from the original text, yet they are expected to contribute to the quality of legal drafting. They are not allowed to interpret the text they translate, yet they are blamed for the lack of clarity and readability.⁴¹⁵

Therefore, EU multilingualism requires a change in approaching translation methods: as Šarčević famously stated, the principle of fidelity to the source text loses ground to the principle of fidelity to the uniform intent of the single instrument.⁴¹⁶

⁴¹⁰ Koskinen (2000).

⁴¹¹ Baaij (2015), p. 102.

⁴¹² Interinstitutional Agreement on Common Guidelines for the Quality of Drafting of Community Legislation (1999/C 73/01), p. 02, 5th and 6th Principle.

⁴¹³ Pacho (2017), p. 69.

⁴¹⁴ Interview (legislative quality control from Council).

⁴¹⁵ Stefaniak (2014), p. 64.

⁴¹⁶ Šarčević (1997), p. 112.

4. What Role for Linguists?

Notwithstanding the lack of mention of translation and other linguistic work in the provisions on legislative procedure, together with the corresponding interinstitutional agreements and guidelines,⁴¹⁷ the importance of translators for legislative drafting is unquestionable, and goes beyond mere translation. For instance, translators are the actors who spot the most mistakes in legislative texts, because they read more carefully and have more time to work on the texts.⁴¹⁸ Forced to analyze every detail, a critical translator tends to detect unclear or ambiguous formulations, misleading logical connectors and other linguistic defects that obstruct comprehension. If detected prior to adoption, such defects can be corrected, thus improving the basic text and the other language versions as well. This can be regarded as the first step in converting the translator into a co-drafter.⁴¹⁹

As Strandvik, quality manager at the Commission's DGT, points out, there are two different conceptual understandings of translation: functionalist (fidelity to the purpose of the communicative act) seeing the translators as active and competent drafters of the equally authentic translated language versions; and faithfulness (fidelity to the source text's surface structure) as the main criterion for translation quality, seeing the translators as 'just translators', where their task is limited to the faithful rendering of the 'original' in the target text.⁴²⁰ A restrictive understanding of fidelity is probably related to the "lawyers' mistrust", the unwillingness of lawyers to grant the translators the right to interpret legal texts. This is not to say that translators should be equaled with the authors or draftspersons, since they do not have the same responsibility as the latter, but to require literal translation is to admit that texts have one meaning fixed by the author, over which the translator has no control.⁴²¹

Two obstacles hinder translators in achieving the objective of becoming mediators between the original drafters and the final readers: (a) the separation of the translation service from

⁴¹⁷ Stefaniak (2014), pp. 59-60.

⁴¹⁸ Interview (Translation planning at Council).

⁴¹⁹ Šarčević (2007), p. 51.

⁴²⁰ Strandvik (2017).

⁴²¹ Stefaniak (2014).

the main operations; and (b) the anonymous and collective (rather than individual) responsibility of translators. This oversimplified perception of translation, encouraging the straightforward substitution of all items in a text and the direct transfer of its format and punctuation from one language into another, can be stretched to the limit to achieve a 'flexible' use of human resources.⁴²²

However, instead of being a mediation process between text producers and addressees, EU translation thus forms part of a complex and multifaceted text production process that does not follow the classic distinction between text production and translation as two separate entities. In fact, in an institutional setting such as that of the EU, the process of translation stays hidden or masked. Essentially, instead of remaining separate actors working independently from the actual text production process, EU translators form an organic but invisible part of law-making in the EU.⁴²³

If we acknowledge that today's legislation tends to be technically detailed, that the meaning of legal texts is determined primarily by legal context and that it is the translators who do the bulk of the drafting, the translators' role in multilingual law-making should be acknowledged, integrating the different actors, ensuring that they work together throughout the process and that translation is not just perceived as an add-on, applied afterwards, once the drafting has been finalised. This is exactly what both the Interinstitutional Agreement and the Joint Practical Guide call for when referring to the "additional requirements" of multilingualism and of "making drafters aware of the effects of multilingualism on drafting quality". Therefore, the "collaboration between departments responsible for ensuring the quality of drafting" called for by Interinstitutional Agreement should include the translation services, which, we repeat, produce 23 of the 24 equally authentic language versions. Internal procedures should be organised so that not only the legal services but also the translators can make suggestions in good time, when compliance with the guidelines is hampered by the way the "original" is drafted. Moreover, if relevant contextual information is not shared with the translators, it considerably increases the risk of divergent language versions. And finally, when the issue result from structural differences in the languages, as we have seen the Joint Practical clearly

⁴²² Tosi (2005), pp. 286-287.

⁴²³ Paunio (2013), p. 18. See also Robinson (2014).

states that where translators lack the authority to adapt the translated language versions to comply with the basic quality requirements for legislation, the "original" should be modified to facilitate translation.⁴²⁴

So EU translators are not "just translators". As the drafting of the official language versions, except for the "original" version, takes place via translation, the translators are *de facto* the drafters of 23 of the 24 equally authentic language versions. For this reason, the translators need competence in legislative drafting.⁴²⁵ Moreover, translators do not only translate, as the English language unit of the Translation Services most often provides editing services, which are encouraged for the ordinary legislative procedure, in order to reach the best possible quality of the originals. However, drafters (as in political actors at Parliament and Council) are not always keen on having their proposals edited and, thus, they fear, altered.⁴²⁶

Since translators and lawyer-linguists are incorporated in the legislative process, they become producers of binding rules. Therefore, translation of EU legislation must be seen as part of law-making. In their redefined role as text producers, translators need to evaluate the pragmatic aspects of the communicative situation in order to select the appropriate translation strategy. This presupposes an analysis of extra-linguistic factors. In this interplay of legal systems translators face semantic instability, since terms can acquire an independent EU meaning. For this reason, they require both linguistic and legal competences. They must be able to foresee how the CJEU will interpret the text, which means legal hermeneutics is an essential tool when translating. If what determines the success of translated EU legislation is its uniform interpretation and application, it goes without saying that translation that is not absolutely reliable poses a threat to the uniform interpretation and application of EU law.⁴²⁷

Indeed, as opposed to classical views of lawyers who refuse the idea of any kind of legal interpretation by translators, these must grasp all the shades of meaning in order to reformulate text in the most reliable way possible. Although the purpose of interpretation

⁴²⁴ Strandvik (2014), pp. 226-227.

⁴²⁵ *Ibid.*, p. 218.

⁴²⁶ Interviews (management from English translation units in Commission and Council).

⁴²⁷ Pachó (2017), p. 68.

differs from that of jurists, it is advisable for legal translators to scrutinise the text not only as linguists, but also through the prism of legal hermeneutics.⁴²⁸

Having recognized the vital importance of legal translation for the proper functioning of EU law, institutions now encourage interaction between drafters and translators at an early stage, enabling translators to gain insight into the meaning of individual concepts and the purpose of the instrument as a whole. After all, understanding the base text is a precondition for successful translation. Although the task of translators of EU law is not to compensate for conceptual incongruity between legal systems, creating effective system-neutral terms requires considerable knowledge of national laws and legal concepts in order to know which terms could lead to misinterpretations and should therefore be avoided.⁴²⁹

Yet if legal translators are truly “text producers” engaged in a dynamic relationship with both sender and receiver, they will inevitably have to tackle questions of interpretation, in the general sense of the term.⁴³⁰ Here we arrive at a controversial point of EU legal translation, which is the relationship between the latter and legal interpretation.⁴³¹ It seems clear that translating, through the translators’ pre-interpretation of the source text, sheds a new light on the message’s meaning, contributing to its clarification.⁴³² But the translator, in contrast to the interpreter, is authorized to change text in the literal sense, for two reasons neither of which is applicable to legal interpretation: the absence of exactly equivalent words and the need to make the translation easily readable and idiomatic. Translation thus involves two stages: in the first, translators interpret the original, i.e. decide on its meaning; while in the second, they express their interpretation in the target language. Only the first stage, interpretation, has a counterpart in law.⁴³³

⁴²⁸ Prieto Ramos (2014), pp. 321-322. See also Baaij (2015), p. 85, and Chromá (2005), p. 407.

⁴²⁹ Šarčević (2018), p. 23.

⁴³⁰ Harvey (2002), pp. 180-182.

⁴³¹ For further discussion, see Flückiger (2005), pp. 354-355.

⁴³² Gémar (2013), p. 175. Other authors, such as Paunio (2013), deny the existence of said ‘pre-interpretive meaning.

⁴³³ Posner (2009), p. 327.

In this respect, the lawyer–linguists’ role is also twofold: they are both coauthors and co-translators of the source text; tweaking and finalizing the wording of legislative draft texts and ensuring concordance between this text and subsequent translations.⁴³⁴

Thus the work of the legal translator (and that of the lawyer-linguist) necessarily shares features with the work of the legal interpreter, for the translator must be able to assess the different possible legal interpretations laid down in the source text.⁴³⁵ Some other authors support a more extreme view in this regard, affirming that translation supposes interpretation and vice versa, so the activities of interpreting and translating cannot be separated from each other.⁴³⁶

In any case, it seems that understanding the text necessitates overcoming the traditional distinction between translation and interpretation, at least to some extent.⁴³⁷ Translators are indeed the prime chronological interpreters of EU legal texts, from the moment that it is their task to render them into the different official languages, risking error or the proliferation of differences.⁴³⁸ Thus translation allows to pre-interpret the legal text before its coming into force and to anticipate eventual semantic problems. In this sense, performing legal translation definitely requires a knowledge and an application of the interpretive methods in place. However, there is still a difference between translator and judge in that the former is not required to rule on a concrete case.⁴³⁹ Müller’s distinction between legal norm and legal text is relevant here: the legal text, on which the translator works, is only one of the elements that the judge takes into account when adjudicating in accordance with the legal norm.⁴⁴⁰ This theoretical approach allows us to agree with Gémár, who affirms that the translator declares the legal text in the same way that the judge declares the legal norm.⁴⁴¹

⁴³⁴ Baaij (2018), p. 135.

⁴³⁵ Pacho (2015), p. 99. See also Engberg (2002), pp. 375-376. Cfr. also Szabados (2011), p. 4.

⁴³⁶ White (1994), pp. 241-243. Szabados (2011) again agrees with this view at p. 4. Strandvik (2015), p. 154, proposes a more nuanced approach, wondering whether “is it always possible to make a clear distinction between the act of understanding and interpretation by translators, on the one hand, and legal professionals, on the other?”, but not giving any categorical answer.

⁴³⁷ Ajani & Rossi (2006), p. 88.

⁴³⁸ Guggeis (2006), p. 115.

⁴³⁹ Flückiger (2005), p. 355.

⁴⁴⁰ Müller (1989), pp. 168 *et seq.* This also anticipates the distinction between semantics and pragmatics, which will be introduced in IV.4.a below.

⁴⁴¹ Gémár (1995), p. 53.

In the case of legal texts of a legislative nature, the translator moves towards the role of legal drafter, faced with similar problems, except that they are bound by the wording of the source language text to be translated. They anticipate readings and adjust terminology in anticipation, keeping in mind the effects to be achieved. They follow the structure, layout and path set by the source language drafter. They work with words and terms as tools, and are tied by those chosen by the source language drafter. They search for equivalent terms, but they cannot go beyond the source text in what it provides. As with the source language drafter, legal meaning in judicial sense escapes them, and they can only seek to steer and influence; the legal meanings will ultimately be constructed by judges in court cases.⁴⁴²

In a nutshell, translation of EU legislation is not intended to communicate a message to a particular interlocutor, but rather to produce law. In other words, translated EU legislation aims at producing a textual representation for norms resulting from the law-making process, without a clearly defined communicative function. Translated EU legislation simply constitutes law so translations are law.⁴⁴³

5. Conclusions

In order to face the challenges of linguistic work at the EU legislative institutions, related to the ambiguous and/or vague wording of EU legislation as negotiated law, its ever developing autonomous terminology that shares the natural language with national legal systems, and the difficulties in drafting identically parsed text into language that have different syntax and grammar, translators and lawyer-linguists have a series of tools at their disposal. From terminological databases to translation memories and communications tools, all is designed for language versions of EU legislation to be as similar as possible. However, this conflicts with both the nature of language and the true involvement of linguists in the EU legislative procedure.

⁴⁴² Robertson (2016), p. 159.

⁴⁴³ Paunio (2013), p. 8.

One of the conclusions of this Chapter is once again the importance of exchanges among the different actors of the legislative procedure, in order to boost said involvement from linguists. Terminological inconsistency, which has been pinpointed as one of the biggest problems for the EU legal language, both in the literature and through my fieldwork, could be minimized through greater contacts among those actors, together with better management of terminological databases (IATE), and translation memories (Euramis).

However, the main conclusion is the need for a conceptualization of EU legal translation as a *sui generis* activity, as the institutional setting in which it takes place, linked to legal-linguistic revision and deeply embedded in the drafting of the law. Both translators and lawyer-linguists, as part of the legislative apparatus, participate in building the legislative intent into the legislation, having to render the nuances of the legislative meaning into the different language versions. In this capacity, they are not only required to work with a pre-interpretive meaning of the legal texts, but they can also decide on the exact formulation of the text in the “target” languages. In this sense, we can affirm that translators and lawyer-linguists clearly and actively participate in the figure of the “diffuse legislator” of the European Union.

Part II: Multilingual Interpretation of EU Law

So far, it may be concluded from our analysis that one of the critical points regarding multilingual EU legal texts is the fact that the different language versions are treated as identical in meaning, irrespective of the fact that they use different languages. This is a necessary, although problematic, requirement of legal multilingualism.⁴⁴⁴ Thus, the principle of equal authenticity makes the language versions of EU law interdependent. It follows that the meaning of EU provisions cannot be derived from one of the language versions alone, but from all the language versions taken together.⁴⁴⁵

Consequently, equally authentic language versions may not always carry equal meaning but, in any case, they will always have equal status.⁴⁴⁶ Because the meaning of language versions is not uniform by stipulation, they must be furnished with uniformity, if not by EU Translation, then by judicial interpretation.⁴⁴⁷

This creates new challenges for legal interpretation, for differences in the shades of meaning of the different language versions are inevitable. As contemporary translation studies emphasise, translations are only approximations.⁴⁴⁸ The inherent indeterminacy of natural language is thus only strengthened by interlingual indeterminacy, which is a consequence of the EU's multilingualism.⁴⁴⁹ Furthermore, the drafting of EU legal acts is not only collective, but actually involves hundreds of actors from different EU institutions and national administrations, coming from different cultural backgrounds and usually working in a language foreign to them, often showing more concern for reaching a compromise on the text rather than striving for clarity and precision.⁴⁵⁰ The inevitable occasional discrepancies between the various language versions, their deliberate vagueness and the difficulties in

⁴⁴⁴ Jopek-Bosiacka (2013), p. 117.

⁴⁴⁵ Kjaer & Adamo (2011), p. 7. See also Pommer (2012), p. 1252.

⁴⁴⁶ Baai (2015), p. 21.

⁴⁴⁷ Baaij (2018), p. 28. See also Bajčić (2014), p. 128, who underscores that eventually legal translation and legal interpretation both serve the objective of achieving a uniform application of EU law.

⁴⁴⁸ Lindroos-Hovinheimo (2007), p. 371.

⁴⁴⁹ Paunio & Lindroos-Hovinheimo (2010), pp. 409–410.

⁴⁵⁰ Guggeis & Robinson (2012), pp. 51 and ff.

identifying a psychological ‘legislator’s’ intent obviously create challenges for traditional theories of legal interpretation.⁴⁵¹

Multilingualism’s most important challenge is indeed to decide what to do if a difference, or worse, an incompatibility, is observed between two or more language versions of one piece of legislation.⁴⁵² To some, inconsistencies among the different language versions of EU legal acts occur infrequently and tend to be harmless.⁴⁵³ However, others claim that significant divergences are the rule rather than the exception.⁴⁵⁴ In general, it can be concluded that, as all language versions are equally authentic, such divergences are not a minor problem. Indeed, different meanings—in the case of laws, this translates into different commands, or different legal consequences— may become equally binding.⁴⁵⁵

As AG Sharpston rightly points out, it is not only virtually impossible to guarantee that the texts of thousands of pages of EU legislation will always be translated into all the official languages without any infelicity, any ambiguity, any error; but even if the words themselves are right in the parallel texts in the different languages, what are the words going to be understood to mean when pored over by lawyers coming from vastly different legal traditions?⁴⁵⁶

The problem of meaning lies at the heart of legal work. Within the EU legal order, there are specific factors to it, namely multilingualism.⁴⁵⁷ There are serious theoretical objections to identity of meaning between language versions, and serious practical obstacles to equivalence of meaning, yet the multilingual system seems to work, from a pragmatic point of view. Going beyond words requires the actors to share cognitive and normative

⁴⁵¹ Łachacz & Mańko (2013), p. 81. See also Kjaer & Adamo (2011), p. 7; Derlén (2011), pp. 151-152; Baaij (2012b), p. 14; Pommer (2012), p. 1243; Šarčević (2013), p. 9.

⁴⁵² Van Calster (1997), p. 364. Schilling (2010), pp. 49-50. This view is shared by Šarčević (2013), p. 9. In that sense, see also Gambaro (2007), p. 13.

⁴⁵³ Cosmai (2014), p. 148. See also Prieto Ramos (2014), p. 324.

⁴⁵⁴ Schilling (2010), p. 51. McAuliffe (2009), p. 100 seems to agree on the point: “Numerous cases have been brought before the Court of Justice as a result of discrepancies or ambiguities between different versions of EU legislation”.

⁴⁵⁵ Schilling (2010), p. 52.

⁴⁵⁶ Sharpston (2010), p. 412.

⁴⁵⁷ Robertson (2012), p. 25.

expectations and to engage in the ideal discourse situation.⁴⁵⁸ So the differences in linguistic meaning push the interpreters to go beyond words and take normative interpretive decisions.

Indeed, when judges interpret law involving linguistic (both intra-lingual and inter-lingual) uncertainty, they make normative decisions. As we have seen, in some cases, the inter-lingual uncertainties in different languages cannot be easily resolved or may not be possible to resolve linguistically. But the Court is never entitled, on the principle *non liquet* (it is not clear), to decline the duty of determining the legal meaning of a relevant enactment. It must provide a single, correct interpretation in case of uncertainty.⁴⁵⁹

From the precedent Chapters, it is clear that the way multilingual law comes about engenders problems of interpretation, i.e. grasping the meaning of EU legal provisions. That is why Chapter IV undertakes a study of how the meaning of such norms can be grasped through interpretation, taking into account the problems multilingualism poses.

Multilingualism's deep hermeneutic challenge, following Bengoetxea, is to grasp whether there is there a meaning independently from the concrete language versions, a pre-interpretive meaning. These questions touch upon the heart of the theory of legal interpretation. How can the text of the rule be separated from the language version in which it is expressed, and how can the text (in one version) not be defied if the other language versions differ? Is there an ontology of the rule that goes beyond its formulation in the form of a provision in a given language version?⁴⁶⁰ The answer will start from the premise that there may be differences between the formulation of the norm and the norm itself.

The interpretation of EU legal texts is carried out by all the institutions, but the authentic interpretation rests on the Court of Justice, guardian of the treaties. The Court faces then the problem that all language versions of the legislation are equally authentic and binding. In practice, however, these difficulties have been reduced.⁴⁶¹ The interpretation at the national level will not even be considered, since domestic courts normally have neither the expertise nor the authority to carry out a final interpretation of EU law that is comprehensive (taking

⁴⁵⁸ Bengoetxea (2015), p. 207.

⁴⁵⁹ Cao (2007), p. 81.

⁴⁶⁰ Bengoetxea (2011), p. 119.

⁴⁶¹ Rideau (2007), p. 99.

into account both the whole body of EU law and the whole array of language versions) and binding. However, it must be kept in mind that national judges are the ones that will encounter most often problems of interpretation of EU law. A final caveat in this regard, which justifies concentrating only on the CJEU – for the purposes of this analysis – is that said frequent encounters are just absolute numbers, i.e. the national courts will solve more EU-law related cases in the whole of the Union within one year than the Court of Justice can solve; but the Court of Justice has relatively (proportionally) more EU-law cases – literally, all the cases it solves – and is also specialized *ratione materiae* in a way that no national court could be.

Therefore, this Part continues with an analysis of such interpretation of multilingual EU law by the Court of Justice. Regarding interpretation, we must distinguish between the descriptive and the normative point of view: while the former is concerned with the description of how legal norms are interpreted, the latter focus on how interpretation is to the interpreted legal norm, i.e. on the evaluation of the process of legal interpretation.⁴⁶² Taking this distinction into account, it must be clarified that this Part is also devoted to an analytical study of the literature on the interpretive methods used by the CJEU with regard to multilingualism (Chapter V), followed by a case-law study of the Court's judgments that include multilingual reasoning, which will test and complement the arguments put forward in the literature (Chapter VI).

⁴⁶² Wróblewski (1963), p. 398.

Chapter IV: Meaning of EU Legal Texts and Interpretation

This Chapter starts by considering the issue of meaning and interpretation of legal texts, drawing from legal theory, philosophy of language and linguistics. A fundamental distinction between the object of interpretation (legal text) and its product (legal norm) will be introduced. The Chapter sketches the theoretical foundations that will allow us to analyse the Court's multilingual reasoning in the subsequent Chapters.

1. Introduction

Law is language-based, and language has to be interpreted in order to be understood. For the purposes of my analysis, the object of interpretation is not law in general, but legal texts that are produced through a multilingual legislative procedure in the EU. There is a consensus in many contemporary theories that the semantic value of a sentence is a function of the semantic value of its constituents, insofar the principle of compositionality is applicable. However, the temptation to assume an analogous principle for texts should be resisted: the semantic value of a text is not a function of the semantic value of its constituents and its structure. Whereas a sentence may express a thought which is plausible; the meaning of a text as a whole on the macro-level requires for its comprehension a more complex cognitive process.⁴⁶³

As it happened with linguistics, there has been an exegetic thrust in law too,⁴⁶⁴ with the migration of concerns about interpretation from philosophy of language into philosophy of law.⁴⁶⁵ In some jurisdictions, academic and public interest in interpretation in legal reasoning may have been sparked by changes in particular legal arrangements: for example, as a result of the doctrine of consistent interpretation or indirect effect developed by the European

⁴⁶³ Mantzavinos (2016).

⁴⁶⁴ Gadamer (2006), p. 30; Betti (1987); Viola & Zaccaria (1999); Raz (2009).

⁴⁶⁵ Marmor (2005), Smith (1990).

Court of Justice, requiring European Union Member States' courts to interpret domestic law so that it is consistent with EU law, so far as it is possible to do so.⁴⁶⁶

Indeed, if law creates problems regarding its language and interpretation that have been thoroughly studied (although never fully solved), multilingual EU law poses unique interpretive challenges that have not been dealt with in a comprehensive theory of meaning. Most of the scholarly reflections and discussions on the meaning of EU legislation focus on legal translation only, while the work on interpretation of EU law tends to just look at what the Court of Justice does. The aim of this Chapter is to fill that gap, by setting the theoretical basis for said comprehensive analysis, which relates meaning and interpretation of multilingual texts. Most contributions referred to throughout the Chapter have been put forward with regard to a monolingual context, and are hence extrapolated and adapted to our special object of study.

These challenges call for an interdisciplinary methodology that accounts for the relevance that linguistic practices acquire in the formulation of EU law. Historically, law and language have in general been treated as discrete phenomena - the conjunction "and" has marked a constant separation of distinctive areas of expertise.⁴⁶⁷ Utilising the linguistic methodologies developed within the philosophy of language, semantics and pragmatics (as fields of study within linguistics), the specific purpose of this study has been to develop an interdisciplinary approach to law and legal texts as language or as linguistic practice, in line with Goodrich's work. In fact, as this interdisciplinary legal put it back in 1984, "despite the glaringly obvious fact that both legal theory and legal practice are, and have always been, heavily dependent upon the tools of linguistic analysis, no coherent or systematic account of the relationship of law to language has ever been achieved".⁴⁶⁸ The field of 'law and language' has evolved since then, with several philosophers of language and linguists having written about the law, and

⁴⁶⁶ Dickson (2016).

⁴⁶⁷ Goodrich (1987), p. 1.

⁴⁶⁸ Goodrich (1984), p. 173. According to Goodrich himself, his first work was a critical analysis of the field of "law and language", whereby he criticised the first legal theorists to propose a linguistic analysis of the law (Kelsen and Hart) for being too "positivistic" and "formalistic". In his words: "Despite the linguistically dubious nature of the regularly made by formalistic theories of adjudication, lawyers theorists have successfully maintained a superb oblivion to and social features of legal language and, rather than studying the actual development of legal linguistic practice, have asserted deductive models of law application in which language is the neutral instrument of purposes peculiar to the internal development of legal regulation and legal discipline."

some lawyers developing an interest in linguistics, but Goodrich's claim still applies to some extent, especially as regards multilingual EU law and its semantic and pragmatic properties, which have been studied only within the context of translation.

From the fields of human knowledge that have been deployed for the purposes of this Chapter, legal theory was an obvious choice, as it features interpretation of the law as one of its main conundrums. Then, philosophy of language makes more general claims about meaning and interpretation of any type of text. Some philosophers of language have discussed specifically legal interpretation from that point of view, but not within the context of EU law. Philosophy of law⁴⁶⁹ can gain from a good philosophical account of the meaning and use of language, and from a good philosophical account of the institutionalized resolution of disputes over language. Philosophy of language can gain from studying the stress-testing of language in legal regulation and dispute resolution. And philosophers of language can gain from the reminder that their task is not only to account for what people share in virtue of the mastery of a language; they also need to consider the possibility of disagreements over the meaning and use of language, and the possibility that there might be good reason for resolving those disagreements in one way rather than another.⁴⁷⁰

So, in order to analyse the variety of opinions on how interpretation is done and to reach some conclusions on how it should be done, which are the goals of the following Chapters of this thesis, it is first necessary to put forward some preliminary assertions not depending on any particular evaluative bias. The semantic approach to EU law here proposed can help elucidating problems of legal interpretation, by showing clearly what sort of problems the interpreter has to deal with and what factors influence the choice to be made. Such clarification is not only relevant for legal theory, but also for theories dealing with the general problems of understanding language.⁴⁷¹ As a result, this Chapter deals with the meaning of EU legal texts as linguistic utterances. Only on the basis of such a theoretical semantic study

⁴⁶⁹ Here I use the terms "legal theory", "philosophy of law" and "jurisprudence" as synonyms. For some terminological clarification, see Solum (2015).

⁴⁷⁰ Endicott (2016).

⁴⁷¹ Wróblewski (1963), pp. 397-399, referring to law in general, not EU law in particular. The author presents his semantic theory of interpretation in a void, here we will apply it to European Union law. Wróblewski's legal theory will be sustained at different points from now on.

will it be possible to discern the practical problems of legal interpretation in such a complex multilingual environment.

2. Some Preliminary Remarks on Meaning and Interpretation

According to legal philosopher Timothy Endicott, a theory of meaning and interpretation of legal language would not be very much less general than a theory of meaning and interpretation of language.⁴⁷² While some philosophers of language and linguists insist on the differences between ordinary language and legal language,⁴⁷³ I still find this claim compelling in that legal language encompasses both terms with an ordinary meaning and specific legal terms, and it should aim to be understandable to lay citizens.

Legal adjudication clearly involves linguistic interpretation. In jurisprudence, meaning is a matter for the judge, who is obliged to resolve a case, by deciding which of several interpretations is correct, and by implication which is mistaken. To this end, they often speak of what they call the 'true and correct' legal meaning. Linguists, on the other hand, see the different possible meanings, not prescriptively as right or wrong, but as data to be explained. They hope to provide a unified description of the various possible meanings and of the relations which may hold between them, as well as a coherent explanation for the apparent variety of linguistic behaviour observed. Further, the different metalanguages used in the two fields sometimes make it difficult to see the extent to which the approaches of lawyers and linguists are nevertheless complementary insofar as they are confronted with similar

⁴⁷² Endicott (2016). For a similar opinion, see Soames (2008).

⁴⁷³ For instance, see Fallon (2015), p. 1273: "But if there are similarities between communicative and legal meaning, several differences also merit notice. Although legal meaning depends partly on linguistic norms, the determination of legal meaning can pose distinctive legal challenges. If meaning depends on context, the context for legal interpretation can be, and often is, importantly different from that of conversational interpretation. Moreover, in seeking to discern what an utterance means in non-legal discourse, we frequently rely on knowledge about the speaker. Legal texts, however, do not have unitary authors. They often reflect compromises. In identifying the meaning of a statute or constitutional provision, it is therefore frequently infeasible to take account of known psychological facts about a speaker in the same way as we might in identifying the meaning of remarks in a conversation."

problems. Knowledge of both jurisprudence and philosophy of language is therefore valuable in the search for mutual enlightenment.⁴⁷⁴

In fact, current philosophical discussions of meaning have been heavily influenced, informed, and inspired by ordinary linguistic usage.⁴⁷⁵ But debates about legal interpretation frequently bypass or give short shrift to the basic concept of legal “meaning.”⁴⁷⁶ This is why this section will start by exploring what “meaning” could mean in the legislative context, starting from general hermeneutics. We will see whether interpretation is the fundamental determinant of the meaning of linguistic expressions in legal texts.

a. Meaning of “Meaning”

“Meaning” of course has many meanings.⁴⁷⁷ In claiming what a legal provision means, judges, lawyers, and scholars may refer to its literal or semantic meaning, its ordinary meaning, its linguistic meaning, its contextual meaning as framed by the shared presuppositions of speakers and listeners, its communicative meaning, its pragmatic meaning, its real conceptual meaning, its intended meaning, its reasonable meaning, its previously interpreted meaning... Among the foremost challenges for legal interpretation is to determine which of these possible senses constitutes relevant legal meaning, either categorically or in a particular instance.⁴⁷⁸ While authors may disagree on the different types or definitions of meaning, they seem to agree on the multiplicity of sense of the term “meaning”. Therefore, we may preliminarily conclude that meaning is dynamic, it changes and evolves over time in different communicative situations.⁴⁷⁹

⁴⁷⁴ Charnock (2013), p. 128.

⁴⁷⁵ Collier (2009), p. 9.

⁴⁷⁶ Fallon (2015), p. 1235.

⁴⁷⁷ Perry (2011), p. 107. For a classic philosophical introduction to the concept of meaning, see generally Ogden & Richards (1936). For an account of meaning within the law, see Fallon (2015) and Geis (1995).

⁴⁷⁸ Fallon (2015), p. 1239.

⁴⁷⁹ Schauer (2008), pp. 1121-1122. According to Paunio (2013), pp. 14-15, not only the inherent indeterminacy of natural languages topped with problems of translation in the EU context, but also the contextuality of language and adjudication implies that the meaning of EU legal texts is potentially ever-changing. See also MacCormick & Summers (1991), pp. 517-518.

To this difficulty in defining meaning, another hurdle is added in the case of EU law. Given the coexistence of a large number of equally authentic language versions for each piece of legislation, the legal texts whose meaning is to be decoded are multiplied, while the meaning should remain unitary. It is hardly surprising to learn that some scholars have been sceptic about the very possibility of enacting normative propositions that have the same meaning in all Member States, across the variety of languages in which European law is expressed. The roots of this scepticism lie in the idea that encoding the same meaning in texts expressed in different languages ultimately fails, because meaning cannot be detached from its linguistic expression, an assumption which is reinforced with respect to legal concepts or institutions by the remark that they are specific to individual legal systems.⁴⁸⁰ This has to do with the theories of linguistic relativity mentioned in the previous Chapter.

Conversely, other authors claim that, at least in hard cases, the meaning of legal provisions does not exist as a matter of pre-legal linguistic fact.⁴⁸¹ This would entail that meaning *can* be detached from its linguistic expression. What can we then say about the work of translators and lawyer-linguists described above, who need to grasp the meaning of the provision in order to render it into other languages? Either we talk about different types of interpretive meaning, or we have to accept that there is a pre-interpretive meaning to legal norms.

And what could this pre-interpretive meaning then be? In linguistics, the nature of literal meaning is the subject of an ongoing debate opposing the so-called 'literalists' and the 'contextualists'. In outline, although the literalists admit that no observable utterance occurs without a context and that literal, acontextual meaning can be no more than an unobservable theoretical concept, they nevertheless assume the existence of an abstract literal meaning as a necessary starting point for interpretation in context. The contextualists, on the other hand, prefer to assume that words take their meaning directly from the context, and that 'literal meaning' therefore plays no genuine role in understanding. If this approach is on the right lines, the consequences would be important in legal interpretation. As both the literalist and the contextualist approaches raise formidable theoretical difficulties, it would be unrealistic to attempt to demonstrate the objective truth or falsity of either theory. Each has its own

⁴⁸⁰ Graziadei (2014), p. 73.

⁴⁸¹ Fallon (2015), pp. 1307.

advantages and disadvantages relative to particular linguistic problems. The more modest contention expressed here is that, in spite of the commonly stated preference for ‘true and correct’ meanings in the interpretation of legal expressions, legal practice (as opposed to theory) tends, contrary to expectation, to corroborate the contextualist view.⁴⁸²

Further, following Solum, legal practitioners are likely to use the word “meaning” in that sense of communicative content of the legal text, but “meaning” can also refer to the legal content of a text, which may not be the same thing as communicative content.⁴⁸³ Both lawyers and philosophers of language know very well that the full content of communication in a natural language often goes beyond the meaning of the words and sentences uttered by the speaker.⁴⁸⁴ The full content of the law may thus be understood as including everything asserted and implicated in adopting the relevant legal texts, not only the textual-linguistic meaning, which becomes a mere guide to the interpretation of the law, to be supplemented by other things.⁴⁸⁵

Meaning has indeed linguistically encoded elements and extra-linguistic elements.⁴⁸⁶ This distinction introduces the divide between semantics and pragmatics, which has been of interest to lawyers because of the controversy as to which of the features is more important to a theory of interpretation.⁴⁸⁷ It has been argued that a pragmatically-oriented conception of interpretation in law, which makes use of some of the insights of pragmatics, can offer a fruitful solution to some traditional puzzles.⁴⁸⁸ In this sense, there is a binary distinction between two levels of meaning, which stems from the study of legal texts as communicative acts and will be studied in-depth in the next section.

Yet there is another layer on top of the communicative process: the “legal meaning” of a text may be defined to be the authoritative meaning given to it by a judge. The legal meaning may thus differ from the “linguistic meaning”, which refers to the meaning communicated by the language of the text in light of the appropriate context of communication, i.e. the pragmatic

⁴⁸² Charnock (2013), pp. 128-129.

⁴⁸³ Solum (2013), p. 484.

⁴⁸⁴ Marmor (2011b) p. 83.

⁴⁸⁵ Soames (2007), p. 8.

⁴⁸⁶ Visconti (2007), p. 129.

⁴⁸⁷ Moore (2003), pp. 126-127.

