SOME ASPECTS REGARDING TRANSLATION DIVERGENCES BETWEEN THE AUTHENTIC TEXTS OF THE EUROPEAN UNION

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Toi, qui me lis, es-tu sûr de comprendre ma langue ?[1]

Abstract

When multiple legal orders and languages co-exist within a single legal regime, there is potential for divergences between the legal texts. The European Union represents on the international legal stage, the most ambitious linguistic project, integrating 28 Member States and 24 official languages.

What we undertook with this study was to discover how the multilingual and multicultural environment of the European Union affects its legislative and judicial processes. We tried to argue the problem of translation divergences between the authentic texts of the European Union.

Many questions arise. Is 'controlled multilingualism' the key to our problem? Is weak multilingualism the solution - especially that it is not new for the European construction? Should one language be chosen as the original?

Of course that we have to see that multilingualism is an advantage, a blessing of the European Union and not an obstacle, a curse. We consider that, despite the various problems with the European multilingualism described in this study, it is unlikely that something would change in the foreseeable future. However, we consider that lawyers should research more in languages and legal interpretation. Interdisciplinary efforts could solve the multilingualism problems of the European Union.

The present study is part of a more complex research on this theme and it is meant to approach certain important points of the master thesis prepared in Switzerland for a LL.M. program.

Keywords: *European Union, translation, divergences, conflicts, authentic texts.*

1. Introduction

Language is the highest cultural form and the most important factor distinguishing between humans and animals. Being an important part of our identity, it supposes diversity and cultural heritage. Because of the fact that we can communicate between ourselves and with others, the languages represent a bridge between people and cultures. Language represents the mean through which communication takes place in the legal, political, commercial or academic environment, in the mass media, on the internet, occupying a leading role in our lives and in this globalised world.

When multiple legal orders and languages co-exist within a single legal regime, such as the European Union, there is potential for divergences between the legal texts. The European Union represents on the international legal stage, the most ambitious linguistic project, integrating 28 Member States and 24 official languages[2].

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[1] Glanert, S., *De la traductabilité du droit*, Dalloz, Paris, 2011, p. 3.

[2] We have to borne in mind that there are also in the EU more than 90 linguistic minority groups. Please see, Duparc Portier P., Masson A., *La question des langues en Europe: entre paradoxes et divergences juridiques* [on line], in Revue trimestrielle des droits de l'homme, no. 72/2007, p. 1071, http://www.rtdh.eu/pdf/20071051.pdf (13.03.2014).

In this study, we shall explore how the multilingual and multicultural environment of the EU affects its legislative and judicial processes, and the challenges raised by the multilingual drafting of legal texts. This objective goes hand in hand with the importance of the adequate drafting of legislative texts and the proper linguistic expression of EU concepts.

The ambition of this study is to prove that the meaning of EU law cannot be derived from one version of the official languages, therefore the languages are interdependent and "[h]ence EU citizens cannot purely rely on their own languages when they want to know what EU law says on a particular issue. In principle, EU citizens must know the law in each and every official language because the meaning of the law is anchored not in one single language version, but in all the language versions taken together"[3].

2. Content

2.1. Multilingualism and Multijuralism[4] in the European Union

Multilingualism can be seen as "a democratic value to be protected, a fundamental right of minority groups, an obstacle to deliberative democracy and a hindrance to legal certainty and the possibility of uniform law, a cultural asset of Europe to be promoted and protected, a competitive advantage of businesses on the market and a prerequisite for the free movement of EU citizens"[5].

Why EU does not agree on a common language? Would this be the solution? The linguistic diversity is a *specific value* of the EU which should be protected. As the former European Commissioner for Multilingualism, Mr. Leonard Orban, once said at a conference on multilingualism that took place in Romania on 15 May 2009:

> *Today we live in a globalized world and Europe is building an ever closer Union. While, on a global level, some "big" languages tend to dominate the scene, Europe is not a melting pot where differences are blotted out. Europe is a common home where diversity is celebrated, and where our many mother tongues are or should be a source of wealth and a bridge to greater solidarity and mutual understanding*[6].

What Mr Orban *did not* say was that although the many mother tongues are a symbol of EU democracy, *a source of greater cultural wealth*, they still impede mutual understanding between EU citizens. Moreover, "[i]n a market where goods, capital, services and persons are encouraged and expected to move freely, the diversity of languages is, in fact, a hindrance to such movement" [7].

Contrary to the provisions of the Treaty establishing the European Coal and Steel Community (authentic in French only) the European Union (and the European Community first) has always been based on the principle that at least one official language of each Member State[8] should become an official language of the Union. As for the provision of Article 314 of the Treaty establishing the European Community, the treaty was drawn up in a

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[3] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *Linguistic Diversity and European Democracy: Introduction and Overview*, Ashgate, 2011, p. 7.

[4] By *multijuralism*, we mean the simple fact that within the EU each Member State has at least one legal system which is entirely its own and whose validity, as opposed to its history, is independent of all other Member State legal systems. From this fact it follows that EU legislators and adjudicators, and their staff, coming as they are from different countries, have many different legal backgrounds, and must legislate for widely differing legal systems.

[5] Kjaer, A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 2.

[6] Speech [on line] http://ec.europa.eu/archives/commission_2004-2009/orban/news/news_en.htm (13.03.2014).

[7] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 5.

[8] There are multilingual legislative systems in the EU: *Belgium* (French, Dutch and German) and *Malta* (Maltese and English). Other multilingual legislative systems in the world: Canada and Switzerland.

single original in four texts equally authentic (*i.e.* Dutch, French, German and Italian languages). This Article has been amended by the Accession Treaties upon each entry into the Community/Union of new Member States[9].

As from July 1st, 2013, the European Union has 28 Member States, the last Member State entering into the European family being Croatia. Each Member State has its own legal system, which can be classified under the criteria of René David in civil law countries or common law countries. Almost every Member State has its own official language, in the EU being recognized 24 languages per total[10]. Moreover, "depending on how languages are defined and what inclusion criteria are used, more than 100 regional and minority languages are spoken in Europe"[11]. However, despite *the struggle* of Europeans to keep their linguistic diversity, we notice that the number of languages spoken in Europe has certainly dropped: "[m]any languages have disappeared, and some European states gave even managed to impose an almost perfect linguistic unity on their territory: English in the UK, German in Germany, French in France or Italian in Italy. Some states even share the same official language"[12].

For those reasons, we consider that we can discuss about multilingualism and multijuralism in the EU. If the notion of "multilingualism" does not rise any questions, by "multijuralism", we understand the simple fact that within the EU, each Member State has at least one legal system which is entirely its own and whose validity, as opposed to its history, is independent of all other Member State legal systems[13]. That means that the EU legal specialists, coming from the Member States, have different legal backgrounds and must legislate for different legal systems.

2.2. The EU Multilingualism. Unity in Diversity

Law is not created in a vacuum, because it has to be applied to practical situations. As mentioned above, if we want a legal act *to be applied uniformly throughout the EU*, it has to be communicated in such a way that the same legal effect be reached in all circumstances. In a multilingual construction such the EU, it means that language has a much more important and complicated role than in national legal systems characterised by one single language.

