Palacký University Olomouc

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Multilingualism and EU Law

Master's Thesis

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I hereby declare that this Master's Thesis entitled *Multilingualism and EU Law* is my original work and I have acknowledged all sources used. I further declare that the text of this thesis including footnotes has 120 180 characters with spaces.

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Olomouc, April 7, 2024 Mgr. Jakub Schwan

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List of Abbreviations

CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
(The) Court	Court of Justice of the European Union and its predecessors
DGT	Translation Directorate-General
ECB	European Central Bank
EP	European Parliament
EU	European Union
NNS	non-native speaker
RP	Rules of Procedure
SL	source language
TEU	Consolidated Version of the Treaty on European Union
TFEU	Consolidated Version of the Treaty on the Functioning of the European Union
TL	target language

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Introduction

General Overview

The European Union is a supranational[1] ‘‘entity’’ currently consisting of twenty-seven Member States. Each Member State brings a unique cultural, political, economic, and linguistic perspective. This diversity is inherently reflected in the linguistic situation within the EU.

The multilingual EU has twenty-four official languages[2] which are all *de iure* equal; the phrase ‘‘principle of linguistic equality’’ is used to describe this phenomenon. There are numerous provisions in the primary law expressing the importance of multilingualism in the functioning of the Union. Paunio[3] adds: ‘‘Multilingualism is a central and inevitable aspect of European integration…’’

The European Parliamentary Research Service[4] offers the following remark: ‘‘The harmonious co-existence of 24 official languages is one of the most distinctive features of the European project.’’ This thesis will highlight the challenges posed by this multilingual system, and that it might not be as ‘‘harmonious’’ as it seems.

The practical impact of the principle of linguistic equality can be seen in the legal obligation to publish acts adopted by EU institutions in each of the twenty-four official languages of the EU.[5] This means that there are many language versions of EU legal texts, and these versions should all convey the same ‘‘message’’ to ensure a uniform interpretation and

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[1] I am aware that the premodifier *supranational*, ‘‘…has now fallen into disuse, partly because of its now unfashionable hierarchical overtones.’’ However, the proposed alternatives (*Staatenverbund*, *fédération d'Etats-nations*, etc.), in my view, have their own problematic aspects. See DE WITTE, B. The European Union as an international legal experiment. In: DE BÚRCA, G. and J. WEILER (eds.). *The Worlds of European Constitutionalism*. Cambridge: Cambridge University Press, 2011, p. 50.

[2] Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish.

[3] PAUNIO, E. *Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice*. Farnham: Ashgate, 2013, p. 1.

[4] KATSAROVA, I. *Multilingualism: The language of the European Union* [online]. Brussels: European Parliamentary Research Service, 2022 [viewed 18 December 2023], p. 1. Available from: https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642207/EPRS_BRI(2019)642207_EN.pdf

[5] LENAERTS, K. and J. GUTIERREZ-FONS. To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice. *Columbia Journal of European Law* [online]. 2014, 20(2) [viewed 10 July 2023], p. 10. Available from: https://heinonline.org/HOL/Page?handle=hein.journals/coljeul20&collection=journals&id=183&startid=&endid=247.

application of EU law. It is only logical that the range of official languages[6] and their differences can lead to linguistic (and thus legal) discrepancies between these versions.

When distant legal cultures with languages from diverse language families come into contact due to globalization, it frequently results in difficulties in comprehending legal concepts and terminology across languages. Law and its underlying theories and principles are abstract in nature, translating legal concepts requires a great deal of research.[7] Vlasenko works with globalization; however, the interaction of legal cultures is immanent in the process of European integration as well.

EU law is a blend of different systems which have different historical backgrounds, and are generally confined in their national and linguistic boundaries.[8] An effective way to tackle the potential linguistic discrepancies is by means of legal methodology and interpretation. There are many approaches lawyers can use, and I will discuss them in the subsequent chapter(s).

The relevance of the topic can be demonstrated by looking at the recent developments in the EU. The number of official languages has only been increasing. The sheer number of official languages is globally unprecedented and unique. There is no country and no international organization in the world that would employ a similar language regime and use more than five languages.[9] Thus, it is important to discuss issues related to multilingualism and the principle of linguistic equality and propose solutions to potential or existing problems.

Research Aims

The aim of the thesis is to conduct an interdisciplinary analysis of multilingualism in the European Union and its connection to the interpretation of EU law. I provide a thorough theoretical analysis of legal interpretation, and how it is used by the Court of Justice of the European Union (‘‘CJEU’’).

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[6] After all, a wide range of language families are represented, and all official languages have their own grammar, lexicon, specific sociolinguistic features, etc.
[7] VLASENKO, S. Legal translation pragmatics: Legal meaning as text-external convention – the case of ‘chattels.’ In: GILTROW, J. and D. STEIN (eds.). *The pragmatic turn in law: inference and interpretation in legal discourse*. Boston: De Gruyter, 2017, p. 251.
[8] PAUNIO, E. *Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice.* Farnham: Ashgate, 2013, p. 7.
[9] KŘEPELKA, F. Multilingualism of the European Union: Facts and Consequences for a New Member State. *Masarykova univerzita, Právnická fakulta* [online]. 2008 [viewed 19 December 2022], p. 3. Available from: https://www.law.muni.cz/sborniky/dp08/files/pdf/mezinaro/krepelka.pdf

The main objective of the thesis is to identify issues that emerge as a result of multilingualism and the principle of linguistic equality.

A number of scholars have discussed the future of linguistic equality in the EU. In 2006, Ammon published his article[10] which analyzed the possibility of having a single internal working language of the EU. It was followed by Baaij's contribution[11] which proposed an adjustment of the framework of institutional multilingualism, and formalizing English as EU's *lingua franca*. The thesis will revisit and evaluate their reasoning, and will provide additional arguments contributing to the idea of abandoning (or modifying) the principle of linguistic equality. The aforementioned approach is proposed as a potential *de lege ferenda* solution to the problems arising from multilingualism. The suitability of this proposal and the willingness of Member States to accept the proposition, as well as the subsequent steps the EU would have to undertake are discussed in the upcoming chapters and detailed argumentation is provided.

It is often expected that the introductory part of a thesis contains a hypothesis or hypotheses which the author tries to confirm or disprove. In legal science, it may be unfitting to include a hypothesis, since jurisprudence and other social sciences are usually not empirical; and therefore, the testing of hypotheses may not be beneficial. Thus, this thesis does not formulate a hypothesis, but rather tries to tackle problematic aspects that arose during the research by answering the following research questions:

1) Are all official languages in fact equal?
2) Is it possible to consider respect for linguistic diversity and related language rights as human rights according to EU law?
3) What other approaches are there to address the challenges related to multilingualism (besides legal interpretation)?
4) What issues can/cannot be addressed by abandoning/modifying the principle of linguistic equality?
5) If there were to be a ''sole/primary official language'' of the EU, would English be the preferred option? Why? Are there any other suitable languages?

[10] AMMON, U. Language conflicts in the European Union: On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests. *International Journal of Applied Linguistics* [online]. 2006, 16(3) [viewed 21 October 2022]. Available from: https://doi.org/10.1111/j.1473-4192.2006.00121.x

[11] BAAIJ, C. J. W. *Legal integration and language diversity: rethinking translation in EU lawmaking.* New York: Oxford University Press, 2018. ISBN 978-0-19-068078-7.

Methodology and Structure of the Thesis

Legal methods used in this study are based on traditional doctrinal approaches, using especially descriptive, analytical, and, to a certain extent, comparative method and legal (logical) arguments when looking at the research questions.

The thesis also employs an interdisciplinary approach. It is mainly concerned with law (EU law specifically); however, it also touches upon legal methodology, political science, and linguistics. Given that this thesis focuses on multilingualism, it is certainly not possible to discuss this topic and leave out the relevant findings in linguistics. Lawyers have often excluded (or even ignored) the linguistic relevance of the topic, and the interplay between language and law. As someone who has a background in both linguistics and law, I strive to use this knowledge to interlink the linguistic findings with legal research to address the above-mentioned research questions.

The thesis is divided into three chapters (excluding Introduction and Conclusion). Firstly, a chapter on multilingualism and the principle of linguistic equality provides a theoretical framework for subsequent analyses. The second chapter attempts to identify issues related to multilingualism in the EU and the principle of linguistic equality. It is also concerned with legal interpretation, and how it is applied by the CJEU. The last chapter proposes alternative solutions to the aforementioned problems, and discusses what the practical implications of the proposal are.

Literature Related to the Topic and Current Research

I have chosen the topic of this thesis after reading an article on legal methodology written by the current President of the CJEU (Koen Lenaerts) and his colleague.[12] This led me to learn more about multilingualism in the EU and its practical effects. I have already mentioned the article by Ammon, as well as the paper by Baaij, both publications have been extensively

[12] LENAERTS, K. and J. GUTIERREZ-FONS. To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice. *Columbia Journal of European Law* [online]. 2014, 20(2) [viewed 10 July 2023]. Available from: https://heinonline.org/HOL/Page?handle=hein.journals/coljeul20&collection=journals&id=183&startid=&endid=247

employed in this thesis, and I comment on their contribution later when discussing the solutions to the issues that relate to multilingualism.

Additionally, I consulted numerous other publications during my research. For a comprehensive list, please refer to the Bibliography.

* Unless otherwise stated in the text, this thesis is written on the legal status effective as of April 7, 2024.

1. Multilingualism and the Principle of Linguistic Equality in the EU

1.1 Defining Multilingualism

There are many definitions of multilingualism; which is only natural as it is a phenomenon that can be studied from many perspectives. European Commission[13] defined it as, "…the ability of societies, institutions, groups, and individuals to engage, on a regular basis, with more than one language in their day-to-day lives." For the purpose of this thesis, I will employ (and slightly modify) the aforementioned definition and treat it as a concept highly interconnected with law. Multilingualism is a phenomenon that can be studied from both an individual and societal perspective.[14] In my view, the European Union represents a *sui generis* society; thus, this thesis will explore the societal (EU) aspects of multilingualism.

In my eyes, multilingualism is; therefore, the actual usage of multiple languages[15] by the ''EU society'' which is subsequently translated into the institutional functioning of the EU and its law. In the context of EU law, multilingualism is inherently connected with the requirement for linguistic diversity which is analyzed in this chapter.

1.1.1 External Institutional Multilingualism

The European Union institutions are responsible for managing and dealing with the various official languages, and the manner in which they employ these languages can be expressed in two different ways. Institutional multilingualism; therefore, encompasses both an internal and external dimension. The external dimension refers to the way in which EU institutions communicate with the public in all of the EU's official languages, as a reflection of the EU's

[13] EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR EDUCATION, YOUTH, SPORT AND CULTURE. *High level group on multilingualism: final report* [online]. Publications Office of the European Union, 2008 [viewed 16 December 2022], p. 6. Available from: https://op.europa.eu/en/publication-detail/-/publication/b0a1339f-f181-4de5-abd3-130180f177c7

[14] CENOZ, J. Defining Multilingualism. *Annual Review of Applied Linguistics* [online]. 2013, 33(1) [viewed 2 January 2023], p. 3. Available from: https://doi:10.1017/S026719051300007X

[15] Usually more than two. In case two languages are used, this phenomenon is called bilingualism.

commitment to preserving linguistic diversity and democratic principles. On the other hand, the internal dimension of institutional multilingualism concerns the working languages used by institutions within their internal operations.[16]

The EU has recognized the importance of multilingualism in fostering a truly inclusive and cohesive European society. In fact, the EU's first communication dedicated solely to multilingualism, issued in 2005, emphasized the responsibility of EU institutions to communicate with citizens in their respective languages and provide them with access to relevant information in all languages. To prevent discrimination on linguistic grounds, it is essential that the EU communicates with its citizens in a language they can understand.[17]

1.1.2 Internal Institutional Multilingualism

The aim of internal institutional multilingualism is to support external institutional multilingualism in upholding the fundamental principles of language diversity and equality. It can be said that the internal component enables the external component, or conversely, that the external dimension requires the internal. Internal institutional multilingualism involves the rules, guidelines, and practices related to language use in the internal decision-making processes of EU institutions.[18]

The fundamental rules for managing internal institutional multilingualism start with Article 1 of Council Regulation 1/1958. This article defines the working languages used by EU institutions. Officially, all twenty-four languages of the EU are also working languages; however, not all languages are used on a daily basis by EU institutions.[19] Regulation 1/1958 and the working languages of the EU are discussed in Chapter 1.2.2.

If new laws are presented in only one or a few languages, individuals who speak those languages as their first language have an advantage over those who use them as a non-native language. It is widely accepted that utilizing fewer working languages than official languages excludes and discriminates against a specific group of EU citizens and their representatives based on the language they speak.[20] I do agree with this observation; however, using all official languages in all scenarios is not feasible. This relates to the principle of linguistic equality, and

[16] BAAIJ: *Legal integration*…, p. 21.
[17] Ibid.
[18] Ibid., pp. 22–23.
[19] Ibid., p. 23.
[20] Ibid.