⁴⁸⁸ Dascal & Wróblewski (1988), p. 203.

meaning. A typical determinant of linguistic meaning is “ordinary meaning”, which, roughly, refers to the sense that an expression usually has in the context at issue. The ordinary meaning may differ, though, from the linguistic meaning.⁴⁸⁹

It has indeed been claimed that legal meaning depends on standards that are largely internal to law. When those standards are indeterminate -- as they typically are in disputed cases -- legal interpreters must make constrained normative choices. Recognizing that there can be multiple linguistically and legally plausible senses of, and thus referents for, claims of legal meaning casts the most frequently debated theories of legal interpretation in a fresh, illuminating perspective. It is equally important to recognize that none possesses the resources to determine a consistent, uniquely correct referent for claims of legal meaning without reliance on relatively *ad hoc* normative judgments.⁴⁹⁰

Author’s opinions on the relationship between “linguistic meaning” (understood as contextual, pragmatic meaning) and “legal meaning” (understood as product of the interpretive techniques in force within a legal community, i.e. ultimately judicial interpretation) differ as well. As Slocum points out, although linguistic meaning is inherently an important determinant of legal meaning due to the nature of legal interpretation, it must be acknowledged that the linguistic meaning of a text is not always coterminous with its legal meaning, which is the authoritative meaning given to it by a judge.⁴⁹¹

Therefore, we see that there are various ways to answer the question of how to characterize the meaning of a legal text. At one extreme, the meaning of a legal text is synonymous with its literal meaning. At the opposite, the communicative meaning of a legal text is exogenous to its legal meaning. Instead, in practice the legal meaning tends to be determined in accordance with some other standard, such as the purpose of the provision or its intended meaning. Between these two extremes reside numerous variations of how communicative meaning contributes (or does not) to legal meaning. In order to address the role of pragmatics in the interpretation of legal texts, I will, as Slocum does, reject the notion that the meaning of a legal text can be constituted without its communicative meaning generally being (at least)

⁴⁸⁹ Slocum (2017a), p. 16.

⁴⁹⁰ Fallon (2015), pp. 1307-1308.

⁴⁹¹ Slocum (2017a), p. 21.

a constraint on permissible interpretations. The importance of this point is that if the communicative meaning of a legal text serves (at least) as a constraint on permissible interpretations, the components of the communicative meaning, including the applicability of pragmatic theories of meaning, which involve inferential processes of reasoning that sometimes deviate from an utterance's conventional meaning, are of crucial importance to legal interpretation. However, the communicative meaning of a legal text is not always fully determinative of its legal meaning. Even in situations not involving ambiguity or vagueness, where communicative meaning cannot be coextensive with legal meaning, the communicative meaning of a text may differ from its legal meaning.⁴⁹²

So the communicative meaning of a legal text is not always fully determinative of its legal meaning, yet it typically acts as a constraint on permissible interpretations. Courts often consider non-textual evidence, such as drafting history and purpose when determining the meaning of a text, and such considerations are understandably controversial for various reasons (e.g. the unreliability of legislative history and the subjectivity of considerations of purpose). Two important, and related, aspects of interpretation should be uncontroversial, though. One is that pragmatic processes are relevant to legal interpretation. The second is that the communicative meaning of a legal text is not always synonymous with its literal meaning, and various linguistic phenomena, seen as pragmatic by many, operate so that the intended meaning of a legal text often differs from its literal meaning.⁴⁹³

We have a plurality of texts in different languages, to which the same meaning should be attributed. Then we have some theories that say that meaning cannot exist as a pre-legal linguistic fact, whereas other authors claim that meaning cannot be detached from its linguistic expression. Several types of meaning are discussed. The aim of the present Chapter is to see how we could bridge those gaps in meaning across languages, from a theoretical point of view. The answer: interpretation.

⁴⁹² Slocum (2017b), p. 119.

⁴⁹³ *Ibid.*, p. 140.

b. Interpreting or Creating Meaning?

In legal theory, discourses on meaning are most frequently tied to interpretation. The relation of “meaning” to “interpretation” can vary with the sense in which the term “interpretation” is used. At least three usages should be distinguished. In one sense, “interpretation” is a ubiquitous phenomenon that is at work whenever one person successfully grasps the communicative content of a text or utterance.⁴⁹⁴ In a second usage, “interpretation” refers to a reflective, problem-solving process that is not involved in all successful communication (which is frequently characterized by simple understanding) and is triggered by an uncertainty or puzzle about either the communicative content of a text or remark or its appropriate application.⁴⁹⁵ In yet a third sense, which is quite specialized and possibly peculiar to law, “interpretation” is often used to refer to the entire process -- which may include multiple aspects -- by which authoritative actors resolve questions about the meaning or content of law in its application to particular cases.⁴⁹⁶

For Wróblewski, it is also common to distinguish three uses of the word “interpretation.” Firstly, interpretation in the widest sense signifies an understanding of a cultural object, e.g., interpretation of a painting. Secondly, interpretation in a wide sense is meaning attribution to any spoken or written language. Interpretation signifies understanding of language. Thirdly, interpretation in a strict sense refers to the situation in which there are doubts concerning the proper understanding of a text; interpretation signifies removing these doubts.⁴⁹⁷

According to Italian legal theorist Giovanni Tarello, in slightly different terms, the activity of legal interpretation is the activity through which any given operator attributes meaning to documents that express norms, in order to find the norm expressed in the document. The activity of attributing meaning to a document may be either volitional or intellective, through

⁴⁹⁴ See, for example, Davidson (1984), asserting that “[a]ll understanding of the speech of another involves radical interpretation” and that “[w]e interpret a bit of linguistic behaviour when we say what a speaker's words mean on an occasion of use”; or Schauer (1993), stating that “every application of a rule is also an interpretation”.

⁴⁹⁵ See, for example, Marmor (2014).

⁴⁹⁶ See, for example, Soames (2011b); Fallon (1987).

⁴⁹⁷ Wróblewski (1992).

either will or conscience. The volitional activities settle a new meaning for the future, whereas the intellectual ones discover a meaning that was given in the past.⁴⁹⁸

Much jurisprudential writing on interpretation in legal reasoning is concerned with how to strike the right balance between the conserving and creative elements in interpretation, and with the constraints which are and/or should be operative upon judges as they undertake this balancing act. Some theorists claim that such concerns about how one ought to interpret the law indicate that it is part of the way that we think about this practice that we regard rival interpretations as subject to objective evaluation as good or bad, better or worse, correct or incorrect.⁴⁹⁹ On this view, characterisations of interpretation which attempt to impugn the objectivity of such evaluations⁵⁰⁰ are to be understood as revisionist accounts which attempt to persuade us that all is not as it appears to be with our practice of judging interpretations to be good or bad, better or worse, correct or incorrect as we currently understand it.⁵⁰¹

For all this, however, a surprising number of legal theorists agree—at least at an abstract level—about one central characteristic of interpretation, namely that interpretation is a Janus-faced concept, encompassing both a backward-looking conserving component, and a forward-looking creative one. In other words, an interpretation of something is an interpretation of something—it presupposes that there is a something, or an original, there to be interpreted, and to which any valid interpretation must be faithful to some extent, thus differentiating interpretation from pure invention—but it is also an interpretation of something, i.e. an attempt not merely to reproduce but to make something of or bring something out of an original.⁵⁰² This is exacerbated in EU law, where the existence of a plurality of texts for each “original” to be interpreted introduces further complexity.

So the term “interpretation” in law has indeed different meanings and must be interpreted itself.⁵⁰³ We have seen some of those, but what about its concrete function? How does interpretation relate to meaning, with the different layers thereof mentioned above?

⁴⁹⁸ Tarello (1980), pp. 61-62.

⁴⁹⁹ Dworkin (1986); Raz (1996).

⁵⁰⁰ See for instance Levinson (1982).

⁵⁰¹ Dickson (2016); Raz (1996).

⁵⁰² Dickson (2016); Fiss (1982); Dworkin (1986); Marmor (2005); Endicott (1994); Raz (1996).

⁵⁰³ Scalia & Garner (2012), p. 53

Related to what has been discussed so far, we find a traditional dichotomy in the literature between interpretation *sensu largo* and *sensu stricto*,⁵⁰⁴ although different terminologies are used (e.g. narrow vs. broad interpretation, derivative vs. clarificative).⁵⁰⁵ Interpretation *sensu largo* implies an ascription of meaning to a sign treated as belonging to a certain language and as being used in accordance with the rules of that language and to accepted communicative practices. Interpretation *sensu stricto* means an ascription of meaning to a linguistic sign only when its meaning is doubtful in a communicative situation. Legal practice often faces this problem, and consequently there is a tendency to view this kind of interpretation as the only one relevant for law.⁵⁰⁶ The CJEU itself has developed an interesting doctrine on clarity in *Da Costa*⁵⁰⁷ and *CILFIT*,⁵⁰⁸ apparently upholding the traditional interpretive principle *in claris non fit interpretatio*,⁵⁰⁹ which is nonetheless controversial.⁵¹⁰

To settle this, we may distinguish between two ways of getting to an interpretation. The interpretation may be obtained directly, without consciously addressing doubts and assessing alternatives, or it may be obtained dialectically, namely, by assessing the reasons for and against adopting the chosen interpretation, and the defeasibility of other possible interpretations. Thus, we may distinguish the following two kinds of interpretive reasoning: (1) *Prima facie* interpretive reasoning, which attributes directly, through uncritical computation, a prima-facie meaning to the utterance at issue; (2) Deliberative interpretive reasoning, which intervenes: a. when *prima facie* interpretive reasoning fails to provide a single, undoubted output, namely, when no prima-facie meaning is obtained directly; or b. when multiple incompatible prima-facie meanings are provided; or c. when the prima-facie meaning fails to satisfy immediately the concerns of the interpreter, so some doubts need to be addressed. Some authors prefer to use the term ‘interpretation’ in a broader sense, to

⁵⁰⁴ Dascal & Wróblewski (1988), p. 204; Barak (2005), p. 4;

⁵⁰⁵ Respectively: Barak (2005); Wróblewski (1992), pp. 87-88.

⁵⁰⁶ Dascal & Wróblewski (1988), p. 204.

⁵⁰⁷ Case 28-30/62, *Da Costa en Schaake NV v Nederlandse Belastingadministratie*, 1963.

⁵⁰⁸ Case 283/81, *CILFIT e Lanificio di Gavardo SpA v Ministero della Sanità*, 1982.

⁵⁰⁹ The so-called doctrine of *acte clair*. Bengoetxea *et al* (2001), p. 55. See also Lenaerts & Gutiérrez-Fons (2013), pp. 7 and 46; Van Calster (1997), pp. 376-377, and Bredimas (1978), p. 15.

⁵¹⁰ Other authors disagree, stating that the Court interprets in the broad sense of the term: see Łachacz & Mańko (2013), p. 83 (“the *acte clair* doctrine has a purely procedural and competence-dividing character and does not entail the CJEU’s accession to the *clara non sunt interpretanda* doctrine”). Itzcovich (2009), p. 550, claims that the Court frequently departs from the principle. See also Baaij (2018), pp. 75 and ff. and Derlén (2009), p. 146. For an overview of the Court’s case law on clarity and interpretation, see Derlén (2018).

cover both kinds of reasoning, while other prefer to use it in a more restrictive sense, covering only the second.⁵¹¹

The same basic idea is explained with a different terminology by other authors, by distinguishing two different moments or stages that occur when an authoritative text is applied or explicated. The first of these moments is interpretation, the process (or activity) that recognizes or discovers the linguistic meaning or semantic content of the legal text. The second moment is construction, the process that gives a text legal effect (either by translating the linguistic meaning into legal doctrine or by applying or implementing the text). Although the terminology (the words "interpretation" and "construction" that express the distinction) could vary, legal theorists cannot do without the distinction.⁵¹²

Therefore, it seems that a consensus has emerged about interpretation and, specifically, about its role in law: that every application of the law requires an interpretation of the law (broadly understood, i.e. also including the uncontroversial *prima-facie* understanding), even if we may distinguish among different types. The striking range of theorists who hold similar views establishes a wide interpretivist consensus. This is a bizarre consensus among people who agree on nothing else. It survives their different views on how to interpret, on whether an interpretation can intelligibly be called right or wrong, on the nature of truth and meaning, and so on. They all think that no legal question can be answered except by an interpretation.⁵¹³

So it seems that we may conclude that determining the meaning of EU legal texts and applying it to specific circumstances in a particular case involves interpretation, as Paunio concluded as well.⁵¹⁴ This is already a bold claim, since not all authors would agree on it, as we have seen. But there is no other alternative, given the plurality of texts, which prevents us from easily getting to a *prima facie* meaning, as there will always be several *prima facies* to be compared and chosen from. Consequently, we will take it as the starting point of our analysis, substantiating it further throughout the Chapter.

⁵¹¹ Macagno et al (2018), p. 77.

⁵¹² Solum (2010), pp. 95-96.

⁵¹³ Endicott (2000), pp. 11-12.

⁵¹⁴ Paunio (2013), pp. 14-15.

3. Interpretation of EU Law: Legal Texts vs Legal Norms

At this point, it is important to recall the difference between legal texts and legal norms. A “legal text” intends to be a set of linguistic signs whose meaning corresponds to a given linguistic code, whereas a “legal norm” refers to a rule used to organize or evaluate human conduct.⁵¹⁵ The text anchors the legal norm, which is extracted from it. *Ergo*, the norm is the product of interpretation, while the text is the object thereof.⁵¹⁶ And, as we have said above, it is through interpretation that we reach the meaning of the legal text, which may then be identified with the legal norm.

In legal theory it is quite common to distinguish between norms and norm-formulations. Several synonyms of norm-formulation are available, including legal text. The distinction is based on the thesis that there is no one-to-one correspondence between the formulations contained in a legal text and the norms expressed by them: a norm can be expressed through various norm-formulations, and a norm-formulation can express different norms. The distinction between norms and norm-formulations mirrors the well-known one between meaning and syntactic form, between propositions and sentences, and is constructed employing certain specific categories taken from analytical philosophy. This kind of treatment, which seemed to afford some important advantages, was inspired in the past century by the linguistic turn mentioned at the beginning of the Chapter.⁵¹⁷

Conversely, the misguided, but common and practical, conflation between norm and text shows up as a theoretical problem in discussion on the stability of the legal text vs. the obvious change of norms. The text remains unchanged, even if its meaning changes. The issue is here exactly what it is that remains constant.⁵¹⁸

Once we make the crucial distinction between linguistic meaning of legal texts and the content of legal norms, it is clear that the primary goal of judges, lawyers, and other legal interpreters is to figure out what the norm is, not what the meanings of the texts are. Working out the meanings of legal texts is an important means to the end of ascertaining the law, but

⁵¹⁵ Gambaro (2007), p. 2-3.

⁵¹⁶ Barak (2005), p. 12. See also Guastini (2001), pp. 27 and ff.

⁵¹⁷ Narváez Mora (2015), p. 44.

⁵¹⁸ Stein (2017), p. 340.

just a means. And other activities that courts engage in — such as deciding how to resolve a divergence among language versions — are other types of means.⁵¹⁹

Legal texts use language as a communication tool in order to make changes in the “real world”.⁵²⁰ That ability to create new states of affairs means, in philosophy of language, that legal texts are performative speech acts with illocutionary force.⁵²¹ They are also collective speech acts, whereby some content is communicated that is, essentially, the legal content of the law voted on. This does not mean that any interpretive question that arises about the legal content of legislation is determined by the content communicated by its enactment. On the contrary, some content is determined by the content that was successfully communicated by the speaker, but some relevant legal content might remain undetermined.⁵²²

The determination of the legal content or legally-relevant meaning of legal texts is the end point of the inference process that so centrally figures in discussions of legal interpretation. The “legal meaning” is, then, an end product of inference processes that are compatible with the inference rules that specifically define legal discourse. So legal meaning is not something that is embedded in a text, but that is arrived at in each and every individual, contextually new case and circumstance.⁵²³

Legal texts may be conceptualized in two opposing ways. Firstly, a “strong theory” sees them as an imperative, presupposes norms in their own right without recourse to contextual elements. A “weaker theory”, on the other hand, conceives them as raw material for the communicative process, so the legal text is supplied with its normative character by the way it is applied in the discourse. Thus, according to the second theory, legal texts are not normative in their own right. This can be justified having recourse to the uselessness of dictionaries in helping to discover the meaning of a legal term, for the rules of use in dictionaries are probabilistic, not normative; i.e. they show uses, but do not exclude uses. However, this requires require giving up the fiction that meaning is actually something objective and objectifiable that exists outside communication. Under the assumption that

⁵¹⁹ Greenberg (2017), p. 110.

⁵²⁰ Robertson (2012), p. 1.

⁵²¹ Austin (1975), pp. 6 and 98-99. See also Searle (1989), p. 238, and Visconti (2007), p. 129.

⁵²² Marmor (2014), p. 12.

⁵²³ Stein (2017), p. 354.

meaning is only present in communication, the task of the judge is actually not to discover what a specific word means, but to decide whether the use of a specific word (and meaning) by a specific person in a specific situation and the consequent behaviour of the person is in accordance with the rule or regulation stated to be the basis of his action.⁵²⁴

However, it is not the case that the text, the instigator of the interpretation, does not contain anything constraining interpretation: the language-meanings are abstractions of histories of uses, essentially memories of uses, and there are genre-conventions that indicate legitimacies of inferencing on all levels. Understanding or reading is always a *hic et nunc* act, and the question of what the text meant irrevocably implies an archaeology of the pragmatics of its creation, including potentialities of the intentions of the creators, no matter how complex this idea may be in the case of EU legal texts. This is a far more linguistically realistic, if less positivistic, idea of what a legal text is. So inferencing – and interpretation is nothing else but inference – is in reality a very basic and very pervasive process in texts and discourses generally, and it raises one specific issue: the issue of the autonomy of the legal text.⁵²⁵

Therefore, the meaning of EU legislation is created and exists thanks to the activity of legal actors. Considered from this perspective, the texts of European provisions are nothing but a focal point for the practice of creating norms, a support that prompts individuals to work out meaning which was not there as such from the very beginning.⁵²⁶ The interpretation of a statement of law guarantees the inferential passage from a text (a legal text or statement) to its meaning (a rule of law).⁵²⁷

The interpreter finds, or decides, or proposes the meaning to be attributed to one or more propositions, whose meaning is not pre-constituted by the interpreter's activity, but is its result. Before the interpreter's intervention, the only thing that is known about the document to be interpreted is that it expresses one or several norms, but it is not known which are these norms.⁵²⁸ The legal text, the provision, contains norm candidates, and the interpretation determines the norm for the instant case. This theory is much clearer in multilingual law,

⁵²⁴ Engberg (2002), pp. 378-382.

⁵²⁵ Stein (2017), p. 353.

⁵²⁶ Graziadei (2015), pp. 23-24.

⁵²⁷ Macagno et al (2018), p. 79.

⁵²⁸ Tarello (1980), pp. 63-64.

where the different language versions can potentially contain different norms, but a common, shared, harmonized or superimposed meaning is extracted from them all to “create” the EU norm. The hermeneutic concept of law moves away from the classical positivist approaches. Law is seen as communication, it offers a basis for communication, and it is itself founded on communication, as the preliminary reference procedure before the ECJ shows.⁵²⁹

Moreover, a text does not have a function for itself, but only within a legal system, as such it is the result of a network of legal provisions and specific legal content. Each legal text has implicit or explicit references to other legal texts: this strong intertextual dimension is a typical feature of legal texts. Each of them has implicit or explicit references to other legal texts: this strong intertextual dimension is a typical feature of theirs.⁵³⁰

In particular, multilingualism leads to a specific type of intertextuality. Even though each language version of EU legislation aspires to be a complete and reliable expression of the law, in order to access its meaning all versions must first be taken into account, together with the context of the provision.⁵³¹ The wider context for EU legal texts consists of the aims and purposes of the EU legal system as a whole, its foundation principles and the specific aims of the individual text. All of that is set against a wider background of shared European legal culture. Since these different elements can have an impact on how a given legal text is to be interpreted, legal meaning is something to be constructed drawing from many strands, and is often not just simply based on what a particular text says.⁵³²

As a result, a legal text alone appears to offer courts limited guidance in finding an answer to legal questions they are faced with.⁵³³ Furthermore, a given EU legal text does not consist of a single element but of a system of 24 language versions whose aim is to produce a single legal norm.⁵³⁴ It thus seems self-evident that multilingual EU law does not contain “one” unequivocal meaning that the interpreter can “discover”.⁵³⁵ Instead, the Court of Justice of

⁵²⁹ Bengoetxea (2015), p. 210.

⁵³⁰ Sandrini (2009), p. 37.

⁵³¹ Pommer (2012), p. 1246.

⁵³² Robertson (2013), p. 23.

⁵³³ Paunio (2013), pp. 14-15.

⁵³⁴ Flückiger (2005), p. 357.

⁵³⁵ Glanert (2008), p. 166; Barak (2005), p. 9. See also Termorshuizen-Arts (2008), p. 75.

the European Union, as the ultimate authoritative interpreter of EU law,⁵³⁶ adds meaning to the legislation, using the formal elements of the text only as a springboard.⁵³⁷ Thus we advocate for an organic vision of EU law, as living being in constant evolution through judicial interpretation, between civil and common law.

4. Interpretation as Communication

When it comes to contemporary linguistic theory, the quest for the meaning of utterances spans between an abstract “linguistic” meaning and a concrete “communicative” meaning. The former is the result of combining the meanings of the lexical units following the rules of syntax and punctuation, while the latter results from inferential processes, where linguistic meaning is taken as a point of departure and enriched with further information. The distinction between linguistic and communicative meaning maps onto the boundary between semantics and pragmatics, the conventional meaning of linguistic units vs. the meaning inferred through the interaction of linguistic meaning with context.⁵³⁸ There is considerable debate regarding the respective definitions and where the semantics/pragmatics borderline crosses for specific linguistic expressions.⁵³⁹

Given the current state of play in philosophy of language, it is reasonable to think that there are multiple legitimate notions of what is communicated.⁵⁴⁰ Which notion is most fruitful plausibly varies depending on the theoretical purposes of the inquiry. How could purely linguistic considerations determine which notion is the relevant one in the legislative context? The communication theorists may insist that the content of the law is the total communicative content of the authoritative legal texts. Just as there is more than one legitimate notion of what is said, however, there is more than one legitimate notion of the total communicative

⁵³⁶ Robertson (2013), p. 27.

⁵³⁷ Paunio (2013), p. 20. See also Glanert (2008), p. 166.

⁵³⁸ Visconti (2014), pp. 247 and ff.

⁵³⁹ Slocum (2017b), p. 124.

⁵⁴⁰ For a small sample of a large literature, see Grice (1989), pp 24–25, 87–88, 117–122; Bach (2001); Carston (1988); Récanati (1988); and Soames (2008).

content of an utterance; again, different notions are plausibly more fruitful for different purposes.⁵⁴¹

The pragmatic aspect of language use is typically associated with the prevalent role that context (understood broadly) plays in understanding the content of an act of communication.⁵⁴² In fact, pragmatics, in its narrow sense, has tended to focus only on “problematic” understanding, i.e. those cases where semantic content alone is insufficient to determine the meaning of a linguistic sign,⁵⁴³ and contextual information must be taken into account.⁵⁴⁴ This does not imply that semantics have no import. On the contrary, the semantics of the expressions are still the primary means of deciphering the social purpose of a regulation.⁵⁴⁵

Given the role of text and meaning in debates about issues of interpretation in law, it seems appropriate to look at these concepts from the point of view of pragmatics, as it deals with the construction of meaning from linguistic and extralinguistic knowledge by the text recipient. While mention of pragmatics in the law has often been restricted to speech act theory,⁵⁴⁶ it is the aim of this Chapter to extend the application of pragmatic approaches to the analysis of legal communication on a wider scale.

a. Semantics and Pragmatics (and Beyond?)

A textual-linguistic approach to law touches upon the fascinating question of the boundary between linguistically encoded and extra-linguistic elements of meaning.⁵⁴⁷ Based on this, there are two models of linguistic communication: first, according to the coding model, communication consists in a sender and a receiver sharing a common code or language and a channel, so that the former encodes the message and sends it for the latter to decode it.

⁵⁴¹ See, e.g. Davis (2003); Bach & Harnish (1979), pp 15–16; Levinson (1983), pp. 15–16; Sperber & Wilson (1986); and Boudreau et al (2007). See also Saul (2002).

⁵⁴² Marmor (2008), p. 424.

⁵⁴³ According to Solum (2013), p. 487, semantic content equals to “literal meaning”.

⁵⁴⁴ Dascal & Wróblewski (1988), p. 204.

⁵⁴⁵ Poscher (2012), p. 133.

⁵⁴⁶ Stein (2017), p. 333.

⁵⁴⁷ Visconti (2007), p. 129.

The semantic information obtained by decoding the sentence uttered is but one example of such information. But much more information has to be used to infer what the speaker meant — that includes both what she said and what she implicated — by her utterance. So intention recognition is central to understanding language that the code model, with autonomous semantics at its core, should largely be abandoned in favor of the inferential model. For this new model of communication, pragmatic reasoning pervades language use.⁵⁴⁸

Pragmatics is about the use of utterances in context, about how we manage to convey more than is literally encoded by the semantics of sentences. Conversely, semantics is the study of context-independent knowledge that users of a language have of word and sentence meaning.⁵⁴⁹ Philosophers of language frequently refer to the role of context in furnishing the meaning of what a sentence communicates as one of “pragmatic enrichment.”⁵⁵⁰ Context is thus centrally involved in explaining how pragmatics complements semantics. Pragmatics is concerned with whatever information is relevant to understanding an utterance, even if such information is not reflected in the syntactic properties of the sentence.⁵⁵¹

So the notorious dependence of the effect of legal language on context is an instance of a general feature of communication, distinguishing semantics from pragmatics. The pragmatics of legal language is a vast field, because the term ‘pragmatics’ could be used as a heading for much of what modern legal scholars and theorists have described as grounds for interpretation, and also as a heading for much that they have described as the theory of interpretation -since ‘pragmatics’ is a term not only for effects of communication, but also for the study of those effects.⁵⁵²

The dividing line between semantics and pragmatics has been subject to much debate.⁵⁵³ The basis of the distinction is the fact that speakers or writers may occasionally attempt to convey something different from what their language in context would be taken by most listeners or readers to signify, thus creating “speaker meaning” as opposed to “sentence meaning”.⁵⁵⁴

⁵⁴⁸ Korta & Perry (2015).

⁵⁴⁹ Griffiths (2006).

⁵⁵⁰ Marmor (2008), p. 423.

⁵⁵¹ Slocum (2017b), p. 124.

⁵⁵² Endicott (2016).

⁵⁵³ Slocum (2015), p. 58.

⁵⁵⁴ Greenawalt (2010), p. 20.

The traditional account makes semantics to be concerned with what is said or asserted (sentence meaning), and pragmatics with what is implicated (speaker meaning).⁵⁵⁵

However, we must be careful with attaching excessive importance to the notion of speaker meaning in legal pragmatics. In addition to the sheer volume and technicality of legislation, the legislature typically does not choose its words in order to implement a communicative intention; rather, the words are the outcome of a complex process of negotiation and compromise. As a result, the language is often chosen not in order to implement anyone's communicative intention, but because, for example, it is unclear enough for a majority to accept. To require legislators representing constituents with diverse and conflicting interests to have a collective communicative intention would make it very difficult for them to enact legislation. There are also reasons why, regardless of whether a communicative intention exists, it is better that the law not depend constitutively on what is in anyone's mind. The goals of law-making provide deeper reasons why it is better that the content of the law not depend constitutively on what is communicated. These goals may well be best served by a system in which a legal act's contribution is different from what it communicates. One example is provided by canons of legal interpretation.⁵⁵⁶

Therefore, the application of pragmatics to legal texts may cause some difficulties, due to its central notion of speaker meaning. It can be argued that the purpose of interpreting a legal text is not primarily to determine what the producer of the text intended to convey. Accordingly, in the pragmatic account for the interpretation of legal texts, the "author's meaning" need not have a central position, and can be viewed merely as one of the contextual factors in the interpretation process.⁵⁵⁷

Indeed, in legal interpretation, the addressees of the conversation (the hearer or the citizens) have access only to the text of the law, from which they need to reconstruct the speaker's meaning, or the legal meaning of the law. The intention that is communicated is the one that

⁵⁵⁵ Szábo (2005), p. 4. For a Gricean account of the semantics and pragmatics divide, see McGinn (2015).

⁵⁵⁶ Greenberg (2011), pp. 253-254.

⁵⁵⁷ Dascal & Wróblewski (1988), pp. 214-215. These difficulties are also linked to the differing goals of non-legal and legal communication: the normal cooperative exchange of information vs. the strategic goals of linguistic interactions in legal settings, which grant pragmatics a more limited role in the latter, according to Marmor (2008), Marmor (2011a), p. 7 and Marmor (2014), p. 27. For a similar view, see Poggi (2011), p. 35.

is retrievable from the textual and contextual evidence provided.⁵⁵⁸ The explicit content of a speech act (such as a statement of law) is the only accessible instrument for reconstructing the speaker's intention.⁵⁵⁹

Legal texts by themselves possess linguistic meanings (semantics), but the meaning that is constructed in particular communicative situations (pragmatics) does not always tie in clearly with the language of texts. This opens, once again, the door to the concept of "legal meaning" as something different from the linguistic or communicative meaning of the legal texts. The significance of these communicative, pragmatic theories of legal interpretation is that they may provide an explanation of how it is possible for meanings to be drawn from multilingual texts, sometimes contrary to the actual wording of individual texts.⁵⁶⁰

b. Interpretation of EU Law as Multilingual Communicative Practice

So it is undeniable that, in order to find the meaning of a legal text through interpretation, one must first identify what the relevant actors said. And for this, one needs to know how semantics and pragmatics interact to generate content.⁵⁶¹ The problem is that considerations based exclusively in the study of language and communication do not afford the resources for defending the legal relevance of one notion of communicative content over others. To understand how legislation affects the content of the law, we need an understanding of the nature and purposes of legislation. The point, of course, is not that it is indeterminate what constitutes a legal act's contribution, but rather that the communication theory lacks the resources to explain which candidate is the relevant one. Therefore, there are competing candidates for the communicative content that constitutes the content of the law, and some further principle is needed to support one candidate over others.⁵⁶²

This is where the interpretive canons in force in any given jurisdiction come into play, as a way to make normative choice among norm candidates in a legal text. In this context, the

⁵⁵⁸ Carston (2013), p. 24.

⁵⁵⁹ Macagno et al (2018), p. 101.

⁵⁶⁰ Robertson (2016), p. 26.

⁵⁶¹ Soames (2007), p. 24.

⁵⁶² Greenberg (2011), pp. 247-250.

Court of Justice seems to claim that, while the linguistic versions may differ from each other on a purely linguistic level, at the legal level they express the same concepts (i.e. each linguistic version of EU law draws from the same EU legal concepts). Therefore, many of the language and translation problems arising in the jurisprudence of the CJEU can be overcome through teleological interpretation or by reference to a “new EU legal language”, as McAuliffe puts it.⁵⁶³

Consequently, it may be said that in the absence of any reasonably identifiable collective intent of drafters, and on the assumption that language itself is not capable of determining the scope of possible readings of a text, given the plurality of language versions of EU legislation, it seems plausible to opt for a hermeneutic theory of interpretation, shifting focus from author and/or text to the interpreter and her epistemic community, assuming that the interpreter invests meaning in a text rather than second-guessing the intent of the drafter or decoding an ‘objectively’ existing meaning allegedly inherent in the text.⁵⁶⁴

In other words, several factors support the proposition that the meaning of EU legal texts is ‘potentially ever-changing’. Those factors include the inherent indeterminacy of natural languages, together with problems of translation, the need for political compromise in an EU of 28 Member States, as well as the contextuality of language and adjudication. This has at least two important consequences. First, EU legislation constitutes an unstable textual basis for interpretation. The multilingual nature of EU law brings to the fore the quagmire of judicial interpretation that not only relates to multilingual legal systems, but to the interpretation and application of law in any legal system. Even in a monolingual context, where it should, at least in theory, be possible to express legal obligations and rights in relatively precise language, precise linguistic formulations do not necessarily result in precise law. Legal effects depend on the way those linguistic formulations are interpreted in a particular factual situation under the constraints of case law that conditions subsequent interpretations. Inevitably, judges’ evaluations concerning the meaning and purpose of the provision in question affect the legal effects of that text. Second, therefore, the Court of Justice assumes a key role in devising the

⁵⁶³ McAuliffe (2013), p. 881.

⁵⁶⁴ Łachacz & Mańko (2013), p. 82.

meaning of EU legislation.⁵⁶⁵ Or, as Bengoetxea states, meaning is harmonized or stabilized by the communicative practise of interpretation between the juristic communities involved in the judicial resolution of disputes in this multilingual community.⁵⁶⁶

5. Conclusions

In order to transcend the unprecedented text-pluralism of the European norm, a wider sense than ever of the term “interpretation” seems to be needed. In this sense, the traditional debates within legal theory between literalists and interpretivists can be left behind, making room for a more flexible and all-encompassing understanding of legal interpretation.

Therefore, for the purposes of this work, interpretation *sensu lato* will be endorsed. Indeed, what matters for the present analysis is that legal interpretation turns a text into a norm – hence the distinction between the linguistic meaning of a text (also communicative meaning) and its legal meaning. To interpret a text is to choose its legal meaning from among a number of semantic or pragmatic possibilities within the communication process. In typical cases, there is a complete identity between the text’s linguistic and legal meanings. However, owing to increased linguistic indeterminacy (additional inter-linguistic indeterminacy on top of intra-linguistic indeterminacy), and in particular to the possibility of divergences among language versions of the legislation, this is not always the case with EU law. In this regard, it must be kept in mind that in EU multilingual interpretation there is no single text, so that meaning is conveyed by the array of texts, taken as a body.⁵⁶⁷ This is why it seems even clearer that the meaning of EU legal provisions can only be accessed through interpretation.

Greater terminological clarity is needed in order to express the conclusions of this Chapter, in which different authors’ terminologies have been referred to. There are several layers of complexity or abstraction to the meaning of EU legal texts that become superimposed, resulting in the legal norm obtained through interpretation.

⁵⁶⁵ Paunio (2017), pp. 57-58.

⁵⁶⁶ Bengoetxea (2015), p. 211.

⁵⁶⁷ Solan (2009), p. 300. Also Pommer (2012), p. 1247; Kjaer & Adamo (2011), p. 7; Van Calster (1997), p. 375.

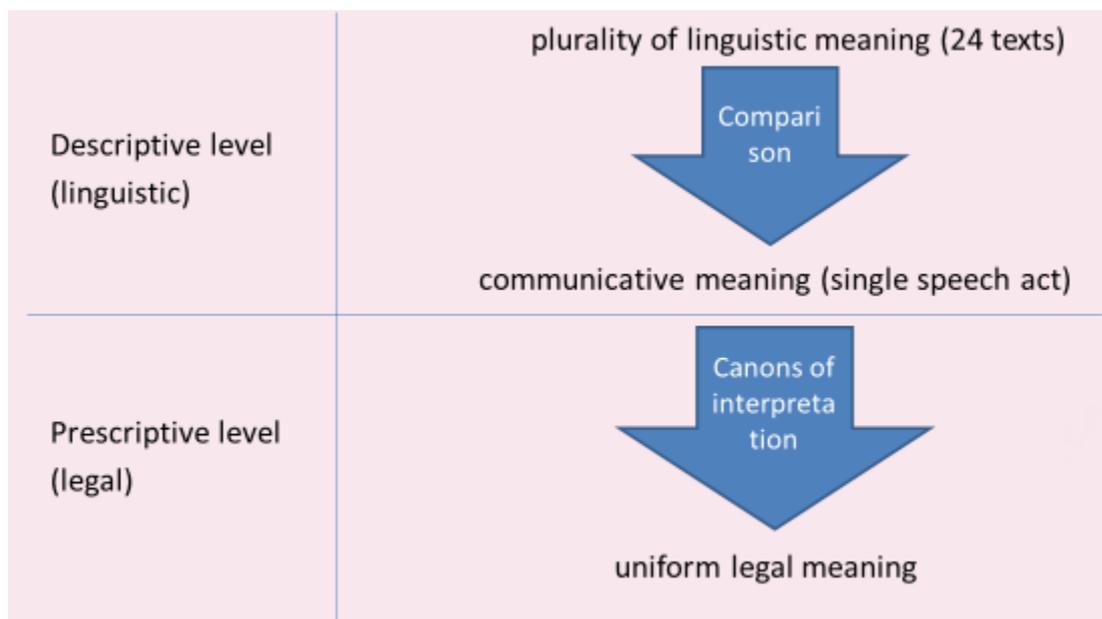
First, regarding the semantic level of EU legal texts, it may be said to be synonymous with linguistic meaning, which may differ across language versions. Subsequently, at the pragmatic level we see a single utterance represented by a plurality of texts. Although, as we have seen, the importance of the legislator's intent should be handled with caution, the communicative theories presented above are still relevant to conceptualize the texts as a single utterance, since this would reinforce the legislative doctrine of equal authenticity of language versions and the CJEU's doctrine of uniformity of meaning of EU legislation. Therefore, all the language versions share the same context.