The multilingualism is one key characteristic of the EU law – "if not *the* key manifestation – of cultural diversity in Europe today"[14]. It is an "indispensable component of the effective operation of the rule of law in the Community legal order"[15].

Why recognizing equal official status to all languages? We consider that this was the solution found by the European legal architects to "immunizing the European institutions

[9] In 1973, English, Irish and Danish, in 1981 Greek, in 1986 Spanish and Portuguese, in 1995 Finnish and Swedish, in 2004 Czech, Estonian, Hungarian, Lithuanian, Latvian, Maltese, Polish, Slovenian and Slovak, in 2007 Romanian and Bulgarian, in 2013 Croatian became official languages in the EU.

[10] However, it must be emphasized that until 2007 Irish was an authentic language of the Treaties but was not included among the official and working languages of the EU. Irish became, with the accession of Ireland, an authentic language of the Treaties but it did not acquire the status of an official language under Regulation No. 1 until 2007 when the regime was extended to Irish with some limitations.

[11] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 4 (footnote omitted).

[12] Gravier M., Lundquist L., "Getting Ready for a New Tower of Babel" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 75.

[13] Schilling, T., Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?, German Law Journal, Vol. 12, No. 07/2011, p. 1462.

[14] Kraus P., "Neither United nor Diverse? The Language Issue and Political Legitimation in the European Union" in Kjaer A.L., Adamo S., *op. cit.*, p. 27.

[15] Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 100.

against the nationalist setbacks they anticipated in case some Member States felt symbolically discriminated against because of the preferential treatment given to the languages of others"[16].

The concept of "multilingualism" can be *strong*, meaning that all official language versions are equally authentic, or *week*, meaning that one language version is authentic, while the others are official translations. In the history of the European construction, we can find both strong and weak multilingualism. For example, the EU adopted the strong multingualism, because all language versions of an act are authentic, while the European Coal and Steel Treaty adopted the weak multilingualism, because the French version was considered to be authentic. An example of today's weak multilingualism would be the case law of the ECJ, because the authentic version is the language-of-the-case version.

From the doctrine and from the ECJ case law, we have noticed that by adopting the strong multilingualism, the EU faces many problems, leading to contradictions or variations between the language versions of EU acts.

Some authors point out that "embracing weak multilingualism instead of the strong variety would solve some of the EU's multilingualism problems without creating new ones (purely political problems apart), and without squandering any of the opportunities multilingualism may offer in the EU context"[17]. The solution for such problems would consist in looking to the single authentic version.

There are however *benefits* of the multilingualism. For instance, translation could lead to a better and clearer version of the original[18], because by translation, the implied assumptions made in the original version may be identified.

Strong multilingualism has the advantage to offer the same rights of a Member State to another Member State, because all European citizens have the right to discover the EU law in their own language.

The paradox expressed in the EU motto "united in diversity" affects also the EU legal regime, the legislation being translated into 24 official languages. All the official languages have equal authenticity. We consider that "in stressing the equal value of the different linguistic versions of the Community acts, the Court [the European Court of Justice] discounted legal argument brought by some States, aimed at supporting the greater value of the different linguistic versions, based, for example, on the corresponding percentage of population in the Community; the Court will not allow the interpretative value of an official version to vary in proportion to the number of individuals of member States where certain languages are spoken"[19]. As stated by the Court in the *EMU Tabac* case[20], "all the language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question".

In many ECJ cases, it was underlined that multilingualism is essential to the EU legal order. For instance, in the case *Kik v. OHIM*, it was underlined that:

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[16] Kraus P., "Neither United nor Diverse? The Language Issue and Political Legitimation in the European Union" in Kjaer A.L., Adamo S., *op. cit.*, p. 23 (footnote ommited).

[17] Schilling T., *op. cit.*, p. 1463.

[18] Caussignac G., "Empirische Aspekte der zweiprachigen Redaktion vom Rechtserlassen" in Muller, F., Burr, I. (eds.), *Rechtssprache Europas. Reflexion der Praxis von Sprache und Mehrsprachigkeit im Supranationalen Recht*, 2004; Robinson W., *How the European Commission Drafts Legislation in 20 Languages*, 53 Clarity, 2005.

[19] Vismara F., "The Role of the Court of Justice of the European Communities in the Interpretation of Multilingual Texts" in Pozzo B., Jacometti V., *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, 2006, p. 66. See also judgment in Case C-296/95 *The Queen v Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd, John Cunningham* [1998] ECR 1605, and Case 9/79 *Marianne Wörsdorfer, née Koschniske, v Raad van Arbeid* [1979], ECR 2717. In these cases, the Court held that in case of doubt, the text of the legal norms should not be considered in isolation, but it should be interpreted and applied in the light of other texts drawn up in the other official languages.

[20] Case C-296/95 The Queen v Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd, John Cunningham [1998] ECR 1605, par. 36.

Multilingualism is an indispensable component of the effective operation of the rule of law in the Community legal order, since many rules of primary and secondary law have direct application in the national legal systems of the Member States[21].

Another example can be discovered in the *CILFIT* case, where the Court stated:

It must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions[22].

Thus, the meaning of EU law cannot be derived from one version of the official languages, therefore the languages are interdependent and "[h]ence EU citizens cannot purely rely on their own languages when they want to know what EU law says on a particular issue. In principle, EU citizens must know the law in each and every official language because the meaning of the law is anchored not in one single language version, but in all the language versions taken together"[23].

The differences between the languages are inevitable because *they are not absolute copies one of each other*. In this case, the EU multilingualism leads to "legal miscommunication, misinterpretation, incoherent and divergent texts and, ultimately, an obstacle to achieving what lies at the very core of the rule of law, namely legal certainty"[24].

But to what extent must language be regarded as *a barrier* to the development of a uniform EU law?

2.3. The EU Multijuralism and the EU law making

As mentioned before, the term "multijuralism" is not very clear and we use it in the sense of the fact that within the EU each Member State has at least one legal system which is entirely its own and whose validity, as opposed to its history, is independent of all other Member States' legal systems. That means that the EU legal specialists, coming from the Member States, have different legal backgrounds and must legislate for different legal systems.

Some authors[25] claim that the different legal background and the obligation to legislate for different legal systems "may cause problems for devising general concepts which will be understood in the same way throughout the EU"[26].

It seems that there is no evidence in this concern, but still, "those problems are accompanied by the unique opportunity offered to the producers of EU legal texts to have at their disposal a toolbox of 27 possible solutions for many situations"[27]. This toolbox should be very useful, a source of inspiration for the best available solution, and the EU should "pay attention to the lessons of national experience"[28].

Although the detailed analysis of the EU law making process would be very interesting for the present study, we emphasize that is not our aim. We resume some of the

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[21] Judgment of the Court in Case C-361/01 P Christina Kik v. Office for Harmonisation in the Internal Market [2003] ECR I-8283.

[22] Judgment of the Court in Case C-283/81, Srl CILFIT and Lanifacio di Gavardo SpA v. Ministry of Health [1982] ECR 3415, par. 18.

[23] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), op. cit., p. 7.

[24] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), op. cit., p. 7.

[25] Pozzo B., "Multilingualism as a "value" in the European Union" in Ajani G., Tiscornia D., Sartor G. (eds.), The Multilanguage Complexity of European Law: Methodologies in Comparison, 2007, p. 133-134.