I will discuss the relationship between the feasibility of language diversity and the right to linguistic equality in the subsequent pages.

1.2 Multilingualism and the Primary Law

The importance of multilingualism is stressed in the EU's primary law. This subchapter offers a comprehensive summary of the regulation of multilingualism on the primary law level which I have gathered by closely analyzing the Treaties and secondary sources related to the topic.

1.2.1 Respect for Linguistic Diversity

The underlying principle closely related to multilingualism is the principle of (linguistic) diversity which is expressed in **Article 3(3) of the Treaty on European Union (''TEU'')**. The mentioned provision rich cultural states that the Union shall respect its and linguistic diversity. This is also mentioned in Art. 22 of the Charter of Fundamental Rights of the European Union. A thorough interpretation will be provided in the subsequent sections. Both articles mention ''respect'' for linguistic diversity. However, diversity does not necessarily mean absolute equality.

The Court ruled that respect for multilingualism and linguistic diversity is an essential aspect of protection granted to the national identities of Member States.[21] I do agree with this opinion of the Court. The EU is often criticized by the Member States for its ambitious supranational (or even federalist) tendencies. The provisions on the importance of linguistic diversity serve as an assurance to the Member States that their national languages are important for the EU.

Furthermore, **Article 55(1) TEU** lists the official languages, and proclaims that the Treaty is drawn up in a ''single original'' in all twenty-four languages. All language versions are; therefore, equally authentic (original) and are not mere translations.[22] The status of a language as an EU Treaty language forms part of the accession negotiations. In these

[21] *Spain v. Eurojust*, C160/03, The Court (Grand Chamber), Opinion of Advocate General, 16 December 2004, par. 34.
[22] BAAIJ, C. J. W. Fifty Years of Multilingual Interpretation in the European Union. In: SOLAN, L. M. and P. M. TIERSMA (eds.). *The Oxford Handbook of Language and Law*. Oxford: OUP, 2012, p. 218.

negotiations, it is also determined which official languages of a potential Member State are recognized as official languages of the EU. If a potential Member State has only one official language, this will become the official language of the EU, as long as this language is not already an official EU language.[23]

Linguistic diversity is also mentioned in **Art. 165(1) of the Treaty on the Functioning of the European Union (''TFEU'')**; the Union shall promote linguistic diversity in connection with education. **Art. 165(2) TFEU** states that the Union's action shall be aimed at developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States. The article does not work with the phrase ''official languages'' but rather uses more general ''languages of the Member States''. I believe that the intention to include other languages can be observed. There are many languages spoken in individual Member States which are not official languages of the Union. These are usually minority languages.

The European Charter for Regional or Minority Languages was adopted in 1992 to protect minority languages in Europe. Nevertheless, it has not been ratified by all EU Member States. France, where many regional languages are spoken (*Breton*, *Alsatian*, *Basque*, *Occitan*, *Catalan*, *Corsican*, etc.), has signed but not ratified the Charter.[24] There are also some endangered languages in Europe; they are used by few speakers or not used and transmitted at all. For example, the *Provençal* language in France, the *Grecanico* language in Italy, the *Mirandese* language in Portugal, and others. They are, like other languages, the embodiment of a particular worldview. Whenever a language disappears, humanity is deprived of one more color of the world.[25] In my view, the EU in Art. 165(2) TFEU confirms the importance and relevance of **all** languages spoken in EU Member States, including minority and endangered languages.

One of the most important action programs in the area of educational promotion of linguistic diversity is the Erasmus+ program which offers mobility and cooperation possibilities in higher education, vocational education, primary/secondary school education, adult education, sport, etc. The most prominent part of the program is the study mobilities focused

[23] BLANKE, H. J. and S. MANGIAMELI. Article 55 [Languages and Deposit of the Treaty]. In: BLANKE, H. J. and S. MANGIAMELI (eds.). *The Treaty on European Union (TEU): A Commentary*. Heidelberg: Springer-Verlag GmbH, 2013, p. 1466.
[24] LACKOVÁ, L. and S. BIDAUD. *Stručný průvodce jazyky Evropy*. Olomouc. Univerzita Palackého v Olomouci, 2021, p. 72.
[25] Ibid., p. 73.

on higher education institutions which give students the opportunity to study in other participating countries; thus, allowing the students to experience different cultures and languages. From my own observations, as someone who took part in the program multiple times, I can attest that the personal aspect can be more prominent than the educational/academic one. Participants are exposed to different languages and cultures which certainly raises their awareness of the importance of multilingual Europe.

The EU's language education policy has lagged behind the political and economic integration of Europe which the EU has had several relatively quiet decades to address. Unless Europeans themselves identify with the EU, and consider it their own, then it is not likely to succeed in this area.[26] I would emphasize the word ''relatively'' as it is almost impossible to describe a decade in the ongoing process of European integration as ''quiet''; however, I do agree with the overall statement. The political and especially economic aspects seem to be dominant in the European integration for obvious reasons. The two areas are most likely to affect the citizens of Member States; thus, it is not surprising that their development is favored.

Additionally, **Art. 207(4) TFEU** regulates the obligation of the Council to act unanimously for the negotiations and conclusion of agreements in the field of linguistic diversity.

1.2.2 Article 342 TFEU and the Historical Background of Multilingualism

According to **Art. 342 TFEU**, the rules governing the languages of the institutions are laid down in the form of regulations by the Council, and the unanimity rule shall be respected. This led to the adoption of the General Regulation 1/1958 which has been amended many times since.

Respect for national identity makes the topic of multilingualism politically very sensitive. It is important to distinguish the official languages of the institutions and their working languages. Working languages are internal languages of the institutions. For practical reasons, the institutions primarily use only a limited number of official languages; especially

[26] LEJSKOVÁ, A. Perspektivy jazykové politiky EU. *Jazykovedný časopis* [online]. 2015, 66(2) [viewed 2 January 2023], p. 156. Available from: https://www.juls.savba.sk/ediela/jc/2015/2/jc15-02.pdf

English, German, and French – 72% of all EU documents are originally written in English, 12% in French, and 3% in German.[27]

From the data above, it can be seen that English is the dominant working language of the EU. In my view, this is an inevitable consequence of the global supremacy of the English language which is the *lingua franca* of today's world.

Křepelka[28] discusses the increasing importance of English which is the dominant language in many fields. It gradually replaced French in diplomacy. It is the preferred language for international trade in many regions of the world. And English has become the norm for communication if another language is not mutually known.

English is the predominant language of EU institutions. It is the language of choice for procedural matters in the Commission (legal drafts usually exist only in English first – which I discussed above). Parliament and the Council also employ primarily English for practical purposes. Additionally, English is the principal language used to translate from and into other official languages of the Union. Moreover, participants in the legislative process prefer to use English in informal gatherings and interaction.[29]

Chapter 3.1 delves into the discourse surrounding the function and importance of the English language in the EU in more depth.

The 1958 Regulation is a living testament that the issue of multilingualism has been important from the very beginning. The Maastricht Treaty extends the linguistic rights of Member States. According to this Treaty, all texts in the field of common security and foreign policy discussed at Council and European Council meetings and texts intended for publication must be translated immediately and simultaneously into all the official languages of the Communities. The exception is the European Court of Justice which has a special language regime laid down in its Rules of Procedure. An additional language right is introduced by the Treaty of Amsterdam. It allows citizens to address the Union's institutions and bodies in their own language and to have the right to a reply in that language. In the history of the EEC/EU, several amendments have been made in connection with the enlargement of the Communities/EU which involved the increase in the number of official languages to include

[27] GEIGER R. Article 342 TFEU. In: GEIGER, R, D.E. KHAN, and M. KOTZUR (eds.). *European Union Treaties: [a Commentary]; Treaty on European Union; Treaty on the Functioning of the European Union; Charter of Fundamental Rights of the European Union*. London: Bloomsbury Publishing, 2015, p. 1031.
[28] KŘEPELKA, F. Dominance of English in the European Union and in European Law. *Studies in Logic, Grammar and Rhetoric* [online]. 2014, 38(1) [viewed 11 January 2023], p. 139. Available from: https://doi.org/10.2478/slgr-2014-0036.
[29] BAAIJ: *Legal integration*…, pp. 63–66.

the languages of the new Member States. After the first enlargement of the EEC in 1973, the Member States were in favor of maintaining general multilingualism. Further enlargements made it necessary to increase and reorganize translation services. The massive enlargement in 2004 meant that the budget to support the translation services had to be significantly increased. Until 2004, full multilingualism was in place in all EU institutions, the financial burden of which became unbearable after enlargement as the number of official languages more than doubled.[30]

The accession of twelve countries to the Union in a short space of time (2004 and 2007) has meant an increase in the number of official and working languages of the Union and a huge increase in the number of language combinations.[31]

1.2.3 Language Rights

Language(s) play a key role in the formation of EU identity. This level of linguistic diversity is one of the aspects which make the EU unique on a global scale. The connection between multilingualism and the acknowledgment of a person's native language is inherently intertwined with the protection of their human rights.

According to **Article 24 TFEU**, the language regime for official communication with citizens is an extremely important tool for democratizing the functioning of the EU. Although impractical and costly, multilingualism is essential for the proper functioning of EU public administration and for the ability of individuals to exercise their rights and protect their interests. This link to fundamental rights is further confirmed in Articles 21, 22, and 41 of the Charter of Fundamental Rights and Freedoms of the EU. The obligation to communicate in the official languages applies to the European Parliament, the Council, the Commission, the ECB, the CJEU, the European Court of Auditors, the Ombudsman, the European Economic and Social Committee, and the European Committee of the Regions. Art. 24 TFEU is concerned with the language only, not the actual content of the communication. It does not include the right of an individual to a reply or to be informed.[32]

[30] LEJSKOVÁ: Perspektivy…, pp. 148–149.
[31] Ibid, p. 146.
[32] SEHNÁLEK, D. Článek 24. In: TOMÁŠEK, M. and V. ŠMEJKAL (eds.). *Smlouva o fungování EU. Smlouva o EU. Listina základních práv EU. Komentář*. Prague: Wolters Kluwer, 2022, p. 106.

While I partly agree with Sehnálek's[33] view that Article 24 TFEU deals only with language and not with the content of communication, it should also be added that language is a necessary part of that content because language creates meaning. I believe that EU citizens have the right not only to address and communicate with the mentioned EU institutions in the official language of their choice, but also the right to a response that is of **sufficient linguistic quality**. The content of the communication is; therefore, also important in this respect. Equally, the recipients of EU law can expect the linguistic quality of individual EU law provisions to be equal among all official languages.

Khan and Henrich[34] criticize the fact that the protection provided by Article 24 TFEU is limited to communication with the specified bodies, agencies, and institutions mentioned in the provision. They criticize the increasing number of administrative units, particularly the ''Agencies established by secondary sources of EU law,'' that are not mentioned in the Articles and the consequent transfer of crucial activities of these entities. In my view, the protection is not limited only to the institutions mentioned in Art. 24 TFEU. If the activities of the mentioned bodies are transferred to ''other units,'' then the legal implications of the provision should be teleologically interpreted such that the linguistic safeguards ensured by the provision are extended to those ''other units'' as well.

In the text above, I often use the word ''right''. One question which needs to be answered is the following, ''Is it possible to regard respect for linguistic diversity and related language rights as human rights according to EU law?''

Article 6 TEU outlines three official sources of EU human rights law. The most significant of these is the Charter of Fundamental Rights of the European Union (''CFR'') which was granted legal authority in 2009. The second is the European Convention on Human Rights which has long been regarded as a ''special source of inspiration'' for human rights principles within the EU by the CJEU. The third source comprises the ''general principles of EU law,'' a collection of legal principles, including human rights, that were developed and refined by the CJEU in the years preceding the drafting of the CFR.[35]

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[33] Ibid.
[34] KHAN, D.E. and S. HENRICH. Article 24 TFEU. In: GEIGER, R, D.E. KHAN, and M. KOTZUR (eds.). *European Union Treaties: [a Commentary]; Treaty on European Union; Treaty on the Functioning of the European Union; Charter of Fundamental Rights of the European Union*. London: Bloomsbury Publishing, 2015, p. 267.
[35] CRAIG, P. and G. DE BÚRCA. *EU law: text, cases, and materials*. 6th ed. Oxford: Oxford University Press, 2015, p. 380.