However, notwithstanding the usefulness of the pragmatic concept of utterance for the unity of meaning of EU legislation, it seems debatable whether the pragmatic level exhausts the meaning, as we have seen that communicative theories simply offer alternatives for the interpretation of utterances, leaving the choice among alternatives open. This, as I have already claimed above, is a normative choice that, for the legislation, can only be properly operationalized through authoritative, legal-normative guidelines, such as the canons of interpretation of the Court of Justice of the EU, the only organ within the Union with competence to settle the meaning of enacted EU legislation for the whole territory. These canons, which we will study in the next Chapters, provide the third necessary layer to the meaning of multilingual EU legislation. Some authors would agree with this (Greenberg, Fallon), others would disagree (Endicott, who claims that interpretive canons belong to the domain of pragmatics).

While, at first glance, one might think that adding language versions to a single body of law can only be a source of confusion, it is also true that adding datapoints (i.e., multiple versions of the same law) can assist the legal interpreter by reducing the extent to which an ambiguity found in one language version can cause uncertainty in meaning. In that sense, language versions add further context to the interpretation of EU law. This context, differently from canons of interpretation, does belong to the pragmatic level, the single speech act.

Therefore, as we can see from the following diagram, we may conclude that there are two main layers of meaning to EU legal texts: linguistic and legal. Within the linguistic level, we may distinguish linguistic meaning as such (semantic) and communicative meaning (pragmatic). Translators work with semantic meaning, which may be considered "pre-

interpretive”, to create each language version. The combination of these language versions, once communicated together into a single speech act, produces a joint communicative meaning. However, in order to overcome problems of both inter- and intra-linguistic indeterminacy, and arrive at the final, “true” meaning of the legislation, something else is needed. This something else is what makes the Court of Justice’s activities unique, the canons of interpretation that lie at the heart of its multilingual reasoning. Therefore, it is through interpretation, in the traditional legal sense, that the communicative meaning is worked out into legal meaning.



Although admittedly baroque and debatable, this distinction will allow us to better analyse and understand what the Court does when comparing language versions of EU legislation, as will be shown in the next Chapters.

Chapter V: Multilingual Interpretive Methods at the CJEU

Chapter V presents an overview on the Court's competence in order to introduce its main interpretive methods, also applied to solve linguistic issues. The main focus rests on cases of comparison and divergences across language versions of EU law. A thorough doctrinal analysis is carried out by addressing the normative model proposed by the literature, which will be then confronted with the empirical analysis of the next Chapter.

1. Introduction

The considerations above have been of a general nature, on the possibilities offered by interpretation as an activity and as a result of said activity. Adjudication, the object of this Chapter, in turn is all about hard cases, i.e. cases in which legal professionals cannot reach intersubjective agreement on what the law demands. Despite their quantitative epiphenomenology with respect to the overall practice of the law, hard cases are central not only to adjudication, but also for the law as a profession and scholarly discipline. Higher courts predominantly deal with hard cases.⁵⁶⁸ This justifies our ultimate focus on divergence of language versions cases before the CJEU, i.e. the hardest type of cases for linguistic matters, as decided by the highest Court for EU law adjudication.

Given the absence of specific legal provisions on the point, the final decision as to how multilingualism is to affect the interpretation of EU law has been left to the European Court of Justice.⁵⁶⁹ When a provision of EU law is unclear, including cases of divergence among language versions, a national court must refer it to the CJEU for interpretation under the preliminary ruling procedure. The rulings handed down by the Court determine the meaning to be given to a provision in all the official languages of the EU.⁵⁷⁰

⁵⁶⁸ Poscher (2017), p. 307.

⁵⁶⁹ Derlén (2011), p. 144. According to Robertson (2013), p. 23, the Court of Justice controls the meaning of EU law provisions.

⁵⁷⁰ Graziadei (2014), p. 80.

Indeed, the Court's interpretation methods are crucial in this respect because it is the Court that determines the ways in which national courts should interpret and apply EU law, according to the Court itself.⁵⁷¹ The EU Treaties bestow upon it the highest, undivided competence to attribute meaning to both primary and secondary EU legislation so to advance a consistent application by national courts, through the preliminary ruling procedure.⁵⁷² The very existence of this procedure explains why it is so important what the ECJ says about the interpretation of Community law, as it is designed to secure the uniform interpretation of this law throughout the Community.⁵⁷³ As part of the judicial division of competences between the EU and national courts under said procedure, the ECJ represents the ultimate authority for deciding any question concerning the interpretation or validity of EU law, except where the answer is *acte clair* or the national court can simply rely on a relevant previous ruling by the Court of Justice (*acte éclairé*).⁵⁷⁴ Accordingly, the Court asserts authority in establishing a single meaning of EU legislation, hence, of all language versions.⁵⁷⁵ Moreover, the Court's interpretation of EU legislation has effect *ex tunc*: its interpretation matters as the only correct one in retroactive respect from the time when the interpreted rules were enacted.⁵⁷⁶

If we follow Wróblewski's third sense of "interpretation",⁵⁷⁷ we may say that the Treaties establish the ECJ's monopoly on the interpretation of Community law. Obviously, the effectiveness of the interpretation monopoly depends upon the willingness of national judges to comply with their duty to refer to the ECJ questions on the interpretation of Community law. This distribution of competences between the ECJ and national judges may be reconstructed in terms of interpretation vs. application and in terms of hard cases vs. easy cases. If the case pending before the national court is easy because the meaning of Community law is clear and non-controversial, then the national judge must enforce it; if the case is hard because there is some doubt on the meaning of a Community provision, then the

⁵⁷¹ Case 61/ 79, *Amministrazione delle finanze dello Stato v Denkavit italiana Srl*. [1980], ECR 01205, par.15, and Case 283/ 81, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health* [1982], ECR 3415, par 18.

⁵⁷² Article 267 TFEU ("preliminary rulings"). See also Tridimas & Tridimas (2004), p. 139.

⁵⁷³ Itzcovich (2009), p. 545.

⁵⁷⁴ Beck (2012), p. 225. For an interesting critique of the Court's case law on point, see Wattel (2004).

⁵⁷⁵ Engberg (2004), p. 1157.

⁵⁷⁶ Baaij (2015), p. 42.

⁵⁷⁷ See Chapter IV.2.b above.

national judge of last instance must refer it to the ECJ. However, as we will shortly see, this clear-cut distinction may not be in practice as clear as one might think.⁵⁷⁸

The principle *in claris non fit interpretatio*, mentioned in the previous Chapter, which means in general terms that if a text is clear and unambiguous it does not need to be interpreted,⁵⁷⁹ has a limited scope in the EU context, according to Van Calster, only for those situations in which all language versions are clear. Nevertheless, he claims that the ECJ has never left this approach although it tends to confirm even clear texts by examining other elements.⁵⁸⁰ Not only do other authors disagree,⁵⁸¹ but it is also questionable whether this claim can still be maintained in the light of cases in which the ECJ adopted an interpretation contrary to the clear and unambiguous wording used in all or some language versions. Therefore, this principle, as well as the reasoning of the Court in general, acquire unique characteristics due to the multilingualism of EU law.

Differently from international law,⁵⁸² neither the EU Treaties nor the secondary law contain any provisions regulating the interpretation of EU law.⁵⁸³ In the absence of any such provision, the Court is, in principle, free to choose which of the methods of interpretation at its disposal best serves the EU legal order.⁵⁸⁴ The Court itself has never set out a systematic scheme of interpretive principles, and varying approaches can be found in the case law.⁵⁸⁵ Moreover, the Court rarely expressly mentions that it has followed a particular method of interpretation of those studied by legal theorists, although it readily refers to the ‘wording’, ‘context’, ‘general scheme’ or indeed the precise words and provision in question, and the ‘purposes,

⁵⁷⁸ Itzcovich (2009), pp. 245-246.

⁵⁷⁹ Bredimas (1978), p. 15. The so-called doctrine of *acte clair*. Bengoetxea et al (2001), p. 55. See also Lenaerts & Gutiérrez-Fons (2013), pp. 7 and 46, and Derlén (2018).

⁵⁸⁰ Van Calster (1997), p. 376-377.

⁵⁸¹ Łachacz & Mańko (2013), p. 83 (“the *acte clair* doctrine has a purely procedural and competence-dividing character and does not entail the CJEU’s accession to the *clara non sunt interpretanda* doctrine”). Itzcovich (2009), p. 550, claims that the Court frequently departs from the principle. See also Baaij (2018), pp. 75 and ff. and Derlén (2009), p. 146.

⁵⁸² See the Vienna Convention on the Law of the Treaties and, for an account of how the Court has used its principles, Arnull (2006), pp. 214 and ff.

⁵⁸³ Itzcovich (2009), p. 539; Luttermann (2009), p. 324. The Charter of Fundamental Rights of the European Union constitutes an exception. See Article 6(1) TEU and Title VII of the Charter.

⁵⁸⁴ Lenaerts & Gutiérrez-Fons (2013), p. 4.

⁵⁸⁵ Conway (2012), p. 147. See also Baaij (2012a), p. 217, who criticizes the Court’s lack of consistency. According to Pozzo (2015), p. 83, the examination of the case law reveals that there is no coherent theory regarding the interpretation of EU multilingual texts which could offer a safe ride for reconciling divergent language versions.

objectives and spirit' of the EU Treaties and legislation adopted under it. Unfortunately, the Court of Justice's rare declarations as to its general method are not always consistent and therefore not terribly helpful in determining the respective weight or sequential ranking which the Court attaches to the various *topoi* of interpretation. Indeed, the Court may support its reasoning and decisions with statements endorsing the most diverse interpretive approaches.⁵⁸⁶ While this might be practical for the Court, it leaves little to no guidance for national interpreters.⁵⁸⁷

Moreover, the multilingual character of EU law made it necessary for the ECJ to find solutions for questions of interpretation that were raised in connection with the inevitable differences between the language versions of legal acts applicable in disputes brought before it. Although the language of the procedure before the ECJ bears major implications on the procedure itself and determines which is the authentic language version of the judgment given, the fact that the procedure is pursued in a certain language does not mean that the EU legal acts that need to be applied are taken into account by the ECJ only in the language version corresponding to the language of the procedure. On the contrary, the ECJ has been asked to resolve questions relating to conflicting language versions of EU law provisions. The case law is not always consistent in that regard, and the Court applies different interpretation techniques in certain cases, leaving a considerable margin of uncertainty for national authorities and private parties applying EU legal acts.⁵⁸⁸ It should also be taken into account that French is the internal working language of the ECJ, which complicates linguistic matters before the Court further.⁵⁸⁹

2. Interpretive Methods in General

In order to describe the way the ECJ deals with the interpretation of multilingual legislation, it is first necessary to introduce the various methods of interpretation employed by the Court. Generally, the literature distinguishes four main interpretation methods: the literal or textual

⁵⁸⁶ Beck (2012), p. 281.

⁵⁸⁷ Derlén (2011), pp. 151-152. See also DGT (2010), pp. 137-138.

⁵⁸⁸ DGT (2010), pp. 137-138.

⁵⁸⁹ Derlén (2018), p. 352. For an illustration of how the Court works in several languages, see McAuliffe & Trklja (2018) and McAuliffe (2016). See also McAuliffe (2012), p. 203; Rideau (2007), pp. 33-34; Van der Jeught (2015), pp. 188 and ff, Sharpston (2010).

method, the historical method, the systematic or contextual method and the teleological or purposive method.⁵⁹⁰ However, other classifications are used as well. Bredimas, for instance, distinguishes only three methods (textual, subjective, functional),⁵⁹¹ while Schübel-Pfister adds the comparative law method to the four mentioned above.⁵⁹² According to others, such as Baaij, the Court tends to discount legislative history.⁵⁹³ The common ground seems to be that the Court's methods of interpretation do not depart from the traditional repertoire; including literal interpretation, contextual interpretation and teleological interpretation.⁵⁹⁴

In analyzing the Court's interpretation methods, and its reasons for preferring one method over another, this Chapter will refer to the distinction between so-called 'first-order' arguments and 'second-order' interpretive arguments.⁵⁹⁵ First-order arguments are the reasons that the Court provides for attributing a certain meaning to a legislative provision. Hence, first-order arguments equate the methods of interpretation discussed so far. 'Second-order' arguments are the Court's reasons for choosing certain methods of interpretations over others. According to Baaij, the Court's case law on multilingual interpretation offers one and the same second-order argument for picking its primary first-order argument, namely the requirement of a uniform interpretation and application of EU law. However, that requirement in itself does not indicate whether a linguistic or metalinguistic reconciliation of language versions is called for.⁵⁹⁶ That is why the issue will be reconsidered in the next Chapter, as uniform interpretation vis-à-vis a plurality of language versions seems more of a constraint or desired goal, rather than a second-order argument.

How clearly the reasoning of the Court of Justice indicates that it has followed second-order criterion of interpretation – or first-order or second-level criteria, for that matter – varies from one judgment to another. This always requires the wording to be open to more than one meaning (reached through different first-order criteria of interpretation), as otherwise there

⁵⁹⁰ See, e.g., Paunio (2013), pp. 26–27; Vogenauer (2001), p. 356; Brown & Kennedy (2000) pp. 323, 343–344.

⁵⁹¹ Bredimas (1978), p. 15

⁵⁹² Schübel-Pfister (2004).

⁵⁹³ Baaij (2018), pp. 166-167.

⁵⁹⁴ Bengoetxea *et al* (2001), p. 48; Itzcovich (2009), 538; Kutscher (1976), pp. 1-21.

⁵⁹⁵ Bengoetxea *et al* (2001), pp. 57 and 65.

⁵⁹⁶ Baaij (2015), pp. 123-126.

would be no interpretations to choose from. In this sense, the wording of the law interpreted always acts as a constraint on the Court of Justice in its interpretation of the law.⁵⁹⁷

Scholars have signaled that, in general, the Court does not appear to uphold a specific hierarchy between the interpretation methods that it uses.⁵⁹⁸ Thus, the Court has not developed a systematic approach regarding its first-order arguments.⁵⁹⁹ The assumption behind the Court's thinking here is that the 'true meaning' of a provision is disclosed only by an interpretation which has regard to all the various criteria of interpretation in the context of the dynamic development of the European Union and its legal framework.⁶⁰⁰

The discretion enjoyed by the Court in its choice between different interpretive criteria applies as well to the use of its previous decisions. Once a precedent has been set, the Court's case law often becomes the most crucial consideration. In addition, the Court may employ special legal arguments or historical or comparative criteria, primarily though not necessarily to bolster an interpretation favoured by some but contradicted by other types of arguments.⁶⁰¹

For the purposes of our analysis, the Court's interpretive arguments may be divided into linguistic (literal or textual) and metalinguistic (contextual, teleological, and others).

a. Linguistic Interpretation

From a general perspective, literal interpretation explains what a normative text conveys by looking at the usual meaning of the words contained therein.⁶⁰² Thus linguistic arguments refer to the wording of a contentious provision. More specifically, they are linked to the semantic and syntactical features of legal language, as well as to comparison of authentic

⁵⁹⁷ Sankari (2013), p. 177-178.

⁵⁹⁸ Bengoetxea (1993), p. 165; Beck (2012), p. 232.

⁵⁹⁹ See Brown & Kennedy (2000), pp. 323, 344.

⁶⁰⁰ Beck (2012), p. 232.

⁶⁰¹ *Ibid.*, pp. 232-233.

⁶⁰² Lenaerts & Gutiérrez-Fons (2013), p. 6.

language versions.⁶⁰³ Among the linguistic criteria employed by the ECJ there is the traditional one of the “proper meaning of the words,” which is at the basis of literal interpretation. This relates to the principle *in claris non fit interpretatio*, mentioned above: only when the meaning of a provision is unclear, there is need for interpretation.⁶⁰⁴ According to Beck, this translates into the Court looking at metalinguistic interpretive criteria whenever the language used is not clear or the meaning suggested by the wording of the provision conflicts with its purpose and/or the overall legislative context.⁶⁰⁵

The problem with linguistic arguments ties closely to the issue of meaning construction and the indeterminacy of language. The so-called ordinary meaning of words argument generally refers to the meaning that a member of a particular linguistic community would attribute to a word or expression in a given context. The ordinary meaning of a word may also refer to the meaning a lawyer attributes to a word or an expression. In that case, it is the ordinary meaning of those words in a particular legal language.⁶⁰⁶ According to Itzcovich, the technical meaning of legal concepts is regularly subject to controversy, it is described but also modified (“constructed”) by the legal doctrine, it may vary significantly from state to state and, within the same state, it may vary from court to court. Already in its first judgments the ECJ maintained that it is not bound by this kind of “proper meaning” of the words of the legal language, i.e., the technical meaning of the legal concepts as it results from the legal culture of the Member States. The ECJ has thus vindicated its power to create a new “proper meaning,” a meaning which is specific to Community law and which best fit to its enforcement.⁶⁰⁷ Of course, the Court is not the only actor that contributes to the creating of the autonomous EU legal meaning, as it is bound by legislative definitions and may even uphold doctrinal elaborations.

Notwithstanding the autonomy of EU legal language, linguistic reasoning is still problematic in so far as EU law is concerned because of the multiplicity of official language versions. In a context of linguistic plurality, referring to the ordinary meaning of words as an argument to

⁶⁰³ Bengoetxea (1993), p. 234. The comparison of language versions will be elaborated upon in the next section, as a self-standing interpretive method, given its prominence for multilingual interpretation.

⁶⁰⁴ Itzcovich (2009), p. 550.

⁶⁰⁵ Beck (2012), p. 281.

⁶⁰⁶ Paunio (2017), pp. 61-62.

⁶⁰⁷ Itzcovich (2009), pp. 550-551.

justify a particular legal outcome means that instead of only two (general and legal) 'ordinary' meanings, it cannot be excluded that several such meanings exist, raising important interpretive questions. To avoid the slippery slope of arguing with language, in particular with a plurality of languages, the Court frequently ties its interpretations to system and purpose. The principle of linguistic equality helps explain why the Court appears to generally favour a more dynamic method of interpretation that not only takes into account the systemic context of the provision in question, but also the purpose of the provision and the piece of legislation at issue.⁶⁰⁸

However, there are limits to that. According to Lenaerts and Gutiérrez-Fons, while it is true that an EU law provision may be interpreted in light of the normative context in which it is placed and/or in accordance with the purposes it pursues, in particular where there are certain ambiguities relating to the way in which that provision is drafted, in accordance with settled case law, contextual or teleological interpretation may not call into question the clear wording of a provision, as this would run counter to the principle of legal certainty and to the principle of inter-institutional balance enshrined in Article 13(2) TEU.⁶⁰⁹

Other authors agree in that the fundamental rule of literal interpretation is that neither a word nor a sentence may be given a meaning that they cannot bear,⁶¹⁰ as language is not infinitely malleable. It may be vague, ambiguous, and capable of meaning different things, but it cannot take any meaning an interpreter wishes.⁶¹¹ Indeed, no court asked to interpret a written provision can ignore the wording of the rule in question. The Court of Justice is no exception: the starting point for the interpretation are literal topoi revolving around the words used. Sometimes the Court specifically refers to the 'actual', 'literal', 'normal' or 'express' wording of a provision as a sufficient reason for adopting a literal interpretation or for rejecting an alternative approach. The Court has even stated that the principle of legal certainty excludes an interpretation that departs from the normal meaning of the words used, although the Court's more commonly articulated, and thus perhaps more considered, position seems to be that the interpretation it will adopt should not be too far removed from

⁶⁰⁸ Paunio (2017), pp. 61-62.

⁶⁰⁹ Lenaerts & Gutiérrez-Fons (2013), p. 7.

⁶¹⁰ Scalia & Garner (2012), p. 31.

⁶¹¹ Barak (2005), p. 24.

the wording actually used. The latter view is also more consistent with the Court's general case law.⁶¹²

Nonetheless, linguistic interpretation is certainly not the set arguments that the Court is best known for. On the contrary, on several occasions the ECJ has departed from the proper and ordinary meaning of the words; its systemic and evolutive interpretations of the EC Treaties have been so bold as to give the impression that the Court perceived its role not as that of a judge who is bound to apply the law "as it is," but as that of an autonomous political actor, which is capable of pursuing and imposing its own constitutional policy, shaping the law "as it ought to be." One may praise or criticize such judicial activism; however, it is suggested that the ordinary meaning of the words is not a conclusive argument within the ECJ's case law, but an argument that may be overridden by competing considerations, which may suggest the interpreter to adopt a more creative approach.⁶¹³ Accordingly, for Beck there are cases where the Court gives preference to the objectives of a measure over a strict literal interpretation, although it is rare for the Court to adopt a *contra legem* interpretation.⁶¹⁴

According to Paunio, the Court seems to typically employ linguistic arguments where one of the parties having submitted observations, or the referring court in the preliminary ruling procedure evoked the issue.⁶¹⁵ Other times, the Court simply skips the literal interpretation and turns immediately to the teleological method. As will be discussed later, it also happens that the Court uses the literal method only to confirm the result received through the application of the teleological approach. It is often argued that, in its earlier case law, the Court put a greater emphasis on the wording of legislative acts, while later it deviated from this approach and turned rather to the purpose of legislation. However, it cannot be said that the literal interpretation entirely disappeared from the Court's case law.⁶¹⁶

Unfortunately, therefore, it seems that there is no clear or established doctrine of literal interpretation in EU law, according to which words and phrases should always be given their plain meaning wherever possible. Thus, although the Court often expressly or impliedly simply

⁶¹² Beck (2012), p. 188.

⁶¹³ Itzcovich (2009), p. 550.

⁶¹⁴ Beck (2012), pp. 232-233.

⁶¹⁵ Paunio (2017), pp. 61-62.

⁶¹⁶ Szabados (2011), p. 6.

equates the correct meaning with the literal meaning, it retains considerable discretion to take account of other interpretive considerations. A purely literal analysis is not appropriate, in particular, if no clear meaning can be identified. There are two obvious categories, corresponding to inter- and intra-linguistic indeterminacy. The first category consists of cases where there are discrepancies between the various language versions of the text of the provision. The second category refers to the various forms of conceptual and other forms of linguistic vagueness, which exist in all legal systems. In both sets of cases the Court enjoys discretion which increases in proportion to the linguistic uncertainty, and it will seek to resolve the legal uncertainty by reference to the purpose, general scheme and/or normative status of the measure as well as the context in which it is to be applied. Furthermore, the Court itself has held that the literal meaning of a provision must be discarded if it conflicts with the purpose, general scheme and the context in which it is to be applied.⁶¹⁷

These factors have made a teleological and contextual approach by the Court to questions of interpretation not only especially well suited to the requirements of the Community legal order, but also unavoidable. The Court's general approach is to seek to interpret provisions in a way which is consistent with all (or nearly all) of the language versions. If that does not prove possible, it turns for guidance to the purpose and context of the provision. As we have pointed out above, an overriding consideration is the need to ensure the uniform interpretation of the provision concerned throughout the Member States.⁶¹⁸ Bengoetxea agrees here, noting that going beyond the literal meaning of the words means implicitly finding a sort of cross-linguistic meaning determined by other factors, notably dynamic ones: purpose, effectiveness, results. The doctrine of the autonomous meaning of the terms used by EU law, also mentioned above, can be understood in this light.⁶¹⁹

Consequently, the Court usually examines the purpose of the disputed provision.⁶²⁰ Moreover, in case of incompatibility, it reserves the right to give priority to a teleological argument even though it contradicts the literal wording.⁶²¹ The fact that the Court resorts to

⁶¹⁷ Beck (2012), p. 189.

⁶¹⁸ Arnull (2006), p. 608.

⁶¹⁹ Bengoetxea (2015), p. 209.

⁶²⁰ Łachacz & Mańko (2013), pp. 83; Conway (2012), p. 147, referring to the *CILFIT* case law.

⁶²¹ Even more concerning: "Methods of linguistic interpretation that do not make it possible to arrive at the desired result are rejected in favor of teleological methods", Robertson (2012), p. 23. In other words, the Court

teleological argumentation to correct literal interpretation has raised serious concerns regarding legal certainty.⁶²²

In practice, stating that a question requiring interpretation can hardly ever be solved by literal interpretation means two things. First, applying semiotic criteria to interpret a fragment of text may yield several alternative meanings. Even if the text might at the outset seem definitive as to its meaning, possible alternative meanings normally appear once systemic and dynamic criteria are applied to the text. Second, according to the second-order criterion of interpretation, the Court of Justice will normally give preference to the interpretation reached with – or which best complies with – systemic or dynamic criteria. Hence one can argue that when the meaning of text is problematised, the use of semiotic criteria of interpretation alone will do little to provide an interpretive solution.⁶²³

b. Metalinguistic Interpretation

As Beck indicates, metalinguistic interpretive criteria include the purpose, the overall legal context, the general scheme of the Treaties, the practicalities of applying the legislation, or, less commonly, the legislative history or comparative criteria.⁶²⁴ Since broad agreement appears to exist today that meaning is context-dependent and is not stable, it may be inferred that, multilingual or not, construing legal meaning necessarily requires looking into purpose and systemic context.⁶²⁵

The Court's main metalinguistic interpretive methods appear to be contextual and purposive. According to Baaij, the two are so deeply intertwined that they can be discussed together

“uses the purpose of the law as a safety valve when the linguistic analysis produces uncertainty or produces a result at odds with furthering the law's goals.” Solan (2014), p. 13. Or as Bredimas (1978), p. 70 puts it: “even when the ECJ finds a legislative text to be clear, it might invoke a teleological argument to contradict that clear meaning”. In the same sense, see Schilling (2010), p. 61. For the opposite opinion, i.e. that the Court would never depart from the clear wording of a provision, see Van Calster (1997), pp. 376-377, and Lenaerts & Gutiérrez-Fons (2013), p. 7.

⁶²² Šarčević (2013), p. 14.

⁶²³ Sankari (2013), p. 90.

⁶²⁴ Beck (2012), p. 281.

⁶²⁵ Paunio (2017), pp. 61-62.

under the mention of teleological method.⁶²⁶ Similarly, Paunio argues that the approach of the Court of Justice based on general and abstract purposes could be described as meta-teleological although contextual and teleological arguments are often interrelated.⁶²⁷

Bredimas notes this tandem as well, remarking that the Court often uses the legislative context to establish or articulate the legislative purpose. Regarding the latter, as stated by the Court in the *CILFIT* case, interpretation of a provision of EU law must attend to “the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.” The former method, on the other hand, interjects a provision into the context of other provisions of the instrument or of the ‘the general scheme’, i.e. the broader context of the relevant EU regulatory framework of which the instrument is part.⁶²⁸ Similarly, other authors assume that, notwithstanding the mentioning of the context and purpose together, the Court in practice tends to focus only on the teleological interpretation without reference to the context of the given rule, so that the contextual interpretation seldom provides an independent basis for taking a decision.⁶²⁹

Another point of agreement seems to be that the teleological, purposive, or functional interpretation method is the Court’s dominant first-order argument.⁶³⁰ Following McAuliffe, that teleological method of interpretation is not only a fundamental part of EU law as it is now, but has also played a large part in its development. The Court’s teleological method of interpretation has allowed it to resolve the difficulties related to the multilingual nature of EU law and deal with the problems of language and approximation in translation; and through the use of that interpretive method in the Court’s case law a new EU legal language has evolved, which somehow transcends the language in which it is expressed.⁶³¹

However, teleological interpretation is not completely detached from the linguistic level. On the contrary, judge's linguistic intuitions are necessary in selecting the purposes of the legislation; for it is the legal act to be interpreted that is the (speech) act for which the judge

⁶²⁶ Baaij (2015), p. 124; Baaij (2018), p. 168.

⁶²⁷ Paunio (2011), p. 56.

⁶²⁸ Bredimas (1978), pp. 16 and 43.

⁶²⁹ Szabados (2011), p. 9.

⁶³⁰ See, e.g. Bengoetxea, MacCormick & Soriano (2001), pp. 45, 58; Bredimas (1978), pp. 20, 77; van Calster (1997), p. 377, and Pollicino (2004), p. 289.

⁶³¹ McAuliffe (2011), pp. 113-114

is seeking an intelligible purpose.⁶³² This illustrates how teleological interpretation actually builds on, and thus depends on a literal reading of the instrument at hand. In this respect, the significance of the Court's textual interpretation of EU legislation, in relation to its teleological approach, should not be underestimated either.⁶³³

Indeed, Arnull clearly states that the view that the Court of Justice ignores the wording of Community provisions in order to pursue an agenda of its own is a parody of its approach. There are many cases where the Court has started by endeavouring by textual analysis to ascertain the meaning of the language of the relevant provision. But sometimes that does not get it very far: Community provisions are authentic in several languages and their wording is often open-textured. Recourse to other considerations, such as their spirit and general scheme, may therefore be essential to elucidate their meaning. As with all courts, the merits of the decisions reached by the Court of Justice on questions of interpretation are occasionally questionable. When it gives precedence to the wording of a provision, critics may say that insufficient regard has been paid to its spirit and the general scheme of which it forms part. When the Court gives precedence to contextual and teleological considerations, critics may say that it should have given more weight to the wording. Sometimes they are objecting more to the conclusion the Court has reached than to its reasoning. Be that as it may, in view of the range of interpretive methods developed by the Court, it is important for it to indicate clearly why it prefers one to another in cases raising difficulties of interpretation.⁶³⁴

Following Beck again, the Court's preferred method of interpretation should therefore be described as a fused or cumulative approach: when interpreting a provision of EU law the Court considers the wording of the provision, in the legal context and general scheme in which it occurs, including in particular the legislative measure containing the provision, with due regard to any relevant precedents and in the light of its purposes and objectives, including the system and objectives of the EU Treaties. The cumulative approach is evident in equal measure in the ECJ's interpretation of treaty provisions, of measures of EU secondary

⁶³² Moore (1981), pp. 293—294.

⁶³³ Baaij (2015), p. 130.

⁶³⁴ Arnull (2006), p. 620.

legislation, of international agreements, as well as of delegated legislation, and even of Commission decisions.⁶³⁵

3. Multilingual Interpretive Methods: Comparison of Language Versions

As Pescatore puts it, the unconscious wisdom of the CJEU judges has led them to treat linguistic problems specific to EU law as regular interpretation problems, which may be solved using the usual methods. What is more, multilingualism may also be used as a method of interpretation, as the comparison of language versions allows to clarify the text of the law.⁶³⁶ This happens at the level of linguistic interpretation, as was indicated above, but may well end up going beyond it, as we will see in the following pages.

In the *CILFIT* case, the Court of Justice analyzed the use of linguistic arguments in interpreting EU law, stressing that national courts should undertake a comparative study of the different linguistic versions before they decide to apply the *acte claire* doctrine.⁶³⁷ This obligation to consult and compare language versions forms a logical corollary of the idea that each version contributes to the meaning of the provision and of the principle of equal authenticity.⁶³⁸

However, the Court appears to rarely compare language versions itself,⁶³⁹ so its reasoning remains essentially monolingual. The exception to the rule is when the Court resorts to genuine comparison of language versions in order to reach a better interpretation of the norm of EU law. That would be truly multilingual reasoning.⁶⁴⁰

The literature on the interpretive strategy of the Court that takes into account the multilingual nature of EU law is definitely scarce. Only a subset of those dealing with its interpretive techniques mention this issue, while an even smaller subset of authors elaborate on it. Yet, since the Court has explicated that language versions must be taken into account when national courts interpret and apply EU legislation, a need for exposing a coherent

⁶³⁵ Beck (2012), p. 284.

⁶³⁶ Pescatore (1984), p. 1008.

⁶³⁷ *CILFIT v Ministero della Sanità*, 1982, par. 18.

⁶³⁸ Šarčević (2002), p. 248. See also Gambaro (2007), p. 13.

⁶³⁹ Baaij (2015).

⁶⁴⁰ Bengoetxea (2011), pp. 109-110.

methodology of multilingual interpretation persists. Despite the lack of a transparent strategy towards interpreting language versions from the Court's interpretation canons, scholars have attempted to derive some order from the Court's case law;⁶⁴¹ some more systematically,⁶⁴¹ while others have taken a more abstract or selective approach.⁶⁴²

a. The Requirement of Comparison of Language Versions

The case law of the Court provides evidence of a long history in underscoring that the interpreter of EU legislation must look to each language version. In the *Van der Vecht* case in 1967 and the *Stauder* case in 1969, the Court determined that a uniform interpretation and application of EU law “makes it impossible to consider one version of the text in isolation” but, instead, requires interpreting it “in the light of” the versions in all languages. In its judgment in the 1996 *Kraaijeveld* case, the Court articulated that EU law cannot be determined based on only one particular language version. In the *Régina v Bouchereau* case in 1977 and many subsequent judgments, the Court repeated that all language versions of EU instruments, collectively, “must be given a uniform interpretation.” In other words, the interpretation of a provision of community law entails a comparative language analysis as the Court explicated in the *CILFIT* case. In the *Nowaco* case in 2006, the Court added that this mode of interpretation has become “settled case-law.” In the spirit of language equality, the Court's interpretation underscores that the interpreter must take into account all, not just some, language versions. The previously cited *EMU Tabac* case illustrates this point.⁶⁴³

Bobek has systematized the three governing principles of language-versions comparison: (i) the prohibition of reading one language version in isolation; (ii) the prohibition of majoritisation; (iii) overcoming possible discrepancies by taking into account other methods of interpretation, especially the logic, system and purposive reading of the normative text. The first two are logical consequences from the principle of equal authenticity of language versions. They are, however, not able to answer the question: what is the ‘correct’ meaning?

⁶⁴¹ See Baaij (2018), Baaij (2015) and Baaij, (2012a).

⁶⁴² Van der Jeught (2018), Pacho Aljanati (2015), Derlén (2009), Bobek (2008) and Schübel-Pfister (2004).

⁶⁴³ Baaij (2015), p. 21. Some of these “famous” cases will be mentioned in the next Chapter, and the hypothesis on the settled case law will be checked.