[26] Schilling T., op. cit., p. 1462.

[27] Schilling T., op. cit., p. 1462.

[28] Mummery J., "Links with National Courts" in Moser P., Sawyer K., Making Community Law. The Legacy of Advocate General Jacobs at the European Court of Justice, 2008, p. 109.

main problems of the EU law making process regarding the divergences between the authentic texts.

There are, according to the Treaty on the Functioning of the European Union, two categories of legal acts in the EU legal order: "legislative" and "non-legislative" acts. The legislative acts have to be adopted under the ordinary or special legislative procedure, while the non-legislative acts have to be adopted by the Commission (two sub-groups: delegated acts and implementing acts).

The EU law making process is construed on a unique multilingual system in which 24 official languages have an equal status - this principle has been established by the founding Treaties of the EU. Moreover, this principle was the subject matter of the very first Regulation of the Council of the European Economic Community, adopted in 1958. By this principle, the EU has to publish its legislation and major policy documents in all the official languages in order that everybody in the EU (citizens, government entities and private organisations) is able to understand the rights and obligations that EU membership confers upon them and to act accordingly. Another right deriving from this principle is the right of the EU citizens to communicate with the EU in any of the official languages.

According to Articles 293-299 of the Treaty on the Functioning of the European Union, the majority legislative acts of the EU are to be adopted under the ordinary legislative procedure, jointly by the Council and the European Parliament (the former co-decision procedure). Summarizing the procedure, the text of a legislative act is the joint product of the following institutions: the *Commission* submits the proposal, while the *European Parliament* and the *Council* adopt the act.

The drafting of legal texts usually starts at the Commission, the most used languages being English[29] and French (however, nowadays, there is a decreasing percentage for French). But is the increasing use of English in the EU institutions compatible with the EU's commitment towards maintaining linguistic diversity? Some authors consider that "EU institutions can be considered as in effect practising linguistic apartheid"[30], since minority languages have no place.

However, each unit of the Commission drafts the legal texts in its working language. In order to be adopted by Commission's decision, the texts have to be translated into the authentic languages, so if the texts are of general application, they have to be adopted in all the EU's official languages.

According to Article 294 of the Treaty on the Functioning of the European Union, which is the most important procedure based on Commission proposals, the European Parliament will deal with the legal texts, once they have been translated into all the EU's official languages. The documents presented by the Member States in their official language, are translated by the Council in the other 23 official languages. After the acts have been sent for publication to EU's Publication Office, the language versions remain unmodified, except for formatting and linguistic corrections. In the end, all legislative acts of the EU are published in the Official Journal of the European Union in all 24 official languages.

One of the most interesting situations related to the conflict of language versions is the *inadequate drafting of EU legal acts*. We consider that the quality of drafting the EU legislation is extremely important in order to exclude undesirable consequences at the national level, and to prevent private litigants from appearing before the EU courts with actions that undermine the EU legal instruments.

Under Article 268 of the Treaty on the Functioning of the European Union, the ECJ has jurisdiction in disputes relating to compensation for damage under non-contractual

[29] This is not a result of a decision by the Council of Ministers, but because of the market forces. The role of English is reinforced also by key decisions, such as using it in all negotiations with applicant Member States.
[30] Philipson R., "The EU and Languages: Diversity in What Unity?" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 62.

liability. The ECJ case law dealing with the non-contractual liability of the European Union provides indications on the possibility for individuals to claim compensation for damages due to translation errors or even differences in the language versions of a given legal act. However, we did not find any such cases, whereas a body of case law relating to the damages caused by illegal acts of the institutions can be identified.

In case *Brasserie du Pêcheur and Factortame*[31], the ECJ found that, in legislative acts not involving an element of discretion on behalf of the legislator, the mere infringement of EU law may suffice for liability. Evidently, it had to establish the causal link between the Union's action and the loss, as well as the damage itself.

Possible scenarios of non-contractual liability for inadequate multilingual drafting and publication of legal acts can be identified, but we did not find case law on this specific problem.

From the *Skoma-Lux* case[32] we understand that the incorrect publication of the EU legislation may not only entail the lack of enforceability of that legal act against individuals, but may be a ground for compensation in the event of losses caused by the application of such legislation (financial losses or damage). The reference was submitted by the Czech court in Ostrava in the course of the national proceedings concerning a fine imposed in respect of customs infringements. One of the company's defences for the annulment of the fine was that the national authorities could not enforce against it the EU legislation not yet published in Czech in the Official Journal.

Realizing the considerable impact of this decision, the Court limited its temporal application, underlying that it should not be applicable to national decisions prior to this judgment, except for the decisions which had been the subject of administrative or judicial proceedings at the date of this judgment.

Moreover, drafting legal texts and translating them are done by natural persons and may sometimes lead to error, especially when there are 24 official languages in the EU legal order. Some errors may be easily recognizable to the readers, others not. There is a powerful need that the EU institutions adopting legal acts have levers to correct those errors. Adopting corrigenda[33] is a common tool to be used when the error may create serious legal consequences. "It derives its authority from the text it rectifies, including its legitimacy, legal force and the provisions on its temporal application"[34]. A corrigendum needs to be published in the same series of the Official Journal as the initial document, and it enjoys retroactive effect (*i.e.* the corrected legal text is official from the date of the initial act). Its size varies – from one or two correction points to hundreds.

The EU law is very special, because it is an autonomous legal order, characterized by multilingualism (24 equally authentic official languages) and multijuralism (28 national legal systems). The increase of the official languages in the EU (from 4 in 1958 to 24 in 2013), determines the multilingualism in EU institutions to be even more complex. We have to keep in mind that with the 24 official languages, the European institutions have to manage 552 linguistic combinations both for translation and for interpretation: each of the 24 languages

[31] Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* 258 [1996] ECR I-1029.

[32] Case C-161/06 *Skoma-Lux* [2007] ECR I-10841. The ECJ was interrogated on the enforceability against individuals by the authorities of a Member State of EU legislation not published in the official language of that Member State. The ECJ held that obligations contained in such legislation may not be imposed on individuals in that Member State, even though those persons could have learned about that legislation by other means (the principle of legal certainty, that required that EU legislation allow those concerned to acquaint themselves with the precise extent of the obligations it imposes on them, which may only be granted by the proper publication of that legislation in the official language of those to whom it applies).

[33] For more information, please see European Commission, Directorate-General for Translation, *Studies on translation and multilingualism. Lawmaking in the EU multilingual environment*, 1/2010, p. 142.

[34] Bobek M., "The Multilingualism of the European Union Law in the National Courts: Beyond the Textbooks" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 127.

must be transposed in the 23 other official languages. This fact requires the recruitment of an important number of translators and interpreters.

Some *other special features of the EU* are: the growing technicality (the majority of legislative areas, resulted from the continuous extension of the legislative competences; technical terminology), product of (political) compromises[35] (different interests at stake reflect in wording of the acts[36]), and special legal terminology.