Article 21 CFR prohibits any discrimination on the grounds of, among others, language. **Article 22 CFR** affirms that respect for language diversity is a basic principle of the EU.[36] Promoting respect for language diversity; however, cannot undermine the national identity of the Member States.[37]

According to **Article 41(4) CFR**, every person may write to the institutions of the Union in one of the official languages, and must have an answer in the same language. Pezl[38] states that Art. 41(4) CFR ensures that EU citizens can address EU institutions in their ‘‘own language’’. He later talks about the official languages of the EU; however, I believe it is important to emphasize that it must be one of the official languages. Otherwise, it would open the door for one of the many minority languages. This is especially (politically) problematic considering the status of the *Catalan* language, *Basque,* and *Galician*.

These languages are considered semi-official or co-official and have a recognized status. This means that based on an agreement governing their use in EU documents, translations are provided by the Spanish government when needed and at its own expense.[39]

On the basis of the above-mentioned list of provisions, I believe it is possible to subsume language rights under the EU human rights protection law. To answer the question I asked: respect for linguistic diversity and related language rights are human rights under EU law. However, it is important to add that the protection is not absolute. As I have already mentioned, linguistic diversity does not mean absolute equality. This implies that situations exist where there is unequal treatment of languages, but such treatment does not necessarily violate human rights protection. There are, in fact, justifiable cases where this equality can be limited. I will discuss this in the subsequent (sub)chapters.

[36] BAAIJ: *Legal integration*…, p. 18.
[37] SCHEU, H.C. Článek 22. In: TOMÁŠEK, M. and V. ŠMEJKAL (eds.). *Smlouva o fungování EU. Smlouva o EU. Listina základních práv EU. Komentář*. Prague: Wolters Kluwer, 2022, p. 1554.
[38] PEZL, T. Článek 41. In: TOMÁŠEK, M. and V. ŠMEJKAL (eds.). *Smlouva o fungování EU. Smlouva o EU. Listina základních práv EU. Komentář*. Prague: Wolters Kluwer, 2022, p. 1594.
[39] KATSAROVA, I. *Multilingualism: The language of the European Union* [online]. Brussels: European Parliamentary Research Service, 2022 [viewed 18 December 2023], p. 4. Available from: https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642207/EPRS_BRI(2019)642207_EN.pdf

1.3 The Principle of Linguistic Equality

As I have already defined in Chapter 1.1, multilingualism (in the EU context) describes the actual usage of multiple languages by the ‘‘EU society’’ and EU institutions. The principle of linguistic equality acknowledges this language plurality and creates a hierarchy. Or, to be more precise, refuses the hierarchy by declaring all official languages equal. As I have already stated above, diversity does not mean absolute equality; therefore, the purpose of this subchapter is to provide the reader with convincing argumentation and assessment of the many drawbacks and weaknesses of this principle.

Typically, the official languages of the Union institutions are considered to be equal. However, the Union institutions can, according to Art. 6 of Regulation 1/1958, specify in their rules of procedure which languages should be used in particular situations. If these rules are adequate and proportional, then this does not violate the principle of linguistic equality.[40] The requirement to preserve adequacy and proportionality must be always followed.

1.3.1 Linguistic Equality *De Iure* and *De Facto*

As I previously stated, all official languages of the EU also serve as working languages, and they are legally considered equal. However, research in this field points to a contradiction between the legal obligation of language equality within the EU, and the unequal practical utilization of languages, resulting in what is referred to as a ‘‘diversity paradox.’’[41]

The notion that all languages can be truly equal is *de facto* unrealistic. The primary purpose of a language is communication, and its power is often determined by the number of speakers it has, as more speakers enable greater communication possibilities. Naturally, languages with a larger number of speakers are used disproportionately more frequently in EU institutions, with English being a prominent example as discussed earlier. From my perspective, this is not a negative aspect. English’s widespread usage is essential for the efficient functioning of the EU, as it serves as a common means of communication. Embracing strict linguistic equality might hinder the Union’s functionality.

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[40] See also *KIK v. Ohim*, C-361/01, The Court, Judgment, 9 September 2003.

[41] DOCZEKALSKA, A. Drafting and interpretation of EU law – paradoxes of legal multilingualism. In: GÜNTHER, G. and M. RATHERT (eds.). *Formal Linguistics and Law*. Berlin, New York: De Gruyter Mouton, 2009, p. 352.

Nevertheless, it is crucial to maintain the idealistic concept of linguistic equality, even if it might only exist in theory, as it symbolizes the overarching equality among Member States; later I will discuss if it is a fundamental aspect for the future of the European project which often faces opposition from eurosceptics claiming that larger Member States exert excessive control over the smaller ones.

The language regimes of different EU institutions vary significantly, with each institution adopting its own approach to address multilingual challenges. Regulation 1/1958 empowers institutions to stipulate the languages to be used in specific cases within their Rules of Procedure (''RP''). However, the interpretation and implementation of this provision differ among institutions. The European Parliament (''EP'') stands out for its commitment to ensuring the highest degree of multilingualism. According to Rule 146 of the RP, all EP documents are drawn up in all official languages, and EP Members have the right to speak in the language of their choice. Simultaneous interpretation is provided for speeches delivered in one of the official languages. While the EP's dedication to linguistic equality is commendable, it faces practical challenges as the number of official languages has increased. This calls for a reconsideration of language choices while maintaining the principle of language equality. [42]

In contrast, the Council of the European Union employs a more limited multilingual approach. Working groups and the Committee of Permanent Representatives play a crucial role in preparing and negotiating texts which often determines the choice of working languages. English, French, and German are frequently used. The European Court of Auditors also adopts a limited multilingualism approach. Art. 28(1) of the RP outlines the linguistic regime for documents to be published in the Official Journal, with drafting languages in English and French. Internal communication relies on English and French. The European Central Bank (''ECB'') follows a pragmatic language regime – English plays a significant role as the working language. The ECB's lawyer-linguists are actively involved in drafting, editing, and translating documents, and English remains the dominant language for specialized language needs within the ECB. [43]

The CJEU is widely recognized for its strong emphasis on French as its primary language. In fact, the Court has even developed a new linguistic variety of French. The reason behind this phenomenon is that the desired standardized variety of French is shaped by the foreign

[42] BURR, I. Article 55. In: BLANKE, H. J. and S. MANGIAMELI (eds.). *The Treaty on European Union (TEU): A Commentary*. Heidelberg: Springer-Verlag GmbH, 2013, pp. 1474, 1478–1479.
[43] Ibid., pp. 1477–1480.

influences of all the non-native speaking staff working in the institution. Cheruvu[44] further highlights that the CJEU requires all judgments to be written solely in French. However, a drawback of this approach is that if judges utilize legal reasoning in a different language and then translate it into French, there is a higher likelihood of producing vague and confusing legal language.

1.4 Chapter Conclusion

In this chapter, I have demonstrated that the principle of linguistic equality is not an absolute one. In practice, complete equality is unachievable. Languages with more speakers, like English, are used more frequently, ensuring efficient communication. However, maintaining linguistic equality symbolizes fairness among Member States. Different EU institutions have varying multilingual approaches, with some prioritizing specific languages for efficiency. Striking a balance between the ideal of linguistic equality and practicality is essential to foster unity and cooperation in the EU.

The following chapters will explore the various (legal) issues arising as a consequence of this principle. The main purpose of this thesis is to propose a solution to these issues. It is crucial to acknowledge that the principle of linguistic equality, by its very nature, has inherent limitations; nevertheless, it holds significance in fulfilling a vital purpose mentioned above.

[44] CHERUVU, S. How do institutional constraints affect judicial decision-making? The European Court of Justice's French language mandate. *European Union Politics* [online]. 2019, 20(4) [viewed 16 July 2023], p. 563. Available from: https://doi.org/10.1177/1465116519859428.

2. (Legal) Issues Related to the Principle of Linguistic Equality

The principle of linguistic equality gives rise to numerous challenges and issues. The sheer number of official languages in the EU poses a significant logistical challenge for translation and interpretation services, as well as for efficient communication and decision-making processes. The cost of providing translations and interpretation in all languages is also a major concern.

Furthermore, linguistic equality can lead to a lack of efficiency and hinder effective communication, as the need for translation can slow down various processes and increase the risk of misinterpretation. This can be particularly problematic in urgent situations or during high-stakes negotiations.

Linguistic diversity can also create an imbalance in the representation and participation of Member States, as larger countries with widely spoken languages may have a greater influence and advantage over smaller countries.

However, the most pressing, in my opinion, are the problems that relate to the notion of equal authenticity of EU law, and the various related legal issues.

2.1 Equal Authenticity of EU Law

Equal authenticity in the context of EU's multilingualism means that: ''… all versions are purported to embody the original, authentic text of the legislative instrument in question.''[45]

As I have already stated above, all language versions of primary EU law are equally authentic according to Art. 55(1) TEU. Furthermore, the Court in its influential rulings in the *CILFIT* case in 1982, established that language versions of secondary EU legislation are also considered equally authentic.[46]

The rationale behind ensuring equal authenticity of language versions stems from the fact that if only one or a few versions of EU legislation were considered as the original, the

[45] BAAIJ: *Legal integration*…, p. 26.
[46] *CILFIT*, 283/81, The Court, Judgment, 6 October 1982, par. 18.

remaining versions would always necessitate verification by comparing them to the ‘‘original’’ language. This would create an inherent advantage for citizens whose mother tongue aligns with the ‘‘original’’ language, while others would be at a disadvantage.[47] Upholding equal authenticity and legal certainty grants European Union citizens the right to rely solely on their language version of the law that governs them, without the need to consult other language versions in order to comprehend the text effectively.[48]

Having twenty-four (or more) language variations of the same text guarantees that it is practically impossible for all these versions to possess identical meanings. It can be argued that equal authenticity is merely a theoretical concept, and it does not exist in the real world.

In some multilingual systems, legislation is drafted in multiple languages **simultaneously** which is referred to as *co-drafting*. A notable example of this approach is found in Canada where all federal legislation is typically drafted simultaneously in both English and French. Another approach involves primarily drafting the legislation in one language while **promptly** producing the version in the other language(s). Using this method, work on both versions progresses hand in hand, with close collaboration between the teams working on each version. The process of drafting ‘‘the original’’ version is influenced by the experience gained from preparing the other version, as commonly observed in Switzerland for the production of French and German versions of legislation. In some other systems, legislation is initially drafted in one language and subsequently translated into one or more additional languages. For instance, in Ireland, legislation is initially drafted in English and then translated into Irish.[49]

The EU also adopts the last-mentioned approach. The phrasing of EU law and the decisions of the Court suggest that all versions should be created simultaneously and without the need for translations. However, this does not reflect the reality. In practice, most drafts during the legislative process are initially composed in English.[50] Later, the text in the ‘‘original language’’[51] is translated into the other official languages to ensure that the legislative act can be formally adopted by the European Parliament and the Council in all the official languages.[52]

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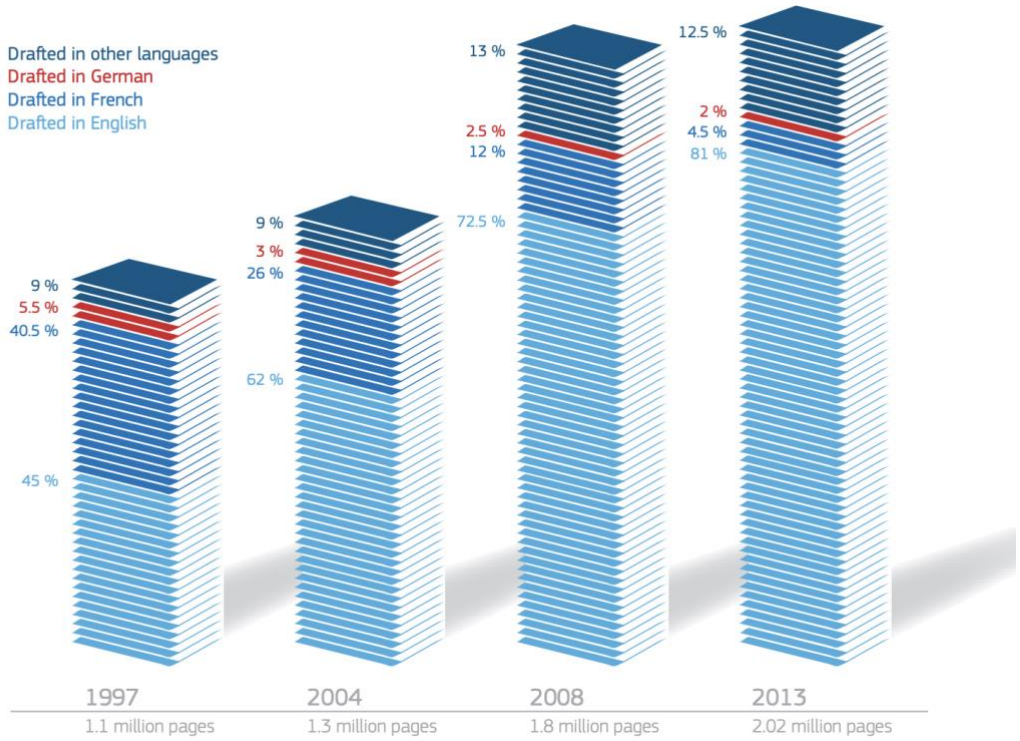
[47] A detailed discussion on this matter will follow in the subsequent chapter.
[48] BAAIJ: *Legal integration*…, p. 26.
[49] ROBINSON, W. Translating Legislation: The European Union Experience. *The Theory and Practice of Legislation* [online]. 2014, 2(2) [viewed 2 February 2023], p. 192. Available from: https://www.tandfonline.com/doi/abs/10.5235/2050-8840.2.2.185?journalCode=rtpl20.
[50] Ibid., p. 195.
[51] Usually in English.
[52] ROBINSON, W. Translating Legislation…, p. 197.