Theoretically, the principles of comparative linguistic interpretation, together with the principle of equal authenticity of all the linguistic versions could, if taken to the extreme, be interpreted as meaning that the content of a Community legal norm is not contained in, for example, its French or English version, but only in the aggregate of all the authentic language versions. Correct literal interpretation of any single piece of Community legislation which is drafted in more languages must thus involve the parallel reading of all of the language versions.⁶⁴⁴

However, it is practically unfeasible not only for EU citizens but also for the Court of Justice and national courts to compare all twenty-four language versions to determine the meaning of a legal provision. The practical difficulty has been noted by Advocate Generals, who observed that this requirement involves a disproportionate effort and puts a practically intolerable burden on the national courts.⁶⁴⁵

Moreover, the Court's actual interpretation methods often fail to live up to its own interpretation canons that underscore the need for interpreting EU legislation in light of all language versions.⁶⁴⁶ The CJEU quite often simply does not realize, or chooses to ignore, that other language versions of a law may diverge from the version in its working language, which is the French version. In cases in which the Court is not alerted by the parties to the fact that other language versions diverge from the French one, it is unlikely that a different version will be consulted.⁶⁴⁷ The relatively few cases where language comparative analysis is carried out by the Court are those where the parties have signalled some of the possible deviations in language versions or have referred to the unequivocal terms used by the provision in question. The Court seldom raises the language issue of its own motion, possibly because the Court itself has failed to detect possible discrepancies. Apparently, the Court has not incorporated the practice of comparing language versions as a matter of routine or as a norm of interpretation, contrary to the very directives the Court enacted for the domestic courts in

⁶⁴⁴ Bobek (2008), pp. 2-4.

⁶⁴⁵ Doczekalska (2014), p. 14. See par. 65 of the opinion of Advocate General F. G. Jacobs delivered on 10 July 1997 in the Case C-338/95 Wiener S.I. GmbH v Hauptzollamt Emmerich, ECR 1997, I-08151; par. 99 of the opinion of Advocate General Stix-Hackl delivered on 12 April 2005 in the Case C-495/03 Intermodal Transports BV v Staatssecretaris van Financiën, ECR 2005, I-08151; see also Doczekalska (2009), p. 364.

⁶⁴⁶ Baaij (2018), p. 70.

⁶⁴⁷ Schilling (2010), p. 59. See also Bengoetxea (2011), p. 97.

the *CILFIT* case.⁶⁴⁸ There is a clear double standard in that the Court itself does not consistently analyze all language versions in its reasoning, which it requires from the national courts.⁶⁴⁹

However, the ECJ seems to suggest that the duty to consult other language versions of EU law is limited to cases in which there are reasons to question the accuracy of one language version. It has, nonetheless, never explained the extent or the practical application of this 'criterion of doubt'. On the other hand, some ECJ case law seems to indicate that it is mandatory in all instances to compare the various language versions of EU law, irrespective of whether the language version in question is clear and unambiguous.⁶⁵⁰ In fact, after *CILFIT* the Court started to distance itself from the criterion of doubt for comparison purposes (ie the necessity for a doubt to exist in at least one of the language versions for comparison to be justified), up to the point where it affirmed that all versions had to be consulted in order to determine whether the norm was clear or not, in the *Ferriere Nord* case. However, the Court later came back to the criterion of doubt in the *EMU Tabac* case.⁶⁵¹

According to Bengoetxea, if we apply Wróblewski's classification of sources of interpretive arguments (must-sources, should or ought-sources, may-sources and ought-not sources) to the comparison of language versions at the Court of Justice, multilingual analysis is a must-source only when the parties have raised such argument and derive different claims from the comparison of different versions, and in that case, the Court will be expected to look at all versions and not only those invoked by the parties. Multilingual comparison is a should-source when the parties have made reference to the clear meaning of the words in only one language version but have not compared the versions. In that case, the Court should look at all language versions to see if the meaning strikes out as clearly as the parties claim. Comparison of language versions is only a may-source when the parties have not raised any claim based on ordinary meaning or literal interpretation. Comparison of language versions is never an ought-not argument.⁶⁵²

⁶⁴⁸ Bengoetxea (2011), pp. 109-110.

⁶⁴⁹ Paunio (2013), p. 37. See also Baaij (2015), p. 54.

⁶⁵⁰ Van der Jeught (2018), pp. 13-14.

⁶⁵¹ See Derlén (2009), pp. 33 and ff.

⁶⁵² Bengoetxea (2011), p. 114.

b. The Reality of Comparison

Consequently, one would expect that a comparison of language versions is a typical element of the Court's interpretation of EU legislation. The data in Baaij's study demonstrate the contrary in two respects: in reality the Court rarely includes a comparative language analysis of EU legislation, and when it does, it often considers only a limited number of EU languages. First, with regard to the Court's limited use of comparative language analyses, between 1960 and 2010, the Court adopted 8,716 judgments. In only 246 of these judgments the Court's reasoning was found to include an explicit comparison or an assessment of more than a single language version. Otherwise stated, on average a mere 2.8% of the Court's cases are 'language cases', as per Baaij's analysis. Second, when the Court explicitly compared language versions, he found that it often neglected to include all versions. At other times, the Court simply referred to a comparative language analysis without mentioning any specific language versions. In only four of its judgments between 1960 and 2010 the Court explicitly stated that it compares versions that were "authentic" or "in force" at the time of adoption. In fact, a quantitative assessment of the Court's own routines exhibits only minimal consistency. Between 1960 and 2010, the Court allegedly compared all language versions in only 1.4% of all judgments that it delivered.⁶⁵³

Van der Jeught agrees in that, although the ECJ does sometimes implicitly refer to all the language versions of the provision(s) at issue, the most commonly used technique is, in current practice, that of a limited linguistic comparison whereby the provisions in the language of the case (which have given rise to the linguistic issue in the first place) are compared with a number of other language versions of the same provisions. In practice, these reference languages are most often widely-known languages. Other languages are sometimes included in the comparison, but there is no clear predictable pattern.⁶⁵⁴

Schübel-Pfister points out that the language of the case is often that of the version where the interpretive problems originated. The Court will logically consult this version. Then, she states

⁶⁵³ Baaij (2015), pp. 55-57. See also Baaij (2018), Baaij (2012a) and Baaij (2012b).

⁶⁵⁴ Van der Jeught (2018), p. 13.

that in some cases the parties or the AG pointed at divergences that the Court subsequently chose to ignore.⁶⁵⁵ According to Baaij, a plausible explanation for the Court's incoherent interpretation practice are its practical or budgetary constraints, not the *acte clair* doctrine, which was only mentioned in 29.89% of the language-comparison judgments he analyzed.⁶⁵⁶ Although the Court might be expected to be better equipped to compare more versions more often than national courts, the 24 current official languages may be too many, so the Court seems to consider it sufficient to include a "significant number" of language versions when interpreting a provision of EU law.⁶⁵⁷

For Bengoetxea, the comparison of language versions therefore seems to be more of a burden than a tool to clarify points of interpretation. At best, it will confirm an interpretation reached by other means. The test is probably to ask whether the comparison of language versions adds any value, or is rather a requisite of procedural justice requiring the Court to address the points raised by the parties. From examples of its reasoning, it seems that the Court draws little value from comparison.⁶⁵⁸

However, Baaij is very clear in affirming, citing recent examples from the Court's case law, that one cannot rely on a textual analysis of one language version alone. In fact, if language versions are not compared, one might end up relying on a language version that retroactively turns out to be incorrect.⁶⁵⁹ In fact, the Court not only uses comparison of language versions as an interpretive technique, it also solves linguistic divergences among language versions. While in the former case multilingual considerations are just *obiter dictum*, in the latter the linguistic issue is decisive for the case.

4. Multilingual Interpretive Methods: Divergences across Language Versions

Obviously, if all language versions of a given provision of the Union are to be consulted, situations of diverging meanings will occur. This might depend on human error. The obvious

⁶⁵⁵ Schübel-Pfister (2004), pp. 214-222.

⁶⁵⁶ Baaij (2015), p. 58.

⁶⁵⁷ Baaij (2018), pp. 77-78.

⁶⁵⁸ Bengoetxea (2011), p. 111.

⁶⁵⁹ Baaij (2018), p. 76.

question then is how language versions with diverging meanings should be reconciled. Naturally, this question is not unique to European Union law. It has previously been discussed in international law, where several different methods of reconciling diverging meanings have been discussed. Traces of such methods can be found in the case law of the European Court of Justice, including preference for the majority meaning, preference for the clear meaning and preference for the literal meaning. However, the Court prefers no single method. While there is no denying that the context and purpose are important tools for the Court, this claim is an oversimplification of the approach of the Court. The Court does not always resolve diverging meanings by turning away from the wording to the context and purpose. On the contrary, sometimes the wording of the different language versions can be used to reconcile divergences. The Court of Justice employs a variety of different techniques to reconcile diverging meanings, and no single approach can be found. While this might be practical for the Court, it leaves little to no guidance for national courts trying to perform the same feat.⁶⁶⁰

Yet, if we compare the amount of divergence cases to the total amount of cases solved by the Court over the decades, we see that it is so little that multilingualism cannot be said to be a frequent cause of litigation.⁶⁶¹ According to Piris, there haven't been many cases before the Court in which the differences among language versions of a legal act have been decisive for the resolution of the case (around 25 cases until 2001).⁶⁶²

According to Van der Jeught, conversely, there is extensive case law of the ECJ on the issue of linguistic discrepancies between language versions of EU law. The Court first established its position half a century ago, when it was asked for the first time to rule on this issue. Since then, the ECJ uses a more or less standardized formula whenever a linguistic discrepancy arises and consistently recalls that 'provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all the languages of the European Union. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and the

⁶⁶⁰ Derlén (2011), pp. 151-152.

⁶⁶¹ Gallas (2001), p. 125.

⁶⁶² Piris (2005), p. 479.

purpose of the rules of which it forms part'.⁶⁶³ Baaij has identified a total of 30 judgments in the ECJ case law in which this stock phrase is used.⁶⁶⁴

Baaij's analysis, the most complete, concluded that, between 1960 and 2010, the Court included a comparison of language versions in the argumentation of 246 of its judgments. These, in turn, produced a total of 170 judgments in which the Court observed discrepancies between language versions of the provision in question. Of the 246 judgments, in 44% the Court detected a linguistic discrepancy that it treated as an interpretive problem. In 25% the Court discovered discrepancies but did not treat these as problems, but rather as a tool, drawing an argument in support of its preferred interpretation.⁶⁶⁵

However, divergences may go unnoticed. Although in older times it could be easier for the judges to look at all the language versions,⁶⁶⁶ today language divergences are not always easily discerned at the ECJ, notwithstanding its translation service and multilingual legal staff. Language discrepancies may in particular be discovered when those working on the case at the ECJ have proficiency in various languages: their mother tongue, French (the internal working language of the ECJ), as well as the language of the case. The probability of such a multilingual setting is particularly high in some Advocate General's chambers (Advocate Generals draft their Opinions in several languages, in principle in French, English, German, Italian or Spanish). Likewise, translation of procedural documents as well as judgments and opinions may reveal language discrepancies. As a general rule, the issue is raised by the parties (in direct actions) or the national courts referring the case for a preliminary ruling (most probably also on the request of the parties themselves).⁶⁶⁷

An examination of the Court's judgments on divergences will allow for a better vision of the nature of the linguistic problems that the European legislator must solve, which were not satisfactorily solved in the case brought before the Court.⁶⁶⁸

⁶⁶³ Van der Jeught (2018), p. 11.

⁶⁶⁴ Baaij (2015).

⁶⁶⁵ Baaij (2012a), p. 219.

⁶⁶⁶ Kutscher (1976), p. I-19.

⁶⁶⁷ Van der Jeught (2018), p. 17. See also Bengoetxea (2011), p. 97 and Čapeta (2009), p. 10.

⁶⁶⁸ Gallas (2001), p. 123.

a. Different Types of Divergences?

Scholarly writing on the Court's overall interpretation methods offers a hypothesis worth examining. Various scholars suggest that these methods turn on the type of legislative instrument of which the pertinent provision is part. This may be applied to the why divergences are solved differently, in accordance with the type of divergence. For example, some postulate that the Court is inclined toward a literal approach with inconsistencies between language versions when the legislative instrument has a highly technical character.⁶⁶⁹ Furthermore, when considering the interpretation of EU Treaties, others suggest that a teleological approach is generally more appropriate due to the lack of explicit definitions.⁶⁷⁰ Similarly, yet others submit that this is relevant for directives since these instruct Member States to achieve certain results rather than to enact specific legal rules. Interpretation of directives, therefore, focusses on the directive's objectives rather than formal legal concepts, they reason.⁶⁷¹ The foregoing hypotheses could possibly justify an *a contrario* reasoning with regard to regulations. That is, regulations and instruments containing definitions of distinct legal concepts may more likely yield a literal interpretation.⁶⁷²

Schübel-Pfister tries to explain the existence of different approaches by pointing to the various procedures in which divergences between language versions play a role. In infringement procedures between the Commission and the Member States and in procedures between two EU institutions, a duty to compare is unproblematic because it does not automatically place the same burden on ordinary EU citizens. Prescribing such a duty in an action for annulment or a preliminary procedure, however, would mean that full comparison is expected of citizens as well. In addition, she points to certain peculiarities of the case at issue which may influence the approach used. In a preliminary procedure a question posed by the referring court may already concern a divergence noted by that court, which means

⁶⁶⁹ See Bredimas (1978), p. 48; and Bengoetxea (1993), p. 234.

⁶⁷⁰ See Brown & Kennedy (2000), pp. 325, 34.

⁶⁷¹ Hesselink (2001), pp. 37-39.

⁶⁷² Baaij (2015), p. 131.

that the criterion of doubt no longer plays a role. In the end, however, Schübel-Pfister admits that her attempts at explaining the different approaches used by the ECJ only account for part of the cases.⁶⁷³

Pacho's analysis, conversely, focused on judgments that deal with divergences in the Court's case-law between 2007 and 2013, i.e. between the accession of Romania and Bulgaria and that of Croatia. This limited timespan is justified due to the depth of her linguistic analysis of each and all of the relevant judgments. Her objectives were to examine the use of comparison (i.e. either to reconcile diverging language versions or as a tool to support the Court's preferred interpretation), the interpretive methods applied by the Court and the type of linguistic problem underlying the divergence. From a linguistic point of view, she then classified divergences into structural-grammatical, lexical-conceptual and lack of consistency.⁶⁷⁴

Following Baaij, finally, we can find two types of discrepancies in the case law: those deriving from translation errors and those stemming from differing semantic scopes. While he states that the CJEU seems to treat the former as textual imperfections that do not have to be taken into account and thus sticks to the literal interpretation, the latter apparently causes the Court to resort to teleological methods.⁶⁷⁵

Therefore, it seems that there are several ways in which divergences have been classified in the literature: based on what type of legislation they are featured in, based on what procedure they are dealt with, based on what language problem they stem from, or based on how they are reconciled. From all these, the latter seems to be the least descriptive and thus most relevant for building a theory of interpretation of multilingual EU law.

⁶⁷³ Schübel-Pfister (2004), pp. 341-343.

⁶⁷⁴ Pacho (2015), pp. 117 and ff.

⁶⁷⁵ Baaij (2012a), p. 229.

b. Reconciliation of Divergences

In the literature, various attempts have been made at describing the approaches the ECJ uses to deal with the interpretation of divergences between equally authentic texts. Most authors emphasise that the ECJ employs different approaches when it is confronted with linguistic divergences, according to the weight which is given to the different interpretation methods. However, there are also authors who claim that the ECJ uses only one approach for all cases involving divergences.⁶⁷⁶

Stevens and Bredimas, for example, take the view that as soon as the ECJ is confronted with a divergence “the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part”. Both authors emphasise the limited value that the ECJ attaches to the words of the provision to be interpreted.⁶⁷⁷ There are also authors who put a great deal of emphasis on context and purpose, but at the same time recognise this is not the only approach the ECJ employs. Jacobs states that interpretation problems caused by differences between language versions “can only rarely be resolved by purely linguistic means”.⁶⁷⁸ Vismara also emphasises objective and context for the purpose of interpretation.⁶⁷⁹

Most authors agree that the ECJ uses a variety of approaches. Arnull, for example, states that the ECJ normally uses the purpose and context of a provision as guidance, after the it has come to the conclusion that it is impossible to interpret in a way which is consistent with all (or nearly all) the language versions. However, occasionally, the ECJ works the other way around and employs the teleological method first, the outcome of which is then checked against the different language versions.⁶⁸⁰ Van Calster observes that the ECJ uses the same methods of interpretation when confronted with diverging language versions, as in cases in which this problem does not play a role. First the ECJ tries to find a solution through “thorough semantic analysis” and it does not abandon the language versions immediately when a divergence is discovered, as Stevens and Bredimas claim. Only when the textual method is

⁶⁷⁶ Derlén (2009), pp. 36 and ff.

⁶⁷⁷ Stevens (1967), p. 277-278; Bredimas (1978), p. 37-40.

⁶⁷⁸ Jacobs (2003), p. 304.

⁶⁷⁹ Vismara (2006), pp. 67-68.

⁶⁸⁰ Arnull (2006), pp. 608-611.

unsuccessful the ECJ turns to the systematic and teleological methods.⁶⁸¹ Schübel-Pfister claims that the ECJ uses different approaches: while divergences are sometimes solved by a purely textual interpretation; usually, the result of the textual interpretation is confirmed by using other methods of interpretation which do not, however, change the original outcome. In other cases, the ECJ gives decisive weight to other interpretation methods, such as the contextual, teleological and historical method. She does not discern a uniform approach, but concludes that the ECJ uses various arguments and interpretation methods depending on the peculiarities of the case.⁶⁸² Paunio, on her part, notes that when the Court ventures into the issue of 'ordinary meaning' or linguistic comparison, it does so to highlight discrepancies before moving on to other metalinguistic arguments.⁶⁸³

To Lenaerts and Gutiérrez-Fons, the fact that the Court tends to use linguistic arguments in cases of diverging language versions only to strengthen the contextual and/or teleological interpretation, upon which its reasoning primarily rests, is compatible with the principle of linguistic equality.⁶⁸⁴ However, Van Calster radically disagrees, considering not only that in any case the Court principally starts with a semantic analysis of the different texts, but also that taking purpose into consideration as the first interpretive element would mean denying equal authenticity.⁶⁸⁵

The most systematic attempt to classify the approaches of the ECJ to the reconciliation of divergences between language versions has been undertaken by Derlén, who distinguishes between at least three approaches that the Court may take. The first is the classical reconciliation approach, which entails that the ECJ performs a proper comparison of the language versions and then reconciles any divergences detected on the basis of a certain principle, such as preference for a clear meaning, without discussing the purpose separately. The second approach is reconciliation followed by an examination of the purpose. Finally, the

⁶⁸¹ Van Calster (1997), p. 377.

⁶⁸² Schübel-Pfister (2004), pp. 233-246.

⁶⁸³ Paunio (2017), pp. 61-62.

⁶⁸⁴ Lenaerts & Gutiérrez-Fons (2013), p. 11.

⁶⁸⁵ Van Calster (1997), p. 375.

third approach skips the linguistic interpretation by concentrating only on the teleological method.⁶⁸⁶

According to Baaij, the Court's literal interpretation method to solve divergences appears in several variants, of which two come to the fore: the majority and the clarity variants. According to the majority variant, the meaning expressed in the majority of language versions is preferred or, as otherwise stated, the one or few language versions that effectively deviate must be read in accordance with the other versions. The clarity variant entails that the meaning of less vague or less ambiguous language versions is preferred.⁶⁸⁷

However, the majority rule, although it may appear logical, must be applied cautiously.⁶⁸⁸ Schübel-Pfister claims that, although the rule is regarded as prohibited in EU law and the ECJ has said so in several judgements, it is nevertheless used.⁶⁸⁹ Jacobs criticises it because it could in theory mean that the interpretation of the same piece of legislation could differ depending on whether the interpretation takes place before or after the accession of new Member States. However, he has acknowledged that the Court may take numerical consideration into account, where they support what appears on other grounds to be the best interpretation. In particular, it has often relied on the consistency of a majority of language versions to justify the conclusion that the version or versions in the minority contained drafting errors, or that the ambiguity inherent in those versions must be resolved in a particular way.⁶⁹⁰

For Bobek, divergences cannot be solved on the basis of simple reassertion of how many languages lean in one direction and how many in the other, i.e. by some form of language 'voting'. The divergence is bridged by resorting to a third principle, which allows us to overcome the stalemate: one is allowed to disregard the conflicting language versions in favour of the systematic or purposive reading of the legal act, which is independent of the conflicting texts.⁶⁹¹ Beck underlines the irrelevance of the majority argument, as in cases of

⁶⁸⁶ Derlén (2009), pp. 36 and ff.

⁶⁸⁷ Baaij (2015), pp. 124-125, Baaij (2018), p. 168.

⁶⁸⁸ Derlén (2009), p. 40.

⁶⁸⁹ Schübel-Pfister (2004), p. 267.

⁶⁹⁰ Jacobs (2003), p. 304.

⁶⁹¹ Bobek (2008), pp. 2-4.

divergence literal analysis will simply be inconclusive for it cannot provide a clear and uniform interpretation.⁶⁹²

Nonetheless, Baaij insists further on language inequality by suggesting that the English language version is most often the version that the Court deems correct. In this sense, when language versions diverge, a uniform interpretation of EU law would most likely be one that agrees with the meaning of the English version. Unless future testing demonstrates otherwise, this predication could amount to a *de facto* interpretation canon of the Court. While he admits that this unsettles the rule of equal authenticity, which maintains that all language versions carry equal weight, an English- first canon does not seem improbable to him.⁶⁹³

Legal scholars generally conclude that the teleological, purposive, or functional interpretation method is the Court's dominant first-order argument, both in general and specifically in dealing with diverging language versions.⁶⁹⁴ Nonetheless, it would be helpful if the Court made clear how it ascertains the purpose of the legal act. A detailed reasoning is generally missing, as is an effort to demonstrate that the purpose can be deduced from all the language versions, or why it can be deduced from only some of them.⁶⁹⁵

Baaij's quantitative analysis of the Court's case law between 1960 and 2010 demonstrates that each time the Court employs teleological first-order arguments in resolving diverging language versions, it combines these with systematic or contextual arguments.⁶⁹⁶ He also found a total of 18 judgments between 1960 and 2010 where the Court preferred the meaning of a small minority of language versions through teleological analysis. Conversely, in this period not once did the Court have the majority of language versions override what it considered the purpose of the instrument. This tentatively suggest that the teleological approach is normally the Court's primary second-order argument when language versions diverge.⁶⁹⁷ However, Baaij underlines as well that an empirical reassessment signposts that

⁶⁹² Beck (2012), p. 174.

⁶⁹³ Baaij (2018), p. 85. This will be texted in the next Chapter: see VI.3.d.

⁶⁹⁴ See, e.g. Bengoetxea, MacCormick & Soriano (2001), pp. 45, 58; Bredimas (1978), pp. 20, 77; van Calster (1997), p. 377, and Pollicino (2004), p. 289.

⁶⁹⁵ Schilling (2010), p. 60.

⁶⁹⁶ Baaij (2015), p. 124; Baaij (2018), p. 168.

⁶⁹⁷ Baaij (2015) and (2018); Ainsworth (2014), p. 48.

the role of the Court's literal or textual approach should not be underestimated. First, a comprehensive analysis of the Court's case law confirms that the Court's literal interpretation methods play a larger role than generally assumed in scholarly writings. In case of discrepancies causing interpretation problems, although the Court employed a teleological approach more often than a literal one when these discrepancies appeared in EU treaties and especially directives, it did not have such an inclination towards teleological interpretation when addressing diverging language versions of secondary legislation that are relatively technical or have a direct effect.⁶⁹⁸

However, the hard reality at the end is that, when language versions really diverge, one must make a choice. On the level of interpretation it is, as a rule, doubtful which of the conflicting versions requires an interpretation and, hence, which norm-formulation has the meaning to which the meaning of the other text has to be adapted. This removal, although problematic in theory, is imposed on the decision-maker by the duty to decide the case.⁶⁹⁹ Moreover, the need for a uniform interpretation and application requires establishing a single or uniform meaning for all language versions. Consequently, when the Court decides that the meaning of one or more language versions diverges from the "actual" meaning of the legislative instruments at hand, some language versions will have to be given a different meaning than citizens were justified to expect.⁷⁰⁰

5. Conclusions

In conclusion, when it comes to interpreting EU legal texts, the Court of Justice mainly rules on cases where national courts found a doubt. For this purpose, it uses both linguistic and metalinguistic methods. Linguistic methods look at the semantics of legal texts (language versions), as pragmatics are constrained by the uniformity of meaning which derives from the unity of the speech act through which all language versions are approved together. Given this, the Court includes the comparison of the semantics of multiple language versions in the

⁶⁹⁸ Baaij (2015), pp. 128-132.

⁶⁹⁹ Wróblewski (1985), p. 247.

⁷⁰⁰ Baaij (2012b), p. 15.

linguistic level of interpretation. Although this should be a compulsory step for the interpretation of EU law, as per the Court's requirements towards national courts, there are clear constraints in terms of time and resources that prevent full comparison from being a constant. In fact, it has been shown that the Court compares language versions in only a small fraction of its cases and that, even when it compares, it does not normally use all the language versions of the relevant legislation. It seems that the Court could *de facto* rely on the initiative of the parties and the linguistic competence of its internal staff in order to compare. Through comparison, the meaning of the EU legal norm may be clarified, or may be further complicated when divergences across language versions are found.

However, linguistic interpretation is not the only interpretive technique the Court has at its disposal. Metalinguistic considerations, mainly contextual and purposive linked together, constitute the Court's famous teleological method. Recourse to said method may be favoured by EU law's characteristics, being supranationally negotiated and multilingual. Linguistic plurality provides additional reasons for moving beyond the linguistic level, mostly due to the need to solve divergences, into the teleological realm. This is particularly relevant for divergences, where the principle of equal authenticity of all language versions does not theoretically allow to discount the wording of some of them.

Moreover, when divergences happen, the distinction between first and second order interpretation canons becomes relevant in order to solve them. Second-order interpretation canons allow us to choose from the first-order interpretation canons the one that are best fit. In this sense, the Court does not limit itself to one set of interpretive arguments, but tends to combine different types, either to confirm or correct itself. This process is flexible and there are different opinions in the literature as how the court does it and what is the relative weight of the different types of arguments.

Finally, I agree with the authors who believe that there should be an explicit obligation for national courts to refer to the ECJ in case of divergences, as a part of the criterion of doubt. Nonetheless, the absence of any systematic consideration on what happens after a divergence is found and solved by the Court, when there were clearly incompatible wordings across language versions, is concerning. In this case, it is presumed that the wording has always been compatible. This may be enough to solve the legal puzzle at hand, but it is surely

not doing any favours to the uniformity of EU legislation, at least from a textual point of view for future reference, unless said legislation is corrected so that all language versions are aligned. While there have been corrections of legislation on a case-by-case basis, it would help to have an official procedure for it.

Chapter VI: Case-law Analysis

Mixed-method empirical analysis of selected judgments by the Court of Justice. Through doctrinal analysis and the Curia database all relevant cases of language version comparison are identified. Subsequently, qualitative content analysis allows for the development of a coding frame and classification into categories of cases. Some quantification and statistical analysis ensue. Aspects of interest to be taken into account, so far missing in the literature, are issues such as a systematic study of who takes the initiative to compare language versions, what language versions tend to be taken into account by the judges, or to what extent a distinction between different types of divergences may be made.

1. Introduction

This Chapter presents original research conducted by the author with the aim of identifying and analysing all CJEU judgments where comparison of official language versions of EU legislation is carried out. Therefore, this is an empirical case-law analysis, combining qualitative and quantitative methods for a better understanding of an underexplored aspect of EU law and judicial reasoning. It takes the discussion back to a fundamental, concrete level, after the high levels of abstraction of the precedent Chapter, where a literature review on multilingual reasoning by the Court of Justice was carried out.

The aim of this Chapter is to take some hypothesis put forward in the previous Chapter and verify how they obtain in the Court's language cases, as well as to explore more broadly how multilingual arguments are used in its reasoning. This means that I purport to identify all cases in which the Court compared linguistic versions of EU legislation, classify them and analyze the categories and their relationships. This will be done from a novel approach, building on the few previous studies on the topic, which are not exhaustive. Particular aspects of interest to be taken into account in the analysis of the judicial reasoning, in view of their novelty, include a systematic study of who takes the initiative to compare language versions, whether the language version that corresponds to the language of the case is always taken into account by the judges, or else what versions are resorted to for comparison, to what extent

a distinction between different types of divergences may be made, or what kind of language problems stand on the way of the uniform interpretation of EU law.

This empirical study will concentrate on the so-called 'context of justification' rather than the 'context of discovery'.⁷⁰¹ As Sankari puts it, what the Court of Justice states as its interpretation of EU law is final – up for review only by the Court of Justice itself; but, in applying these interpretations of EU law we have nothing else to go by than the judgments themselves.⁷⁰² In other words, we have no systematic way of knowing what happened behind the closed doors, where many multilingual actors may influence the outcome of judgments in different moments of the deliberation and drafting process, including before and after.⁷⁰³

One does not know, therefore, whether in all judgements discrepancies among language versions were indeed absent or whether they were unnoticed or ignored.⁷⁰⁴ In fact, that is one of the main theoretical issues when dealing with problems of interpretation of multilingual law: the identification of discrepancies between language versions of EU law. This is an issue with many levels, which could be articulated as follows: first, only so many cases of discrepancies are noticed and taken to court; second, only a fraction of those arrive to the Court of Justice's level (presumably very few, since the primary adjudication on the interpretation of EU law is made at the national level)⁷⁰⁵, and, finally, only so many of those discrepancies are really disruptive of the application of the law. Regarding any unnoticed or unnoted discrepancies at the level of the CJEU, it must be precised that clarifying those issues goes beyond the scope of this thesis, which only focuses on the text of the judgments of the Court.

Some overarching questions that this research seeks to answer is to what extent the Court does as it says when it comes to multilingual reasoning (i.e. how the Court applies to itself the requirement to compare language versions that it bestowed upon national courts as per the

⁷⁰¹ See Bengoetxea (1993), p. 44, as quoted in Baaij (2018), p. 13.

⁷⁰² Sankari (2013), p. 8.

⁷⁰³ For a detailed account of how the Court of Justice works as a multilingual institution, see McAulifee (2016) and her project website "[The Law and Language at the European Court of Justice Project](#)".

⁷⁰⁴ Baaij (2012b), pp. 14-16.

⁷⁰⁵ Derlén (2009), p. 8: "Obviously the importance if the European Court of Justice to the development of Community law cannot be overemphasized. However, the day-to-day interpretation and application of Community law actually takes place in the many and various courts and tribunals of the Member States".

CILFIT case-law⁷⁰⁶), as well as whether multilingual reasoning is used as an interpretive tool on its own right (clarificatory power) or rather stems from divergences across language versions (cause of litigation). For these purposes, the raw material are judgments by the Court of Justice only, within the preliminary ruling procedure, actions for annulment and infringement by Member States.

It is not only interesting to see when the Court decides to compare language versions, but also which language versions it uses for the comparison: total or partial comparison, comparison of the language versions that were official at the time of the adoption of the particular provision, or the language versions available at the moment of the dispute. After all, it may be argued that a language version that did not exist at the time of adoption of the relevant legislation should not be considered as “original” as the other language versions. Other factors that can explain variation are human factors: time constraints, linguistic competences of the judges and the AG.

The literature on multilingual reasoning by the CJEU is definitely scarce. Only a subset of those dealing with its interpretive techniques mention this issue, while an even smaller subset of authors elaborate on it. Yet, since the Court has explicated that language versions must be taken into account when national courts interpret and apply EU legislation, a need for exposing a coherent methodology of multilingual interpretation persists. Despite the lack of a transparent strategy towards interpreting language versions from the Court’s interpretation canons, scholars have attempted to derive some order from the Court’s case law;⁷⁰⁷ some more systematically,⁷⁰⁷ while others have taken a more abstract or selective approach.⁷⁰⁸

That is why the present contribution will shed light in two different orders of issues: not only the multilingual reasoning of the Court, but also the methodology for empirical analysis of the Court’s case law more in general. In fact, this type of legal empirical methodology would benefit from a more solid foundation in legal scholarship,⁷⁰⁹ as we can see from the meagerness of methodological explanation in the previous comprehensive study on the

⁷⁰⁶ C-283/81, *CILFIT e Lanificio di Gavardo SpA v Ministero della Sanità* [1982] ECR 3415.

⁷⁰⁷ See Baaij (2018), Baaij (2015) and Baaij, (2012a).

⁷⁰⁸ Van der Jeught (2018), Pacho Aljanati (2015), Derlén (2009), Bobek (2008) and Schübel-Pfister (2004).

⁷⁰⁹ See Schebesta (2017), Hall & Wright (2008), Shapiro (2008).

topic.⁷¹⁰ The challenge lies in finding ways to tie reproducible categories in the coding of judgments to the words used by the Court in its reasoning.

In substance, all relevant cases of language version comparison are identified through literature review and, mostly, keyword searches on Curia and other databases. Subsequently, qualitative content analysis allows for the development of a coding frame and classification into categories of judgments. Aspects of interest to be taken into account for the coding of judgments, in view of their novelty, are the systematic study of who takes the initiative to compare language versions, what language versions tend to be taken into account by the judges, or to what extent a distinction between different types of divergences across language versions may be made. Moreover, other aspects that have been previously considered by the literature will be tested against the largest existing dataset of this kind (almost 500 datapoints), including the importance of linguistic (literal) vs metalinguistic (teleological) interpretive canons to solve divergences across language versions, or different types of language problems found through comparison. Finally, quantification of judgment categories will complete this mixed-method approach by providing quick visualization of patterns over time.

2. Case Selection and Classification

Cases have been selected based on a two-tiered empirical search system, after a preliminary phase of screening from existing doctrinal studies. Baaij's analysis, the most complete, is based on a statistical overview of 50 years of the Court's case law on linguistic discrepancies, between 1960 and 2010.⁷¹¹ He concluded that, in those years, the Court included comparison of language versions in the argumentation of 246 of its judgments.⁷¹² My dataset, which nearly doubles in size Baaij's, provides a good ground for testing his results and building a more solid methodology. There are three possible (overlapping) explanations for the difference in size of the datasets: a) the Court has resorted to comparison more intensively in

⁷¹⁰ Baaij (2015), Baaij (2012a).

⁷¹¹ Baaij (2012a).

⁷¹² *Ibid.*, p. 219.

recent years, when compared to previous years, as my dataset extends up until the end of 2018; b) my searches have produced more results due to more thorough use of keywords; c) slight differences in the scope of analysis of the two datasets. The first explanation has been tested and confirmed to explain most of the difference by the data, while the other two remain dubious, in light of Baaij's lack of detailed methodological explanation.

The first phase of data collection consisted of filtered searches on the Curia database,⁷¹³ using the terms: "language version", "linguistic version", "language", "linguistic", "divergence", "comparison", "wording" and the names of the official language versions in a series of iterations with different combinations thereof (including Boolean operators to cater for different forms of the same lexeme) so as to limit the number of results of each search to a feasible sample to be screened manually. Only judgments by the Court of Justice were selected, excluding staff cases,⁷¹⁴ since the beginning of its operation until the end of 2018. The searches were carried out in English for the sake of language familiarity and affinity with previous studies.

Subsequently, a more complex query was launched, where all judgments delivered by the Court of Justice were searched with a script for the occurrence of the terms above close to each other. This was done in order to overcome the shortcomings of Curia's search form, where terms can only be searched for together when occurring next to each other, or else in the whole document. The second phase of case selection confirmed the results of the first phase, with only few anecdotal additions. The total amount of judgments thus found was 450. Some judgments contained several instances of comparison,⁷¹⁵ yielding a total of 485 datapoints.

Finally, aside from the 485 instances of comparison, 55 other judgments have been found where the keywords were present, but due to other actors proposing the comparison of language versions, without the Court picking up on it.

⁷¹³ [Curia search form](#).

⁷¹⁴ The reason for this exclusion is the cases not being related to legislation of general application. They were, in any case, only six judgments, which makes them easily negligible for the purposes of this study.

