



# **The European Legal Forum**

**Forum iuris communis Europae**

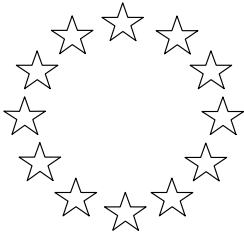
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**Lingua Latina fundamentum et salus Europae**

*The European Legal Forum (E) 6-2002, 313 - 320*

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# The European Legal Forum

## Forum iuris communis Europae

6-2002

pp. 313 - 372

2<sup>nd</sup> Year Nov./Dec. 2002

### LAW OF THE EUROPEAN ORGANISATIONS

#### Lingua Latina fundamentum et salus Europae

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##### I. The EU's credo: multilingualism

1. Maintaining, promoting and enhancing linguistic diversity is one of the main objectives of the European Union (EU). For the Commission and Parliament,<sup>1</sup> the will for political unity alone does not suffice. The pursuit of unity implies a regard or respect for diversity.

2. The fear of heavy bureaucracy can only be eliminated if the European institutions speak the language of all citizens. Only by respecting the cultural identity of each and every person can a trust be created between the Union and citizens, which is necessary for the Union's prosperity and the bringing together of its peoples.

3. A common foreign and security policy would be desirable. In this connection the EU should speak in a *single voice* – in a single voice, but not in one language. Indeed, one of the Union's strengths rests in the fact that relationships are made with many countries in *the* language spoken in these countries. This also represents an advantage of multilingualism worth preserving.<sup>2</sup>

##### II. Legal sources

1. All 12 treaty languages<sup>3</sup> are considered equal<sup>4</sup> under the Treaty on European Union and the Treaty establishing the European Community incorporated in the Treaty of Amsterdam.

2. With the exception of Irish, all treaty languages are also official languages.<sup>5</sup> Consequently, the Official Journal has 11 editions.<sup>6</sup> All documents must be available for consultation in all official languages<sup>7</sup> by the Council of Ministers,<sup>8</sup> the European Parliament,<sup>9</sup> the Economic and Social Committee,<sup>10</sup> as well as the Committee of the Regions.<sup>11</sup> Parliamentary debates are simultaneously interpreted.<sup>12</sup> Every citizen of the Community has the right to use his own language in his dealings with EU organs. He must receive an answer in his own language.<sup>13</sup> Correspondence with a Member State must be conducted in that State's official language.<sup>14</sup>

3. Not all official languages are working languages, however. The Council of Ministers unanimously decides the language in which the organs of the Community work.<sup>15</sup> The or-

<sup>5</sup> Article 53 EU Treaty and Article 290 (ex-Article 217) EC Treaty in connection with Council Regulation 1/1958 of 15 April 1958 determining the languages to be used by the European Economic Community, last amended by the Accession Treaty of 24 June 1994, OJ 1994 C 241, at 285.

Articles 28(1) and 41(1) EU Treaty likewise refer to Article 290 EC Treaty in the titles relating, respectively, to common foreign and security policy (Article 11 et seq. EU Treaty) and to police and judicial cooperation (Article 29 et seq. EU Treaty).

<sup>6</sup> Article 5 Regulation 1/1958 (*supra* note 5).

<sup>7</sup> See *Lenz/Röttinger*, EG-Vertrag, 2<sup>nd</sup> ed., Cologne (D), 1999, Article 290 para. 2, and explicitly in Article 117(1) of the Rules of Procedure of the European Parliament and Article 14(1) of the Rules of Procedure of the Council.

<sup>8</sup> Article 202 et seq. EC Treaty.

<sup>9</sup> Article 189 et seq. EC Treaty.

<sup>10</sup> Article 257 et seq. EC Treaty.

<sup>11</sup> Article 263 et seq. EC Treaty.

<sup>12</sup> Article 117(2) Rules of Procedure of the European Parliament (*supra* note 7).

<sup>13</sup> Article 21(3) EC Treaty; Article 2 Regulation 1/1958 (*supra* note 5); and Article 39(4) European Charter of Fundamental Rights.