We consider that in order to be able to do proper legal translations, the translators have to have also legal education and to be experienced in comparative law. This is required because the legal language is a specific domain and term equivalences between different languages are not sufficient. It is not a problem of terminological equivalence of proximity, therefore the legal background in comparative law should be compulsory. Needless to say that "[w]hile rudimentary or superficial comprehension [of the legal text] is common to the layman, precision or thorough comprehension is the forte of the specialist. Between these two levels of comprehension, a whole range of interpretations is theoretically possible"[37]. Language has a good quality when the jurists' ideas are clear.

The goal "of legal translation is to produce texts that are at least equivalent, if not identical (utopia?) […] The problem of achieving equivalent legal effects in the translated text is not the same for the translator and the jurist. Ideally, the translator is also a lawyer; however, the translator generally strives for *linguistic* equivalence, the lawyer for *legal* equivalence. In both cases, it is the meeting and the harmonious fusion of the two constitutive ingredients of the text – form and content – that produce a desired equivalence"[38].

Albeit there is no special provision to try and avoid the translation conflicts between the 24 official language versions (although this problem is well known at the EU level[39]), the translators have to avoid these divergences.[40] We consider that a final control of the consistency of the 24 language versions "at the very end of the legislative process is imperative to minimize the incidence of contradictions between language versions"[41]. Some authors underline that "[a] possible solution for this dilemma is to have the legislative bodies vote twice on a bill – once before and once after finalization by the experts – or at least to

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[35] The political compromises leave sometimes the EU translators without answer why several words are used to denote one and the same concept in the original version and therefore do not know if these words should be translated in a different way or not. One example is the context of emission trading under the Kyoto Protocol and under the EU European Trading System, respectively, where the same concept is called *deletion* [of assigned amount units] in the Kyoto system and *cancellation* [of allowances] in the European Trading System, or retirement in the Kyoto system and surrender in the European Trading System. European Commission, Directorate-General for Translation, *Studies on translation and multilingualism*. *Lawmaking in the EU multilingual environment*, 1/2010, p. 72.

[36] There are typical vague expressions without a concrete meaning sometimes, like *promote, foster, encourage, support, strengthen, facilitate, manage, take place, proceed to*, which result in artificial constructions, and syntax and grammar problems in certain languages.

[37] Gemar J.-C., "What Legal Translation is and is not – Within or Outside the EU" in Pozzo B., Jacometti V., *op. cit.*, p. 73.

[38] Gemar J.-C., "What Legal Translation is and is not – Within or Outside the EU" in Pozzo B., Jacometti V., *op. cit.*, p. 75-76.

[39] The Rule 146 of the Rules of Procedure of the European Parliament states that: "Where it has been established after the result of a vote has been announced that there are discrepancies between different language versions, the President shall decide whether the result announced is valid... If he declares the result valid, he shall decide which version is to be regarded as having been adopted. However, 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 differ from the original text". [on line] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20130701+RULE-146+DOC+XML+V0//EN&language=EN&navigationBar=YES (13.03.2014).

[40] We remember a funny story about divergences, found in our research in ROBINSON W., *How the European Commission drafts legislation in 20 languages*, in Clarity – Journal of the international association promoting plain legal language, no. 53/2005, p. 6: "It may happen that a term used in one language leads to a misunderstanding in another. In Regulation (EC) No 141/2000, the term «orphan drug» is used in a technical sense (known to the trade circles) of a drug which is used to treat a rare disease and for which the manufacturer receives special tax credits and marketing rights as an incentive to develop the drug. However, a German expert has assured me that she has seen it translated as «medicine for children without parents»!".

[41] Schilling T., *op. cit.*, p. 1482.

have them take cognizance, with the possibility of another vote, of the finalized language version"[42].

According to Rule 180 (2) of the Rules of Procedure of the European Parliament[43], before the legislative text is finalized and published in the Official Journal, that text has to be verified by legal and linguistic experts. Therefore, the experts intervene *after* the political agreement on the text.

Of course that all the EU major institutions have their own translation services. As one study pointed out in 2010, "[t]he largest one is the Directorate-General for Translation of the European Commission with c. 1750 translators located in Brussels and Luxembourg. The European Parliament has 1200 translators in Luxembourg. The Council Secretariat employs 700 translators in Brussels. The Court of Justice, the Committee of the Regions and the European Economic and Social Committee (these two latter jointly), the Court of Auditors, the European Central Bank and the European Investment Bank […] have their own translation services and the decentralised bodies and agencies of the EU which have no own translation services can resort to a joint Translation Centre. Most EU translation services have freelance contractors, too, in order to lessen their workload (according to Commission statistics, 28% of the Commission's translation workload was outsourced to freelance contractors in 2008)".[44]

Not every document produced or received by an EU institution is translated into all official languages, but, as a general rule, all legislative and legally binding documents are translated into all official languages (*e.g.* regulations, decisions, directives).

At this level, we consider it is wonderful that there is an online official database where all EU legislation is available in the official languages.

However, with the impressive number of translators and interpreters, there is a strong need to keep in control the costs for the translation and interpretation services. In 2011, the total cost for these services was around 1.1 billion Euros, representing less than 1% of the EU budget, or 2.50 Euros per citizen yearly. This was possible due to the use of "«relay languages», so-called «bipolar» or «tripolar» translations, the use of specialized software, interfaces and data bases (Poetry, DGTVista, Eur-Lex, IATE, Euramis and others) and relying on an increased number of external translators"[45]. The relay language translation is a translation for which a first translator translates from one language to another language (usually, English or French), and a second translator translates this translation into the intended target language. A *bipolar* translation is when a translator translates in another language that his mother tongue, while a *tripolar* translation is when a translator translates one language in another, none of which are his mother tongues.

2.4. Multilingualism and Multijuralism at the European Court of Justice

The European Court of Justice (formed by the Court of Justice, the General Court and the Civil Service Tribunal) is the judicial authority of the multilingual EU, ensuring the uniform interpretation of the EU law in 24 official languages. It ensures the observance of law "in the interpretation and application" of the treaties. It has to ensure that the Member States comply with their obligations, reviews the legality of the EU institutions' acts and interprets the EU law at the request of the national courts.

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[42] Schilling T., *op. cit.*, p. 1462 (footnote omitted).

[43] The rule states that "[t]exts adopted by Parliament shall be subject to legal-linguistic finalisation under the responsibility of the President. Where such texts are adopted on the basis of an agreement reached between Parliament and the Council, such finalisation shall be carried out by the two institutions acting in close cooperation and by mutual agreement".

[44] European Commission, Directorate-General for Translation, Studies on translation and multilingualism. Lawmaking in the EU multilingual environment, 1/2010, p. 17.

[45] Gravier M., Lundquist L., "Getting Ready for a New Tower of Babel" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 81 (footnote omitted).

As for the Court's multilingualism, a distinction must be drawn between the language of the case, which is governed by Article 29 et seq. of the Rules of Procedure[46], and the working language used within the Court. The *working language* of the Court is the language used by the Members of the Court and its staff for day to day internal communication and work produced jointly, which, at present, is French. Therefore, the Members of the Court, 28 judges and 9 Advocates General, do not have to be multilingual – they have to know French. Moreover, "[b]y opting for a common working language, the Court preserves multilingualism as an institution but becomes a monolingual decision-maker"[47]. One author underlines that this system is "inflexible to such an extent that if a judgment were to be drafted in a language other than French (for example, in English, as it has exceptionally been the case), the Court would literally be totally *lost in translation*"[48].