⁷¹⁵ C-816/79, C-90/83, C-406/92, C-130/95, C-210/97, C-174/00, C-498/03, C-169/04, C-316/05, C-340/08, C-473/08, C-230/09, C-65/09, C-192/13 P, C-197/13 P, C-103/14, C-688/15, C-24/16, C-48/16, C-293/16, C-670/16, C-239/17 and C-287/17.

Once the cases were selected, the classification phase began. For this purpose, a literature review of socio-legal methods (mostly from the social sciences in general, as the legal literature on empirical methods for case-law analysis is scarce) showed that the most widely used categorizing strategy in qualitative data analysis is coding. In coding, the data segments are labelled and grouped by category; they are then examined and compared, both within and between categories.⁷¹⁶ Since the goal of the analysis was to systematically describe the meaning of qualitative data (judicial reasoning), qualitative content analysis seemed like a good fit. Moreover, it had three main advantages: qualitative content analysis reduces data, it is systematic, and it is flexible. The coding frame was developed to tag parts of the material (judgments) in an abductive way: some of the categories were adapted from theoretical knowledge from the literature and the categories used in the relevant previous studies, while others were data-driven.

In fact, to start with, the method requires the examination of the material to counter the danger of looking at it only through the lens of one's assumptions and expectations. The new categories thus developed were integrated with the preexisting categories, which were also refined in the process. As is often the case in qualitative research, this was an iterative process, going through some of these steps repeatedly, modifying the coding frame, checking its validity and reproducibility. This is a test of the quality of the category definitions: they should be so clear and unambiguous that the second coding yields results that are very similar to those of the first coding.⁷¹⁷

Because of the large amount of material involved and to avoid cognitive overload, only a small percentage (approximately 10% - 50 cases) of the judgments was used in building the coding frame. Having selected a varied sample (different types of procedure, different years, different languages involved), main categories (codes) were mostly developed in a concept-driven way with data-driven subcategories (subcodes).⁷¹⁸ This varied slightly among categories, as will be specified in the next sections.

⁷¹⁶ Maxwell & Schmiel (2014), pp. 24-25.

⁷¹⁷ Schreier (2014), pp. 170-171.

⁷¹⁸ *Ibid.*, pp. 175-176.

After several iterations through the sample of 50 judgments to build and test the coding frame, it was consolidated as including both compulsory codes, together with optional codes. While the former were mostly theory- or concept-driven, coming from the literature instead of stemming directly from the judgment's text, with an exhaustive list of possible subcodes; the latter were more data-driven, i.e. they were triggered by the Court's language, which means that the list of subcodes was open-ended and more were added as the coding went on.

As can be noticed, the high amount of judgments to be analyzed and the complexity of the frame of analysis could easily lead to the aforementioned cognitive overload. In order to avoid this, a specific software for qualitative content analysis has been used. MAXQDA was chosen because of its unique integration of quantitative, statistical functionalities within the qualitative analysis.⁷¹⁹ Once the judgments were entered into the software, MAXQDA allowed for complex retrievals and queries to tag the material efficiently.⁷²⁰ After the coding itself (developing the coding frame, refining it through several iterations over the test sample and effectively tagging all documents), MAXQDA allowed for the transformation of qualitative data and/or codes into quantitative representation for exploratory review or statistical analysis.⁷²¹ This calculation of code frequencies arguably turned the design of the analysis into a so-called mixed-methods design, i.e. a design that combines qualitative and quantitative features.⁷²²

The chosen methodology has thus allowed to overcome the methodological limitations of previous contributions on the issue of multilingual judicial reasoning by the Court of Justice. Empirical and quantitative methods effectively address the limitations of traditional legal scholarship, including a lack of precision, subjectivity, a surplus of anecdotal evidence, and a tendency to succumb to herd behavior.⁷²³ This claim for transparency and reproducibility in legal scholarship is related to the surge of empirical methods in other social disciplines, notably political science, but whose potential the legal discipline is falling short of using.⁷²⁴

⁷¹⁹ For more information on MAXQDA's functionalities and research potential, see Kuckartz & Rädiker (2019).

⁷²⁰ Gibbs (2014), pp. 279-285.

⁷²¹ Saldaña (2016), pp. 26-27.

⁷²² Schreier (2012), pp. 239-240.

⁷²³ Šadl & Palmer Olsen (2017), p. 330.

⁷²⁴ Schebesta (2017).

Qualitative data/text/content analysis has the advantages of resembling the classic legal scholarly exercise of reading a collection of cases, finding common threads, and commenting on their significance, as well as bringing the rigor of social science to our understanding of case law, creating a distinctively legal form of empiricism.⁷²⁵

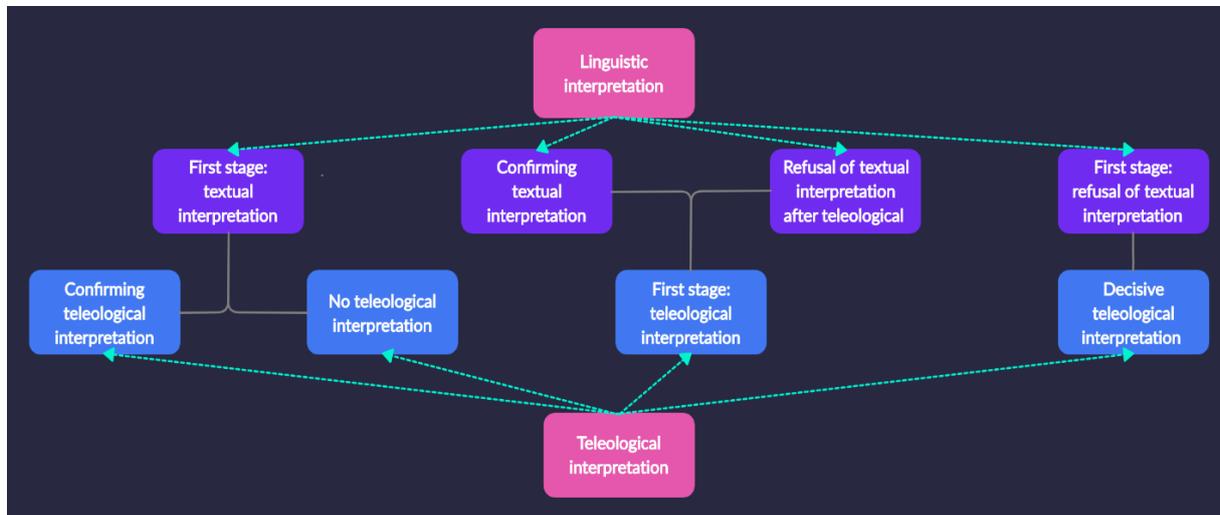
a. Classification: compulsory codes for quantitative analysis

The compulsory categories (or codes, in pink at top and bottom, with subcodes in blue/purple at center, which acted as classifiers within each category) applied to every case and are detailed in the following figures.

Aside from the more “factual” fact that these were the codes used for each and every judgment of the dataset, together with the so-called case variables (year, title, language of the case, type of procedure, type of legal act compared), and a binary code for presence of language of the case (yes/no), what they have in common is their theory-driven matrix, their exhaustive list of subcodes, and their related potential for quantification. In fact, section 3 will combine several of these codes and variables to produce quantitative results.

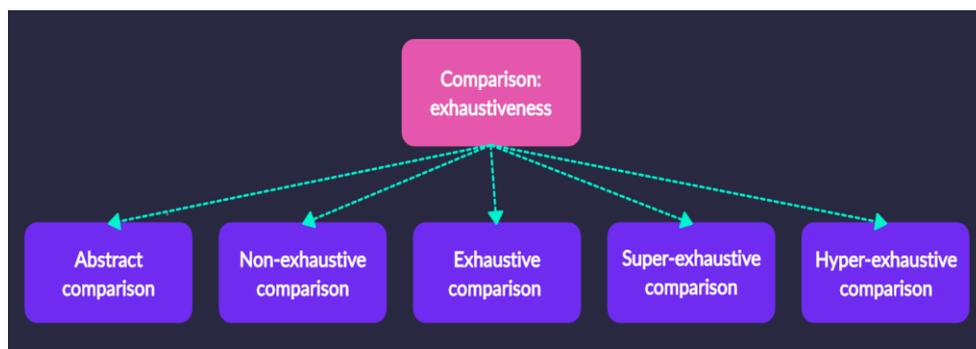
⁷²⁵ Hall & Wright (2008), p. 64.

Figure 1: linguistic interpretation vs teleological interpretation



The codes for linguistic (or textual) and teleological (or metalinguistic) interpretation were built in parallel, combining order of appearance with relative relevance. As is evident from the previous Chapter, they were a necessary part of the analysis from the outset (theory-driven codes). The subcodes were first inspired by the literature, then refined to match the Court’s reasoning and the purposes of this analysis. This figure illustrates their correspondance: linguistic interpretation as a first step may lead either to a confirming teleological interpretation or be left alone (no teleological interpretation). Conversely, an interpretation that starts with teleology may either be followed by a confirming textual interpretation or to a refusal of textual interpretation. The absence of textual interpretation is logically impossible in this context, since all cases were selected based on their including language version comparison, which entails an inspection of the textual level. Finally, whenever teleological interpretation intervened to correct or supersede the textual level, linguistic interpretation was always coded as refused in the first stage. This was a complex normative choice to make, as sometimes the Court elaborates on the textual level, as opposed to refusing it outright, draws some conclusions from it, and then moves to the teleological method by declaring an insufficiency of the literal method that was not apparent until that moment. In the end, these cases where the textual level receives some attention before moving on to the teleological level were still coded as refusal of textual method, for the sake of consistency and simplicity.

Figure 2: types of comparison



This code was also theory-driven, in the sense that there are general discussions in the literature that ponder what language versions the Court tends to compare. It was also used by Baaij, although with different subcodes. The ones here have been put together in order to reflect all possible behaviours of the Court when doing language comparison vis-à-vis the language versions, in a manner that allows to discriminate as many levels of detail as possible.

Figure 3: results of comparison and types of divergence

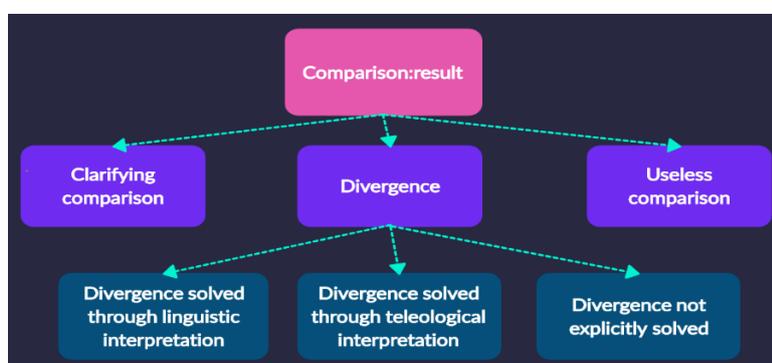
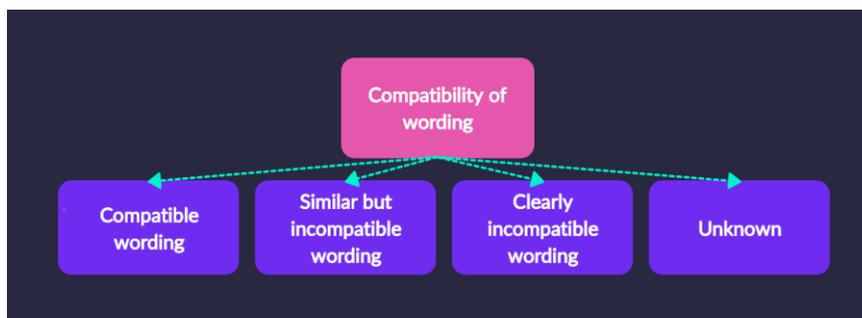


Figure 3 showcases codes that stem from debates in the literature. The novelty of this approach is to account for the possibility of a “useless” comparison, along with comparison as a tool and comparison or hindrance (i.e. source of divergences). Instead of conceiving it as yielding a binary outcome, this code adds a third way to cover the cases where the Court does engage in comparison (or says it has), but then discards it for not shedding any new light on the meaning of the norm, without it revealing a divergence either.

Then, the subcode divergence becomes a parent code for the different types of divergence, which have been classified according to how they are solved. Although this may seem too descriptive, it has been preferred to other solutions proposed in the literature due to its being clearer and easier to attach to the Court's words. Other classifications, such as problematic/unproblematic, syntactic level/semantic scope, etc. were considered too interpretive. Once again, to the two obvious ways to solve divergences (textually or teleologically), a third possibility has been added, embodying cases where the Court takes note of the divergence but discards the need to solve it by moving to other arguments.

Figure 4: compatibility of wording



Finally, figure 4 portrays the different possibilities regarding the compatibility of the wording of language versions. It must be noted that the Court does not always give its explicit assessment on this, so this is the code with the highest risk of interpretivism and subjectivity. However, it was deemed necessary to better evaluate the Court's behavior in combination with other codes, as will be shown in the next section. The presence of the four subcodes is justified by a core of clear cases each: the two extremes of the compatibility spectrum are self-evident, then a middle ground was added for cases where the Court admitted that a divergence was of little significance, plus a fourth code for "unknown" wording was required when the Court mentioned the language versions without referring to their wording. Surrounding those cores, the grey areas were broader than for other codes. Unfortunately, these differences seemed too evanescent to be recorded.

b. Classification: optional codes for qualitative analysis

Additionally, there were a series of codes (with subcodes) that were used only when triggered by specific wording, with relation to: actors other than the Court who compared, types of teleological interpretation, other interpretive arguments used by the Court (including possible second-order interpretative canons), mention to translation in relation to language versions, precedents for multilingual reasoning and language problems that underlie divergences.

These codes, with their corresponding subcodes, will be explored in detail in section 4. The list of subcodes does not purport to be exhaustive, as it was compiled as cases came up. This, together with their limited presence over the whole dataset, has made quantification difficult. An exception is the code on actors other than the Court who compare, which is explored quantitatively in the next section. However, that code may not be classified as compulsory, as the Court does not always mention where the incentive to compare may have come from. Moreover, its subcodes are non-exhaustive, in the sense that to the obvious candidates who compared in their dialogue with the Court of Justice (referring courts, AGs, parties, Commission), others were added as the Court mentioned them (Parliament and Council). This has a limited scope in that the list of actors may not be enlarged much further than this, but the code still shared more conceptual similarity with other optional codes than with compulsory codes. This notwithstanding, it has been included in the quantitative analysis in order to relate to the debates in the literature presented in the previous Chapter.

Finally, the inclusion of codes on the Customs Code and the Common Customs Tariff, as well as the Sixth VAT Directive and VAT Directive 2006/112, were required by the widespread presence of these pieces of legislation in the language comparison cases: 51 instances of comparison regarding customs, 47 on the Sixth VAT Directive and 22 on the other VAT Directive. Moreover, codes on the language versions used in the comparisons were included, together with codes on the precedents cited by the Court in support of their multilingual reasoning.

3. Quantitative Results

The following quantitative results stem mainly from the compulsory codes, which were mostly generated *ex ante* and correspond to categories developed and addressed in the literature, together with the case variables (year, language of the case, type of procedure and type of legal act compared). These are aspects that were incorporated in the research questions from the outset and thus had to be necessarily tackled by the coding frame.

When considering the following quantitative results, it must be borne in mind that the unit of analysis was the case (judgment). However, there are a few instances in which one judgment contained several comparisons, in which case each of the comparisons has been considered as a separate datapoint, giving a total of 485 data points. Those cases containing several comparisons are C-816/79, C-90/83, C-406/92, C-130/95, C-210/97, C-174/00, C-498/03, C-169/04, C-316/05, C-340/08, C-473/08, C-230/09, C-65/09, C-192/13 P, C-197/13 P, C-103/14, C-688/15, C-24/16, C-48/16, C-293/16, C-670/16, C-239/17 and C-287/17. As we can observe, the trend of more comparisons in one case has increased over the years. This seems to correspond to a general trend in language version comparison.

a. How Often is Comparison Actually Used?

Indeed, my preliminary hypothesis of the progressive increase in the number of cases of comparison in the Court's case law over time, which would justify the difference in size between my database and Baaij's, as pointed out above, has been confirmed by the data. Table 1 below shows the number of judgments issued by the Court of Justice where comparison of language versions was used, divided in groups depending on the decade of delivery, with a constant increase over time.⁷²⁶

⁷²⁶ Please note that the decade of 2010s does not include 2019.

Table 1: language comparison per decade

| Decade of delivery | Judgments |
|--------------------|-----------|
| 1960s | 5 |
| 1970s | 19 |
| 1980s | 47 |
| 1990s | 61 |
| 2000s | 131 |
| 2010s | 222 |
| TOTAL | 485 |

Once we add to the analysis the total amount of judgments delivered each year by the Court of Justice, we can see how the proportion of “language cases” has indeed increased over time not only in absolute terms, but also relatively. Those figures, however, are not readily available. The annual reports on judicial statistics from the Curia website only cover down to 1997,⁷²⁷ while the figures resulting from searches in Curia and EUR-Lex vary greatly. There are also variations among different Curia reports referring to the same year. The following figures have been obtained from the Curia search form, taking into account the year of delivery. The following table and graph represent the percentages of language comparison judgments delivered by decade, displaying a steady increase over time, as well as the total percentage of comparison by the Court (3.93%)⁷²⁸:

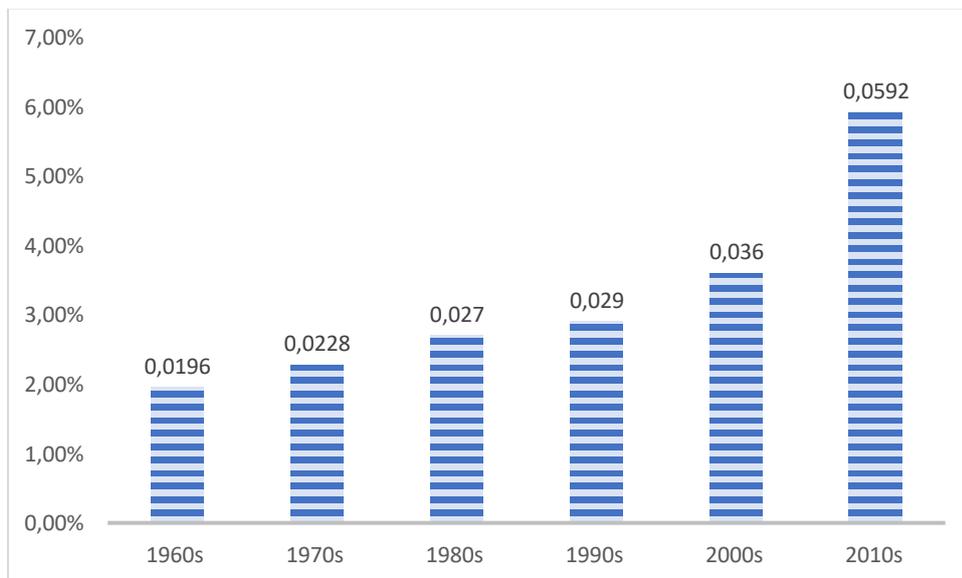
⁷²⁷ [Curia's annual reports.](#)

⁷²⁸ According to Baaij (2015), the Court only compared in 2.8% of the cases between 1960 and 2010. The figure yielded by this study for that period is slightly higher: 3.07%.

Table 2: percentage of “language cases” by decade

| | Total amount of judgments | Language comparison judgments | Percentage |
|-------|---------------------------|-------------------------------|------------|
| 1960s | 255 | 5 | 1.96% |
| 1970s | 832 | 19 | 2.28% |
| 1980s | 1,738 | 47 | 2.70% |
| 1990s | 2,105 | 61 | 2.90% |
| 2000s | 3,641 | 131 | 3.60% |
| 2010s | 3,748 | 222 | 5.92% |
| TOTAL | 12,319 | 485 | 3.93% |

Figure 5: percentage of “language cases” by decade



Out of all the instances of comparison, the most recurrent procedure is, as expected, the preliminary ruling, in 82.3% of cases. Actions for failure to fulfil obligations (7.6%), appeals (5.2%) and actions for annulment (4.7%) are much less represented. Compared to the Court's general judicial statistics, as shown in its annual reports,⁷²⁹ this seems to tend towards an overrepresentation of preliminary rulings and underrepresentation of the other types of procedure, particularly appeals.

Regarding the types of act compared, Directives feature most often (48.2% of instances of comparison), followed by Regulations (30.9%), then Commission Regulations (9.1%). The language versions of the Treaties are compared only in 1.9% of the language cases. Finally, Commission and Council Decisions score 1.0% each.

b. Who Compares?

According to Paunio, the Court seems to typically employ linguistic arguments where one of the parties having submitted observations, or the referring court in the preliminary ruling procedure evoked the issue.⁷³⁰ This point is also made by Schilling and Bengoetxea, who claim that the Court rarely realizes that other language versions may diverge from the version in its working language, which is the French version, unless being alerted by the parties to the case.⁷³¹

Indeed, the empirical analysis shows that in most cases (277, i.e. 57.11% of the dataset) the Court noted other actors mentioning language versions, comparing them, or referring a question about the wording of a provision in a way that elicited comparison. Of course, this result has the limitation of relying on a self-reported reliance on other actors by the Court itself, which may not reflect all instances in which the comparison was not first carried out on its own motion. For a final confirmation of this result, a more comprehensive analysis of a myriad of documents, such as AGs opinions, orders of reference, parties' submissions, and

⁷²⁹ [Curia's annual reports.](#)

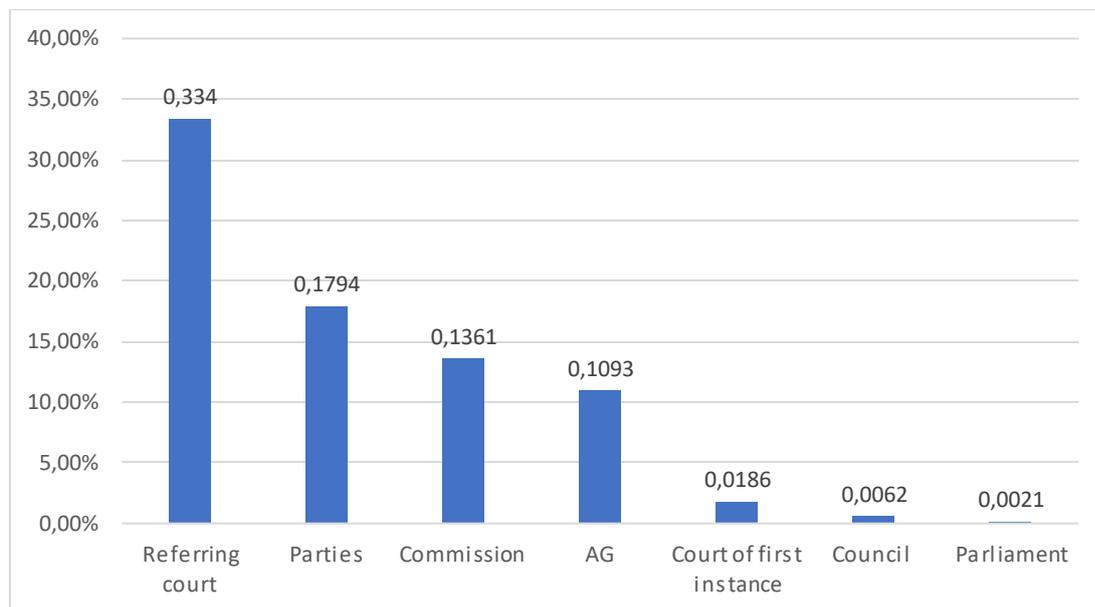
⁷³⁰ Paunio (2017), pp. 61-62.

⁷³¹ Schilling (2010), p. 59. See also Bengoetxea (2011), p. 97.

other background documents would have to be carried out. This, however, goes beyond the scope of this thesis and is thus left for future research.

What can be known and analysed with the available data is what actors are reported by the Court to have induced it to compare language versions. It must be noted that these actors are not mutually exclusive, as the Court may refer to several on them in the same case.

Figure 6: percentage of “language cases” where the Court reports the influence of other actors on comparison

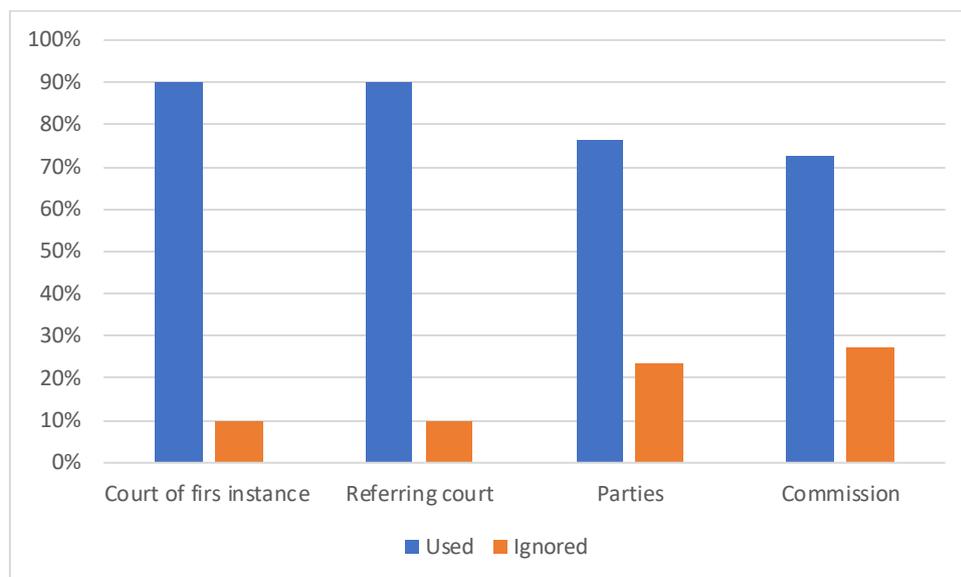


The referring court may induce the comparison either by asking about the wording of a provision, without comparing as such (in 23.09% of all comparison cases), or by comparing itself (in 5.15% of the cases), or both (5.15%).

Finally, there is a series of 55 cases where actors other than the Court proposed a comparison, but the Court did not follow through. These silences may be relevant, following Sarmiento: one should pay attention to silence within the special nature of preliminary references, which are unlike ordinary litigation.⁷³² Without limiting ourselves to preliminary rulings, the following graph demonstrates whom the Court ignores the most when they propose a comparison of language versions:

⁷³² Sarmiento (2012), pp. 302-305.

Figure 7: influence of different actors on the Court’s comparison of language versions



The Court has never self-reportedly ignored the Advocate General when it comes to comparison of language versions. The court of first instance for appeal cases, together with the referring court for preliminary rulings, are understandably given substantial weight in their comparison arguments, due to their role of counterparts in the judicial dialogue. From the point of view of strategic litigation, it could make sense that the parties (including both parties in national proceedings, proceedings before the court itself and interveners) are the most ignored actor, as they may indulge into “language version shopping” for the sake of advancing their case. However, surprisingly enough, the Commission is ignored even more often. This may be tentatively explained by the Commission’s recurrent use of the same arguments, which could lead to a loss of persuasiveness. However, further investigation is required to verify this claim.

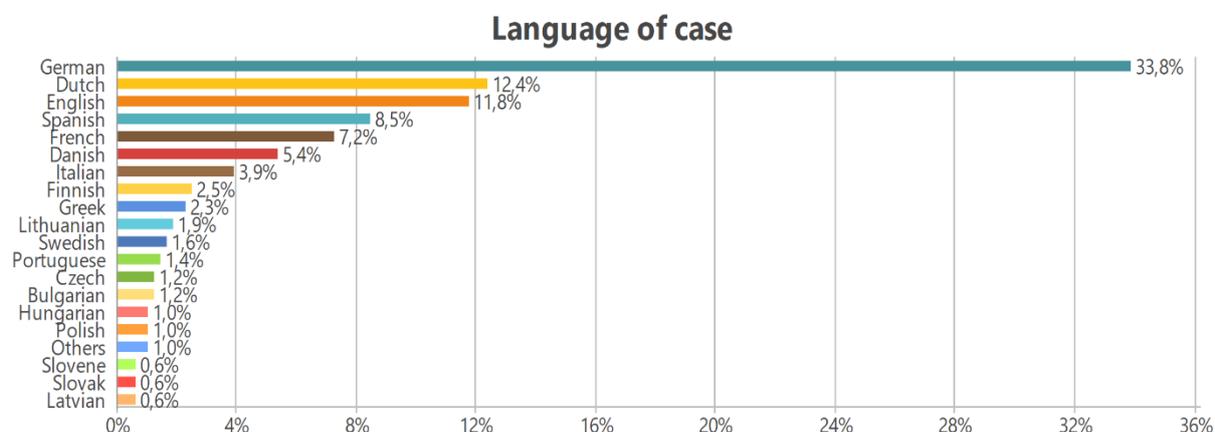
c. What Languages are Compared?

So we have seen that it does matter who brings the case of multilingual comparison before the Court of Justice. And depending on that factor, the language of the case will be chosen.⁷³³

⁷³³ For more information on the language of the case, see the [official website of the Court of Justice](#).

The following chart shows what languages were most often present as language of the case in comparison cases:

Figure 8: language of case in cases of comparison



As we can see, there is a clear predominance of German, which had already been recorded by Baaij.⁷³⁴ This can be explained by the large number of language comparisons in preliminary ruling cases coming from Germany, since the percentages for the language of the case in preliminary rulings are very close to the general percentages displayed in Figure 8 just above and, as we have already seen, preliminary rulings constitute 82.3% of cases of language comparison. The other types of procedure are less represented overall and display different language patterns.

The 37 cases of actions for failure to fulfil obligations against Member States follow the official language of the corresponding Member State. Spanish accounts for an 18.9% here, followed by German, French and English (each with 16.2%), then Italian (10.8%) and Dutch (5.4%).

Actions for annulment represent only 23 out of 485 datapoints. The predominance of French (30.4% of cases), versus other languages (Spanish and German with 17.4%, Dutch with 13%, Greek and English with 8.7%) may be explained by their usual interinstitutional nature.

⁷³⁴ Baaij (2015), p. 59.

Finally, there are 12 appeal cases, the majority of which were led in Spanish (58.3%), followed by English (12.5%) and Italian (8.3%).

In most cases (61.6%), the language of the case will be taken into account for comparison purposes. But what languages, aside from the language of the case, are mentioned by the Court when comparing language versions of EU legislation?⁷³⁵

As expected, the languages other than the language of the case used most often were, first, French (in 43.50% of the dataset) and, second, English (in 40%). Italian follows suit with a 32.78%, while German was used in 27.42% of the comparisons, and Spanish in 24.95%. The scholarly debate on the use of English as a *de facto* institutional lingua franca has been illustrated in the first Chapter. The next section will unravel the quantitative basis to support or refute such hypothesis as applied to the multilingual reasoning of the Court of Justice.⁷³⁶

d. The Role of English

For each decade,⁷³⁷ the following table (Table 3) portrays how often the English language version was used for comparison (whenever English was not the language of the case). In a second table (Table 4), the cuts in between year groups have not been assigned uniformly, but rather based on the successive enlargements that the Union has undergone,⁷³⁸ in order to test how enlargements may have affected the use of English at the Court of Justice.

⁷³⁵ This refers to an explicit mention by the Court in the text of the judgment, since we cannot know in what language the judges (and other actors who contributed to the legal reasoning that the judgment reflects) were really reasoning when they considered the applicable provisions and then drafted the judgment.

⁷³⁶ Baaij's empirical analysis results into support to the English-dominance hypothesis. See Baaij (2015), pp. 54 and ff.

⁷³⁷ Except for the decade of the 1960s, when English was not yet an official language of the EU.

⁷³⁸ For a timeline of the enlargements, see the [official website of the EU](#).

Table 3: frequency, by decade, of use of English for comparison of language versions

| | Language comparison judgments | English used in comparison | Percentage |
|-------|-------------------------------|----------------------------|------------|
| 1970s | 19 | 5 | 26.32% |
| 1980s | 47 | 13 | 27.66% |
| 1990s | 61 | 22 | 36.07% |
| 2000s | 131 | 45 | 34.35% |
| 2010s | 222 | 109 | 49.09% |
| TOTAL | 480 | 194 | 40.42% |

As we can observe, the use of English in comparisons has consistently increased throughout the decades. The second table also shows a steady increase in the percentage of language comparisons that include English, with the exception of the period corresponding to the second enlargement. In this regard, it must be borne in mind that English was added as an official language in the first enlargement.

If we want to test whether the presence of English was particularly affected by the accession of the Nordic countries in 1995 or the big enlargement of 2004, as hypothesised by some,⁷³⁹ the calculations show that 27.85% of the comparisons pre-1995 used English, while in the period between 1995 and 2004, 35.11% of the comparisons included English, and after 2004, 45.27% did so. This seems to indicate that the greatest increase in the use of English for comparison of language versions in the case law of the Court of Justice took place after the big enlargement of 2004.

⁷³⁹ For further discussion on this point, see Chapter I.4.b above.

Table 4: frequency, by enlargement period, of use of English for comparison of language versions

| | Language comparison judgments | English used in comparison | Percentage |
|--------------------------------|-------------------------------|----------------------------|------------|
| 1st enlargement (1973-1980) | 24 | 9 | 37.5% |
| 2nd enlargement (1981-1985) | 24 | 4 | 16.67% |
| 3rd enlargement (1986-1994) | 31 | 9 | 29.03% |
| 4th enlargement (1995-2004) | 95 | 36 | 37.89% |
| 5th enlargement (2004-2006) | 42 | 13 | 30.95% |
| 6th enlargement (2007-2013) | 114 | 48 | 42.10% |
| 7th enlargement (2013-2018) | 149 | 75 | 50.34% |
| TOTAL | 480 | 194 | 40.42% |

However, has this really been to the detriment of other languages, in particular, French?