I should note that the significance of English is increasingly evident, with its use as the primary drafting language becoming more prevalent than in the past (refer to Figure 3).

Figure 1 – Drafting languages throughout the years

Source: EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR TRANSLATION, *Translation and multilingualism* [online]. Publications Office, 2014 [viewed 4 April 2024], p. 7. Available from: https://op.europa.eu/en/publication-detail/-/publication/e0770e72-afa1-4971-8824-6190512537dc/language-en.



Moreover, the process of creating EU legislation involves many actors from different EU institutions. Each participant in the process often comes from a different linguistic background, and the main objective of the negotiations is to reach a decision and consensus, rather than focusing on linguistic details and clarity.

The objective of translating legislation is to faithfully convey the meaning of the original text which can often be a challenging task. The difficulty in translating legal texts lies in the requirement for the translations to accurately capture the intended meaning of the original.

According to Baaij,[53] legal translation represents a distinct category of translation, and European Union (EU) translation is a distinct form of legal translation. The success of EU translation can be evaluated based on its ability to generate language versions that facilitate a **consistent interpretation** of EU law across all official languages of the EU.

However, despite efforts to produce high-quality translations that lead to uniform language versions, the sheer number of languages inherently gives rise to linguistic discrepancies between those versions which make a uniform application of EU law in all Member States difficult.

2.2 Language Discrepancies

Language discrepancies refer to inconsistencies or variations in meaning, terminology, or expressions that arise between different language versions of a particular text or document. These discrepancies occur when translating or interpreting content from one language to another, resulting in differences in the way concepts, legal terms, or intentions are conveyed. Language discrepancies can emerge due to linguistic nuances, cultural differences (including diverging legal cultures and types of legal systems), the complexity of legal terminology, or limitations in translation techniques, and they can impact the uniformity and clarity of understanding across different language versions of a given text.

The discrepancies among language versions can have legal implications, since they can pose a challenge in determining the accurate meaning of a legal provision, because languages work in different ways; they have distinctive morphological and syntactical rules. They have also different lexicons,[54] and it might be challenging to replicate one meaning in twenty-four languages.

Baaij[55] differentiates between two types of language discrepancies; there are **translation errors** and **discrepancies related to the semantic scope**. Translation error entail the use of distinctly different terms in the various language versions. [These usually happen when translators lack expertise or make a mistake.] Discrepancies that involve the semantic scope of

[53] BAAIJ: *Legal integration*…, p. 105.
[54] Lexicon is the vocabulary (word-stock) of a language.
[55] BAAIJ: Fifty Years…, pp. 229–230.

terminology occur when two (or more) terms can be considered equivalent, but do not have the same semantic scope or fully overlapping semantic scopes.

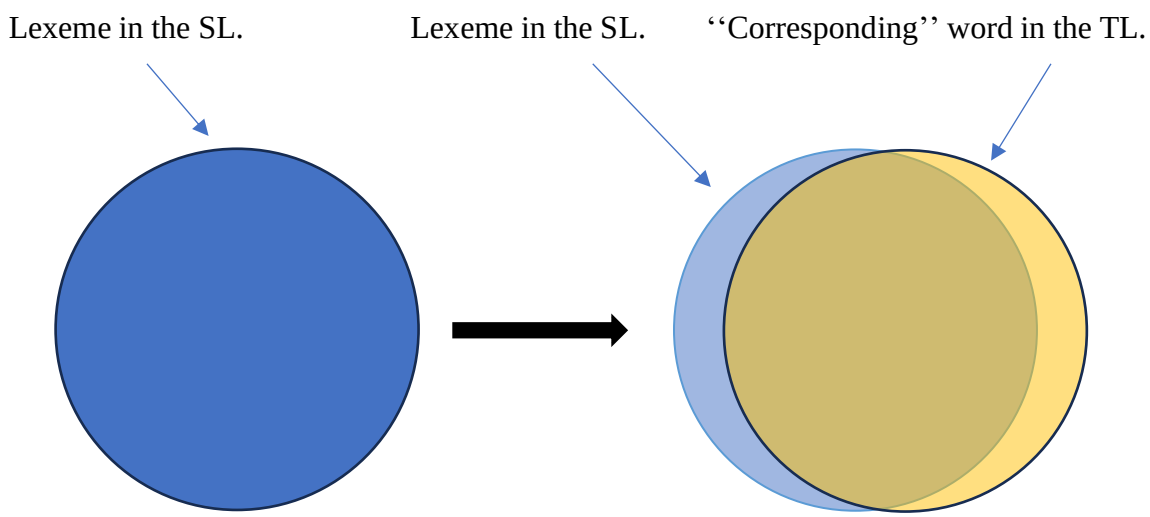
I disagree with Baaij, as I believe that two terms cannot be deemed completely equivalent if their semantic scopes diverge. For two terms to be considered equivalent, their semantic scopes must overlap fully. I believe that Baaij suggests that it is possible for two terms in two different languages to be **nearly** equivalent, yet still possess minor nuanced distinctions in meaning.

For non-linguists, I believe it will be useful to elaborate on this a little more. All language versions should consist of terms and expressions which have the same semantic scope. These terms and expressions should be equivalent; they should have the same meaning. The bearer of meaning is called a *lexeme*. Kolář[56] defines it as: ‘‘… a unit of vocabulary, a lexical item. As such it covers more than just a single word.’’ This indicates that a single word can possess multiple meanings. For instance, the word ‘‘chair’’ can refer to either the leader of a committee or a piece of furniture. However, in another language, there might exist two separate words to represent these two distinct lexemes. This presents a challenge for translators who must transfer a lexeme from a source language (‘‘SL’’) into a corresponding term in a target language (‘‘TL’’). Translators know that it is difficult to achieve equivalence.

The meaning of a lexeme (known as *sememe*) consists of multiple semantic elements (*semes*). A specific word, such as ‘‘mother,’’ derives its meaning from several semes: ‘‘human,’’ ‘‘female,’’ ‘‘adult,’’ etc.[57] When translating a word from a(n) SL to a TL, the individual semes that constitute the meaning of the lexeme can be almost identical to those of the corresponding word in the target language. However, it is possible that one or more minor semes may be missing or added. Hence, even if a word-for-word translation is found in a dictionary, the lexemes rarely **fully** overlap. The objective of the translation process is to identify the most suitable term in the desired TL that accurately conveys the intended lexeme from the SL while minimizing potential ambiguity. The concept mentioned above can be illustrated through the figure provided below.

[56] KOLÁŘ, P. *A Guide to English Lexicon*. Opava: Silesian University in Opava, 2014, p. 5.
[57] Ibid., pp. 5–9.

Figure 2 – Semantic scope



Baker[58] states: ‘‘…although equivalence can usually be obtained to some extent, it is influenced by a variety of linguistic and cultural factors and is therefore always relative.’’ Thus, the notion of language equality in the EU is deceptive. At most, legal translation can only offer an approximate representation of the original source.

This is further exacerbated by the specific features of legal texts and the fact that equivalence issues can arise not only at the word level, but also above the word level; one needs to consider textual, pragmatic, and even semiotic equivalence.[59]

Diverging language versions may render diverging interpretations in the various Member States that rely on a particular version, and thus potentially cause inconsistent application of EU law.[60]

Given that the uniformity of meaning among language versions is not inherently guaranteed, it becomes necessary to ensure uniformity, if not by EU translation, then by judicial

[58] BAKER, M. *In Other Words: A Coursebook on Translation*. 3rd ed. London: Routledge, 2018, p. 5.
[59] I feel obliged to briefly explain some of the linguistic terms I used. *Morphology* is the study of words and their forms. *Syntax* studies the arrangement of words (word order) and phrases. *Text linguistics* is concerned with texts as communication systems (above sentence level). *Pragmatics* deals with meaning in context. *Semiotics* study of signs and symbols; their use or interpretation. For further details see SVOBODA, A. and T. HREHOVČÍK. *An ABC of Theoretical and Applied Linguistics*. Opava: Silesian University in Opava, 2006. ISBN 80-7248-382-X.
[60] BAAIJ: Fifty Years…, p. 218.

interpretation.[61] Above, I have demonstrated that language discrepancies are an unavoidable consequence of the translation process. However, legal interpretation serves as a means to compensate for these discrepancies.

2.3 The Court's Involvement

In this subchapter, I will provide an account of various tools the CJEU uses to compensate for language discrepancies caused by the multilingual nature of the EU.

As I have already stated above, the CJEU plays an important role in ensuring the uniform application of EU law. The Court does so by utilizing various interpretative methods.

2.3.1 Legal Interpretation – General Overview

Given that the target audience consists of lawyers, it is presumed that extensive definitions of all terminology associated with legal interpretation are not required. Instead, a brief introduction to the topic is provided to maintain text cohesion. Additionally, it is worth noting that certain related terms may have multiple definitions, and to ensure clarity, specific definitions are provided that align with the context being discussed.

In political discussions, the call for lawmakers to craft laws that are entirely clear and leave no room for multiple interpretations has attained almost mythical significance. Although the idea of such precise regulation is theoretically possible, it is not realistically achievable in practice.[62] Thus, lawyers must utilize methods of legal interpretation to compensate for regulations that lack textual precision and clear meaning.

According to Art. 19(1) TEU, the European Court of Justice: ''…shall ensure that in the interpretation and application of the Treaties the law is observed.''

The Court has the freedom to select the interpretative approach that most effectively upholds the legal framework of the European Union. The Court's interpretative methods align with the classical methods of interpretation. According to Lenaerts and Gutidrrez-Fons, [63] these

[61] BAAIJ: *Legal integration*…, p. 28.
[62] MELZER, F. *Metodologie nalézání práva. Úvod do právní argumentace*. 2nd ed. Praha: C.H. Beck, 2011, p. 90.
[63] LENAERTS: To Say What the Law..., p. 6.

classical methods include **literal** interpretation, **contextual** interpretation, and **teleological** interpretation. These methods are acknowledged in national legal systems and are also recognized in public international law.

The literal and teleological approaches will be discussed in detail in the following section(s). The **contextual** approach can be analyzed from two distinct but complementary perspectives. Internal contextual interpretation centers on the normative context within which the EU law provision in question is situated. Similar to how different components in an engine work together for its proper functioning, the Court examines the functional relationship between the EU law provision and the normative system it is part of. It is based on the assumption that the legislator acts rationally. This implies that the authors of the Treaties are considered to have established a coherent and comprehensive legal framework. On the other hand, external contextual interpretation delves into the legislative decision-making process that led to the adoption of the EU law provision in question.[64]

The categorization of various methodological approaches; however, differs. Other scholars also include historical interpretation and comparative interpretation.[65]

The CJEU primarily utilizes two interpretative methods: the **literal** and **teleological** approach.

2.3.2 Literal Interpretation

‘‘Literal interpretation (or textualism) may be defined as the action of explaining what a normative text conveys by looking at the usual meaning of the words contained therein.’’[66]

Melzer[67] further points out that the focus goes beyond mere words and their meaning. It also encompasses grammar, including both morphology and syntax. It is essential to adhere to the rules that dictate how words are modified and combined to create more extensive structures (e.g., phrases, sentences).

The literal method is considered a kind of necessary evil. It is a procedure that is unavoidable, but not entirely reliable; that is why it is recommended to also use other methods of interpretation. The purpose of a legal provision, the history of its creation, its systematics or

[64] Ibid., p. 16–17.
[65] SANKARI, S. *European Court of Justice legal reasoning in context*. Groningen: Europa Law Publishing, 2013, p. 64.
[66] LENAERTS: To Say What the Law..., p. 8.
[67] MELZER: *Metodologie*…, p. 88–89.

constitutional conformity take precedence over the text itself.[68] According to the Czech Constitutional Court,[69] this method is only an initial familiarization with the legal norm itself (and its application).