As for the *language-of-the-case*, all the 24 official languages of the Member States can be the language-of-the-case. Only one language may be chosen as the language-of-the-case in front of the ECJ. There is however one exception: where cases are joined and the language of the case is different for each, each language used is a language-of-the-case.

It is interesting that, before the final deliberation, the draft judgement is submitted to a "judgement reader", who has "to burnish the French version"[49]. After the judgement reader and the final deliberation, the judgements are translated into the language of the case and, of course, in all the other official languages.

Moreover, it is interesting that a feature of the Court's translation is that "translators do not start afresh. […] Concerning EU legislative texts quoted by the Court, the translation of the judgment into the language of the case generally will follow the language-of-the-case version of such a text even if that text is adopted as a *dictum proprium* by the Court and even if its language-of-the-case version is not, or only with difficulties, reconcilable with the French version on which the judges have based their judgment"[50].

As for the multijuralism, we underline that this is a special feature of the ECJ due to its composition, judges and AGs educated and trained in different legal systems and areas of law, therefore "the Court is a potential laboratory for comparative law and comparative legal cultures"[51].

We have really enjoyed the colourful comparison of a judge with a rock climber. "Although a keen rock climber or mountaineer might select the most difficult or challenging route to get to the top of a particular rock face simply for the sake of responding to the challenge, a judge faced with a problem of interpretation will be more like the hill walker who merely wants to enjoy the view from the top and, if an easier path exists around the back, will for preference take that. Of course if no such path exists, the judge will have to take the rock climber's approach using the available equipment"[52].

In its activity, the ECJ deals with the interpretation and application of the EU law. The Court has to consider the EU legal texts as equally authentic expressions of the law maker's intention. In order to discover the real intentions of the law maker, the Court has to interpret

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[46] Rules of Procedure of the Court of Justice [on line] http://www.google.ro/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&sqi=2&ved=0CDEQFjAA&url=http%3A%2F%2Fcuria.europa.eu%2Fjcms%2Fupload%2Fdocs%2Fapplication%2Fpdf%2F2008-09%2Ftxt5_2008-09-25_17-33-27_904.pdf&ei=mcARUtDuHqeg4gSOhoDIAQ&usg=AFQjCNGDiJSN6UT7xZmzuwlFNlGPn8dwWQ (13.03.2014).

[47] Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice", in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 106.

[48] Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice", in Kjaer A.L., Adamo S. (eds.), *op. cit.*, Ashgate, 2011, p. 107.

[49] Schilling T., *op. cit.*, p. 1475.

[50] Schilling T., *op. cit.*, p. 1475.

[51] Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, Ashgate, 2011, p. 107.

[52] Kennedy T., Learning European Law. A Primer and Vade-mecum, Sweet&Maxwell, 1998, p. 253.

the legal text. Judicial interpretation is the way in which the judges establish the meaning of legal norms. As stated in the doctrine, "interpretation of law is in no way an exact science but rather a judicial art. In the end, it is a matter of judicial instinct, and because the judge proceeds instinctively, the process cannot be reduced to a series of mechanical rules"[53]. We shall deal with this matter in the following sub-section.

Additionally, the ECJ develops the general principles of law, which can be considered to be judge-made law – almost quasi-legislative.

Although the matters of judicial interpretation and of developing the general principles of law are very interesting, we shall not refer to them in this study, because they will make the object of a future study.

However, it is highly essential to discuss some of the *ECJ's case law* on translation conflicts between the authentic texts of the European Union and the legal consequences of such judge-made definitions.

The ECJ has pointed out in the *CILFIT* case[54] that, since the Community law is drawn up in different languages equally authentic, "even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States".

Therefore, every provision of EU law "must be placed in its proper context and interpreted in the light of the whole series of provisions which are part of the same law and of its purpose, including its state of evolution at the time that the provisions it contains are applied"[55].

Michal Bobek drafted the *CILFIT* guidelines which indicate the multilingual and multicultural judicial reasoning[56]:

- ✓ do not read one version in isolation; all language versions are equally authentic and correct legal interpretation of any one piece of EU legislation involves the parallel reading of all versions;
- ✓ do not majoritize from a number of confluent language versions (*i.e.* do not allow the majority of language versions to prevail over the minority);
- ✓ take into account other methods (system and *telos*).

Some authors add to these guidelines not to choose a meaning that is incompatible with some language versions (go for a minimum common denominator). It is interesting that Bobek considers that "if the national judges were genuinely to adhere to these guidelines, the entire Community judicial system would collapse within months"[57].

The *CILFIT* judgement was described in a picturesque manner described: it "can be seen either as a punishment to proud courts similar to that of Babel – if you dare contest my authority and contradict clear precedents by resorting on your clear understanding of the law (*acte clair*) I shall have you read all language versions and confuse you! – or as a strategy to defend its own record of interpretation, as when squids squirt ink and blur the waters around

[53] Socanac L., Goddard C., Kremer L. (eds.), *Curriculum, Multilingualism and the Law*, Nakladni zavod Globus, Zagreb, 2009, p. 10 apud Brown L.N., Kennedy T., *Brown, Jacobs: The Court of Justice of the European Communities*, Sweet&Maxwell, London, 2000, p. 323.

[54] Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982] ECR 03415.

[55] Vismara F., "The Role of the Court of Justice of the European Communitities in the Interpretation of Multilingual Texts" in Pozzo B., Jacometti V., *op. cit.*, p. 67.

[56] Please see Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 115.

[57] Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice", in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 115.

them in order to hide from predators – by following the *CILFIT* guidelines you realize the difficult predicament of the Court"[58].

As we can imagine, the language of the procedure before the ECJ has important implications on the procedure and establishes the authentic language version of the judgment given. However, the language of the procedure does not mean that the EU legal acts applied in the case by the ECJ shall be considered only in the language version corresponding to the language of the procedure, since the ECJ has been asked to resolve questions relating to conflicting language versions of EU law provisions. Using different interpretation techniques, the Court uses in this matter the principle of the equal authenticity of the language versions of the EU legal acts, completed by the application of a teleological rather than a grammatical interpretation. The case law is not always consistent and a considerable margin of uncertainty is left for national authorities and private parties applying EU legal acts.

This question appeared from 1967, when in case *Van der Vecht*[59], the ECJ resolved the problem relating to the Dutch version of a regulation which differed from three other language versions: "*the need for a uniform interpretation of Community regulations necessitates that this passage should not be considered in isolation, but that in cases of doubt, it should be interpreted and applied in the light of the versions existing in the other three languages*". The Court reasoning was that in cases free from doubt, a language version could be interpreted in isolation.

In 1969, in case *Stauder*[60], the ECJ dealt with the difference in the wording of a EU decision relating to the sale of butter at reduced prices to beneficiaries under certain social welfare schemes. The decision authorised Member States to make butter available at a lower price than normal to some special beneficiaries (certain consumers who are in receipt of a certain social benefit). Two language versions mentioned the purchase based on the 'coupon indicating their names', whilst the other versions mentioned a 'coupon referring to the person concerned'. The ECJ stated that "*when a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages*". Considering the objectives of the decision and the intent of the EU legislator, the ECJ held that the provision had to be interpreted, in all Member States, in a way that it would not require the identification of the beneficiaries by their names.