Figure 9: percentages of English v French for language version comparison by decade

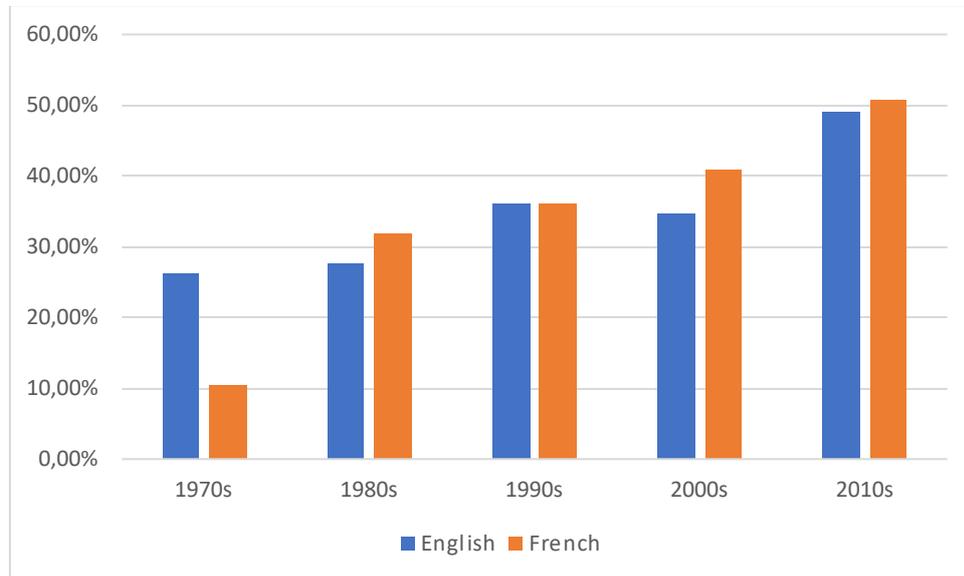
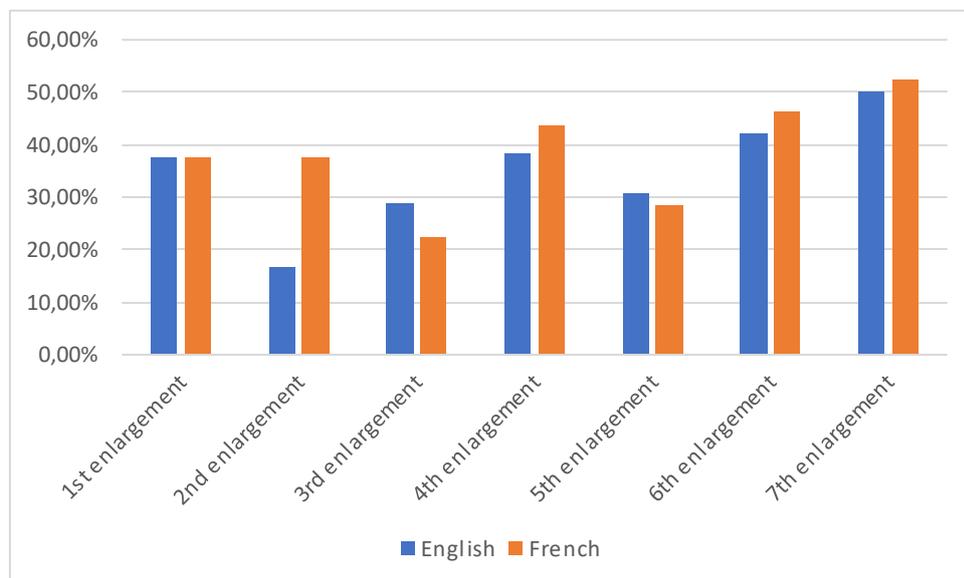


Figure 10: percentages of English v French for language version comparison by enlargement period



As we can observe, in terms of decades, the only period when the use of English for comparison is higher than French is in the 70s, or when the UK and Ireland joined the Union. In terms of enlargements, mostly during the 3rd one (1986-1994), when Portugal and Spain

acceded and only slightly during the big enlargement of 2004 (5th enlargement). Therefore, we may conclude that English has not generally overthrown French as the language most resorted to for comparison. At least in the case law of the Court, and at least when it comes to explicit mention in its judgments.

To conclude, the English-first interpretive canon advocated by Baaij, as a way of solving divergences among language versions,⁷⁴⁰ has been tested through a “proxy”, a cross-analysis of the following codes: i) use of English-language version, ii) divergences solved at the literal level, iii) language versions with incompatible wording, as there does not seem to be any direct indicator of which language version is preferred over others in most cases of divergence, except where the wording is clearly incompatible.⁷⁴¹ Out of the two cases where these conditions align (English is present in a comparison of language versions, either as language of the case or not; there is a divergence solved at the linguistic level, not metalinguistic, and the wording of the language versions is deemed incompatible), one does not consider English separately from the other language versions;⁷⁴² whereas the other, if anything, gives preeminence to French.⁷⁴³

e. Types of Comparison

Baaij used the categories “*ex nunc* languages” and “*ex tunc* languages” to classify comparisons. According to his findings, the Court included all language versions official at the time of adoption of the legal act (*ex tunc*) in 15 judgments, a 6% of his dataset. In contrast, in

⁷⁴⁰ Baaij (2018), p. 85. See Chapter V.4.b above.

⁷⁴¹ As has been underlined throughout this work, no language version may take precedence above the others, lest to hinder the principle of equal authenticity of the official language versions, a logical consequence of the equality of Member States, their citizens and languages. The Court, in fact, would never openly declare that one version prevails over the others.

⁷⁴² In case C-9/79, *Koschniske*, the Court held: “A comparison with the other versions of the provision in question reveals that, in all the other versions, a word has been used which includes equally male and female workers (“ægtefællen”, “Ehegatte”, “spouse”, “conjoint”, “coniuge”).”

⁷⁴³ From case C-74/23, *GSV*: “As regards the versions of TARIC code 7019 59 00 10 in the other EU languages, with the exception of the Hungarian language version, it is clear that they refer expressly, like the French language version set out in paragraph 26 of this judgment, to a ‘tissu à maille ouverte’ (open mesh fabric) and not to ‘gazes et toiles à bluter’ (bolting cloth). For example, the Spanish language version refers to ‘tejidos de malla abierta’, the German language version to ‘offenmaschige Gewebe’, the English language version to ‘open mesh fabrics’, the Polish language version to ‘tkaniny siatkowe o otwartych’ and the Swedish language version to ‘öppna maskor’.”

33 judgments (13%), it included more languages than the ones in force *ex tunc*. He also found 75 cases (31%) in which the Court simply said that it was comparing all versions, without mentioning which ones. In all other cases, the Court compared less than the number of language versions *ex nunc*, or said that it was comparing most or several language versions.⁷⁴⁴

Based on his analysis after data-driven refinement, the following categories have been developed:

- Abstract comparison: the Court mentions all language versions, the majority thereof, or just language versions in general, without citing any of them in particular. The version of the language of the case may be referred to;
- Non-exhaustive comparison: at least one language version other than the language of the case is mentioned, but fewer than or different from those languages that were official at the time of adoption of the legal act at hand;
- Exhaustive comparison: all language versions that were official at the time of adoption are mentioned;
- Super-exhaustive comparison: language versions are added to those of official at the time of adoption of the legal act at hand, without reaching the threshold of all language versions available at the time of judging;
- Hyper-exhaustive comparison: all language versions in force at the time of delivery of the judgment are used for comparison.

⁷⁴⁴ Baaij (2015), p. 57.

Figure 11: types of comparison based on the language versions included

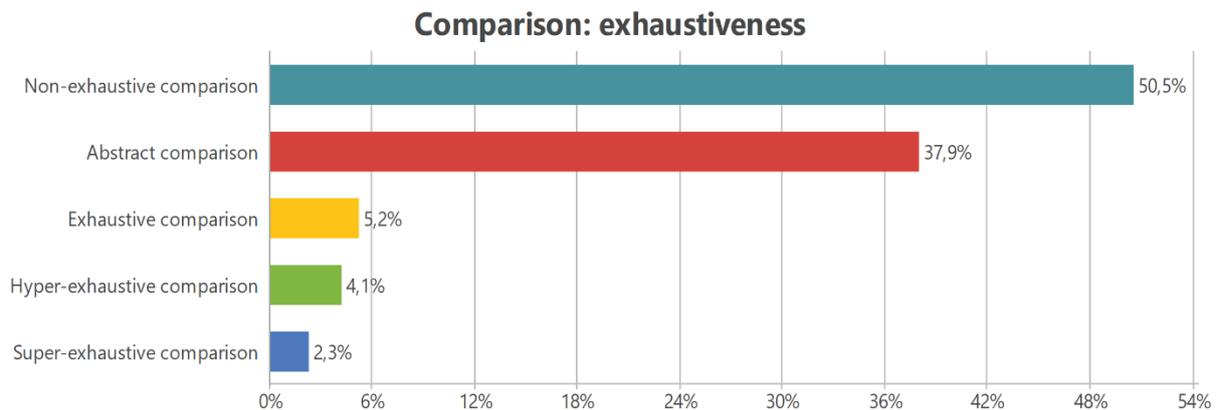
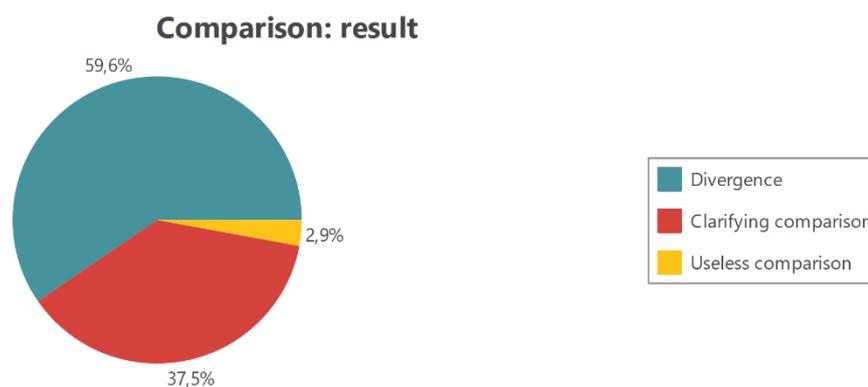


Figure 11 shows similar figures to those mentioned by Baaij: 5.2% of the language cases compare only the language versions official at the time of adoption of the legal act at hand, and 37.9% feature an abstract comparison. What is new here is the realization that, in the majority of cases, what the Court does is to compare “random” language versions (50.5% of non-exhaustive comparison). Only in very few instances did the Court use more language versions than those official at the time of adoption.

Moreover, another code was needed regarding comparison. Many authors speak of the fascinating danger of divergences or discrepancies among language versions, of multilingualism as an interpretive tool or as a threat to the uniformity of meaning of EU legislation. Applied to this empirical analysis, it all boils down to the result of the comparison of language versions performed by the Court: did it reveal, or confirm, a divergence? Did it help clarify the meaning of the legislation? Or was it merely anecdotal, even useless?

For that purpose, three corresponding subcodes were developed. A “clarifying comparison” serves as a helpful tool to precise the meaning of the provision, yields no divergence whatsoever, but a wording which is almost identical in all language versions analyzed. On the contrary, a “useless comparison” is not helpful, as cannot add much in order to elucidate the meaning of the provision at hand. Finally, “divergence” cases may be further broken down, as will be done in the next section.

Figure 12: types of comparison based on the outcome of the comparison



Indeed, we can notice that the most common outcome of comparison is divergence, followed by clarification. The very few cases of uselessness were related mostly to general ambiguity of the provision at hand, regardless of its multilingual character.

But does that mean that language version comparison is more of a hindrance than a tool? The next section will seek to answer this question by delving into different types of divergence.

f. Types of Divergence

According to Baaij, we can find two types of discrepancies in the case law: those deriving from translation errors and those stemming from differing semantic scopes. While he states that the CJEU seems to treat the former as textual imperfections that do not have to be taken into account and thus sticks to the literal interpretation, the latter apparently causes the Court to resort to teleological methods.⁷⁴⁵ This distinction has not proven operational in this analysis, as the Court does not mention translation errors;⁷⁴⁶ nonetheless, similar reasoning may be built upon the combination of a series of different, more immediate (in the sense of textual-dependent) codes, thus avoiding the risk of overinterpretation and lack of reproducibility, two

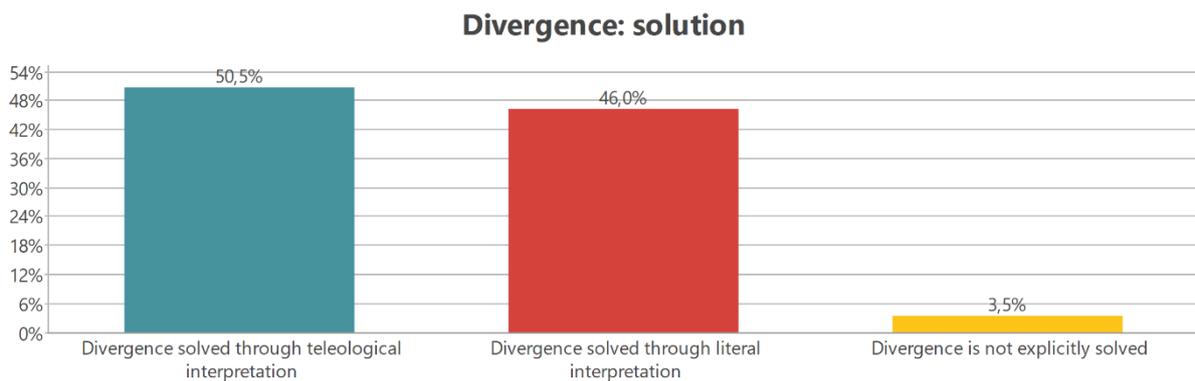
⁷⁴⁵ Baaij (2012a), p. 229.

⁷⁴⁶ With six, very limited, exceptions, which will be mentioned below at VI.4.b.

of our main goals here. This approach is based on how the Court solves the divergences, similarly to Derlén's.⁷⁴⁷

Accordingly, divergences may be qualified as problematic or unproblematic, based on how they are treated and solved by the Court. These two categories (divergence problematic/unproblematic and interpretive technique used to solve the divergence) were unified, after the empirical analysis resulted in an almost perfect overlap. In fact, the number of problematic divergences is the same as the number of divergences solved through teleological interpretation. Unproblematic divergences, of which there is only one less case than problematic (thus making it an almost even split between the two types) may be solved through literal interpretation or left unsolved. Consequently, the following graph concentrates on how divergences are solved:

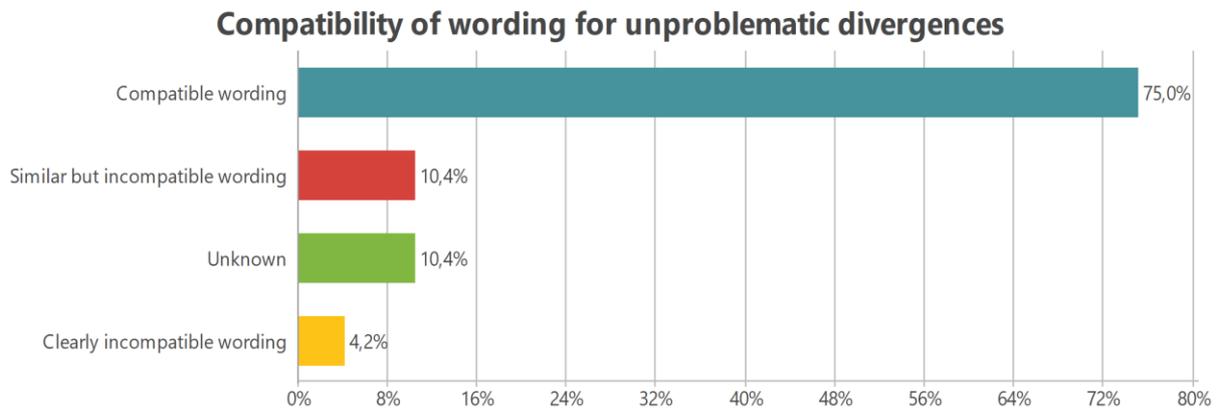
Figure 13: types of divergence based on the interpretive technique used for reconciliation



Divergences are normally solved through literal interpretation (comparison) when the wording of the language versions is compatible with each other, as in there is an overlap for at least one of the norm candidates yielded. However, interestingly enough, there were a few cases where the divergence was solved through textual comparison, but the wording of the different versions was incompatible, as shown in the next figure:

⁷⁴⁷ Derlén (2009), pp. 36 and ff.

Figure 14: compatibility of wording of divergent language versions reconciled through literal interpretation



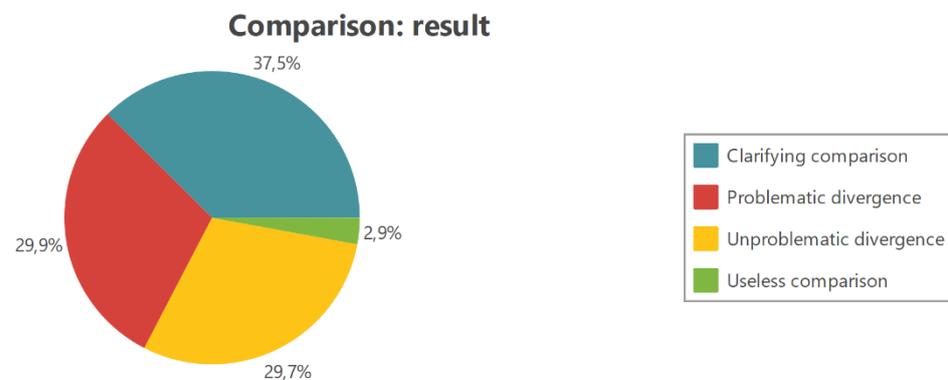
Admittedly, this result comes with a caveat: as has already been pointed out, the classification of the wording of the different language versions being “compatible”, “similar but incompatible”, “clearly incompatible”, or “unknown” (this latter is a fallback category, in the sense that it only applies whenever the wording in the different versions was not actually considered by the Court) was done in accordance with my own judgment, as opposed to what the Court declared (as the Court did not always pronounce on this issue), which puts it at a higher risk of overinterpretation or misjudgment. In spite of this caveat, this means that, in a small number of cases (six cases of “clearly incompatible wording”), the Court chose to treat as unproblematic a divergence that truly was problematic. A closer look at those cases shows a common trait: in all of them there was only one, or two, language versions that differed from the rest. Therefore, we may conclude that, regardless of the strong incompatibility that language versions may display, the Court may overcome that divergence through comparison whenever all language versions, but one or two, are consistent with each other.⁷⁴⁸ These cases are the ones that hinder legal certainty and equality among citizens from different MS the most. Luckily, they only represent 1.24% of the cases analyzed.

⁷⁴⁸ It is also worth mentioning that the cases, where the Court *de facto* sorted a problematic divergence through the majority rule, mentioned in the previous Chapter, do not contain any mention to the majority of language versions, as 51 other cases do. In fact, 46 out of those 51 cases feature clearly compatible wording across language versions. This is counterintuitive, and another instance of the Court not doing as it says. More on how the majority code is applied in VI.4.c below.

While it is true that, as some point out, divergences among language versions of directives tend to be solved teleologically and divergences among language versions of regulations tend to be solved literally,⁷⁴⁹ the deviation from the general trend is under two percentage points for regulations and around four percentage points for directives.

Finally, going back to the question that closed the previous section, with its corresponding graph, once we take the type of divergence into account, we are left with the following figures:

Figure 15: types of comparison based on the outcome of the comparison, *rectius*



Therefore, the most common outcome being clarifying comparisons (37.5%), unproblematic divergences (29.7%) may also be considered to help clarify the meaning of EU legislation, making up to a clear majority of 67.2% of cases of comparison as an interpretive tool. Only the red area of the chart (29.9% of comparisons) remains problematic. It turns out that multilingualism may not be so much of a hindrance after all.

g. Linguistic vs Metalinguistic Interpretation

From a more general point of view, the linguistic, textual or literal interpretive method (comparing and reconciling the wording of different language versions) may be used cumulative with or alternatively to the metalinguistic or teleological method (reasoning based

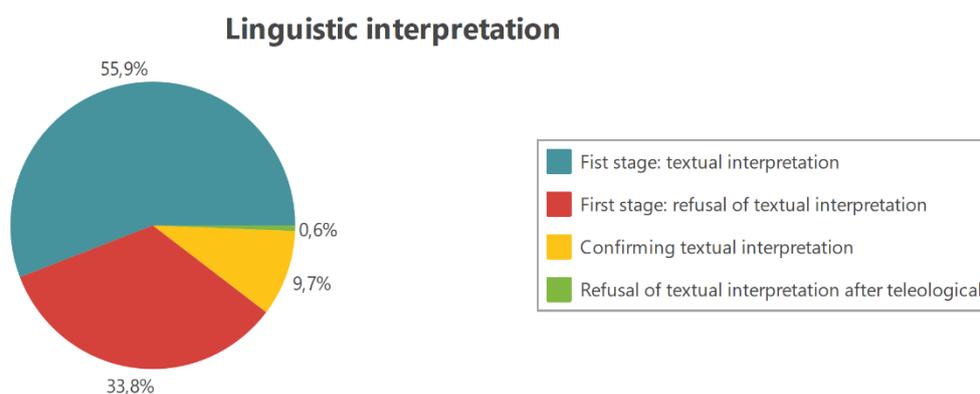
⁷⁴⁹ Hesselink (2001), pp. 37-39; Baaij (2015), p. 131.

on the general scheme and the purpose of the rules at issue) in language comparison cases.⁷⁵⁰ Many scholars, however conclude that the teleological method is the Court's dominant canon, both in general and specifically in dealing with diverging language versions.⁷⁵¹

Building from this premise, the codes for linguistic and metalinguistic interpretation have been built in parallel: the Court may start from one and move to the other, either to confirm or refute its previous conclusion, or it may, more rarely, focus only on one of them. However, these codes were designed in a sort of zero-sum fashion, so that one of the two will always be attributed a higher importance than the other one, thus excluding the possibility of a mere declaration that both linguistic and metalinguistic interpretation co-occur, without saying how they relate to each other.

By the nature of this analysis, all cases considered include linguistic interpretation, but this has not been upheld in all of them. While the code "linguistic interpretation" was necessarily theory-driven, the subcodes have been refined through data analysis. The result is the following chart, which portrays how linguistic (or textual) interpretation is used for the comparison of language versions, in relation to teleological:⁷⁵²

Figure 16: use of textual interpretation in relation to teleological for comparison



⁷⁵⁰ Van der Jeught (2018), p. 12.

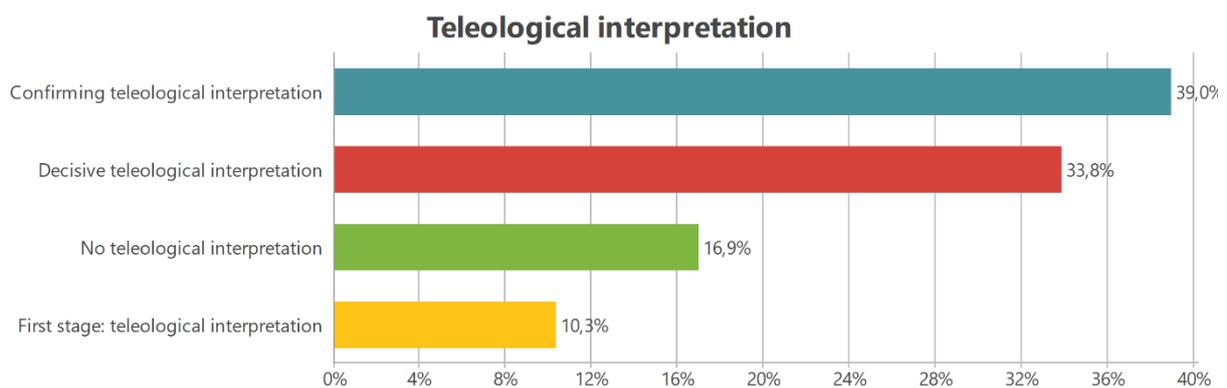
⁷⁵¹ See, e.g. Bengoetxea, MacCormick & Soriano (2001), pp. 45, 58; Bredimas (1978), pp. 20, 77; van Calster (1997), p. 377; Jacobs (2003), p. 304; Pollicino (2004), p. 289, and Vismara (2006), pp. 67-68.

⁷⁵² It must be noted that here "first stage" of interpretation is meant in relation to the particular instance of multilingual interpretation (i.e. comparison of language versions), not to the interpretation happening in the judgment at large.

In most cases, as expected, the Court starts with the linguistic interpretation and adheres to it. In nearly one third of the cases, on the contrary, the Court will start with the linguistic level, but discard it due to divergences or ambiguity. A small amount of cases use textual interpretation after teleological in order to confirm it, while only three cases (0.6%) mention the linguistic level after the teleological in order to reject the former. Textual interpretation never trumps teleological.

As a result, teleological interpretation, which includes all metalinguistic methods, is most often used after linguistic interpretation, either to confirm it or to supersede it, but teleological may also be used before textual, without ever being superseded. Finally, some language cases do not include any teleological interpretation, as follows:

Figure 17: use of teleological interpretation in relation to textual for comparison



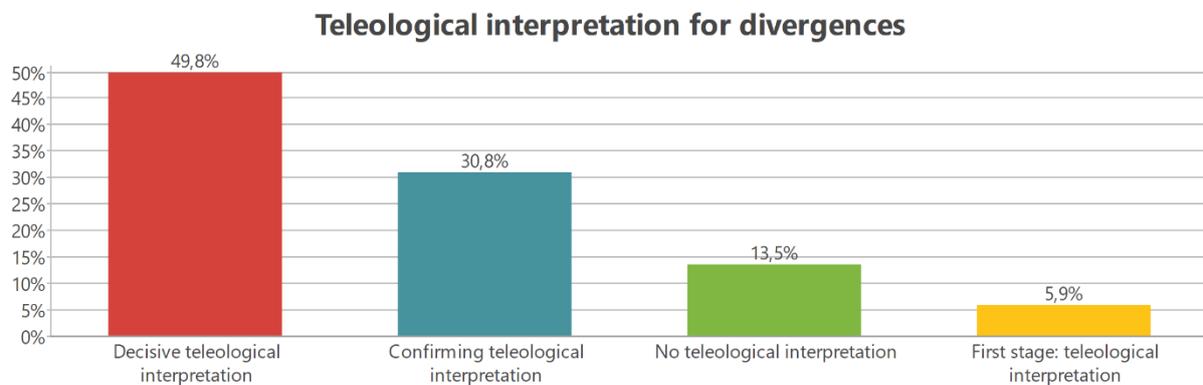
In case of decisive teleological interpretation, the textual level is not enough, because of a lack of clarity/ambiguity or different norm candidates (divergence). The teleological interpretation then helps choose among the candidates or clarify the ambiguity.

Teleological interpretation is thus more often used to uphold a textual interpretation than to supersede it. And most cases of textual interpretation will be confirmed by a teleological interpretation (69.7%), as opposed to only 30.3% where teleological interpretation is omitted.

Lastly, the hypothesis put forward in the literature as per the previous Chapter, whereby multilingual interpretive problems (divergences) increase the importance of teleological reasoning, is supported by the following histogram, which shows an increase in the

percentage of cases where teleological interpretation was decisive in cases of divergence (49.8% in figure 18), vs cases of comparison (33.8% in figure 17):

Figure 18: use of teleological interpretation in relation to textual in case of divergence



4. Qualitative Results

As opposed to the quantitative results detailed above, the following qualitative examples correspond to the optional codes, which were mostly data-driven. Again, “mostly” because many of these categories are mentioned in the literature on the Court’s multilingual reasoning. Nonetheless, subcodes have been incorporated to the coding frame as the coding went on, differently from the previous quantitative categories, which were fixed by the end of the test phase.

These results, therefore, do not purport to show definite trends on the data, just how the following categories could be subdivided, once all the instances of comparison are taken into account; or, at most, how often the corresponding subdivisions (subcodes) appear in the dataset, as an indication of their relevance. However, these categories are either underrepresented vis-à-vis the categories in the previous section (which makes sense, taking into account that the latter were compulsory codes, while the codes in this section were only optional, and thus present in fewer cases), or the possibilities for quantitative analysis are limited for other reasons, which will then be explained as appropriate.

a. Types of Metalinguistic Interpretation

This part of the analysis has confirmed the hypothesis outlined in the previous Chapter that metalinguistic methods conflate context and purpose, or scheme and intent, into a general teleological canon.⁷⁵³ In fact, several iterations of coding have not allowed for a reliable disentanglement of both methods that would yield solid quantitative results.

Table 5: Types of teleological arguments in relation to multilingual comparison

| | Documents |
|---------------------------|-----------|
| Contextual interpretation | 292 |
| Purposive interpretation | 286 |
| Historical interpretation | 40 |
| Legislature's intent | 29 |
| Legal certainty | 9 |
| Comparative law | 5 |
| Effectiveness | 3 |
| Author's intent | 2 |
| Commission's intent | 2 |
| Protection of litigants | 2 |
| Council's intent | 1 |

⁷⁵³ Paunio (2011), p. 56; Baaij (2015), p. 124; Baaij (2018), p. 168.

As we can observe, contextual (or systemic) and purposive interpretation go almost hand in hand in frequency. Conversely, other types of metalinguistic methods lag way behind, with different formulations for intent depending on the case at hand (legislature's or author's more in general, Commission's and Council's more in particular). Different levels of generality are combined into this table, to try to capture how the Court reasons more in detail. Moreover, several of the canons often coexist in the same judgment. Contextual methods coexist with purposive methods in most of their occurrences, and vice versa: there are 193 joint occurrences, versus 93 and 99 of each alone, respectively. This further supports the consideration of teleological methods together, instead of separately.

b. Second-order Interpretive Arguments

As was pointed out in the previous Chapter, there is a distinction between the Court's 'first-order' arguments and 'second-order' interpretive arguments, the latter being used as reasons to choose among the former.⁷⁵⁴ According to Baaij, the Court's case law on multilingual interpretation offers one and the same second-order argument for picking its primary first-order argument (the linguistic vs metalinguistic interpretation canons analysed above), namely the requirement of a uniform interpretation and application of EU law. However, that requirement in itself does not indicate whether a linguistic or metalinguistic reconciliation of language versions is called for.⁷⁵⁵

This section concentrates on the Court's formulae that could be identified as second-order arguments. The following table displays what the Court says is important to solve multilingual interpretive problems:

⁷⁵⁴ Bengoetxea *et al* (2001), pp. 57 and 65.

⁷⁵⁵ Baaij (2015), pp. 123-126.

Table 6: Possible second-order interpretive arguments in relation to multilingual comparison

| | Documents |
|------------------------------------|-----------|
| Divergence: context + purpose | 124 |
| Uniform interpretation: comparison | 117 |
| Equal authenticity | 54 |
| Requirement of comparison | 37 |
| Uniform interpretation: purpose | 12 |
| Uniformity: context + purpose | 7 |
| Divergence: purpose | 4 |

As expected, the most common argument is the need for a teleological interpretation in case of divergence, which matches the conclusions reached so far,⁷⁵⁶ followed closely by the need to compare in order to guarantee a uniform interpretation, which is linked to the third and fourth requirements in the rank (equal authenticity and requirement to compare as such). In fact, many of these formulae are just variations of two types of argument: priority to metalinguistic arguments or priority to linguistic arguments. The need for a uniform interpretation is mentioned in relation to both of them. Regarding metalinguistic arguments, most often context and purpose are mentioned together, more rarely purpose is mentioned alone.

The metalinguistic second-order arguments were used slightly more often than the linguistic ones, although the two were very often combined in the same case. This is what creates

⁷⁵⁶ See figure 18 in VI.3.g.

difficulties in quantifying the relative weight of one technique or the other in the context of second-order interpretive arguments, or another instance of the Court not doing as it says, since it is hard to see how one can follow two conflicting directions as the same time.

c. *Acte Clair*

According to Baaij's analysis, between 1960 and 2010, the Court cites the condition of doubt in only 13 of 44 judgments in which it explicitly states a need to compare language versions, thus a mere 29.89%.⁷⁵⁷ Following Derlén, after *CILFIT* (1982) the Court started to distance itself from the criterion of doubt for comparison purposes (i.e. the necessity for a doubt to exist in at least one of the language versions for comparison to be justified), up to the point where it affirmed that all versions had to be consulted in order to determine whether the norm was clear or not, in the *Ferriere Nord* case (1997). However, the Court later came back to the criterion of doubt in the *EMU Tabac* case (1998).⁷⁵⁸

This analysis has found 27 cases where the *acte clair* doctrine is mentioned, thus distributed over time. The first language case where the *acte clair* appears is from 1967. After that, it was not until 1990 that the criterion of doubt was mentioned again in relation to multilingual reasoning. Then, there was another gap until 1996, from when the criterion has been used sparsely. In fact, according to this empirical analysis, only 20.93% of the judgments where the Court cites the requirement of comparison include a mention to the criterion of doubt as well.

d. Other Interpretive Arguments

This section deals with some of the Court's recurrent arguments. They encompass different interpretive techniques used by the Court and mentioned in the literature, but not covered so far under the more traditional categories. The following table shows the *topoi* with their corresponding frequencies in the dataset:

⁷⁵⁷ Baaij (2015), p. 58.

⁷⁵⁸ See Derlén (2009), pp. 33 and ff.

Table 7: other interpretive arguments used by the Court in multilingual cases

| | Documents |
|--|-----------|
| Majority of linguistic versions | 51 |
| Autonomous concept of EU law | 24 |
| Ordinary meaning | 24 |
| Reference to "original" versions only | 11 |
| Language error acknowledged by the Court | 6 |

The occasional mention of the “majority of language versions” is not necessarily connected to the majority of the versions being actually compared, and is not normally used as a decisive argument by the Court, as Jacobs points out.⁷⁵⁹ Likewise, the mention to the “original” versions in the context of comparison is not generally accompanied by an exhaustive comparison of all official language versions at the time of adoption.

The “autonomous concept of EU law” reflects the need for a uniform EU legal language, sometimes regardless of the lack of legislative definitions. Only in two cases the Court went against this need for uniform interpretation, by recognizing the different national connotations that a technical term had across the Union, which prevent them from providing a uniform autonomous definition.

Finally, the acknowledgement of the existence of an error in at least one of the language versions as an explanation for divergence is present in only six cases of the dataset. Out of those, only one instance refers to a “mistranslation”. The following section elaborates on the issue of how the Court acknowledges the inclusion of translation in the genesis of EU law.

⁷⁵⁹ Jacobs (2003), p. 304. For a discussion on reconciliation of divergences through the majority rule, see Chapter 5.4.b above.

e. Translation

As has been noted in previous Chapters, the fact that EU legislation is essentially translated legislation is not mentioned anywhere in EU legislation. For official purposes, the official language versions “magically” materialize one next to each other at the time of adoption of the given legal act, regardless of negotiations having been carried out in only one or two languages, with the subsequent translation process before adoption. Therefore, it was expected that the Court would not mention the fact that language versions are translations or that they may contain translation errors, as some authors claim.

However, it did so, even if just a handful of cases. The following table reflects how often translation was mentioned in relation to language versions:

Table 8: language versions mentioned to be translated in the Court’s judgments

| | Documents |
|-----------------------------|-----------|
| Mentioned by the Commission | 9 |
| Mentioned by the Court | 4 |
| Mentioned by parties | 1 |

What the empirical analysis found was that the Court acknowledged translation in only four cases, while the Commission brought it up in nine cases, and the parties referred to translation errors once.

f. Precedents

As stated in the previous Chapter, the discretion enjoyed by the Court in its choice between different interpretive criteria applies as well to the use of its previous decisions.⁷⁶⁰ The following table displays the most cited precedents when it comes to multilingual reasoning:

Table 9: precedents for multilingual reasoning

| | Documents |
|---|-----------|
| <i>EMU Tabac</i> | 18 |
| <i>Jyske Finans</i> | 17 |
| <i>Bouchereau</i> | 15 |
| <i>Stauder</i> | 14 |
| <i>Cricket St Thomas, Institute of the Motor Industry</i> | 13 |
| <i>Borgmann</i> | 9 |
| <i>Endendijk, Rockfon</i> | 8 |
| <i>M and Others, EKW and Wein & Co, Kurcums Metal, DR and TV2 Danmark</i> | 7 |
| <i>Profisa, Koschniske</i> | 6 |
| <i>Moksel Import und Export, Codan, Ferriere Nord, Zuid-Hollandse Milieufederatie, Commission v Netherlands, Kraaijeveld, Sabatauskas</i> | 5 |
| <i>CILFIT</i> | 4 |

⁷⁶⁰ Beck (2012), pp. 232-233.

Surprisingly, not all the case included in this table are “famous” cases, i.e. not all of them have made their way into the literature. For instance, *CILFIT*, which has been mentioned often throughout this thesis as being a fundamental of multilingual reasoning by the Court, ranks quite low with only four mentions, compared to *EMU Tabac*, *Stauder* or *Bouchereau*, all at the top of the list. Conversely, other frequent cases, such as *Jyske Finans*, are not frequently mentioned in the literature on multilingual reasoning by the Court.