While interpreting an EU law provision, it is indeed possible to consider its normative context in which it is placed and/or in accordance with the purposes it pursues; especially when there are uncertainties in its drafting. However, when the wording of an EU law provision is unambiguous and specific, its contextual or teleological interpretation cannot challenge its literal meaning. This approach is essential in maintaining the principles of legal certainty and inter-institutional balance as stated in Article 13(2) TEU. In accordance with established case law,[70] the Court will always respect the clear and precise language of an EU law provision and will never disregard it.[71]

When a situation demands a high level of predictability, the principle of legal certainty may necessitate the Court to adopt a textualist approach. Particularly in criminal law, adhering to textualism aligns with the principle of legality (*nullum crimen sine lege, nulla poena sine lege*) which has been acknowledged by the Court.[72]

Despite certain factors that may diminish the relevance of the literal approach, it can still lead to the accurate interpretation of EU law. Therefore, I believe Škop's[73] assertion that it is a necessary evil is somewhat exaggerated. In specific instances, the literal approach is preferred due to its alignment with the principle of legal certainty.

Škop[74] also argues that there is no reason to outright reject using solely the literal interpretation, because there are cases where the text is ambiguous, unclear, or problematic. Relying solely on intuition to select the appropriate method of interpretation is not viable; instead, all aspects must be thoroughly considered, taking into account all available methods of interpretation.

I agree with the need to evaluate all options (i.e., all interpretative methods). To me, it is not clear what Melzer[75] means when he states that the literal approach cannot, on its own, lead

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[68] ŠKOP, M. Některé techniky jazykové interpretace práva. *Právník* [online]. 2017, 156(9) [viewed 2 February 2023], p. 770. Available from: https://www.ilaw.cas.cz/casopisy-a-knihy/casopisy/casopis-pravnik/archiv/2017/2017-9.html?a=3226.
[69] III. ÚS 384/08, Constitutional Court of the Czech Republic, Judgment, 30 September 2009.
[70] See, e.g., *Commission v. U.K.*, C-582/08, The Court, Judgment, 15 July 2010.
[71] LENAERTS: To Say What the Law..., p. 9.
[72] Ibid.
[73] ŠKOP: Některé techniky…, p. 770.
[74] Ibid., p. 770–771.
[75] MELZER: *Metodologie*…, p. 110.

to interpretative conclusions. In my view, the literal approach can (and sometimes must) be used as the decisive approach. However, I agree that it should be employed alongside the other approaches.

The utilization of the literal approach becomes more difficult in the case of EU law. As I have already explained in the previous sections of the thesis, all language versions must be taken into account. This means that the textual meaning of not just one version, but **ideally** twenty-four versions must be considered and compared with one another.

The Court also stated that ‘‘…the need for a uniform interpretation of Community regulations makes it impossible for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages…’’[76]

Once more, this remains an idealistic notion. It is practically unfeasible for an individual to fluently speak all twenty-four official languages of the EU and compare them. Nevertheless, there are methods available, such as translation tools, to facilitate the process. The CJEU, in reality, tries to utilize comparative means when dealing with legal texts. In the EMU Tabac case,[77] the Court pointed out that all language versions must in principle be given ‘‘the same weight.’’

Additionally, Lenaerts and Gutidrrez-Fons[78] state that ‘‘textualism, as a method of interpretation, does not suffice where linguistic divergences exist.’’ The Baaij’s analysis described below; however, proves that not only the literal approach can be effective when dealing with language discrepancies, but is employed surprisingly often by the CJEU.

2.3.3 Teleological Interpretation

The teleological approach, initially introduced by Josef Kohler, originates from the Greek word *télos* which means **‘‘purpose’’**. This immediately points to the primary focus of this approach. It considers the original **intent** behind a specific provision or legal regulation. At times, the wording (text) of a provision may not accurately reflect its intended purpose. The teleological approach enables us to ‘‘ignore’’ the literal reading of the text and interpret it based on the purpose of the provision instead.

[76] *EMU Tabac*, 296/95, The Court, Judgment, 2 April 1998, par. 36.
[77] Ibid.
[78] LENAERTS: To Say What the Law..., p. 13.

Wintr[79] provides the following definition: ‘‘A teleological interpretation of a legal act or its provision refers to a method of interpretation that is focused on the underlying purpose of the legal norm as stated in the legal act or the purpose of the overall legal regulation to which the interpreted norm belongs. This type of interpretation can also be viewed as an interpretation in harmony with the broader spirit and values of the entire legal system.’’

Teleological interpretation is the way to find an objectively recent interpretive goal. It is; therefore, not about the meaning that the author of the law associated with the interpreted text, but about the objective meaning of the legal text for its present-day recipient.[80] This means that the method accounts for shifts in meaning which are caused by societal changes.

Scholars are debating the criteria for deciding which interpretative method to utilize. Bengoetxea[81] does not believe that there is a hierarchy between interpretative methods. According to Sankari[82], the Court's approach is characterized by the prominent use of teleological interpretation. Baaij[83] ads that the uncertainty regarding the method chosen by the Court should not be a cause for concern. The teleological and literal interpretive methods are not mutually exclusive. In many cases, the Court employs both approaches in a single judgment, with the literal interpretation serving as the principal argument and the teleological interpretation as the secondary or supplementary argument, and vice versa.

At first glance, the ECJ appears to provide a clear response to the question of its primary interpretative strategy in cases of linguistic discrepancies; it favors the teleological approach.[84]

From 1960 to 2010, the Court[85] reiterated this principle in 50 of its judgments and often emphasized that the teleological approach to linguistic discrepancies is firmly established as ‘‘settled case law.’’[86]

The following section will shed light on this phenomenon (and in some cases: **myth**).

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[79] WINTR, J. *Metody a zásady interpretace práva*. 2nd ed. Praha: Auditorium, 2019, p. 163.
[80] Ibid., p. 167.
[81] BENGOETXEA, J. *The Legal Reasoning of the European Court of Justice: Towards a European Jurisprudence*. Oxford: Clarendon Press, 1993, p. 165.
[82] SANKARI: *European Court*…, p. 67.
[83] BAAIJ: Fifty Years…, pp. 223–224.
[84] BREDIMA-SAVOPOULOU, A. *Methods of interpretation and community law*. Amsterdam; New York: North-Holland Pub. Co., 1978, pp. 19–21. Cited in BAAIJ, C. J. W. Fifty Years of Multilingual Interpretation in the European Union. In: SOLAN, L. M. and P. M. TIERSMA (eds.). *The Oxford Handbook of Language and Law*. Oxford: OUP, 2012, pp. 220.
[85] *Tele2 v. Telekom*, C-426/05, The Court, Judgment, 21 February 2008, par. 25.
[86] BAAIJ: Fifty Years…, p. 220.

2.3.4 Interpretation as a Solution to Legal Issues Related to Multilingualism in the EU

There is no denying that there are numerous challenges arising from the existence of twenty-four official languages in the EU. When such issues, particularly those involving language discrepancies that jeopardize the equal authenticity of EU law, arise, the main recourse available is legal interpretation**. If uniformity cannot be attained through translation, it must be achieved through judicial interpretation.**[87]

Baaij[88] analyzed 170 judgments of the Court where linguistic discrepancies occurred searching for tools which were used to solve any issues in interpretation that occurred. Through a statistical analysis of the Court's case law, Baaij assessed the inclinations toward opting for either the literal or teleological[89] approach.

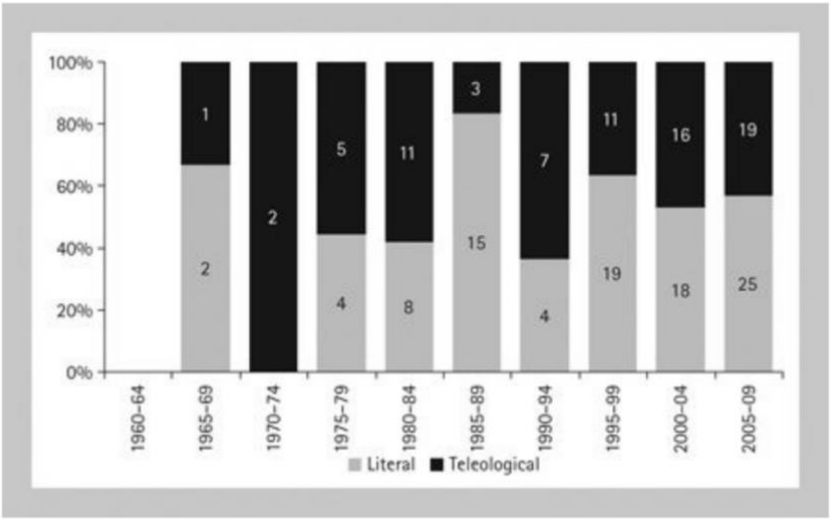
Based on the aforementioned statements regarding the primacy of the teleological approach, one might anticipate its consistent application in the majority of the 170 judgments. However, that is not the case. Despite the teleological interpretation being the prevailing method in the Court's judgments; when it comes to linguistic discrepancies, the teleological approach is not, in fact, the prevailing method for interpreting EU law.[90]

Analyzing all 170 cases between 1960 and 2010 reveals that the Court's preference for a principal literal argument in cases of discrepancies is not an infrequent occurrence. In fact, the Court tended to use the literal approach more frequently than the teleological approach. During this period, the Court employed the teleological approach in 75 judgments when dealing with discrepancies, while in the remaining 95 judgments, it opted for the literal approach (cf., Figure 2).[91]

[87] BAAIJ: *Legal integration*…, p. 28.
[88] BAAIJ: Fifty Years…, p. 219.
[89] Baaij's utilization of the teleological approach incorporates the contextual approach as well.
[90] BAAIJ: Fifty Years…, p. 221.
[91] Ibid.

Figure 3 – Interpretive methods in respect of linguistic discrepancies, between 1960 and 2010 (total number and percentage split)

Source: BAAIJ: Fifty Years…, p. 222.



The literal approach can be divided into two main categories: the ‘‘majority argument’’ and the ‘‘clarity argument.’’ In approximately two-thirds of the cases where the Court adopted a literal approach, it advocated giving priority to the interpretation found in the majority of language versions. In the remaining one-third of cases, the literal approach involved favoring the language versions that the Court deemed clearer or less ambiguous than the others. However, in the vast majority of cases, the ‘‘clearer language version’’ was also in the majority.[92]

The Court prefers employing the literal method over the teleological one when justifying an interpretation that aligns with the majority of language versions. Conversely, when their interpretation deviates from the majority of versions, the Court tends to resort to a teleological argument. This is also the case when around half of the versions differ from the other half, indicating the absence of a clear majority among the versions.[93]

Based on the data presented above, legal interpretation grants the CJEU the flexibility to arrive at its desired decisions, since there is no precise or mathematical method to determine

[92] Ibid., pp. 221–222.
[93] Ibid., p. 227.

what the decision should be. Interpretative methods provide the CJEU with the leverage to justify its actions, as law cannot be overly rigid, and must be able to address various social issues. However, this attribute of law also poses a challenge to the principle of legal certainty which is crucial for the recipients of law to understand and anticipate how legal provisions are and will be applied. In other words, law should be reasonably predictable to some extent. The multilingual nature of the EU only makes this more difficult.

Words, phrases, sentences, and higher linguistic structures vary across different languages; therefore, their (literal) interpretation may also be different (cf. 2.2). Additionally, employing literal interpretation can be challenging, since all language versions must be considered due to their equality. On the other hand, using the teleological approach appears to be simpler, because there should only be one purpose for a legal provision in all Member States and all languages. Why does the Court even use the literal approach then? In my view, this is primarily to uphold legal certainty. Recipients of EU law find the wording of provisions clearer than potentially more accurate but complex interpretations of the legal purpose. Although teleological interpretation seeks to identify the legal purpose, it can generate a broad range of results. A well-structured argumentation based on the teleological method may lead to various conclusions about the actual legal purpose. This means that the teleological approach is, in my eyes, more flexible, and can lead to diverging outcomes which can be seen as a disadvantage of this interpretative method.

Thus, it can be concluded that legal interpretation can function as a tool capable of addressing the consequences of multilingualism of EU law; however, it is not without its flaws. The absence of a precise or standardized approach in using various interpretative methods grants significant flexibility which can be seen positively, as it aids in solving different legal problems, but this flexibility can also have a detrimental effect; it can interfere with the principle of legal certainty, because it is not clear how exactly will be the chosen interpretative method employed.

3. Abandoning (Modifying) the Principle of Linguistic Equality as a Solution to (Legal) Issues Related to Multilingualism in the EU

In the previous chapter, I highlighted the significance of legal interpretation when addressing the countless legal issues connected to multilingualism. Nevertheless, interpretation is not the only technique at our disposal. There exist alternative strategies for addressing problems related to multilingualism.

The aim of this chapter is to introduce various approaches, assess them, and illustrate their respective strengths and limitations. The chapter begins with the most radical proposal, and subsequently presents progressively less extreme ideas.

There are three main approaches I consider to be relevant:

a) English as the **sole (working) language** of the EU;

b) English as the **primary (working) language** of the EU;

c) **alternative** proposals.