Also, in 1977, in case *North Kerry Milk Products*[61], the ECJ was asked to interpret the provisions of a regulation regarding the conversion rate to be applied between the currency in which the Community aid for the production of casein was fixed and the Irish pound in which the aid was to be paid to the applicant. According to the regulation, sums owed in national currency by a Member State for transactions under the Common Agricultural Policy were to be paid on the basis of the relationship between the unit of account and the national currency prevailing at the time when the transaction was carried out (*i.e.* the date on which the event by which 'the amount involved in the transaction becomes due and payable' occurs.) Stating that *"the elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty, inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words. Consequently, it is preferable to explore the possibilities of solving the*

[58] Bengoetxea J., "Multilingual and Multicultural Legal Reasoning: The European Court of Justice" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 116.
[59] Case 19/67 *van der Vecht* [1967] ECR 345.
[60] Case 29/69 *Stauder* [1969-1970] ECR 157.
[61] Case 80/76, *North Kerry Milk Products* [1977] ECR 149.

points at issue without giving preference to any one of the texts involved", the ECJ recognized an apparent discrepancy between the English wording of the provision and the wording of other official languages. The phrase in English "*the event… in which the amount… becomes due and payable*" was rendered in French with the phrase "*le fait générateur de la créance*" and with the equivalent expressions in the other languages. Although the Commission argued that the English version of the provision was to be interpreted in the light of the other language versions, the ECJ stated that it was preferable to explore the possibilities of solving the point raised by such discrepancies without giving preference to any text involved. Reading the relevant texts determined that the event by which the manufacturer became entitled to aid was marketing, and that marketing was "*le fait générateur de la créance*" within the meaning of the French text and the other corresponding texts and also "*the event by which the amount became due and payable*" within the meaning of the English text of the regulation, therefore the ECJ stated that any discrepancy between the versions in different languages of the regulation was irrelevant in the present context. The ECJ reached the above conclusion by taking into consideration the general context of the provision at issue and by discerning a meaning of the relevant provision that could be reconciled with all language versions and that corresponded to the legislator's intent regarding the provision in question.

Another case where the Court tried to reconcile diverging language versions is the case *Road Air*[62], when the ECJ decided that the provisions of the then Article 133 (1) of the Treaty permitted three different ways of interpretation. The Court underlined that the interpretation of the provision should be assigned to the one favoured by most language versions, and that the German version, "*even if it were ambiguous […] must be interpreted in a manner conforming with the other language versions*".

In *Kraaijeveld BV*[63], the Court restated that in translation conflicts between the authentic texts of the European Union, there is a need for a uniform interpretation of the rule concerned and that provision has to "be interpreted by reference to the purpose and general scheme of the rules of which it forms part"[64].

Another important case is the case *Ferriere Nord*[65] where the ECJ was asked whether conditions need to be fulfilled alternatively or cumulatively, question that showed the fact that the ECJ was not always able to reconcile diverging language versions. The Court stated that:

> *[the Italian] version cannot prevail on its own over all the other language versions which, through the use of the word 'or', show that the condition in question is alternative and not cumulative in nature. The uniform interpretation of Community provisions requires that they be interpreted and applied in the light of the versions established in the other Community languages*".

Even after this case, the situation was not clear. Although the Court continued to use the expression "in cases of doubt", the *Ferriere* case underlines that no reliance can be placed on a single language version.

In judgment *Vorarlberger Gebietskrankenkasse*[66], the ECJ had to analyse a conflict between the different language versions of the provisions at issue:

> *The French version uses the term 'victime', which, on a semantic interpretation, refers to the person who directly suffered the damage. On the other hand, the version in*

[62] Case C-310/95, *Road Air* [1997] ECR I-2229.
[63] Case C-72/95 Aannemersbedriif P/K. Kraaijeveld BV & Others v. Gedeputeerde Staten van Zuid-Holland [1996] ECR I-5403.
[64] See also Case 30/77 *Régina v. Pierre Bouchereau* [1977] ECR 1999, para. 14; Case C 437/97 *EKW and Wein & Co.* [2000] ECR I 1157, para. 42; Case C 457/05 *Schutzverband der Spirituosen-Industrie* [2007] ECR I 8075, para. 18; Case C 239/07 *Sabatauskas and Others* [2008] ECR I 7523, para. 39; Case C-347/08 *Vorarlberger Gebietskrankenkasse v WGV-Schwäbische Allgemeine Versicherungs AG* [2009] ECR I-08661, para. 26; and Case C-511/08 *Handelsgesellschaft Heinrich Heine GmbH v Verbraucherzentrale Nordrhein-Westfalen eV* [2010] ECR I-03047, para. 51.
[65] Case C-219/95 *Ferriere Nord* [1997] ECR I-4411.
[66] Case C-347/08, *Vorarlberger Gebietskrankenkasse* [2009] ECR I-08661.

German, which is the language of the case, uses the term 'der Geschädigte', which means the 'injured party'. Accordingly, that term may refer not only to persons who directly suffered the damage, but also to persons who suffered it indirectly.

The ECJ considered that other language versions of the relevant provision used terms similar to the German version (which is the language of the case), and that the ECJ had already given an interpretation in a previous judgment that determined the scope of the concept. These two elements led to the conclusion that, regardless of the French term that suggested a narrower scope of the concept (term 'victime', which refers to the person who directly suffered the damage), the provision in question had to be interpreted in accordance with the scope suggested by the German and many other language versions.

In another judgement dated September 10th, 2009,[67] the Court stated that:

First, it is settled case-law that the need for a uniform interpretation of Community directives makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted and applied in the light of the versions existing in the other official languages (see, to that effect, Case C-296/95 EMU Tabac and Others [1998] ECR I-1605, paragraph 36; Case C-321/96 Mecklenburg [1998] ECR I-3809, paragraph 29; and Case C-498/03 Kingscrest Associates and Montecello [2005] ECR I-4427, paragraph 26).

The wording of the Court may be sometimes different[68]:

It is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement for uniform application of EU law. Where there is divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

In a more recent judgment, dated May 30th, 2013,[69] the Court used the same reasoning, but making a reference to the real intentions of the author and the aim to achieve:

It is settled case law that the need for uniform application and, accordingly, for uniform interpretation of a European Union measure makes it impossible to consider one version of the text in isolation, but requires that that measure be interpreted on the basis of both the real intention of its author and the aim that the latter seeks to achieve, in the light, in particular, of the versions in all other official languages (see, inter alia, Case C 569/08 Internetportal und Marketing [2010] ECR I 4871, paragraph 35, and Case C 52/10 Eleftheri tileorasi and Giannikos [2011] ECR I 4973, paragraph 23).