The mention of multilingual reasoning maxims being “settled case law” was introduced for the first time 1985, but it wouldn’t reappear until 1991, and after that until 1997. From then on, it did become quite usual in the Court’s multilingual reasoning. The same judgments are mentioned most often in relation to containing “settled case law”, while *CILFIT* is only mentioned once!

This shows that the way the Court treats its own case law is different from how the literature does so, which is one of the differences that empirical legal research can help us uncover.

g. Language Problems

The following list of linguistic issues is a non-exhaustive exemplification of what lies underneath the divergences that the Court reconciles. The subcodes have been added as the problems came up in the judgments, throughout the whole duration of the analysis. As pointed out above, this is a fundamental difference between this qualitative section and the previous quantitative one. Because of their more qualitative nature, these categories elude quantification. They are meant as a general indicator of the issues that are most commonly faced when drafting and translating EU legislation, as recounted in Chapter III, without a claim of being a comprehensive list or capturing each and every instance of each particular language problem.

Table 10: types of language problems when comparing language versions

| | Documents |
|---|-----------|
| Terminological inconsistency | 39 |
| Time markers | 35 |
| Omission in some language versions | 24 |
| Addition in some language versions | 13 |
| And/or problem | 7 |
| Different gender/number | 6 |
| Punctuation difference | 4 |
| Different verbal tenses | 4 |
| Issues with attribution of defining clauses | 2 |
| Different order in list | 1 |

The most common problem, added to the list early on during the coding and pinpointed by the Court itself in many occasions, is terminological inconsistency, meaning that at least one language version uses different terms to refer to the same concept. Indeed, the fieldwork at the legislative institutions had already raised this issue: translators and lawyer-linguists are very much wary of using terms consistently throughout different provisions and legal acts, even across areas of law. Not doing so from the outset may result in disastrous consequences for the uniformity of meaning of EU legislation, such as with the VAT Directive saga that was mentioned in section 2 above. Yet one small slip of the mind is enough to unleash this problem, which can (and does) understandably happen, notwithstanding the use of translation memories (Euramis), databases (IATE), and terminology checks (lawyer-linguists).

The fact that time constraints and division of labour among institutions entails the involvement of different people translating the same concept across time and space does not help this case either.

The second most frequent problem, related to time markers, is again understandable from the point of view of translation. Temporal indicators are something very precise for legislative purposes, which nonetheless varies greatly across languages. Think prepositions that include or exclude, implicitly or explicitly, a given date. Some of these do not have equivalents in every official language and thus constraint linguists working for the EU institutions to sometimes resort to far-fetched expressions, difficult to interpret. Translating temporal indications with the exact same semantic scope in all the official languages, without disambiguating, introducing more vagueness, or just plainly changing the meaning, is thus just more than challenging, as proven by this analysis.

Subsequently, omissions and additions in language versions are just two different ways of looking at the same problem. Easily explained by an overlook, a slip of the finger or a mere stylistic choice, this insidious issue encompasses a host of divergences, from the obvious omission of a term in a list to the addition of a qualifying adverb (such as “particularly”) in only a couple of the language versions. This is why emphasis is sometimes put on word-by-word or literal translation techniques, whenever possible, in the context of EU legal translation.

The “and/or” problem is not so common, but was another predictable source of divergence. Is an enumeration contained in the legislation exhaustive or non-exhaustive? Are the conditions mentioned cumulative or alternative? Different language versions may be contradictory in this regard, so utmost care should be used when translating these seemingly innocuous conjunctions.

Next in the list, different gender or number of adjectives, nouns or pronouns is a self-evident problem that is fortunately rare enough. Same goes for punctuation differences, which seek to be avoided through the synoptic approach mentioned in Chapter III.2.c. The same may be said about differences in verbal tenses, present both in modality (permission/possibility vs coercion, a relevant distinction in legal language) and in tense (present vs past). Moreover,

the differences in grammar across languages make it sometimes difficult to identify to what noun a defining clause may be attributed in a complex sentence, although this does not seem to be a big issue for the EU legal language. Finally, only once a slip of the translator's hand that resulted in different order in a list created a multilingual interpretive problem for the Court.

5. Conclusions

450 judgments have been analysed, with 485 instances of comparison, through qualitative content analysis, combining compulsory and optional codes in the coding frame. After the coding phase, using MAXQDA, the quantitative functions of the software allowed to provide statistical analysis of the compulsory codes, together with a more qualitative exploration of the optional codes.

The preliminary hypothesis of the progressive increase in the number of cases of comparison in the Court's case law over time has been confirmed by the data, both in absolute and in relative terms. It has also been confirmed, as put forward in the literature, that the Court resorts to comparison most often after the self-reported influence of other actors: national courts in preliminary rulings, parties to the procedure, the Commission and AGs.

Another important finding is that, in the majority of cases of comparison, what the Court does is to compare "random" language versions. The languages most used for comparison purposes are, first, French (in 43.50% of the dataset) and, second, English (in 40%). Although English has steadily increased for comparison purposes over time, with the greatest increase after the big enlargement of 2004, we may conclude that English has not generally overthrown French as the language most resorted to for comparison.

The most common outcome of comparison is divergence, followed by clarification. However, not all cases of divergence are problematic. Unproblematic divergences are in fact only one case behind problematic ones, yielding a final result of 29.9% of comparisons being problematic, while the majority (67.2%) constitute an interpretive tool, regardless of a small degree of divergence.

In most cases, as expected, the Court started its approach to multilingual problems with linguistic interpretation and adhered to its result. In nearly one third of the cases, on the contrary, the Court started with the linguistic level, but discarded it due to divergences or ambiguity. Textual interpretation never trumped teleological, but a 16.9% of language cases did not include any teleological interpretation.

The hypothesis whereby multilingual interpretive problems (divergences) increase the importance of teleological reasoning is supported by the data. The analysis also indicated that contextual methods coexist with purposive methods in most of their occurrences, and vice versa, supporting the consideration of teleological methods together, instead of separately.

Moreover, it was found that the Court actually uses the majority of language versions to solve divergences very rarely, while it refers to that argument way more often. Also, its use of second-order arguments is cumulative (conflating linguistic and metalinguistic arguments), which defeats their own purpose.

The first language case where the *acte clair* doctrine appears in relation to language comparison is from 1967. After that, it was not until 1990 that the criterion of doubt was mentioned again in relation to multilingual reasoning. Then, there was another gap until 1996, from when the criterion has been used sparsely. In fact, according to this empirical analysis, only 20.93% of the judgments where the Court cites the requirement of comparison include a mention to the criterion of doubt as well. This shows that the criterion may be less significant, at least concerning multilingual reasoning, than what the literature normally considers it to be.

The Court's use of precedent for multilingual reasoning shows that the way the Court treats its own case law is different from how the literature does so, which is one of the differences that empirical legal research can help us uncover. Some famous cases, such as *CILFIT*, were only mentioned very rarely by the Court, while other obscure cases were mentioned much more often. The mention of multilingual reasoning maxims being "settled case law" was introduced for the first time in 1985, but it didn't become recurrent in the Court's case law until 1997. Some of these maxims correspond to the so-called second-order interpretive canons (uniform interpretation of EU law), which do not yield any clear preference for

linguistic or metalinguistic techniques. Other interpretive arguments used by the Court include considering the majority of language versions, autonomous concepts of EU law or the ordinary meaning of terms.

Finally, a series of language issues, most of which were already mentioned in the previous Chapters, have been identified as the most common causes of divergence among language versions. These include, but are not limited to, terminological inconsistencies, problems with temporal indicators, omissions in some language versions, fluctuation between “and” and “or” depending on the version, different gender or number of flexed words, punctuation differences and different verbal tenses.

We may conclude from this Chapter that the Court does not always do as it says, or as others say it does. The mismatch with the literature was expected, due to the precise reasons that lie at the origin of this thesis, but more clarity from the Court itself would be needed. While it compares language versions more and more often, it does not do it as often as it would probably be advisable, taking into account its requirement in *CILFIT* and the fact that it sometimes ignores instances of comparison by other procedural actors in its reasoning. Moreover, when it does compare, it looks into “random” language versions, following unclear criteria. This and other feats of multilingual reasoning, such as mixing second-order arguments, can make the Court’s behaviour hard to track. This mismatch between the Court’s self-declared goals for the EU legal system, of equal authenticity and uniformity, and its actual multilingual reasoning is in fact more unsettling, even if not so frequent, not so much for the difficulties that it generates in studying and predicting the Court’s reasoning, but mostly regarding the consequences for legal certainty that may well end up affecting EU citizens.⁷⁶¹

⁷⁶¹ See, for instance, Van der Jeught’s (2018) discussion on the *Endendijk* case.

Final Conclusions

Critical underpinning of the Court's approach (as the most authoritative interpreter of EU law) regarding the multilingual nature of EU law, in accordance with its previously developed characteristics and in order to solve the problems previously sketched.

Normative account whose aim is to assess the fit of the practice to the goals of the system, namely equal authenticity of the different language versions and uniformity of meaning of EU law.

So far, the main hypothesis that the multilingual nature of EU law originates divergences of linguistic meaning across language versions, which in turn results in the Court overstretching said linguistic meaning of certain language versions through comparison for the sake of uniformity of legal meaning, has been confirmed, based on the following conclusions.

Multilingualism has been a legal requirement on EU legislation since the inception of the European project. Although its founding fathers could not have predicted the exact consequences of its unfolding, up to the 24 official languages that we count nowadays, both primary and secondary EU law must be published in all language versions. The rationale for this does not only stem from legal principles and rights, such as democracy, the right to information and legal certainty for citizens; but also from political reasons, including supporting linguistic diversity and upholding the equality among all Member States, regardless of their size or population.

Therefore, and notwithstanding the necessity to simplify the institutional language arrangements for communication purposes, including within the legislature procedure, all language versions of EU legislation remain equal once published. The fact that English has become the *de facto* working language at the legislative institutions, including for negotiation and drafting purposes, does not mean that this language acquires any formal preeminent role, or that it would be politically or legally feasible to implement this. Conversely, it would not be politically acceptable to get rid of it as an official language either, taking into account that this would require a unanimous vote by all Member States reunited in the Council. In fact,

regardless of Brexit, English remains the mother tongue of an important number of EU citizens from Ireland and Malta.

This obviates the need to reply to those who argue that multilingualism should be limited, be it through the imposition of one single working language (English), or a restricted multilingual regime. For the reasons presented in the paragraph above, this could not be applied to EU legislation, which clearly needs to be translated into all the official languages in order for it to be binding on EU citizens, as preconized by the Court in its *Skoma-Lux* judgment. The fact that language versions other than English are drafted by linguists is thus a negligible anecdote that cannot affect their validity, necessary for a fair and certain operationalization of EU law.

However, the existence of a multitude of language versions brings along, as it often does, both advantages and disadvantages. While the abundance of textual referents for single legal norm may help to clarify vague or ambiguous passages in one of the language versions, guaranteeing that all EU citizens have access to EU legislation in their national languages, this is only helpful insofar as said textual referents do not diverge among themselves, in which case legal certainty is hindered by the differences across languages.

In order to tackle this potential danger, which is one of the arguments multilingualism sceptics use (together with the cost of multilingualism, a traditional scapegoat that goes first through the window when finances get ugly, in order to save money), translation work must be done with outmost care and integrated organically into the legislative procedure. Costs should be secondary and quality should prime, taking into account that bad quality of translations could bring about not only democratic concerns linked to the lack of legal certainty, but also litigation costs, sustained only by some private parties but with externalities for all the system.

This needs to be taken seriously for legislative purposes. The ordinary legislative procedure, the default law-making process at the EU institutions, is a process of co-drafting, both in the sense of a multi-actor collaborative process and of multilingual parallel rendering. The result of this refined collaboration is a flexible procedure, whose details have been time and again adapted to practical requirements for the sake of efficiency, in order to allow the Union to produce legislation of adequate quality within time constraints in an increasing number of official languages. This, together with budgetary concerns, puts linguistic workers at the EU

legislative institutions under mounting pressure not only to do more with less, but to also do it better.

However, the responsibility for the quality of the final language versions is joint. From the technical drafters at the Commission, through the language editors and legal reviser that check the proposal in the original language, to Commission translators, including the Parliament's and Council's political actors, translators and lawyer-linguists, together with MS experts, all contribute to the final text in one way or another. While translators' do quality control of the base text, language version production and terminological work; J-Ls do not only carry out legal-linguistic revision, but also terminological work, for which they have the last word.

Therefore, it is important to note that the linguistic work on the EU legislative institutions is not exhausted by the intervention of translators, but includes lawyer-linguists as well. Notwithstanding the many initiatives already undertaken and the tight time constraints, as pointed out above, anything that can be done to improve their collaboration and tap on their synergies would result in quality gains. This applies not only to contacts across language communities, but also across institutions and exchanges with drafters and the "legislator" as such. Interviewees among those language professionals never ceased to point out how important this was. While their concrete tasks are different, the challenges that translators and lawyer-linguists face are similar, as are the tools at their disposal. Their role must be re-conceptualized, in order to better reflect the reality of their work and overcome the mistrust that lawyers' and policy-makers sometimes experience in their regard (especially vis-à-vis translators, take the example of the refusal of editing services mentioned above). As McAuliffe and Trklja point out, it is essential to increase lawyers' awareness of the multilingual character of EU law.

In order to face the challenges of linguistic work at the EU legislative institutions, related to the ambiguous and/or vague wording of EU legislation as negotiated law, its ever developing autonomous terminology that shares the natural language with national legal systems, and the difficulties in drafting identically parsed text into language that have different syntax and grammar, translators and lawyer-linguists have a series of tools at their disposal. From terminological databases to translation memories and communications tools, all is designed

for language versions of EU legislation to be as similar as possible. However, this conflicts with both the nature of language and the true involvement of linguists in the EU legislative procedure, which leaves some room for improvement.

One of the conclusions of this thesis is thus, once again, the importance of exchanges among the different actors of the legislative procedure, in order to boost said involvement from linguists. Terminological inconsistency, which has been pinpointed as one of the biggest problems for the EU legal language, both in the literature and through my fieldwork, could be minimized through greater contacts among those actors (including an increased, consistent use of ELISE), together with better management of terminological databases (IATE), and translation memories (Euramis).

However, an even more important overarching conclusion is the need for a conceptualization of EU legal translation as a *sui generis* activity, linked to legal-linguistic revision and deeply embedded in the drafting of the law. Both translators and lawyer-linguists, as part of the legislative apparatus, participate in building the legislative intent into the legislation, having to render the nuances of the legislative meaning into the different language versions. In this capacity, they are not only required to work with a pre-interpretive meaning of the legal texts (semantics), but they can also decide on the exact formulation of the text in the “target” languages. In this sense, we can affirm that translators and lawyer-linguists clearly and actively participate in the figure of the “diffuse legislator” of the European Union, by participating in the one collective speech act constituted by the contemporaneous publication of all language versions of a piece of EU legislation of general application.

Moreover, that is not the only concept in need of profound revision, due to the unprecedented linguistic pluralism of the European legal system. In this regard, a wider sense than ever of the term “interpretation”, in its legal sense, seems to be needed. The traditional debates within legal theory between literalists and interpretivists can be left behind, making room for a more flexible and all-encompassing understanding of legal interpretation as a communicative practice, as Bengoetxea advocates.

What matters for the present conclusions is that legal interpretation turns a text into a norm – hence the distinction between the linguistic meaning of a text (also communicative

meaning) and its legal meaning. To interpret a text is to choose its legal meaning from among a number of semantic or pragmatic possibilities within the communication process. In typical cases, there is a complete identity between the text's linguistic and legal meanings. However, owing to increased linguistic indeterminacy (additional inter-linguistic indeterminacy on top of intra-linguistic indeterminacy), and in particular to the possibility of divergences among language versions of the legislation, this is not always the case with EU law. In this regard, it must be kept in mind that in EU multilingual interpretation there is no single text, so that meaning is conveyed by the array of texts, taken as a body. This is why it seems even clearer that the meaning of EU legal provisions can only be accessed through interpretation.

There are several layers of complexity or abstraction to the meaning of EU legal texts that become superimposed, resulting in the legal norm obtained through interpretation. First, regarding the semantic level of EU legal texts, it may be said to be synonymous with linguistic meaning, which may differ across language versions. Subsequently, at the pragmatic level we see a single utterance represented by a plurality of texts. Although, as we have seen, the importance of the legislator's intent should be handled with caution, the communicative theories presented above are still relevant to conceptualize the texts as a single utterance, since this would reinforce the legislative doctrine of equal authenticity of language versions and the CJEU's doctrine of uniformity of meaning of EU legislation. Therefore, all the language versions share the same context.

However, notwithstanding the usefulness of the pragmatic concept of utterance for the unity of meaning of EU legislation, it seems debatable whether the pragmatic level exhausts the meaning, as we have seen that communicative theories simply offer alternatives for the interpretation of utterances, leaving the choice among alternatives open. This, as I have already claimed above, is a normative choice that, for the legislation, can only be properly operationalized through authoritative, legal-normative guidelines, such as the canons of interpretation of the Court of Justice of the EU, the only organ within the Union with competence to settle the meaning of enacted EU legislation for the whole territory. These canons provide the third necessary layer to the meaning of multilingual EU legislation.

While, at first glance, one might think that adding language versions to a single body of law can only be a source of confusion, it is also true that adding datapoints (i.e., multiple versions

of the same law) can assist the legal interpreter by reducing the extent to which an ambiguity found in one language version can cause uncertainty in meaning. In that sense, language versions add further context to the interpretation of EU law. This context, differently from canons of interpretation, does belong to the pragmatic level, the single speech act.

Therefore, we may conclude that there are two main layers of meaning to EU legal texts: linguistic and legal. Within the linguistic level, we may distinguish linguistic meaning as such (semantic) and communicative meaning (pragmatic). Translators work with semantic meaning, which may be considered “pre-interpretive”, to create each language version. The combination of these language versions, once communicated together into a single speech act, produces a joint communicative meaning. However, in order to overcome problems of both inter- and intra-linguistic indeterminacy, and arrive at the final, “true” meaning of the legislation, something else is needed. This something else is what makes the Court of Justice’s activities unique, the canons of interpretation that lie at the heart of its multilingual reasoning. Therefore, it is through interpretation, in the traditional legal sense, that the communicative meaning is worked out into legal meaning.

When it comes to interpretation, the Court of Justice is indeed one of a kind. In an unprecedented judicial model, it mainly rules on cases where national courts found a doubt. For this purpose, it uses both linguistic and metalinguistic methods. Linguistic methods look at the semantics of legal texts (language versions), as pragmatics are constrained by the uniformity of meaning which derives from the unity of the speech act through which all language versions are approved together. Given this, the Court includes the comparison of the semantics of multiple language versions in the linguistic level of interpretation. Although this should be a compulsory step for the interpretation of EU law, as per the Court’s requirements towards national courts, there are clear constraints in terms of time and resources that prevent full comparison from being a constant. In fact, it has been shown that the Court compares language versions in only a small fraction of its cases and that, even when it compares, it does not normally use all the language versions of the relevant legislation. It seems that the Court could *de facto* rely on the initiative of the parties and the linguistic competence of its internal staff in order to compare. Through comparison, the meaning of

the EU legal norm may be clarified, or may be further complicated when divergences across language versions are found.

However, linguistic interpretation is not the only interpretive technique the Court has at its disposal. Metalinguistic considerations, mainly contextual and purposive linked together, constitute the Court's famous teleological method. Recourse to said method may be favoured by EU law's characteristics, being supranationally negotiated and multilingual. Linguistic plurality provides additional reasons for moving beyond the linguistic level, mostly due to the need to solve divergences, into the teleological realm. This is particularly relevant for divergences, where the principle of equal authenticity of all language versions does not theoretically allow to discount the wording of some of them.

Moreover, when divergences happen, the distinction between first and second order interpretation canons becomes relevant in order to solve them. Second-order interpretation canons allow us to choose from the first-order interpretation canons the one that are best fit. In this sense, the Court does not limit itself to one set of interpretive arguments, but tends to combine different types, either to confirm or correct itself. This process is flexible and there are different opinions in the literature as how the court does it and what is the relative weight of the different types of arguments.

In order to bring greater clarity into the Court's multilingual argumentation, an empirical study has been carried out, where the assumptions found in the literature have been tested. For this purpose, 450 judgments where the Court performs comparison of language versions have been analysed, with 485 instances of comparison. These are allegedly all judgments where language version comparison is performed by the Court, identified through various phases of thorough keyword searches in the whole of the Court's case law.

The empirical analysis used a mixed-method approach, with a qualitative and a quantitative phase. After the qualitative phase, where the Court's arguments were tagged following concepts referred to in the literature as further developed by the author, a quantification of frequencies allowed to provide some statistical analysis, as well as a more qualitative exploration of the Court's multilingual reasoning from different points of view.

The preliminary hypothesis of the progressive increase in the number of cases of comparison in the Court's case law over time has been confirmed by the data, both in absolute and in relative terms. It has also been confirmed, as the literature says, that the Court resorts to comparison most often after the self-reported influence of other actors: national courts in preliminary rulings, parties to the procedure, the Commission and AGs.

Another important finding is that, in the majority of cases of comparison, what the Court does is to compare "random" language versions. The languages most used for comparison purposes are, first, French (in 43.50% of the dataset) and, second, English (in 40%). Although English has steadily increased for comparison purposes over time, with the greatest increase after the big EU enlargement of 2004, we may conclude that English has not generally overthrown French as the language most resorted to for comparison.

The most common outcome of language version comparison has been found to be divergence, followed by clarification. However, not all cases of divergence are problematic. Indeed, only 29.9% of comparisons cause problems, while the majority (67.2%) constitute an interpretive tool, regardless of a small degree of divergence, which is anyway solved through comparison of language versions.

Regarding its interpretative methods of choice, in most cases of multilingual reasoning, as expected, the Court started with linguistic interpretation and adhered to its result. In nearly one third of the cases, on the contrary, the Court started with the linguistic level, but discarded it due to divergences or ambiguity. Textual interpretation never trumped teleological, but a 16.9% of the language cases analysed did not include any teleological interpretation.

Subsequently, the hypothesis whereby multilingual interpretive problems (divergences) increase the importance of teleological reasoning is supported by the data. The analysis also indicated that contextual methods coexist with purposive methods in most of their occurrences, and vice versa, supporting the consideration of teleological methods together, instead of separately.

Another controversial point of the Court's multilingual reasoning is its use of the criterion of doubt in relation to the obligation to compare language versions. The first language case

where the *acte clair* doctrine appears in relation to language comparison is from 1967. After that, it was not until 1990 that the criterion of doubt was mentioned again in relation to multilingual reasoning. Then, there was another gap until 1996, from when the criterion has been used sparsely. In fact, according to this empirical analysis, only 20.93% of the judgments where the Court cites the requirement of comparison include a mention to the criterion of doubt as well. This shows that the criterion may be less significant, at least concerning multilingual reasoning, than what the literature normally considers it to be.

However, I must agree with those who believe that there should be an explicit obligation for national courts to refer to the ECJ in case of divergences, as a part of the criterion of doubt. Nonetheless, the absence of any systematic consideration on what happens after a divergence is found and solved by the Court, when there were clearly incompatible wordings across language versions, is concerning. In this case, it is presumed that the wording has always been compatible. This may be enough to solve the legal puzzle at hand, but it is surely not doing any favours to the uniformity of EU legislation, at least from a textual point of view for future reference, unless said legislation is corrected so that all language versions are aligned. While there have been corrections of legislation on a case-by-case basis, it would help to have an official procedure for it.

Regarding precedent use for multilingual reasoning, the mention of these maxims being “settled case law” was introduced for the first time in 1985, but it didn’t become recurrent in the Court’s case law until 1997. Some of these maxims correspond to the so-called second-order interpretive canons (uniform interpretation of EU law), which do not yield any clear preference for linguistic or metalinguistic techniques. Other interpretive arguments used by the Court include considering the majority of language versions, autonomous concepts of EU law or the ordinary meaning of terms.

In that regard, it was found that the Court actually uses the argument of the majority of language versions to solve divergences very rarely, while it refers to that argument way more often. Also, its use of second-order interpretive arguments is cumulative (conflating linguistic and metalinguistic arguments), which defeats their own purpose of choosing among first-order interpretive arguments.

Finally, a series of language issues have been identified as the most common causes of divergence among language versions. These include, but are not limited to, terminological inconsistencies, problems with temporal indicators, omissions in some language versions, fluctuation between “and” and “or” depending on the version, different gender or number of flexed words, punctuation differences and different verbal tenses.

We may conclude from this analysis that the Court does not always do as it says, or as others say it does. The mismatch with the literature was expected, due to the precise reasons that lie at the origin of this thesis, but more clarity from the Court itself would be needed. While it compares language versions more and more often, it does not do it as often as it would probably be advisable, taking into account its requirement in *CILFIT* and the fact that it sometimes ignores instances of comparison by other procedural actors in its reasoning. Moreover, when it does compare, it looks into “random” language versions, following unclear criteria. This and other feats of multilingual reasoning, such as mixing second-order arguments, can make the Court’s behaviour hard to track. This mismatch between the Court’s self-declared goals for the EU legal system, of equal authenticity and uniformity, and its actual multilingual reasoning is in fact more unsettling, even if not so frequent, not so much for the difficulties that it generates in studying and predicting the Court’s reasoning, but mostly regarding the consequences for legal certainty that may well end up affecting EU citizens.

And while the previous paragraph may not have added much to the author’s initial impressions and intuitions, when this thesis had yet to be written, the whole process behind it has taught her many invaluable lessons. Therefore, it is the author’s only hope for this piece that it may, at some point, teach someone else something too. Be it about the importance of linguistic work for EU law-making, about the nature of legal language and interpretation, or about alternative legal methods; hopefully the reader will be able to make some sense of this long succession of confusing pages and learn something new from them.

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Annex I: Interviews

The following table summarizes interview data. All interviews were carried out in Brussels between February and June 2017. The interviewees were informed of the scope of my research and agreed to sharing their expertise without being personally quoted. Therefore, the format used for the interviews was semi-structured and unrecorded, in order to boost trust. Interviewees were chosen on the basis of their involvement in the linguistic aspects of the legislative procedure, including translators, terminologists, lawyer-linguists, legal revisers, management (translation planning, quality control, legislative planning) in the three legislative institutions. The questions asked were related to their professional tasks and their collaboration with colleagues within said procedure. In order to protect their anonymity, the table will only display a general description of their position within their institution, as well as their language community when relevant.

It must be stated from the outset, as a caveat, that the Council and the Spanish language community are overrepresented in the sample, due to availability reasons. This potential concern is countered by the qualitative nature of the interviews and the absence of any substantial quantitative claims based thereon.

| Institution | Position | Language |
|--------------------|------------------------|-----------------|
| Council | Translator | Spanish |
| Council | Lawyer-linguist | Portuguese |
| Council | Translation planning | n/a |
| Council | Lawyer-linguist | Spanish |
| Council | Translation management | English |

| | | |
|------------|-----------------------------|------------|
| Council | Translation quality control | n/a |
| Commission | Translation management | Spanish |
| Commission | Translation | Spanish |
| Commission | Translation management | English |
| Commission | Terminologist | Spanish |
| Commission | Translator | Spanish |
| Commission | Translation planning | n/a |
| Council | Translation quality control | Spanish |
| Parliament | Lawyer-linguist | Spanish |
| Commission | Translation quality control | Spanish |
| Council | Translation management | n/a |
| Council | Translation | Spanish |
| Council | Lawyer-linguist | Lithuanian |
| Parliament | Legislative planning | n/a |
| Council | Translation management | French |

| | | |
|------------|-----------------------------|---------|
| Council | Translation quality control | n/a |
| Council | Lawyer-linguist | French |
| Council | Legislative quality control | n/a |
| Council | Legislative planning | n/a |
| Commission | Translator | Finnish |
| Council | Translator | German |
| Commission | Legal reviser | Spanish |
| Commission | Legislative planning | n/a |
| Council | Lawyer-linguist | English |
| Council | Lawyer-linguist | Finnish |
| Council | Translation management | Italian |
| Parliament | Translation | Spanish |
| Council | Terminologist | Spanish |

Annex II: List of Language Cases

| | Judgment | Year | Title |
|----|-----------------|-------------|--|
| 1 | C-66/63 | 1964 | <i>Netherlands v High Authority</i> |
| 2 | C-33/65 | 1965 | <i>Denker v Bundesversicherungsansalt für Angestellte</i> |
| 3 | C-16/65 | 1965 | <i>Schwarze v Einfuhr und Vorratsstelle Getreide</i> |
| 4 | C-19/67 | 1967 | <i>Sociale Verzekeringsbank v Van der Vecht</i> |
| 5 | C-8/66 | 1967 | <i>Cimenteries v Commission</i> |
| 6 | C-29/69 | 1969 | <i>Stauder v Ulm</i> |
| 7 | C-33/69 | 1970 | <i>Commission v Italy</i> |
| 8 | C-12/73 | 1973 | <i>Muras v Hauptzollamt Hamburg-Jonas</i> |
| 9 | C-61/72 | 1973 | <i>Mij PPW Internationaal N. V.</i> |
| 10 | C-49/73 | 1973 | <i>Fleischer v Hauptzollamt Flensburg</i> |
| 11 | C-128/73 | 1973 | <i>Past v Hauptzollamt Freiburg</i> |
| 12 | C-183/73 | 1974 | <i>Osram v Oberfinanzdirektion</i> |
| 13 | C-7/74 | 1974 | <i>Brouerius van Nidek v Inspecteur der Registratie en Successie</i> |
| 14 | C-186/73 | 1974 | <i>Fleischkontor v Einfuhr und Vorratsstelle Schlachtvieh</i> |
| 15 | C-35/75 | 1975 | <i>Matisa v Hauptzollamt, Berlin</i> |
| 16 | C-21/76 | 1976 | <i>Bier v Mines de Potasse d'Alsace</i> |
| 17 | C-98/75 | 1976 | <i>Casrtens Keramik v Oberfinanzdirektion Frankfurt am Main</i> |
| 18 | C-14/76 | 1976 | <i>De Bloos v Bouyer</i> |
| 19 | C-29/75 | 1976 | <i>Kaufhof v Commission</i> |
| 20 | C-36/76 | 1976 | <i>Amministrazione delle Finanze dello Stato v Foral</i> |
| 21 | C-108/76 | 1977 | <i>Klöckner v Oberfinanzdirektion München</i> |
| 22 | C-30/77 | 1977 | <i>Regina v Bouchereau</i> |
| 23 | C-76/77 | 1977 | <i>Auditeur du travail v Dufour</i> |
| 24 | C-80/76 | 1977 | <i>North Kerry Milk Products</i> |
| 25 | C-82/76 | 1977 | <i>Hoeghst v Hauptzollamt Frankfurt-am-Main</i> |
| 26 | C-93/76 | 1977 | <i>Liègeois v OPTS</i> |
| 27 | C-7/78 | 1978 | <i>Regina v Thompson</i> |
| 28 | C-97/78 | 1978 | <i>Schumalla</i> |
| 29 | C-9/79 | 1979 | <i>Koschniske v Raad van Arbeid</i> |
| 30 | C-18/76 | 1979 | <i>Germany v Commission</i> |
| 31 | C-233/78 | 1979 | <i>Lentes v Germany</i> |
| 32 | C-161/78 | 1979 | <i>Conradsen v Ministeriet for Skatter og Afgifter</i> |
| 33 | C-165/78 | 1979 | <i>IMCO - Michaelis</i> |
| 34 | C-151/78 | 1979 | <i>Sukkerfabriken Nykobing v Ministry of Agriculture</i> |
| 35 | C-114/78 | 1979 | <i>Yoshida v Industrie und Handelskammer Kassel</i> |
| 36 | C-34/78 | 1979 | <i>Yoshida v Kamer van Koophandelen Fabrieken voor Friesland</i> |
| 37 | C-11/76 | 1979 | <i>Netherlands v Commision</i> |
| 38 | C-125/79 | 1980 | <i>Denilauler v Couchet Frères</i> |
| 39 | C-816/79 | 1980 | <i>Mecke</i> |
| 40 | C-803/79 | 1980 | <i>Roudolff</i> |
| 41 | C-87/79 | 1980 | <i>Bagusat v Hauptzollamt Berlin-Packhof</i> |

| | | | |
|----|----------|------|---|
| 42 | C-824/79 | 1980 | <i>Folci</i> |
| 43 | C-798/79 | 1980 | <i>Chem-Tech</i> |
| 44 | C-814/79 | 1980 | <i>Netherlands v Rüffer</i> |
| 45 | C-784/79 | 1980 | <i>Porta-leasing v Prestige International</i> |
| 46 | C-56/80 | 1980 | <i>Weigand v Schutzverband Deutscher Wein</i> |
| 47 | C-150/80 | 1981 | <i>Elefanten Schuh</i> |
| 48 | C-136/80 | 1981 | <i>Hudig en Pieters</i> |
| 49 | C-157/80 | 1981 | <i>Rinkau</i> |
| 50 | C-27/81 | 1981 | <i>Rohr v Ossberger</i> |
| 51 | C-250/80 | 1981 | <i>Töpfer</i> |
| 52 | C-160/80 | 1981 | <i>Smuling-De Leeuw</i> |
| 53 | C-96/80 | 1981 | <i>Jenkins v Kingate</i> |
| 54 | C-50/81 | 1982 | <i>Kaders v Hauptzollamt Hamburg-Ericus</i> |
| 55 | C-49/81 | 1982 | <i>Kaders v Hauptzollamt Hamburg-Waltershof</i> |
| 56 | C-38/81 | 1982 | <i>Effer v Kantner</i> |
| 57 | C-295/81 | 1982 | <i>IFF v v Hauptzollamt Bad Reichenhall</i> |
| 58 | C-234/81 | 1982 | <i>Du pont de Nemours v Commissioners of Customs and Excise</i> |
| 59 | C-218/82 | 1983 | <i>Commission v Council</i> |
| 60 | C-90/82 | 1983 | <i>Commission v France</i> |
| 61 | C-49/82 | 1983 | <i>Commission v Netherlands</i> |
| 62 | C-77/82 | 1983 | <i>Peskeloglou V Bundesanstalt für Arbeit</i> |
| 63 | C-34/82 | 1983 | <i>Peter v Znav</i> |
| 64 | C-90/83 | 1984 | <i>Paterson v Weddel</i> |
| 65 | C-133/83 | 1984 | <i>Regina v Scott</i> |
| 66 | C-327/82 | 1984 | <i>Ekro</i> |
| 67 | C-45/83 | 1984 | <i>Ludwig-Maximilians-Universität München</i> |
| 68 | C-242/83 | 1984 | <i>Caisse de Compensation pour Allocations Familiales v Patteri</i> |
| 69 | C-58/83 | 1984 | <i>Commission v Greece</i> |
| 70 | C-236/83 | 1984 | <i>University of Hamburg v Hauptzollamt München-West</i> |
| 71 | C-129/83 | 1984 | <i>Zelger/Salinitri</i> |
| 72 | C-252/84 | 1985 | <i>Collector Guns v Hauptzollamt Koblenz</i> |
| 73 | C-107/84 | 1985 | <i>Commission v Germany</i> |
| 74 | C-200/84 | 1985 | <i>Daiber v Hauptzollamt Reutlingen</i> |
| 75 | C-155/84 | 1985 | <i>Onnasch</i> |
| 76 | C-135/83 | 1985 | <i>Abels</i> |
| 77 | C-100/84 | 1985 | <i>Commission v United Kingdom</i> |
| 78 | C-13/83 | 1985 | <i>Parliament v Council</i> |
| 79 | C-241/83 | 1985 | <i>Rösler/Rottwinke</i> |
| 80 | C-214/84 | 1985 | <i>Stinnes v Hauptzollamt Kassel</i> |
| 81 | C-238/84 | 1986 | <i>Röser</i> |
| 82 | C-19/83 | 1986 | <i>Wendelboe / LJ Music</i> |
| 83 | C-38/85 | 1986 | <i>Bienengräber v Hauptzollamt Hamburg-Jonas</i> |
| 84 | C-226/85 | 1987 | <i>DÜlinger Hüttenwerke v Commission</i> |
| 85 | C-316/85 | 1987 | <i>Lebon</i> |

| | | | |
|-----|----------|------|--|
| 86 | C-144/86 | 1987 | <i>Gubisch Maschinenfabrik v Palumbo</i> |
| 87 | C-266/85 | 1987 | <i>Shenevai v Kreischer</i> |
| 88 | C-424/85 | 1987 | <i>Frico v Voedselvoorzienings In- en Verkoopbureau</i> |
| 89 | C-122/87 | 1988 | <i>Commission v Italy</i> |
| 90 | C-138/86 | 1988 | <i>Direct Cosmetics</i> |
| 91 | C-291/87 | 1988 | <i>Huber</i> |
| 92 | C-199/87 | 1988 | <i>Jensen v Landbrugsministeriet</i> |
| 93 | C-55/87 | 1988 | <i>Moksel v Balm</i> |
| 94 | C-300/86 | 1988 | <i>Van Landschoot v Mera</i> |
| 95 | C-228/87 | 1988 | <i>Criminal proceedings against X</i> |
| 96 | C-316/86 | 1988 | <i>Krücken</i> |
| 97 | C-357/87 | 1988 | <i>Schmid</i> |
| 98 | C-353/85 | 1988 | <i>Commission v United Kingdom</i> |
| 99 | C-173/88 | 1989 | <i>Skatteministeriet v Henriksen</i> |
| 100 | C-215/88 | 1989 | <i>Casa Fleischhandels</i> |
| 101 | C-372/88 | 1990 | <i>Cricket St Thomas</i> |
| 102 | C-273/90 | 1991 | <i>Meico-Fell</i> |
| 103 | C-121/90 | 1991 | <i>Posthumus</i> |
| 104 | C-100/90 | 1991 | <i>Commission v Denmark</i> |
| 105 | C-90/90 | 1991 | <i>Neu and Others</i> |
| 106 | C-158/90 | 1991 | <i>Nijs and Transport Vanschoonbeek-Matterne</i> |
| 107 | C-27/90 | 1991 | <i>Sitpa</i> |
| 108 | C-338/90 | 1992 | <i>Hamlin Electronic</i> |
| 109 | C-29/91 | 1992 | <i>Redmond Stichting v Hendrikus Bartol</i> |
| 110 | C-34/92 | 1993 | <i>Grusa Fleisch v Hauptzollamt Hamburg-Jonas</i> |
| 111 | C-327/91 | 1994 | <i>France v Commission</i> |
| 112 | C-212/91 | 1994 | <i>Angelopharm v Hamburg</i> |
| 113 | C-406/92 | 1994 | <i>The Tatry</i> |
| 114 | C-341/93 | 1995 | <i>Danværn Production A/S v Schuhfabriken Otterbeck</i> |
| 115 | C-389/93 | 1995 | <i>Dürbeck</i> |
| 116 | C-449/93 | 1995 | <i>Rockfon</i> |
| 117 | C-44/95 | 1995 | <i>Royal Society for the Protection of Birds</i> |
| 118 | C-84/95 | 1996 | <i>Bosphorus</i> |
| 119 | C-283/94 | 1996 | <i>Denkavit</i> |
| 120 | C-468/93 | 1996 | <i>Gemeente Emmen v Belastingdienst Grote Onderneming</i> |
| 121 | C-72/95 | 1996 | <i>Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland</i> |
| 122 | C-267/95 | 1996 | <i>Merck and Others</i> |
| 123 | C-171/94 | 1996 | <i>Merckx and Neuhuys</i> |
| 124 | C-228/94 | 1996 | <i>Atkins</i> |
| 125 | C-298/94 | 1996 | <i>Henke</i> |
| 126 | C-85/95 | 1996 | <i>Reisdorf v Finanzamt Köln-West</i> |
| 127 | C-143/93 | 1996 | <i>van Es Douane Agenten</i> |
| 128 | C-287/94 | 1996 | <i>Frederiksen v Skatteministeriet</i> |
| 129 | C-64/95 | 1996 | <i>Lubella v Hauptzollamt Cottbus</i> |