3.1 English as a *Lingua Franca*

First and foremost, it is crucial to examine the role of the English language both within and beyond the European Union. The previous chapters showcased the dominant position of English among the official languages of the EU. Ammon follows the research on multilingualism conducted by Theo van Els,[94] and adds that ‘‘there is no doubt about the growing predominance of a single language, English, inside and outside the EU institutions.’’[95]

[94] VAN ELS, T. Multilingualism in the European Union. *International Journal of Applied Linguistics*, 2005, 15(3), pp. 263–81. Cited in AMMON, U. Language conflicts in the European Union: On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests. *International Journal of Applied Linguistics* [online]. 2006, 16(3) [viewed 21 October 2022], p. 320. Available from: https://doi.org/10.1111/j.1473-4192.2006.00121.x.

[95] AMMON, U. Language conflicts in the European Union: On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests. *International Journal of Applied Linguistics* [online]. 2006, 16(3) [viewed 21 October 2022], p. 323. Available from: https://doi.org/10.1111/j.1473-4192.2006.00121.x.

This is logical, given that English is arguably the most widely spoken language globally.[96] This trend is also evident in Europe. Seidlhofer, Breiteneder, and Pitzl[97] add, ‘‘English impinges on everybody’s life in Europe, in many different ways: people watch CNN and MTV, they attend English classes, they encounter commercial slogans such as “The real thing” and “I’m lovin’ it”; hip hoppers as well as bank executives use English in their (very different) everyday activities; companies choose English for internal communication; tourists ask and are given directions in English, and so on. In short, English is everywhere, and we cannot avoid it.’’

Elder and Davies[98] understand the expression *English as a lingua franca* in four different ways:

1. English is used in interactions involving at least some non-native speakers (‘‘NNSs’’).
2. English is utilized in interactions where all participants are NNSs and do not share a common first language.
3. English is employed in interactions where all participants are NNSs and share a similar first language.
4. English represents a new code used among NNSs, not strictly standard English but based on it. Post-colonial or World Englishes, like Indian English, could fall under this definition.

The second definition aligns particularly well with the dynamics of communication within the European Union. Given the rich linguistic diversity in the EU, it is essential to establish a common language that the majority of speakers can employ for communication in instances where their native languages differ.

The following sections will explore the potential for enhanced adoption of English within the EU, a prospect that may encounter challenges detailed later. Nevertheless, the current situation might be relatively favorable due to the absence of a dominant English-speaking

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[96] Determining the most widely spoken language is a challenging task due to several factors. Firstly, population data can be inconsistent or outdated, particularly in regions with diverse and evolving language landscapes. Additionally, defining proficiency in a language varies widely among different studies and surveys. Languages also differ in terms of the proportion of native speakers compared to those who speak it as a second language (and there are also different levels of proficiency), further complicating comparisons. Furthermore, the prevalence of global communication and migration has led to increased bilingualism and multilingualism, making it harder to identify a clear dominant language.

[97] SEIDLHOFER B., BREITENEDER A., PITZL M.-L. ENGLISH AS A LINGUA FRANCA IN EUROPE: CHALLENGES FOR APPLIED LINGUISTICS. *Annual Review of Applied Linguistics* [online]. 2006, 26 (1) [viewed 26 February 2024], p. 3. Available from: https://doi.org/10.1017/S026719050600002X.

[98] ELDER C., DAVIES A. ASSESSING ENGLISH AS A LINGUA FRANCA. *Annual Review of Applied Linguistics* [online]. 2006, 26 (1) [viewed 26 February 2024], pp. 282–283. Available from https://doi.org/10.1017/S0267190506000146.

nation within the EU since the departure of the United Kingdom. Consequently, it may be more feasible for other Member States to acknowledge English's predominant role, especially considering that only Ireland and Malta, both among the smallest Member States, have English as one of their official languages.

A closer look at the sociolinguistic situation in both Ireland and Malta reveals that the role of English differs *de iure* and *de facto* which further supports the notion that English stands as a language independent of other Member States, allowing it to serve as a neutral medium of communication.

As mentioned above, English is not the only official language in Ireland and Malta – Irish and Maltese being the ''other'' official languages.

Both Member States boast unique linguistic and cultural identities. The Republic of Ireland has Irish, a language belonging to the Celtic branch of the Indo-European languages which shares connections with Scots Gaelic, Welsh, and Breton. English also belongs to the Indo-European family of languages; however, it is a Germanic language (not a Celtic language).[99]

Regarding Maltese, it stands as the sole Semitic language within the official languages of the EU, and alongside Estonian, Finnish, and Hungarian, it represents the non-Indo-European official languages. Despite its utilization of Latin letters, like most other EU official languages, Maltese is closely related to Arabic.[100]

The coexistence of (Irish) English and **Irish** is formally recognized by the Constitution of Ireland. Article 8 of the Irish constitution designates both languages as ''official.'' However, while Irish holds the constitutional status of being the **national** language of the Republic of Ireland, English does not share this recognition. This arrangement does not correspond with the sociolinguistic landscape in Ireland. The constitutional acknowledgment might imply that Irish has the largest number of native speakers but this is not accurate. Rather, the constitutional status is aimed at protecting linguistic heritage.[101]

[99] HOYTE-WEST, A. On the Road to Linguistic Equality? Irish and Maltese as Official EU Languages. *Discourses on Culture* [online]. 2019, 11 (1) [viewed 17 March 2024], p. 101. Available from: https://doi.org/10.36145/DoC2019.05

[100] Ibid.

[101] SCHWAN, Jakub. *Legislative Process in Ireland: A Contextual Analysis* [online]. 2020 [cit. 2024-03-19]. Available from: https://is.slu.cz/th/zynbv/. Bachelor's thesis. Silesian University in Opava, Faculty of Philosophy and Science in Opava. Thesis supervisor Marie CRHOVÁ, pp. 8–9.

Hickey states that Ireland is a completely English-speaking country. He asserts that nearly all Irish speakers are bilingual, proficient in both Irish[102] and English, except for a small number of elderly individuals residing in the rural *Gaeltacht* – a collective term for Irish-speaking regions.[103]

Article 5(1) of the Constitution of Malta states, similarly to the Irish Constitution, that **Maltese** is the **national** language of Malta. Article 5(2) stipulates that English, alongside Maltese, holds official language status. This regulation underscores that Maltese constitutionally holds precedence as the primary language in Malta.

Like Irish, Maltese, despite its status as the national language, is the less widely spoken language in Malta (when compared with English).[104]

In summary, English holds a dominant position both within and beyond the European Union, evident in its widespread use and influence in various aspects of daily life. This dominance aligns with the needs of the EU where rich linguistic diversity necessitates a common language for effective interaction among speakers of different native languages. The absence of a dominant English-speaking Member State within the EU (since the departure of the United Kingdom) further facilitates the potential for enhanced adoption of English. This is supported by the fact that only Ireland and Malta, both smaller member states, have English as one of their official languages, alongside their respective national languages. Despite their constitutional recognition, both Irish and Maltese languages are less widely spoken compared with English, reinforcing the idea that English might be a good option to serve as a neutral medium for communication within the EU.

3.2 English as the Sole (Working) Language of the EU

Ammon[105] discusses the complex dynamics surrounding the reduction of working languages within the European Union and other contexts. The central argument is that confining the number of working languages, particularly to a single language like English, can have

[102] When Hickey refers to bilingualism, he does not necessarily imply fluency. The proficiency in Irish varies across the population of Ireland.
[103] HICKEY, R. English in Ireland: Development and Varieties. In HICKEY, R. (ed.). *Sociolinguistics in Ireland*. London: PALGRAVE MACMILLAN, 2016, p. 4.
[104] HOYTE-WEST: On the Road…, p. 101.
[105] AMMON: Language conflicts…, pp. 328–329.

significant benefits but also raises concerns related to language ownership, prestige, and practicality. The main advantage of having a single working language is the increased efficiency in communication. When everyone operates in the same language, the need for translation and interpretation services diminishes, leading to cost savings and smoother interactions. This is especially relevant within the EU, an ‘‘organization’’ that employs a substantial number of translators and interpreters to facilitate communication among its diverse Member States. Concentrating on a single language could ease this burden and potentially lead to substantial financial savings.

As mentioned earlier, having twenty-four language versions of a legal document jeopardizes the principle of legal certainty. If there existed just a single formulation of a legal document, it would certainly aid in minimizing the occurrence of linguistic discrepancies. However, it is important to acknowledge that even with only one version, there still remains the possibility of encountering some level of legal ambiguity, because even a single language can give rise to semantic and legal confusion.

The discussed solution can be effective with not only English, but also other languages – the central objective is to establish a single language as the primary medium of communication. However, in my perspective, English stands as the sole viable option in this regard. In the following discussion, I elaborate on the importance of both French and German. Nevertheless, none of the official languages of the European Union have the global prominence that English enjoys, as it universally functions as the world’s *lingua franca* (as discussed in Chapter 1.2.2 and 3.1).

Baaij[106] also observes that the current practice of institutional multilingualism in the European Union already leans toward English being the primary language (while still recognizing the significance of a few other widely spoken languages) despite the existence of the principle of linguistic equality. Baaij[107] suggests that this prevailing reality demands formal acknowledgment, and states that there is the need for English to take the role of the primary language not only in the context of **legislative drafting** but also for the **interpretation** of EU legislation.

[106] BAAIJ: *Legal integration*…, pp. 57–58.
[107] Ibid.

The larger Member States are beginning to express doubts about the dominance of English. They worry that this may lead to a decline in the global status of their own languages. Germany, Austria, France, Italy, and Spain, all with significant languages, face this concern.[108]

Conflicts about the working language(s) have been occurring since the very beginning of the European project. France was especially eager to establish French as the sole working language. Throughout history, French enjoyed a privileged position among other working languages; however, its position has weakened over time.[109]

Germany previously acknowledged the dominance of French in conjunction with English, as the prevailing working language for a significant duration. However, this perspective shifted following the reunification of Germany and its regaining of political independence in 1990. Subsequently, Germany began to emphasize that the German-speaking community held a notably higher number of native speakers within the EU, especially after Austria's inclusion in 2004. Additionally, Germany subtly pointed out its substantial contributions to the EU budget. More recently, Germany highlighted that, according to updated statistics, the German language even surpassed French as a foreign language in the EU, although this lead was marginal and still considerably behind English.[110]

The current literature; however, does not provide a thorough examination of the practical implementation of this solution. Therefore, I explore the various issues interlinked with the possible employment of the solution.

There are two proposed approaches to this solution. The more extreme option involves enacting both the Regulations and the Directives solely in English. Under this approach, Regulations would not need to be translated, and Directives would still serve to set out goals, but individual Member States would use English in the transposition process. This would effectively integrate English into the legal frameworks of all Member States, with national courts mandated to apply EU law in English. Member States would then decide whether to undertake translations themselves, assuming the associated risks.

However, this approach presents significant challenges, particularly in Member States where English is not the official language. It would contradict constitutionally guaranteed rights, as citizens are entitled to access relevant legislation in their native languages.

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[108] AMMON: Language conflicts…, p. 323.
[109] See also HNÍZDO, B. More Languages, Less French? The Enlarged EU and the Status of French as an EU Language. *Perspectives* [online]. 2005, 24(1), [viewed 9 August 2023]. Available from: http://www.jstor.org/stable/23616045.
[110] AMMON: Language conflicts…, p. 330.

Implementing such a solution would necessitate a fundamental overhaul of the legal systems across Member States.

A less extreme alternative (second approach) entails the exclusive use of English only in the operations of EU institutions. Under this scenario, EU law would continue to be drafted, applied, and interpreted in all official EU languages. Nonetheless, this approach also presents potential issues. For instance, representatives of Member States and Members of the European Parliament would be required to possess proficient English skills. This requirement could infringe the right to be elected – as candidates might need to meet language proficiency criteria and pass language assessments.

There are undoubtedly many advantages of having a single official language; however, it needs to be stated that this proposal clearly means an abolishment of the principle of linguistic diversity and the principle of equal authenticity which, in my view, contradicts the core values of the Union. I believe that the drawbacks arising from this proposal far outweigh its advantages. While it is undeniable that such an approach would simplify and reduce costs for many EU-related processes and activities, the European project was founded on the principles of respectful collaboration and equality among the Member States. Although achieving absolute equality is practically unattainable, making English the sole language of the EU would constitute a complete departure from the current foundational principles of the Union.

Lenaerts[111] adds that ‘‘the unanimity rule within the Council makes it very difficult, if not impossible, to adopt a linguistic regime that would give preference to some of the official languages of the EU as compared to others.’’ I fully agree with this statement. The European project is a project of an ongoing endeavor to maintain the Member States’ relevancy, primarily driven by the potential political and economic benefits it offers. The idea of Member States willingly relinquishing one of their essential national attributes, such as their native language, in the context of the European Union’s operations, appears exceedingly improbable.