In correspondence with third states and their nationals, it is up to the Commission member to determine the official language of the Union in which a response will be given. Thus Mme Cresson was correct in consistently using her mother tongue. See Response of the Commission of 24 June 1996, OJ 1996 C 365, at 12.

<sup>14</sup> Article 3 Regulation 1/1958 (*supra* note 5).

<sup>15</sup> Article 290 EC Treaty.

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Abridged version of contribution to appear next year in the festschrift *Studi in onore di Giuseppe Gandolfi*.

<sup>1</sup> See Resolution of the European Parliament, OJ 1995 C 43, at 91.

<sup>2</sup> The Commission worked on a proposal for the programme "Multilingual Information Society" (MLIS). The creation of an infrastructure for language resources should be supported and the language industry and the use of modern linguistic aids in the public sector promoted (OJ 1996 C 364). The Council now oversees this programme (OJ 1996 L 306, at 40).

<sup>3</sup> I.e. Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish.

<sup>4</sup> Article 314 (ex-Article 248) EC Treaty: All texts [are] equally authentic.

gans are only capable of determining the full particulars for themselves in their rules of internal procedure.<sup>16</sup>

4. In proceedings before the ECJ, the applicant chooses the language of the case. Complaints against a Member State or its nationals are to be conducted in the language of the defendant.<sup>17</sup>

5. The language provisions of the Office for Harmonisation of the Internal Market (Trade Marks and Designs) likewise exhibit special features.<sup>18</sup> The applicant must indicate a second language, the use of which he accepts as a language of proceedings for opposition, revocation or invalidity proceedings. The language selected must be one of OHIM's working languages. Only five languages are permitted: English, French, German, Italian and Spanish.<sup>19</sup>

### III. The legal reality

1. The decisions of the Council of Ministers are prepared by a committee composed of the permanent representatives of the Member States. In this case, only English, French or German is used.<sup>20</sup>

2. Only English and French are spoken in the working parties on the common foreign and security policy. These two languages are overwhelmingly used in the general administration and at meetings of departmental heads. Meeting documents are likewise only available at first in one of these languages.<sup>21</sup>

3. In this way, English is gaining more and more the upper

hand, becoming the preferred working language.<sup>22</sup> The attempt to strengthen the role of the German language failed. German has fallen far behind.<sup>23</sup>

German civil servants are therefore instructed by the federal government to use only German in Brussels. It is irrelevant whether an interpreter is available. To wit there have already been occasions in which Germans have responded to Italian colleagues in English although being addressed in fluent German.<sup>24</sup>

During the Finnish Presidency in the second half of 1999, Austria and Germany repeatedly refused to participate in ministerial and Council meetings because they were not interpreted into and from German.<sup>25</sup> Germany also sent no representative to a meeting of the EU Culture Committee convened on 30 January 2001 in the town of Jokkmokk in northern Sweden.<sup>26</sup> All participants at that meeting could express themselves in their native languages, although interpretation was available only in English and French.<sup>27</sup>

4. At the Court of Justice, French remains the only working language.<sup>28</sup>

<sup>16</sup> In Article 12 of its Rules of Procedure, the Council of Ministers has determined that all proposals and supporting documents must be available in the official languages; deviations from this rule are only permitted out of a need for expediency and require unanimous approval. A Minister may lodge a reservation against a proposal should amendments not be available in his official language.

Pursuant to Article 18(1) of the Rules of Procedure of the Commission (OJ 2000 L 308, at 26 et seq. (8 December 2000)) all instruments are to be attached in the authentic languages of the summary note at the end of the meeting at which they were adopted. "Authentic languages" are the official languages of the Communities in the case of instruments of general application and the language(s) of those to whom they are addressed in other cases (Article 18(6)).

<sup>17</sup> See Articles 29, 31 and 110 of the Rules of Procedure of the Court of Justice and Articles 36 and 37 of the Rules of Procedure of the Court of First Instance. Any amendment to these procedural rules requires the unanimous approval of the Council. See Article 225(4) sentence 2 (ex-Article 168 a) EC Treaty (Court of First Instance) and Article 245(3) sentence 2 (ex-Article 188) EC Treaty (Court of Justice).