From all the above mentioned ECJ cases, it appears that the Court is compelled to apply *different interpretation techniques* that correspond to the nature of the actual discrepancy between the language versions of the EU legal acts that it is called upon to interpret. In order to avoid such discrepancies, a continuous effort of strengthening the quality of the drafting and the translation of the multilingual EU law is compulsory. Although the principle of equal authenticity of all language versions is incompatible with cases that result in an interpretation that gives precedence to one version over the other, the ECJ realized that solutions are needed. We have to borne in mind that these solutions do not have to overlook the principle of effectiveness, which ensures maximum adhesion to the EU objectives. Thus, in a judgment of 2000, the ECJ stated that "whenever a provision of Community law was capable of diverse interpretation, preference must be given to the one which is best adapted to

[67] Case C-199/08 *Erhard Eschig v UNIQA Sachversicherung AG* [2009] ECR I-08295, par. 54.
[68] Case C-41/09 European Commission v Kingdom of the Netherlands [2011] ECR I-00831, para. 44.
[69] Case C-488/11 Dirk Frederik Asbeek Brusse, Katarina de Man Garabito v Jahani BV [2013], not yet published, par. 26.

safeguarding its effectiveness, while preserving the principle that, in the case of disparity between the various language versions of a Community text, the provision must be interpreted as a function of the system and purpose of the legislation of which it forms part"[70]. In another case[71], the Court reiterated that, when an EU provision is capable of different interpretations, preference shall be accorded to the best suited to preserve the effectiveness of that provision.

An examination of the ECJ case-law[72] highlights "how solutions to problems of interpretation of multilingual texts reflect specific characteristics"[73] of the EU's legal system. This analysis shows that the Court does not yet have a clear policy on how to solve the practical problem of authenticity of texts of all language versions of the Community legislation. Although AG Stix-Hackl suggested that the language version of the draft legislation should be such "reference" version, the Court has not confirmed this solution.

As mentioned before, we have to borne in mind that in the future, the ECJ may answer to the question of conflicts of language versions from inadequate drafting.

A final issue regarding that we shall refer in this study analyses the reconciliation of the texts in case of divergences between language versions. It is obvious that there are diverging meanings between all 24 official languages versions, but the problem is how do we reconcile the diverging meanings? European institutions are familiar with this question. During the years, several methods of reconciliation have been discussed and observed in the ECJ's case law: preference for the majority meaning, preference for the clear meaning, preference for the liberal meaning. Unfortunately, the Court did not prefer and adopt just one method.

Sometimes, in reconciling the divergent language versions, the Court uses the context and the purpose. For example, in case *Givane v. Secretary of State*[74], the Court presupposed that a literal interpretation can solve the problem of diverging meanings, but underlined that it has not enough:

> *Since a literal interpretation of the words 'for at least two years' […] does not provide an unequivocal answer to the question referred, it is necessary to place that expression in its context and to interpret it in relation to the spirit and purpose of the provision in question.*

Thus, we should interpret this passage as saying that literal interpretation can be used to reconcile diverging meanings, BUT that was not possible in the respective case.

We notice that the Court regularly uses a standard phrase when explaining the need for multilingual interpretation, which is:

> *It must be borne in mind in this regard that, according to settled case-law, the necessity for uniform application and accordingly for uniform interpretation of a Community measure makes it impossible to consider one version of the text in isolation, but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light, in particular, of the versions in all languages*[75].

However, there are situations when a comparison of the different official versions will not solve the interpretative problem, but it will still have an important role because it can demonstrate that a particular wording is *misleading*. When using the purpose to solve the interpretative problem, the Court often uses the wording of various articles of the act of its

[70] Case C-437/97 Evangelischer Krankenhausverein Wien v Abgabenberufungskommission Wien and Wein & Co. HandelsgesmbH v Oberösterreichische Landesregierung [2000] ECR 1157.
[71] Case C-434/97 Commission of the European Communities v. the French Republic [2002] ECR 1129.
[72] Case 19/67 *van der Vecht* [1967] ECR 345, Case 49/71 *Getreide*, Case 6/74 *Moulijn*, Case C-103/01 *Firefighters*.
[73] Vismara F., "The Role of the Court of Justice of the European Communities in the Interpretation of Multilingual Texts", in Pozzo B., Jacometti V., *op. cit.*, p. 68.
[74] Case C-257/00 Nani Givane and Others v. Secretary of State for the Home Department [2003] ECR I-345.
[75] Case C-188/03 *Irmtraud Junk v. Wolfgang Kühnel* [2005] ECR I-885, para. 33.

preamble. For example, in the case *Commission v. Germany*[76], the Court used in order to establish the purpose of the act the wording of Article 13 and the preamble of the directive. Of course, that it is important how the ECJ finds and construes the purpose of a legal act. Apart from looking to the preamble or various articles of the act, the ECJ could also consult the *travaux préparatoires*, because the choice of the proper word could have been part of the discussions in the legislative bodies.

We consider that the teleological method is the most used method in establishing legal meaning of the EU law by the ECJ.

But when multilingual interpretation is going to be engaged and which languages should be considered as mandatory consultation languages? First of all, we consider that English and French should be the consultation languages, because these are "*de facto* originals in the legislation process of the Union, in the sense that a crushing majority of all documents are drafted first in one of these languages. As *de facto* originals they are potentially better prepared than other language versions and better reflect the intention of the legislator"[77]. Another reason would be that they represent the most important legal cultures: civil law and common law. The need for uniformity[78] throughout the European Union could be another reason to choose these languages as consultation languages. "[T]he search for their meaning [varying linguistic expression of laws] does not start out with the aim of reconciling the various language versions, but originated in the need to represent the precepts and values of the Community legal system in a uniform way"[79]. The uniformity is needed because "a Union whose rules are interpreted and applied differently in each Member State is a Union on paper only"[80]. We consider that if the national courts will use their own language version, interpreted with the help of the two mandatory consultation languages (English and French), the uniformity could be achieved, because the same languages would be used in all the Member States. Although there might be critics regarding the privileged position given to French and English by this recommendation, we consider that they already enjoy a special position, being considered *de facto* originals in the legislative process of the European Union. Of course, that in the event of difficult cases, the national courts retain the possibility to refer them to the ECJ.

As regards the moment when national courts should consult other language versions, we underline that these mandatory consultation languages should be employed automatically in the interpretation process. As for the multilingual interpretation by the ECJ, this does not happen regularly. The ECJ either trusts its AGs with the performance of language comparison[81], or it conducts its own comparison, sometimes including more languages[82] and arriving at different conclusions[83].

The multilingual interpretation can have two outcomes: either all the official language versions have the same meaning, or they do not. Sometimes, the ECJ understands the

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[76] Case 107/84 Commission of the European Communities v. Federal Republic of Germany [1985] ECR 2655.

[77] Derlen M., "In Defence of (Limited) Multilingualism: Problems and Possibilities of the Multilingual Interpretation of European Union Law in National Courts" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 162.

[78] Case 30/77 Régina v. Pierre Bouchereau [1977] ECR 1999, para. 14; Case C-372/88 *Milk Marketing Board of England and Wales v. Cricket St. Thomas Estate* [1990] ECR I-1345, paras. 18-19; Case C-187/07 *Criminal proceedings against Dirk Endendijk* [2008] ECR I-2115, para. 25.

[79] Vismara F., "The Role of the Court of Justice of the European Communitities in the Interpretation of Multilingual Texts" in Pozzo B., Jacometti V., *op. cit.*, p. 68.

[80] Derlen M., "In Defence of (Limited) Multilingualism: Problems and Possibilities of the Multilingual Interpretation of European Union Law in National Courts", in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 163.