The first chapter provided a detailed overview of the various primary law provisions regarding the language situation in the EU. Amending these provisions would pose a considerable challenge. Article 48 TEU outlines the procedures for amending the EU Treaties. Given my previous argumentation on the severity of the aforementioned proposal, it is evident that the amendment required to implement the proposal would necessitate the ordinary revision procedure.

[111] LENAERTS: To Say What the Law…, p. 11.

The ordinary procedure is a general form of treaty revision and should be used for all substantial interventions in the substance of primary law. The procedure may be initiated by a proposal from the government of any Member State, the European Parliament, or the Commission. They submit the proposal to the Council which forwards it to the European Council. The European Council shall decide on the proposal by a simple majority after consulting the European Parliament and the Commission. In the event of a positive decision, the President of the European Council shall call for a Convention. Its task is to examine the proposal and draw up a consensual text for the amendment of primary law (in this case the amendment of language-related provisions within the primary law). Once the Convention has reached a consensus and adopted certain recommendations, the President of the Council will convene a conference of the representatives of the governments of the Member States. The latter adopts the text of the treaty amending primary law. The work of the Intergovernmental Conference is concluded by the signing of the document amending primary law by the Heads of State of the Member States. The amendments will enter into force after ratification by all Member States.[112]

Additionally, there are other changes previously mentioned that would be necessary. The constitutional and human rights frameworks of individual Member States would have to be amended to incorporate the English language into their respective legal systems. However, this prospect is not only improbable but also entirely unrealistic.

In conclusion, it is challenging to envision the actual realization of this approach. In my opinion, there is no political will that would allow this proposal to be applied. The previous chapters have shown in detail how much the principle of linguistic equality is embedded in EU law. It can be argued that this principle is intrinsically linked to the functioning of the Union. **While its abolition would be practical, it would also undermine the equality among the Member States, and its current implementation is not feasible in practice.**

3.3 English as the Primary (Working) Language of the EU

I would like to propose my own (less drastic) approach and evaluate its feasibility. An alternative which could be considered is the possibility of keeping all official and working

[112] STEHLÍK, V., O. HAMUĽÁK and M. PETR. *Právo Evropské unie: ústavní základy a vnitřní trh*. Prague: Leges, 2017, p. 90.

languages of the EU; however, in case of legal ambiguity resulting in interpretation issues, English would be the proffered language used to determine the ‘‘true’’ meaning behind a legal provision.

The reasons for why English would be suitable as a ‘‘privileged’’ language were discussed above. This proposal would ensure that a high level of linguistic equality and diversity is sustained. It would also be beneficial in preserving the principle of legal certainty – recipients of EU law would know which version is valid in case of ambiguity, but legislation would be available in the language they understand; documents would still need to be translated into all official languages.

That is; unfortunately, why this approach, compared with the previous one, would not have a substantial financial benefit caused by minimizing the importance of translation services which impose a significant burden on the EU budget. The Court of Auditors' Special Report concerning translation expenditure showed that in 2005, the EU institutions which produced the largest volume of translations were the Commission (1 324 000 pages), the Parliament (1 080 000 pages) and the Council (457 000 pages). Together they represent about 70% of the total EU translation volume.[113] These translations are not done without cost; rather, there are dedicated staff members responsible for them who require financial compensation.

To summarize the above-mentioned, in case of linguistic discrepancies caused by having multiple language versions, English would work based on the *lex superior derogat legi inferiori* rule; thus, the English version would be applied.

However, the mentioned approach also encounters some of the same issues as the previous one (English as the sole language of the EU); albeit to a lesser degree. In my view, the current principles of the EU and the regulation of (fundamental) language rights in EU law do not allow for such a solution. However, it would be (politically) easier to modify the legal framework to suit this approach than the previous proposal mentioned in 3.2.

The Court already tends to favor specific languages. The top language versions (above 20%) included in Court's language comparisons between 2005 and 2010 were German (30%), English (28%), Italian (26%), French (23%), and Spanish (21%).[114]

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[113] Court of Auditors. *Special Report No 9/2006 concerning translation expenditure incurred by the Commission, the Parliament and the Council together with the institutions' replies*. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006SA0009.
[114] BAAIJ: *Legal integration*…, p 80.

From the data above, it is evident that the CJEU employs a restricted selection of official languages for comparative analyses when interpreting EU law. This limitation is inherent, given the impracticality of expecting all judges to possess proficiency in all twenty-four official languages. As I have established, the Court exhibits a preference for certain languages over others; that is why the proposition articulated in this subchapter gains significance. The argument asserts that maintaining a predominant language, like English, would significantly contribute to strengthening the **principle of legal certainty**, because recipients of EU law would not merely wait for which languages the CJEU will use for their comparative analysis, but would know that the English version will be utilized for the interpretation and subsequent application of EU law.

Regulations and Directives would; thus, be written in all official EU languages, and all would be legally relevant and binding. In most cases, EU law would be applied using the ‘‘translated’’ versions (e.g., in the Czech Republic the Czech language version, etc.); however, if an interpretation issue between different language versions arose, the English version would be applied. This means that national courts would primarily use their respective language version to apply EU law.

Should it be necessary to interpret a national language version, this could be done by the national court. However, if a party to proceedings concludes that the Czech version contradicts the English version, it could object and request that this version is applied as the primary version.

In my eyes, it would be beneficial to place the responsibility to adhere to the English version of secondary EU law on higher courts within the national judicial system, possibly with specialized chambers dealing with such issues. These chambers would have experienced judges and lawyer-linguists who have the skills to interpret the English versions of EU law provisions. This arrangement would alleviate the need for **all** judges in all Member States to possess fluency in English. Nevertheless, it could also be considered to enable all national judges to issue preliminary questions to these specialized chambers in order for lower court judges to align their interpretations accurately with the English version as well.

Nonetheless, national courts should already be conducting these comparative analyses at present. This was discussed in the *CILFIT*[115] case which underlined the significance of national courts undertaking a comparative analysis of various linguistic versions in question

[115] *CILFIT*, 283/81, The Court, Judgment, 6 October 1982, par. 18.

before opting to apply the ‘‘*acte clair*’’ doctrine. Lenaerts[116] further adds that should a national court find such a comparative analysis to be overly burdensome and excessively time-consuming, it has the option to request assistance from the CJEU.

This proposal would also ensure meticulous drafting of the English version, so it has as few ‘‘errors’’ as possible.

Currently, all language versions are equally authentic, fostering equality among Member States, but also introducing legal (un)certainty issues in cases of linguistic (semantic) and legal conflicts. Under the proposed scheme, the CJEU would be mandated to rely solely on the English version. Although this approach would not yield savings in translation services, as all documents would still require translation, the CJEU’s operation solely in English would result in **some** cost reduction. Crucially, the Court’s decision-making would be considerably quicker, as the need for version comparisons would be eliminated.

A problem could arise if a significant majority of non-English versions set out a legal rule in a certain way, but the English version contained a different arrangement – the legal meaning behind a particular provision would be different. This would probably not happen very often, as a great deal of effort would be made to ensure that the English version was written perfectly. However, it cannot be ruled out.

A similar situation where the majority of language versions deviate from the minority, already occurs. Baaij’s[117] research revealed that in most cases where the ECJ determines that there is only one or a few language versions differing from the majority, its eventual interpretation of the legal provision aligns with its understanding of the majority of language versions.

In instances where the English version unmistakably includes a legal regulation that is clearly in contradiction with a significant majority of other versions, it would be appropriate to introduce legislation to allow the application of the majority view from other versions. However, this would be very difficult, as it would be necessary to define what is ‘‘clear contradiction,’’ ‘‘significant majority,’’ and who should do this interpretation and comparison.

In summary, this subchapter proposes an alternative approach to addressing the issues related to multilingualism within the EU, suggesting that while all official languages should be retained, English could be prioritized in cases of legal ambiguity. This proposal aims to maintain linguistic equality and diversity while ensuring legal certainty. However, it is

[116] LENAERTS: To Say What the Law..., pp. 15–16.
[117] BAAIJ: Fifty Years…, p. 227.

acknowledged that this approach would not yield significant financial benefits due to continued translation requirements. The proposal suggests that higher courts within national judicial systems could be responsible for adhering to the English version of secondary EU law, potentially reducing the burden on lower court judges. This subchapter also highlights potential challenges and complexities, such as ensuring the accuracy of the English version, and addressing conflicts between language versions. It suggests that the CJEU could rely solely on the English version to accelerate decision-making, but acknowledges the need for careful consideration and potential legislative changes. Additionally, existing research is referenced indicating that the CJEU tends to align its interpretation with the majority view of language versions. Should the CJEU continue its trend of aligning its interpretation with the majority view of language versions, there could be complications if the prioritized English version is not in the majority, highlighting the need for clear guidelines and mechanisms to address such situations.

3.4 Alternative Proposals – Further Research

Multilingualism in the EU causes many problems, one of the biggest being the ‘‘possible’’ violation of the principle of legal certainty when linguistic and legal discrepancies arise between different versions.

As I have described in the earlier chapters, one of the most effective ways to find a legal conclusion (when discrepancies occur) is to use the means of legal interpretation and comparison between language versions. The *CILFIT*[118] case emphasizes the connection between legal interpretation and linguistic comparison, highlighting that ‘‘An interpretation of a provision of Community law thus involves a comparison of the different language versions.’’ Given the fact that there are multiple methods of interpretation, and that interpretation is done by people who are always burdened by their own subjective view, even this solution cannot be the ultimate and always the right one. The proposals mentioned above (in 3.2 and 3.3) could make a significant contribution to strengthening the principle of legal certainty in relation to multilingualism, as they severely limit the legal relevance of other official and working

[118] *CILFIT*, 283/81, The Court, Judgment, 6 October 1982, par. 18.

languages of the Union. At the same time, it is important to mention that they have their own problems which I have described above.

The aim of this subchapter is to reflect on alternative proposals that would be less extreme, and would have positive effects in terms of maintaining legal certainty but also ensuring linguistic diversity in the EU.

Due to the limitations imposed on this thesis (word count), it is not possible to delve into this topic thoroughly. This subchapter will; therefore, only point the direction for **further research** in this area, and it will briefly outline the individual proposals.

In my opinion, it would be advantageous to establish an improved legal framework to uphold the principle of equal authenticity, particularly focusing on:

1) enhancing the quality of legal drafts;

2) improving translations into other official languages and the process of transposing Directives.

3.4.1 Enhancing the Quality of Legal Drafts

As I have mentioned in previous sections of this thesis, legal documents are usually drafted in English only. Subsequently, they are translated into other languages. Examining the translation process itself and the functioning of responsible institutions and professionals would prove advantageous. As explained below, the current operation is functioning well. Hence, rather than advocating for revolutionary changes, it would be beneficial to suggest modifications aimed at optimizing and improving the entire process. Already at the stage of drafting, a more thorough linguistic comparative process could be undertaken, and subsequent translations into languages from other language families should be taken into account when creating the English version. So that the translation into these languages is as simple and unambiguous as possible. However, I will not hide the fact that this is not an easy task. A brief mathematical calculation shows that there are 552 combinations ($n = 24^2 – 24$) of official EU languages which provides significant opportunity for conflicts to arise in translation.

I should also note that some efforts are already underway in this regard. Therefore, it is crucial to thoroughly explore all possibilities for enhancing this existing mechanism. The process of drafting EU legislation involves numerous individuals who speak various languages. It would not only be advantageous for the draft to be composed by a native English speaker but also beneficial to have a linguist examine the semantic and legal implications of the text.

Technical experts face a real challenge when drafting complex texts in a non-native language. To assist them, the Translation DG established an Editing Service in the early 2000s, aimed at improving document quality. By 2005, it extended to cover a significant portion of English and French originals by non-native speakers. There is no universal requirement for Commission documents to undergo editing; departments decide which documents need checking.[119]

Conducting an up-to-date survey to assess the percentage of drafters who have their texts checked by native speakers is necessary. If the survey shows that drafters do not use the Editing Service, it is essential to explore various ways to address this issue and ensure that the quality of legal drafting meets not only acceptable standards, but also facilitates easy translation into other official languages.

3.4.2 Improving Translations into Other Official Languages and the Process of Transposing Directives

The most important documents that undergo the process of translation are legal drafts. After the drafting process in the European Commission, the text is sent to the Translation Directorate-General (‘‘DGT’’) for translation into the other 23 official languages. The DGT is one of the world’s largest translation services. It bears full responsibility for translation quality, with final text checks by legal revisers in the Commission Legal Service only in exceptional cases, unlike the European Parliament and the Council where lawyer-linguists review texts in all languages.[120]

As stated by Robinson[121], the staff translators at DGT are well-versed in EU institutions, procedures, and terminology, supported by robust IT systems and terminological resources. Legal qualifications are not mandatory, although a minority possess them. However, given that approximately 60% of their workload involves legislation and they have access to various training opportunities, they gather significant expertise in legislative matters.