<sup>18</sup> Article 115 Regulation 40/94 on the Community trade mark (OJ 1994 L 11, at 1).

<sup>19</sup> The Dutch lawyer Christina Kik from The Hague petitioned that the provision be annulled. She lost on procedural grounds in two instances. See CFI 19 June 1995 – T-107/94 – *Kik v Council and Commission* [1995] ECR II-1717 and the appellate order in ECJ 28 March 1996 – C-270/95 – *Kik v Council and Commission* [1996] ECR I-1987. A renewed complaint that Greece also joined as a party was dismissed by the Court of First Instance. See CFI 12 July 2001 – T-120/99 – *Kik v OHIM* [2001] ECR II-2235. The Court saw no discrimination in OHIM's language policy. Article 290 EC Treaty was applied within the boundaries permitted by the Treaty.

<sup>20</sup> *Lopes Sabino*, Les langues dans l'Union européenne, enjeux, pratiques et perspectives, [1999] 35 RTD eur. 159, 163.

<sup>21</sup> *Martiny*, Babylon in Brüssel, [1998] ZEuP 227, 237; *Heusse*, Le multilinguisme ou le défi caché de l'Union Européenne, [1999] RMC 202, 204; *Lopes Sabino* (*supra* note 20).

<sup>22</sup> *Manz*, Sprachenvielfalt und europäische Integration, NZZ No. 107 of 10 May 2001, at 9. This becomes obvious when considering the percentage of original documents in French and English produced by the Council General Secretariat (computed in terms of number of pages) – 1993: F 57.66 %, E 28.28 %; 1994: F 56.67 %, E 27.60 %; 1995: F 65.99 %, E 19.11 %; 1996: F 45.82 %, E 34.93 %; 1997: F 42.36 %, E 40.58 %; 1998: F 36 %, E 60 % (see OJ 1999 C 96, at 129); 1999: F 29 %, E 66 %; 2000: F 43 %, E 55 %; 2001 (January to August) F 33 %, E 65 %. The picture shifts, even if not substantially, when looking at the number of documents – 1997: F 63 %, E 34 %; 1998: F 46 %, E 49 %; 1999: F 39 %, E 55 %; 2000: F 57 % E 40 %; 2001 (January to August) F 35 %, E 63 %. This becomes still more obvious at the Commission. Its translation service must contend with 1 200 000 pages per year, a number which is increasing at annual rate of 10 %; 55.2 % are written in English, 32.7 % in French and a meagre 3.9 % in German. See the overview of the Translation Service of the Commission [www.europa.eu.int/comm/dgs/translation/index\\_en.htm](http://www.europa.eu.int/comm/dgs/translation/index_en.htm) (current 20 November 2002).

<sup>23</sup> Computed in terms of number of pages, the percentages for the translation of German originals are – 1993: 1.66 %; 1994: 4.79 %; 1995: 1.96 %; 1996: 1.54 %; 1997: 1.77 %; 1998: 5 %; 1999: 5 %; 2000: 2 %; 2001 (January to August): 2 %. In terms of number of documents – 1997: 3 %; 1998: 5 %; 1999: 6 %. 2000: 3 %; 2001 (January to August): 2 %.

<sup>24</sup> See *Nass*, Man spricht nicht Deutsch, FAZ No. 129 of 6 June 2001, at 15.

<sup>25</sup> *Ross*, Europas Einheit in babylonischer Vielfalt, FAZ No. 62 of 14 March 2001, at 11.

<sup>26</sup> *Die deutsche Sprache als EU-Dauerbrenner*, NZZ No. 26 of 1 February 2001, at 2.

<sup>27</sup> With 82 million Germans and 8 million Austrians, German is the most common language in the EU. Germany is also the largest net contributor. Entry into the Community civil service should therefore be contingent on the applicant's mastery of *two* foreign languages, and not just one. The English-speaking civil servants would need only focus themselves on French, but also on picking up another official language. This would apply analogously to the French. German would have a chance again. As *Nass* (*supra* note 24) points out rightly. At their 12<sup>th</sup> international congress in Lucerne (CH), German language instructors rightly voiced strong criticism at the hypocrisy of the EU and the Council of Europe, which advocate multilingualism but which in fact practise bilingualism and consign German, the most commonly spoken language in Europe, to the margins. See NZZ No. 179 of 6 August 2001, at 7.