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| 130 | C-17/96 | 1997 | <i>Badische Erfrischungs-Getränke v Land Baden-Württemberg</i> |
| 131 | C-130/95 | 1997 | <i>Giloy v Hauptzollamt Frankfurt am Main-Ost</i> |
| 132 | C-389/95 | 1997 | <i>Klattner v Greek State</i> |
| 133 | C-143/96 | 1997 | <i>Knubben Speditions</i> |
| 134 | C-64/96 | 1997 | <i>Land Nordrhein-Westfalen v Uecker and Jacquet</i> |
| 135 | C-83/96 | 1997 | <i>Provincia Autonoma di Trento and Another v Dega</i> |
| 136 | C-310/95 | 1997 | <i>Road Air v Inspecteur der Invoerrechten en Accijnzen</i> |
| 137 | C-259/95 | 1997 | <i>Parliament v Council</i> |
| 138 | C-2/95 | 1997 | <i>SDC v Skatteministeriet</i> |
| 139 | C-163/95 | 1997 | <i>Von Hond v Cinnamond</i> |
| 140 | C-248/96 | 1997 | <i>Grahame and Hollander</i> |
| 141 | C-177/95 | 1997 | <i>Ebony Maritime</i> |
| 142 | C-219/95 P | 1997 | <i>Ferriere Nord v Commission</i> |
| 143 | C-167/95 | 1997 | <i>Linthorst, Pouwels and Scheres</i> |
| 144 | C-360/96 | 1998 | <i>Arnhem and Rheden v BFI Holding</i> |
| 145 | C-1/97 | 1998 | <i>Birden v Bremen</i> |
| 146 | C-292/96 | 1998 | <i>Göritz Intransco International</i> |
| 147 | C-149/97 | 1998 | <i>Institute of the Motor Industry</i> |
| 148 | C-236/97 | 1998 | <i>Skatteministeriet v Codan</i> |
| 149 | C-321/96 | 1998 | <i>Mecklenburg</i> |
| 150 | C-210/97 | 1998 | <i>Akman</i> |
| 151 | C-296/95 | 1998 | <i>EMU Tabac</i> |
| 152 | C-375/97 | 1999 | <i>General Motors Corporation and Yplon</i> |
| 153 | C-216/97 | 1999 | <i>Gregg v Commissioners of Customs & Excise</i> |
| 154 | C-305/88 | 1999 | <i>Lancray</i> |
| 155 | C-48/98 | 1999 | <i>Söhl & Söhlke v Hauptzollamt Bremen</i> |
| 156 | C-231/97 | 1999 | <i>Van Rooij v Dagelijks bestuur van het waterschap de Domme</i> |
| 157 | C-193/98 | 1999 | <i>Pfennigmann</i> |
| 158 | C-235/92 P | 1999 | <i>Montecatini v Commission</i> |
| 159 | C-151/98 P | 1999 | <i>Pharos v Commission</i> |
| 160 | C-12/98 | 2000 | <i>Amengual Far</i> |
| 161 | C-436/98 | 2000 | <i>HMIL</i> |
| 162 | C-193/99 | 2000 | <i>Hume</i> |
| 163 | C-434/97 | 2000 | <i>Commission v France</i> |
| 164 | C-437/97 | 2000 | <i>EKW and Wein & Co</i> |
| 165 | C-482/98 | 2000 | <i>Italy v Commission</i> |
| 166 | C-420/98 | 2000 | <i>W.N.</i> |
| 167 | C-384/98 | 2000 | <i>D.</i> |
| 168 | C-6/99 | 2000 | <i>Greenpeace France and Others</i> |
| 169 | C-425/98 | 2000 | <i>Marca Mode</i> |
| 170 | C-166/99 | 2000 | <i>Defreyen</i> |
| 171 | C-253/99 | 2001 | <i>Bacardi</i> |
| 172 | C-306/98 | 2001 | <i>Monsanto</i> |
| 173 | C-86/99 | 2001 | <i>Freemans</i> |

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| 174 | C-36/98 | 2001 | <i>Spain v Council</i> |
| 175 | C-277/98 | 2001 | <i>France v Commission</i> |
| 176 | C-268/99 | 2001 | <i>Jany and Others</i> |
| 177 | C-517/99 | 2001 | <i>Merz & Krell</i> |
| 178 | C-375/99 | 2001 | <i>Spain v Commission</i> |
| 179 | C-235/00 | 2001 | <i>CSC Financial Services</i> |
| 180 | C-256/00 | 2002 | <i>Besix v Kretzschmar</i> |
| 181 | C-384/00 | 2002 | <i>Bredemeier</i> |
| 182 | C-378/00 | 2002 | <i>Commission v Parliament and Council</i> |
| 183 | C-174/00 | 2002 | <i>Kennemer Golf</i> |
| 184 | C-188/00 | 2002 | <i>Kurz</i> |
| 185 | C-132/99 | 2002 | <i>Netherlands v Commision</i> |
| 186 | C-187/01 | 2003 | <i>Gözütok and Bügge</i> |
| 187 | C-276/01 | 2003 | <i>Steffensen</i> |
| 188 | C-257/00 | 2003 | <i>Givane and Others</i> |
| 189 | C-127/00 | 2003 | <i>Hässle</i> |
| 190 | C-152/01 | 2003 | <i>Kyocera</i> |
| 191 | C-245/01 | 2003 | <i>RTL Television</i> |
| 192 | C-223/01 | 2003 | <i>AstraZeneca</i> |
| 193 | C-45/01 | 2003 | <i>Dornier</i> |
| 194 | C-305/01 | 2003 | <i>MKG-Kraftfahrzeuge-Factoring G</i> |
| 195 | C-40/01 | 2003 | <i>Ansul</i> |
| 196 | C-114/01 | 2003 | <i>AvestaPolarit Chrome</i> |
| 197 | C-384/01 | 2003 | <i>Commission v France</i> |
| 198 | C-109/02 | 2003 | <i>Commission v Germany</i> |
| 199 | C-135/01 | 2003 | <i>Commission v Germany</i> |
| 200 | C-8/01 | 2003 | <i>Taksatorringen</i> |
| 201 | C-57/00 P | 2003 | <i>Freistaat Sachsen and Others v Commission</i> |
| 202 | C-212/01 | 2003 | <i>Unterpertinger</i> |
| 203 | C-371/02 | 2004 | <i>Björnekulla Fruktindustrier</i> |
| 204 | C-338/01 | 2004 | <i>Commission v Council</i> |
| 205 | C-385/02 | 2004 | <i>Commission v Italy</i> |
| 206 | C-341/01 | 2004 | <i>Plato Plastik Robert Frank</i> |
| 207 | C-152/02 | 2004 | <i>Terra Baubedarf-Handel</i> |
| 208 | C-1/02 | 2004 | <i>Borgmann</i> |
| 209 | C-227/01 | 2004 | <i>Commission v Spain</i> |
| 210 | C-46/02 | 2004 | <i>Fixtures Marketing</i> |
| 211 | C-338/02 | 2004 | <i>Fixtures Marketing</i> |
| 212 | C-444/02 | 2004 | <i>Fixtures Marketing</i> |
| 213 | C-182/01 | 2004 | <i>Saatgut-Treuhandverwaltungsgesellschaft</i> |
| 214 | C-203/02 | 2004 | <i>The British Horseracing Board and Others</i> |
| 215 | C-382/02 | 2004 | <i>Cimber Air</i> |
| 216 | C-415/02 | 2004 | <i>Commission v Belgium</i> |
| 217 | C-17/01 | 2004 | <i>Sudholz</i> |

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| 218 | C-321/02 | 2004 | <i>Harbs</i> |
| 219 | C-16/03 | 2004 | <i>Peak Holding</i> |
| 220 | C-387/01 | 2004 | <i>Weigel</i> |
| 221 | C-495/03 | 2005 | <i>Intermodal Transports</i> |
| 222 | C-188/03 | 2005 | <i>Junk</i> |
| 223 | C-280/04 | 2005 | <i>Jyske Finans</i> |
| 224 | C-192/04 | 2005 | <i>Lagardère Active Broadcas</i> |
| 225 | C-428/02 | 2005 | <i>Fonden Marselisborg Lystbådehavn</i> |
| 226 | C-336/03 | 2005 | <i>EasyCar</i> |
| 227 | C-203/04 | 2005 | <i>Gebrüder Stolle</i> |
| 228 | C-86/03 | 2005 | <i>Greece v Commission</i> |
| 229 | C-329/03 | 2005 | <i>Trapeza tis Ellados</i> |
| 230 | C-110/03 | 2005 | <i>Belgium v Commission</i> |
| 231 | C-189/02 P | 2005 | <i>Dansk Rørindustri and Others v Commission</i> |
| 232 | C-300/02 | 2005 | <i>Greece v Commission</i> |
| 233 | C-498/03 | 2005 | <i>Kingscrest Associates and Montecello</i> |
| 234 | C-107/04 | 2005 | <i>Comité Andaluz de Agricultura Ecológica</i> |
| 235 | C-169/04 | 2006 | <i>Abbey National</i> |
| 236 | C-332/04 | 2006 | <i>Commission v Spain</i> |
| 237 | C-135/03 | 2006 | <i>Commission v Spain</i> |
| 238 | C-221/04 | 2006 | <i>Commission v Spain</i> |
| 239 | C-380/03 | 2006 | <i>Germany v Parliament and Council</i> |
| 240 | C-5/05 | 2006 | <i>Joustra</i> |
| 241 | C-316/05 | 2006 | <i>Nokia</i> |
| 242 | C-353/04 | 2006 | <i>Nowaco Germany</i> |
| 243 | C-181/04 | 2006 | <i>Elmeka</i> |
| 244 | C-4/03 | 2006 | <i>GAT</i> |
| 245 | C-174/05 | 2006 | <i>Zuid-Hollandse Milieufederatie and Natuur en Milieu</i> |
| 246 | C-300/05 | 2006 | <i>ZVK</i> |
| 247 | C-484/04 | 2006 | <i>Commission v United Kingdom</i> |
| 248 | C-413/04 | 2006 | <i>Parliament v Council</i> |
| 249 | C-414/04 | 2006 | <i>Parliament v Council</i> |
| 250 | C-401/05 | 2006 | <i>VDP Dental Laboratory</i> |
| 251 | C-125/05 | 2006 | <i>Vulcan Silkeborg</i> |
| 252 | C-228/05 | 2006 | <i>Stradasfalti</i> |
| 253 | C-400/06 | 2007 | <i>Codirex Expeditie</i> |
| 254 | C-34/04 | 2007 | <i>Commission v Netherlands</i> |
| 255 | C-64/04 | 2007 | <i>Commission v United Kingdom</i> |
| 256 | C-56/06 | 2007 | <i>Euro Tex</i> |
| 257 | C-63/06 | 2007 | <i>Profisa</i> |
| 258 | C-270/05 | 2007 | <i>Athinaiki Chartopoiia</i> |
| 259 | C-457/05 | 2007 | <i>Diageo</i> |
| 260 | C-458/05 | 2007 | <i>Jouini and Others</i> |
| 261 | C-455/05 | 2007 | <i>Velvet & Steel Immobilien</i> |

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| 262 | C-363/05 | 2007 | <i>JP Morgan Fleming Claverhouse Investment Trust</i> |
| 263 | C-486/06 | 2007 | <i>Van Landeghem</i> |
| 264 | C-408/06 | 2007 | <i>Götz</i> |
| 265 | C-330/05 | 2007 | <i>Granberg</i> |
| 266 | C-289/05 | 2007 | <i>Länsstyrelsen i Norrbottens län</i> |
| 267 | C-62/06 | 2007 | <i>ZF Zefeser</i> |
| 268 | C-229/06 | 2007 | <i>Sunshine Deutschland Handelsgesellschaft</i> |
| 269 | C-409/04 | 2007 | <i>Teleos and Others</i> |
| 270 | C-306/06 | 2008 | <i>01051 Telecom</i> |
| 271 | C-517/07 | 2008 | <i>Afton Chemical</i> |
| 272 | C-187/07 | 2008 | <i>Endendijk</i> |
| 273 | C-375/07 | 2008 | <i>Heuschen & Schrouff Oriental Foods Trading</i> |
| 274 | C-66/08 | 2008 | <i>Kozlowski</i> |
| 275 | C-306/07 | 2008 | <i>Ruben Andersen</i> |
| 276 | C-279/06 | 2008 | <i>CEPSA</i> |
| 277 | C-173/07 | 2008 | <i>Emirates Airlines</i> |
| 278 | C-239/07 | 2008 | <i>Sabatauskas and Others</i> |
| 279 | C-426/05 | 2008 | <i>Tele2 Telecommunication</i> |
| 280 | C-248/07 | 2008 | <i>Trespa International</i> |
| 281 | C-38/07 P | 2008 | <i>Heuschen & Schrouff Oriëntal Foods Trading v Commission</i> |
| 282 | C-317/07 | 2008 | <i>Lahti Energia</i> |
| 283 | C-403/07 | 2008 | <i>Metherma</i> |
| 284 | C-132/05 | 2008 | <i>Commission v Germany</i> |
| 285 | C-482/07 | 2009 | <i>AHP Manufacturing</i> |
| 286 | C-44/08 | 2009 | <i>Akavan Erityisalojen Keskusliitto and Others</i> |
| 287 | C-311/06 | 2009 | <i>Consiglio Nazionale degli Ingegneri</i> |
| 288 | C-263/08 | 2009 | <i>Djurgården-Lilla Värtans Miljöskyddsförening</i> |
| 289 | C-199/08 | 2009 | <i>Eschig</i> |
| 290 | C-32/08 | 2009 | <i>FEIA</i> |
| 291 | C-428/07 | 2009 | <i>Horvath</i> |
| 292 | C-542/07 P | 2009 | <i>Imagination Technologies v OHIM</i> |
| 293 | C-558/07 | 2009 | <i>S.P.C.M. and Others</i> |
| 294 | C-347/08 | 2009 | <i>Vorarlberger Gebietskrankenkasse</i> |
| 295 | C-261/08 | 2009 | <i>Zurita García and Choque Cabrera</i> |
| 296 | C-134/08 | 2009 | <i>Tyson Parketthandel</i> |
| 297 | C-270/07 | 2009 | <i>Commission v Germany</i> |
| 298 | C-550/09 | 2010 | <i>E and F</i> |
| 299 | C-194/08 | 2010 | <i>Gassmayr</i> |
| 300 | C-54/09 P | 2010 | <i>Greece v Commission</i> |
| 301 | C-419/10 | 2010 | <i>Hofmann</i> |
| 302 | C-569/08 | 2010 | <i>Internetportal und Marketing</i> |
| 303 | C-66/09 | 2010 | <i>Kirin Amgen</i> |
| 304 | C-185/08 | 2010 | <i>Latchways and Eurosafe Solutions</i> |
| 305 | C-471/08 | 2010 | <i>Parviainen</i> |

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| 306 | C-133/09 | 2010 | <i>Uzonyi</i> |
| 307 | C-473/08 | 2010 | <i>Eulitz</i> |
| 308 | C-511/08 | 2010 | <i>Heinrich Heine</i> |
| 309 | C-451/08 | 2010 | <i>Helmut Müller</i> |
| 310 | C-340/08 | 2010 | <i>M and Others</i> |
| 311 | C-203/09 | 2010 | <i>Volvo Car Germany</i> |
| 312 | C-218/09 | 2010 | <i>SGS Belgium and Others</i> |
| 313 | C-422/09 | 2010 | <i>Vandourou and Others</i> |
| 314 | C-64/09 | 2010 | <i>Commission v France</i> |
| 315 | C-482/09 | 2011 | <i>Budějovický Budvar</i> |
| 316 | C-441/09 | 2011 | <i>Commission v Austria</i> |
| 317 | C-453/09 | 2011 | <i>Commission v Germany</i> |
| 318 | C-423/10 | 2011 | <i>Delphi Deutschland</i> |
| 319 | C-52/10 | 2011 | <i>Eleftheri tileorasi and Giannikos</i> |
| 320 | C-65/09 | 2011 | <i>Gebr. Weber and Putz</i> |
| 321 | C-445/09 | 2011 | <i>IMC Securities</i> |
| 322 | C-351/10 | 2011 | <i>Laki</i> |
| 323 | C-421/10 | 2011 | <i>Stoppelkamp</i> |
| 324 | C-144/10 | 2011 | <i>BVG</i> |
| 325 | C-463/09 | 2011 | <i>CLECE</i> |
| 326 | C-41/09 | 2011 | <i>Commission v Netherlands</i> |
| 327 | C-503/10 | 2011 | <i>Evroetil</i> |
| 328 | C-230/09 | 2011 | <i>Kurt und Thomas Etling and Others</i> |
| 329 | C-585/10 | 2011 | <i>Møller</i> |
| 330 | C-536/09 | 2011 | <i>Omejc</i> |
| 331 | C-145/10 | 2011 | <i>Painer</i> |
| 332 | C-108/10 | 2011 | <i>Scattolon</i> |
| 333 | C-404/09 | 2011 | <i>Commission v Spain</i> |
| 334 | C-72/11 | 2011 | <i>Afrasiabi and Others</i> |
| 335 | C-235/09 | 2011 | <i>DHL Express France</i> |
| 336 | C-412/10 | 2011 | <i>Homawoo</i> |
| 337 | C-83/10 | 2011 | <i>Sousa Rodríguez and Others</i> |
| 338 | C-79/10 | 2011 | <i>Systeme Helmholtz</i> |
| 339 | C-381/10 | 2011 | <i>Astrid Preissl</i> |
| 340 | C-323/10 | 2011 | <i>Gebr. Stolle and Doux Geflügel</i> |
| 341 | C-33/11 | 2012 | <i>A Oy</i> |
| 342 | C-395/11 | 2012 | <i>BLV Wohn- und Gewerbebau</i> |
| 343 | C-49/11 | 2012 | <i>Content Services</i> |
| 344 | C-294/11 | 2012 | <i>Elsacom</i> |
| 345 | C-509/10 | 2012 | <i>Geistbeck</i> |
| 346 | C-19/11 | 2012 | <i>Geltl</i> |
| 347 | C-190/10 | 2012 | <i>Génesis</i> |
| 348 | C-218/10 | 2012 | <i>ADV Allround</i> |
| 349 | C-355/11 | 2012 | <i>Brouwer</i> |

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| 350 | C-510/10 | 2012 | <i>DR and TV2 Danmark</i> |
| 351 | C-245/11 | 2012 | <i>K</i> |
| 352 | C-558/11 | 2012 | <i>Kurcums Metal</i> |
| 353 | C-250/11 | 2012 | <i>Lietuvos geležinkeliai</i> |
| 354 | C-56/11 | 2012 | <i>Raiffeisen-Waren-Zentrale Rhein-Main</i> |
| 355 | C-502/10 | 2012 | <i>Singh</i> |
| 356 | C-420/10 | 2012 | <i>Söll</i> |
| 357 | C-92/12 PPU | 2012 | <i>Health Service Executive</i> |
| 358 | C-402/11 P | 2012 | <i>Jager & Polacek/OHIM</i> |
| 359 | C-488/11 | 2013 | <i>Asbeek Brusse and de Man Garabito</i> |
| 360 | C-89/12 | 2013 | <i>Bark</i> |
| 361 | C-85/11 | 2013 | <i>Commission v Ireland</i> |
| 362 | C-360/11 | 2013 | <i>Commission v Spain</i> |
| 363 | C-86/11 | 2013 | <i>Commission v UK</i> |
| 364 | C-546/11 | 2013 | <i>Dansk Jurist- og Økonomforbund</i> |
| 365 | C-22/12 | 2013 | <i>Haasová</i> |
| 366 | C-476/11 | 2013 | <i>HK Danmark</i> |
| 367 | C-583/11 P | 2013 | <i>Inuit Tapiriit Kanatami and Others v Parliament and Council</i> |
| 368 | C-391/12 | 2013 | <i>RLvS</i> |
| 369 | C-251/12 | 2013 | <i>Van Buggenhout and Van de Mierop</i> |
| 370 | C-140/12 | 2013 | <i>Brey</i> |
| 371 | C-298/12 | 2013 | <i>Confédération paysanne</i> |
| 372 | C-277/12 | 2013 | <i>Drozdovs</i> |
| 373 | C-604/11 | 2013 | <i>Genil 48 and Comercial Hostelera de Grandes Vinos</i> |
| 374 | C-125/12 | 2013 | <i>Promociones y Construcciones BJ 200</i> |
| 375 | C-442/12 | 2013 | <i>Sneller</i> |
| 376 | C-281/12 | 2013 | <i>Trento Sviluppo and Centrale Adriatica</i> |
| 377 | C-243/11 | 2013 | <i>RVS Levensverzekeringen</i> |
| 378 | C-486/12 | 2013 | <i>X</i> |
| 379 | C-394/11 | 2013 | <i>Belov</i> |
| 380 | C-269/11 | 2013 | <i>Commission v Czech republic</i> |
| 381 | C-309/11 | 2013 | <i>Commission v Finland</i> |
| 382 | C-296/11 | 2013 | <i>Commission v France</i> |
| 383 | C-293/11 | 2013 | <i>Commission v Greece</i> |
| 384 | C-236/11 | 2013 | <i>Commission v Italy</i> |
| 385 | C-193/11 | 2013 | <i>Commission v Poland</i> |
| 386 | C-450/11 | 2013 | <i>Commission v Portugal</i> |
| 387 | C-189/11 | 2013 | <i>Commission v Spain</i> |
| 388 | C-515/12 | 2014 | <i>4finance</i> |
| 389 | C-297/13 | 2014 | <i>Data I / O</i> |
| 390 | C-117/13 | 2014 | <i>Eugen Ulmer</i> |
| 391 | C-74/13 | 2014 | <i>GSV</i> |
| 392 | C-330/13 | 2014 | <i>Lukoil Neftohim Burgas</i> |
| 393 | C-103/13 | 2014 | <i>Somova</i> |

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| 394 | C-575/12 | 2014 | <i>Air Baltic Corporation</i> |
| 395 | C-307/13 | 2014 | <i>Ivansson and Others</i> |
| 396 | C-43/13 | 2014 | <i>Kronos Titan and Rhein-Ruhr Beschichtungs-Service</i> |
| 397 | C-52/13 | 2014 | <i>Posteshop</i> |
| 398 | C-192/13 P | 2014 | <i>Spain v Commission</i> |
| 399 | C-197/13 P | 2014 | <i>Spain v Commission</i> |
| 400 | C-359/12 | 2014 | <i>Timmel</i> |
| 401 | C-616/11 | 2014 | <i>T-Mobile Austria</i> |
| 402 | C-162/13 | 2014 | <i>Vnuk</i> |
| 403 | C-487/12 | 2014 | <i>Vueling Airlines</i> |
| 404 | C-473/13 | 2014 | <i>Bero and Bouzalmate</i> |
| 405 | C-461/12 | 2014 | <i>Granton Advertising</i> |
| 406 | C-485/12 | 2014 | <i>Maatschap T. van Oosterom en A. van Oosterom-Boelhouwer</i> |
| 407 | C-114/13 | 2015 | <i>Bouman</i> |
| 408 | C-168/14 | 2015 | <i>Grupo Itevelesa and Others</i> |
| 409 | C-103/14b | 2015 | <i>Jakutis and Kretingalės kooperatinė ŽŪB</i> |
| 410 | C-182/13 | 2015 | <i>Lyttle and Others</i> |
| 411 | C-539/13 | 2015 | <i>Merck</i> |
| 412 | C-81/14 | 2015 | <i>Nannoka Vulcanus Industries</i> |
| 413 | C-207/15 P | 2015 | <i>Nissan Jidosha v EUIPO</i> |
| 414 | C-51/14 | 2015 | <i>Pfeifer & Langen</i> |
| 415 | C-301/14 | 2015 | <i>Pfotenhilfe-Ungarn</i> |
| 416 | C-65/14 | 2015 | <i>Rosselle</i> |
| 417 | C-80/14 | 2015 | <i>USDAW and Wilson</i> |
| 418 | C-554/13 | 2015 | <i>Zh. and O.</i> |
| 419 | C-498/13 | 2015 | <i>Agrooikosystemata</i> |
| 420 | C-83/14 | 2015 | <i>CHEZ Razpredelenie Bulgaria</i> |
| 421 | C-41/14 | 2015 | <i>Christie's France</i> |
| 422 | C-161/14 | 2015 | <i>Commission v United Kingdom</i> |
| 423 | C-264/14 | 2015 | <i>Hedqvist</i> |
| 424 | C-207/14 | 2015 | <i>Hotel Sava Rogaška</i> |
| 425 | C-528/13 | 2015 | <i>Léger</i> |
| 426 | C-557/13 | 2015 | <i>Lutz</i> |
| 427 | C-627/13 | 2015 | <i>M.</i> |
| 428 | C-310/14 | 2015 | <i>Nike European Operations Netherlands</i> |
| 429 | C-471/14 | 2015 | <i>Seattle Genetics</i> |
| 430 | C-373/13 | 2015 | <i>T.</i> |
| 431 | C-257/14 | 2015 | <i>Van der Lans</i> |
| 432 | C-44/15 | 2015 | <i>Duval</i> |
| 433 | C-276/14 | 2015 | <i>Gmina Wrocław</i> |
| 434 | C-103/14 | 2015 | <i>Jakutis and Kretingalės kooperatinė ŽŪB</i> |
| 435 | C-446/12 | 2015 | <i>Willems and Others</i> |
| 436 | C-220/14 P | 2015 | <i>Ezz and Others v Council</i> |
| 437 | C-369/13 | 2015 | <i>Gielen and Others</i> |

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| 438 | C-487/14 | 2015 | <i>Total Waste Recycling</i> |
| 439 | C-179/15 | 2016 | <i>Daimler</i> |
| 440 | C-294/16 PPU | 2016 | <i>JZ</i> |
| 441 | C-667/15 | 2016 | <i>Nationale Loterij</i> |
| 442 | C-443/14 | 2016 | <i>Alo and Osso</i> |
| 443 | C-46/15 | 2016 | <i>Ambisig</i> |
| 444 | C-442/14 | 2016 | <i>Bayer CropScience and Stichting De Bijenstichting</i> |
| 445 | C-191/14 | 2016 | <i>Borealis Polyolefine</i> |
| 446 | C-113/15 | 2016 | <i>Breitsamer und Ulrich</i> |
| 447 | C-659/13 | 2016 | <i>C & J Clark International</i> |
| 448 | C-139/15 P | 2016 | <i>Commission v Spain</i> |
| 449 | C-140/15 P | 2016 | <i>Commission v Spain</i> |
| 450 | C-147/15 | 2016 | <i>Edilizia Mastrodonato</i> |
| 451 | C-550/14 | 2016 | <i>Envirotec Denmark</i> |
| 452 | C-597/14 P | 2016 | <i>EUIPO v Grau Ferrer</i> |
| 453 | C-521/14 | 2016 | <i>Jakutis and Kretingalės kooperatinė ŽŪB</i> |
| 454 | C-112/15 | 2016 | <i>Kødbranchens Fællesråd</i> |
| 455 | C-174/15 | 2016 | <i>Vereniging Openbare Bibliotheken</i> |
| 456 | C-484/14 | 2016 | <i>Mc Fadden</i> |
| 457 | C-558/14 | 2016 | <i>Khachab</i> |
| 458 | C-648/15 | 2017 | <i>Austria v Germany</i> |
| 459 | C-504/16 | 2017 | <i>Deister Holding</i> |
| 460 | C-133/16 | 2017 | <i>Ferenschild</i> |
| 461 | C-173/15 | 2017 | <i>GE Healthcare</i> |
| 462 | C-374/16 | 2017 | <i>Geissel</i> |
| 463 | C-423/16 P | 2017 | <i>HX v Council</i> |
| 464 | C-195/16 | 2017 | <i>I</i> |
| 465 | C-678/15 | 2017 | <i>Khorassani</i> |
| 466 | C-308/16 | 2017 | <i>Kozuba Premium Selection</i> |
| 467 | C-306/16 | 2017 | <i>Maio Marques da Rosa</i> |
| 468 | C-427/15 | 2017 | <i>NEW WAVE CZ</i> |
| 469 | C-535/15 | 2017 | <i>Pinckernelle</i> |
| 470 | C-293/16 | 2017 | <i>Sharda Europe</i> |
| 471 | C-422/16 | 2017 | <i>TofuTown.com</i> |
| 472 | C-528/15 | 2017 | <i>Al Chodor and Others</i> |
| 473 | C-48/16 | 2017 | <i>ERGO Poist'ovňa</i> |
| 474 | C-516/16 | 2017 | <i>Erzeugerorganisation Tiefkühlgemüse</i> |
| 475 | C-442/16 | 2017 | <i>Gusa</i> |
| 476 | C-174/16 | 2017 | <i>H.</i> |
| 477 | C-465/15 | 2017 | <i>Hüttenwerke Krupp Mannesmann</i> |
| 478 | C-404/16 | 2017 | <i>Lombard Ingatlan Lízing</i> |
| 479 | C-670/16 | 2017 | <i>Mengesteab</i> |
| 480 | C-231/16 | 2017 | <i>Merck</i> |
| 481 | C-24/16 | 2017 | <i>Nintendo</i> |

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| 482 | C-416/16 | 2017 | <i>Piscarreta Ricardo</i> |
| 483 | C-277/16 | 2017 | <i>Polkomtel</i> |
| 484 | C-632/15 | 2017 | <i>Popescu</i> |
| 485 | C-72/15 | 2017 | <i>Rosneft</i> |
| 486 | C-521/15 | 2017 | <i>Spain v Council</i> |
| 487 | C-640/15 | 2017 | <i>Vilkas</i> |
| 488 | C-559/15 | 2017 | <i>Onix Asigurări</i> |
| 489 | C-183/16 P | 2017 | <i>Tilly-Sabco v Commission</i> |
| 490 | C-688/15 | 2018 | <i>Anisimovienė and Others</i> |
| 491 | C-287/17 | 2018 | <i>Česká pojišťovna</i> |
| 492 | C-647/16 | 2018 | <i>Hassan</i> |
| 493 | C-561/16 | 2018 | <i>Saras Energía</i> |
| 494 | C-414/17 | 2018 | <i>AREX CZ</i> |
| 495 | C-256/16 | 2018 | <i>Deichmann</i> |
| 496 | C-554/16 | 2018 | <i>EP Agrarhandel</i> |
| 497 | C-612/15 | 2018 | <i>Kolev and Others</i> |
| 498 | C-60/17 | 2018 | <i>Somoza Hermo and Ilunión Seguridad</i> |
| 499 | C-462/17 | 2018 | <i>Tänzer & Trasper</i> |
| 500 | C-250/17 | 2018 | <i>Tarragó da Silveira</i> |
| 501 | C-239/17 | 2018 | <i>Teglgaard and Fløjstrupgård</i> |
| 502 | C-90/17 | 2018 | <i>Turbogás</i> |
| 503 | C-301/16 P | 2018 | <i>Commission v Xinyi PV Products (Anhui)</i> |
| 504 | C-240/17 | 2018 | <i>E</i> |
| 505 | C-163/16 | 2018 | <i>Loboutin</i> |