Legal drafts are not the sole documents undergoing translation. It is essential to examine how other institutions handle translations (e.g., the Court of Justice).

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[119] ROBINSON, W. Drafting EU Legislation in the European Commission: A Collaborative Process. *The Theory and Practice of Legislation* [online]. 2014, 2(3), [viewed 2 April 2024], pp. 255–256. Available from: https://doi.org/10.5235/2050-8840.2.3.249.
[120] Ibid, p. 261.
[121] Ibid, pp. 261–262.

Future research should also delve deeper into examining the **training opportunities** and other related aspects such as the **academic background** of translators, the possibility of improving **quality control**, providing **continuous education** (in linguistics, translatology, and law) for translators, etc. Additionally, there is a need to investigate the potential benefits of having more translators with legal background. In conversations with Professor Johannes Michael Rainer[122] at the University of Salzburg, we concurred that as AI-driven tools improve, they could have significant financial benefits, as these tools have the potential to replace not only translators but also interpreters in specific scenarios. It is; therefore, crucial to explore the future trajectory of standard translation software in light of the emergence of artificial intelligence which holds promise for enhancing translation processes.

Finally, the process of transposing Directives in individual Member States poses a risk to equal authenticity and subsequent uniform application of EU law. Therefore, future research should focus on developing legal regulation that establishes a functional framework for Member States to adhere to, so the transposition process is easier and respects the genuine intent outlined in a particular Directive.

The approaches mentioned in this subchapter offer promising prospects for dealing with multilingualism in the Union. They focus on gradual improvements rather than a radical overhaul of the system which, in my opinion, presents a preferable approach compared to those discussed in sections 3.2 and 3.3, as they avoid the necessity for fundamental alterations in the functioning of the Union.

3.5 Chapter Conclusion

Throughout this chapter, various proposals regarding the challenges, particularly concerning legal certainty and linguistic diversity, have been explored.

The chapter began by discussing the potential benefits and drawbacks of establishing English as the sole working language of the EU. While such a proposal could streamline communication and decision-making processes, it also risks marginalizing non-English languages and contradicting the EU's foundational principles.

[122] https://de.wikipedia.org/wiki/Johannes_Michael_Rainer

Subsequently, English as the primary working language was proposed, emphasizing the preservation of all official languages while prioritizing English in cases of legal ambiguity. This proposal aimed to balance legal certainty with linguistic diversity, recognizing the importance of maintaining equal authenticity among language versions of EU documents.

Enhancing the quality of legal drafts and improving translations into other official languages emerged as key strategies to mitigate linguistic discrepancies and ensure/improve legal certainty. Suggestions included a more thorough involvement of native English speakers and linguists in the drafting process, optimizing translation processes, and exploring the potential of AI-driven translation tools.

Overall, the chapter highlights the complexity of multilingualism within the EU, and underscores the need for further research and thoughtful consideration in addressing these challenges. While no single solution may offer a perfect resolution, a combination of approaches that uphold the principles of equality, diversity, and legal certainty can contribute to a more effective and inclusive EU.

Conclusion

Multilingualism within the European Union presents a complex set of challenges and opportunities. With twenty-four official languages representing the diverse cultural, political, and economic landscapes of its Member States, the EU strives to balance the equality and usage of all official languages with the practicalities of effective communication and a functioning legal system.

The primary challenge associated with multilingualism revolves around the (co)existence of multiple language versions of legal provisions, all of which are considered equally authentic. This situation leads to the occurrence of discrepancies which can potentially negatively affect the lives of EU citizens. Moreover, the sheer number of official languages poses significant financial burden, and makes the system inefficient. The maintenance of such a diverse linguistic landscape entails considerable costs and is not operationally effective.

The first research question mentioned in the Introduction asked whether all official languages are genuinely equal. The principle of linguistic equality seeks to recognize this linguistic diversity by asserting the equality of all official languages. However, while diversity is acknowledged, absolute equality may be unattainable. Despite the legal designation of all official languages as equals, empirical evidence suggests a disparity between legal obligation and practical usage. In reality, languages are not inherently equal; their importnace is often determined by the number of speakers. Consequently, languages with larger speaker bases, such as English, German, French, or Spanish, tend to enjoy greater prominence within EU institutions. Even the Court of Justice of the European Union demonstrates a tendency to favor specific languages in its comparative analyses.

The second research question investigates whether respect for linguistic diversity and associated language rights can be classified as human rights under EU law.

Language plays a pivotal role in shaping EU identity, with the Union's linguistic diversity serving as a distinguishing feature globally. The connection between multilingualism and the recognition of individuals' native languages is closely linked to the safeguarding of their human rights.

Article 24 of the Treaty on the Functioning of the European Union underscores the importance of the language regime for official communication with citizens, crucial for democratizing the EU's functioning. While multilingualism may be impractical and costly, it remains vital for effective EU public administration and enabling individuals to exercise their

rights and safeguard their interests. This link to fundamental rights is further emphasized in the Charter of Fundamental Rights and Freedoms of the EU.

The question arises whether respect for linguistic diversity and language rights can be considered human rights under EU law. The Charter of Fundamental Rights, the European Convention on Human Rights, and general principles of EU law serve as crucial sources of human rights law, affirming the prohibition of language-based discrimination and promoting language diversity as a fundamental principle.

Article 41(4) of the Charter ensures individuals' right to correspond with EU institutions in their chosen official language and receive responses in the same language. However, it is important to note that this protection is not absolute, as linguistic diversity does not imply absolute equality. Certain instances of unequal treatment may be justifiable within the framework of linguistic diversity.

Respect for linguistic diversity and language rights are; therefore, considered human rights under EU law.

Legal interpretation plays a crucial role in addressing the challenges posed by multilingualism. With twenty-four official languages, legal and linguistic discrepancies can jeopardize the equal authenticity of EU law. When faced with such issues, legal interpretation methods (mainly literal and teleological interpretation) become the primary means of achieving uniformity.

The third research question explores other approaches to tackling challenges associated with multilingualism, beyond relying solely on legal interpretation. The discussed approaches are modifications to the principle of linguistic equality. **The fourth research question asked what issues can/cannot be addressed by abandoning/modifying the principle of linguistic equality.**

While legal interpretation plays a crucial role in addressing multilingual complexities, it is essential to explore additional strategies.

This thesis introduced and evaluated various approaches, ranging from radical to more moderate proposals, considering their respective strengths and limitations. Three main approaches were considered.

The first approach advocated for English as the sole (working) language of the EU, representing the most radical proposal. Under this approach, all other official languages would be abandoned in favor of English, with the aim of streamlining communication and reducing translation costs. While this approach may offer potential efficiency gains, it raises concerns about marginalizing linguistic diversity and undermining the principle of equal authenticity

enshrined in EU law. Additionally, implementing such a drastic change would require extensive legislative amendments and may face political resistance.

The second approach proposed English as the primary (working) language of the EU, representing a somewhat less extreme idea. This approach suggested prioritizing English in EU law, communications, and documentation while still retaining other official languages for specific purposes. By striking a balance between efficiency and linguistic diversity, this approach seeks to address multilingual challenges without completely abandoning non-English languages. However, it still faces challenges such as ensuring proficient English skills among representatives and potential infringements on language rights.

Exploring alternative proposals beyond prioritizing English represented another option for addressing multilingual complexities within the EU. These alternative proposals may involve innovative solutions or adjustments to the current multilingual framework, aiming to enhance efficiency and legal certainty while preserving linguistic diversity. Further research is needed to explore these alternative approaches in depth, considering factors such as the quality of legal drafts and translations, the transposition process of Directives in Member States, and the potential role of technology in facilitating multilingual communication.

The first two approaches share the common feature of promoting English as either the sole or primary language of the EU. **The fifth research question asked: If the EU were to adopt a ‘‘sole’’ or ‘‘primary’’ official language, would English be the preferred option? What factors contribute to its preference, and are there any other languages that could be considered equally suitable for this role?**

English seems to be a preferred option for the primary official language of the EU for several reasons. English’s suitability as the primary official language of the EU is strengthened by its worldwide influence and growing usage both within the EU and internationally. As a *lingua franca*, it facilitates various interactions, ranging from business transactions to educational endeavors, and diplomatic communications among EU representatives. This widespread use suggests that English holds significant advantage and usefulness as a common language for communication among the diverse linguistic backgrounds of EU Member States, institutions, etc.

Furthermore, the absence of a dominant English-speaking Member State within the EU, following the departure of the United Kingdom, could potentially pave the way for broader acceptance of English as the primary language. With no single Member State wielding disproportionate linguistic influence, other nations may now find it more acceptable to acknowledge English’s predominant role.

Practically speaking, adopting English as the primary official language could streamline communication within EU institutions, reducing reliance on translation and interpretation services. This operational efficiency could lead to tangible cost savings and smoother interactions, aligning with the EU's goals of efficiency and effectiveness in governance.

Moreover, English's prevalence could contribute to legal certainty within the EU framework. Given its widespread usage and familiarity, relying on English could simplify the interpretation and application of EU law, mitigating potential discrepancies arising from multiple language versions of legal documents.

Despite these compelling reasons in favor of English, it is crucial to acknowledge the significance of other languages within the EU. French and German, for instance, have historically played pivotal roles in EU operations and boast considerable speaker populations within the union. While they may not match English's global prominence, their cultural and linguistic significance cannot be understated.

However, despite acknowledging the significance of languages such as French and German within the EU, it remains evident that English stands out as the most viable candidate for the sole or primary working language of the EU. The global significance of English as a dominant language is not just notable but considerable. Its importance is increasing, even within the European Union.

Moreover, the potential elevation of French and German to primary working language status could face resistance from other Member States. France and Germany, being considered the most powerful Member States within the EU, may encounter opposition from smaller Member States reluctant to accept the dominance of their languages. This resistance could hinder the smooth functioning of EU institutions and exacerbate tensions within the Union.

Therefore, I assert that the English language is the only suitable candidate to become the sole/primary working language of the EU based on the arguments mentioned above.

On the other hand, I hold the belief that linguistic diversity is crucial. It enriches the cultural fabric of the European Union, and reflects the diverse identities of its Member States. Therefore, while recognizing the practical benefits of adopting English, it is important to also protect linguistic (and therefore cultural) diversity. Finding a solution that balances efficiency with respect for all languages is crucial to fostering unity within the Union. I wish the EU the best of luck in navigating these challenges and trust that we will find a solution (cf. 3.4) that benefits everyone involved.

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Annotation

Multilingualism in the EU poses both challenges and opportunities: the Union has twenty-four official languages that represent the diverse cultural, political, and economic landscapes of its Member States. This thesis delves into the multifaceted dynamics of multilingualism, examining the intricate balance between linguistic equality and the pragmatic demands of effective communication and a functioning legal system. Legal interpretation emerges as a pivotal tool in navigating the complexities inherent to multilingual legal systems with a focus on ensuring the equal authenticity of legal provisions across all languages. The thesis evaluates various proposals, ranging from radical shifts like advocating for English as the sole or primary language of the EU to more moderate approaches that seek to preserve linguistic diversity while enhancing efficiency. Despite the practical advantages of promoting English, such as streamlining communication and reducing translation costs, the thesis underscores the importance of safeguarding linguistic diversity as a cornerstone of European identities and unity.

Abstrakt

Mnohojazyčnost představuje pro Evropskou unii výzvu i příležitosti: EU má dvacet čtyři úředních jazyků, které reprezentují bohaté kulturní, politické i ekonomické bohatství jednotlivých členských států. Tato práce pohlíží na problematiku mnohojazyčnosti z různých perspektiv a zkoumá komplikovanou rovnováhu mezi jazykovou rovností a pragmatickými požadavky na efektivní komunikaci a na fungující právní systém. Výkladové právní metody se ukazují jako klíčový nástroj pro řešení složitých situací, které jsou mnohojazyčným právním systémům vlastní. Práce hodnotí různé návrhy. Od radikálních změn, jako je prosazování angličtiny jako jediného nebo primárního jazyka EU, až po umírněnější přístupy, které se snaží zachovat jazykovou rozmanitost a zároveň zvýšit efektivitu fungování EU. Navzdory praktickým výhodám přijetí angličtiny, jako je zefektivnění komunikace a snížení nákladů na překlady, práce zdůrazňuje význam zachování jazykové rozmanitosti jako základního kamene evropských identit a jednoty.

Key Words

EU, multilingualism, EU law, legal interpretation, English, principle of linguistic equality, linguistic diversity

Klíčová slova

EU, mnohojazyčnost, právo EU, výklad práva, angličtina, princip jazykové rovnosti, jazyková rozmanitost