[81] See Case C-173/07 *Emirate Airline* [2008] ECR I-05237, par. 25. But sometimes, important language differences discovered by the AGs are ignored by the Court – *e.g.* Case C-265/03 *Igor Simutenkov v Ministerio de Educacion y Cultura, Real Federacion Espanola de Futbol* [2005] ECR I-2579.

[82] See Case C-420/98 *W.N. v. Staatssecretaris van Financiën* [2000] ECR I-2867.

[83] See Case C-72/95 Aannemersbedriif P/K. Kraaijeveld BV & Others v. Gedeputeerde Staten van Zuid-Holland [1996] ECR I-5403.

language comparison as looking for the literal meaning or the usual meaning of words, at least[84].

3. Conclusions

What we undertook with this study was to discover how the multilingual and multicultural environment of the EU affects its legislative processes and the challenges raised by the multilingual drafting of legal texts. It has tried to argue the problem of translation divergences between the authentic texts of the European Union.

We saw that multilingualism and multijuralism are specific to the EU. If at the beginning of this complex structure, there were just six countries (Belgium, France, Italy, Luxembourg, the Netherlands, West Germany) and four languages (German, French, Italian, Dutch), nowadays it is even more challenging because there are 28 countries and 24 languages. Definitively, the EU is a multilingual environment, integrating 28 Member States and 24 official languages[85].

When multiple legal orders and languages co-exist within a single legal regime, such as the EU, there is potential for differences between the legal texts. The European Union represents, for sure, on the international legal stage, the most ambitious linguistic project.

Multilingualism can be seen as "a democratic value to be protected, a fundamental right of minority groups, an obstacle to deliberative democracy and a hindrance to legal certainty and the possibility of uniform law, a cultural asset of Europe to be promoted and protected, a competitive advantage of businesses on the market and a prerequisite for the free movement of EU citizens"[86].

As some authors point out "there is an important difference in the way multilingualism and multijuralism play out: while it is entirely possible and, indeed, necessary for individual participants in the legislative and adjudicative processes of the EU to act sometimes or even regularly in a language that is not their mother tongue", it is rather difficult and generally not required to forget one's legal background and to adopt a foreign one"[87].

The ambition of this study was to prove that the meaning of the EU law cannot be derived from one version of the official languages, therefore the languages are interdependent and "[h]ence EU citizens cannot purely rely on their own languages when they want to know what EU law says on a particular issue. In principle, EU citizens must know the law in each and every official language because the meaning of the law is anchored not in one single language version, but in all the language versions taken together"[88].

The differences between the languages are inevitable because they are not absolute copies one of each other; therefore, the EU multilingualism leads to "legal miscommunication, misinterpretation, incoherent and divergent texts and, ultimately, an obstacle to achieving what lies at the very core of the rule of law, namely legal certainty"[89].

This study tried to touch upon both theoretical aspects (*i.e.* what the multilingualism and multijuralism of EU law implies) and practical issues (*i.e.* how this multilingual legislative system actually works in the EU; the interaction between legal languages at

[84] Case C-298/07 Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband eV v deutsche internet versicherung AG [2008] ECR I-07841. In this case, AG Colomer used the dictionary meanings of the words in question.

[85] We have to borne in mind that there are also in the EU more than 90 linguistic minority groups. Please see, Duparc Portier P., Masson A., *La question des langues en Europe: entre paradoxes et divergences juridiques* [on line], in Revue trimestrielle des droits de l'homme, no. 72/2007, p. 1071, http://www.rtdh.eu/pdf/20071051.pdf (13.03.2014).

[86] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 2.

[87] Schilling T., *op. cit.*, p. 1461 (footnote omitted).

[88] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 7.

[89] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 7.

national and at EU level, problems emerging from multilingualism, illustrated by the relevant case law of the European Court of Justice).

Of course that the meaning of the EU law cannot be derived from one version of the official languages, therefore the languages are interdependent and "[h]ence EU citizens cannot purely rely on their own languages when they want to know what EU law says on a particular issue. In principle, EU citizens must know the law in each and every official language because the meaning of the law is anchored not in one single language version, but in all the language versions taken together"[90].

From all the ECJ cases mentioned in this study, it appears that the Court is compelled to apply different interpretation techniques that correspond to the nature of the actual discrepancy between the language versions of the EU legal acts that it is called upon to interpret. In order to avoid such discrepancies, a continuous effort of strengthening the quality of the drafting and the translation of the multilingual EU law is compulsory. Although the principle of equal authenticity of all language versions is incompatible with cases that result in an interpretation that gives precedence to one version over the other, the ECJ realized that solutions are needed. We have to borne in mind that these solutions do not have to overlook the principle of effectiveness, which ensures maximum adhesion to the EU objectives.

This study shows that the Court does not yet have a clear policy on how to solve the practical problem of authenticity of texts of all language versions of Community legislation. Although advocate general Stix-Hackl seemed to suggest that the language version of the draft legislation should be such "reference" version, the Court has not yet given a clear opinion on this suggestion.

As mentioned before, we have to borne in mind that in the future, the ECJ may also answer to the question of conflicts of language versions from inadequate drafting.

What about the solution? Is weak multilingualism the solution (replacing the 24 equally authentic official language versions of EU law by one version and 23 official translations), especially that is not new for the European construction? Should one[91] language be chosen as the original? We consider that *unilingualism* would vitiate the European Union, violating the principle of European identity. If the "real unity of Europe is the multilingualism" [92], therefore *unilingualism* would be the end of Europe. However, there are authors supporting the choice of a "single reference language". But, "[s]ince it is unlikely (due to political reasons) to expect that a single reference language, or a reference language for specific Community instruments will be introduced in the near future, it is most important that at least lawyers are trained to understand the most widely used drafting languages of Community legal instruments (in accordance with the opinion of AG Stix Hackl) and compare national harmonised legislation or directly applicable language versions against the original language version in order to minimise the risk of misinterpretation of Community law"[93].

Of course that we have to see that multilingualism is an advantage, a blessing of the EU and not an obstacle, a curse. We consider that, despite the various problems with the EU multilingualism described in this study, it is "quite unlikely that anything would change in legal terms in the foreseeable future"[94]. However, we consider that lawyers should research

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[90] Kjaer A.L., Adamo S., "Linguistic Diversity and European Democracy: Introduction and Overview" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 7.

[91] For the rejection of *unilingualism*, please see Fenet A., *Diversité linguistique et construction européenne,* in Revue trimestrielle de droit européen, Dalloz, Paris, 2001, p. 262 and following.

[92] Eco U., *Un entretien avec Umberto Eco*, Le Monde, 29 September 1992.

[93] Glézl A., *Lost in Translation; EU Law and the Official Languages – Problem of the Authentic Text* [on line], p. 11, http://www.cels.law.cam.ac.uk/events/Glezl.pdf (13.03.2014).

[94] Bobek M., "The Multilingualism of the European Union Law in the National Courts: Beyond the Textbooks" in Kjaer A.L., Adamo S. (eds.), *op. cit.*, p. 141.

more in languages and legal interpretation. Interdisciplinary efforts could solve the multilingualism problems of the EU.

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