<sup>28</sup> Report on translation at the Court of Justice, at 4 (point 2), available at: <http://www.curia.eu.int/en/txts/others/trad.pdf> (current 15 November 2002); *Pirrung*, Die Stellung des Gerichts Erster Instanz im Rechtssystem der EG, Bonn (D), 2000, at 10. For the reasons, see *Riese*, Das Sprachenproblem in der Praxis des Gerichtshofs der Europäischen Gemeinschaften, in: *Festschrift Dölle II*, Tübingen (D),

#### IV. Employment of interpreters and translators

1. The EU possesses the world's largest interpretation and translation service.<sup>29</sup> In 1995, it employed 2500 translators – 1200 at the Commission alone. Of this number, 570 enjoyed civil servant status; 2500 were freelancers.<sup>30</sup> At present, 4000 interpreters and translators work for Brussels.<sup>31</sup>

2. Language services account for two percent of the budget and about a third of the administrative costs.<sup>32</sup> It is estimated that the annual costs of multilingualism total 1.8 billion euros.<sup>33</sup> This figure includes not only the expenditures for interpreters and translators,<sup>34</sup> but also outlays for language training, recruitment competitions and publications in the eleven official languages.<sup>35</sup>

3. With eleven official languages, each session of the Parliament, Commission and Council implicates 110 possible language combinations. Each of the eleven languages must be interpreted into ten others.<sup>36</sup>

4. With 16 Member States, five other languages would be added,<sup>37</sup> resulting in 240 language combinations. With 27 Member States, work must be done in 22 languages, with 462 potential language pairs. However, the credo of multilingualism and linguistic equality will be upheld. The European Parliament<sup>38</sup> holds fast to the notion that technical and budgetary arguments do not justify a reduction in the languages used. The topic is taboo. They deceive themselves<sup>39</sup> and declare 2001 “Year of Languages”.<sup>40</sup>

1963, at 505, 512: All seven judges understood French, very few the other languages!

<sup>29</sup> Bergsdorf, *Sprachen sind der Schlüssel zu Europa*, Rheinischer Merkur No. 15 of 13 April 2001, at 18.

<sup>30</sup> Brackemiers, *Europe without Frontiers and the Language Challenge*, [1995/2] *Terminologie et traduction* 14.

<sup>31</sup> The exact figure amounts to 3951. See general budget for the financial year 2000, OJ L 40, at 1. See also *Praktische Probleme der Osterweiterung*, NZZ No. 175 of 31 July 2001, at 3.

<sup>32</sup> Brackemiers (*supra* note 30), at 15.

<sup>33</sup> Berteloot, *Die Sprachen des Europäischen Rechts und die Rechte der Unionsbürger*, in: Schulze (ed.), *Recht und Sprache II*, Baden-Baden (D), 2001, at 10.

<sup>34</sup> In the 2000 budget, estimated at 686 million euros; for an itemisation, see OJ 2000 C 219 E, at 129 (Answer to Written Question E-2239/99 by Christopher Huhne).

<sup>35</sup> In its 11 languages, the L Series (Leges) of the Official Journal comprises 190 000 printed pages; the C Series (Communications), 170 000 printed pages. Added to this number in 1998 were an additional 144 298 pages of the case law of the Court of Justice and the Court of First Instance, excluding staff cases. See Berteloot (*supra* note 33), note 49.

<sup>36</sup> Indeed, were interpreters required to provide simultaneous translations not only in their mother language, but also into one or two foreign languages, their numbers could be reduced by half or a third. The quality would also suffer as a result. The performance of even the best interpreter is substantially weaker when he works in a language that is not his native language. Even someone like myself, who for 50 years has lived, taught and written in a foreign language area, must make do with a meagre, often cut and dried vocabulary and has to fight against the limited command of any other language he has learned. Only the native speaker has no handicap!

<sup>37</sup> I.e. Czech, Estonian, Hungarian, Polish and Slovenian.

<sup>38</sup> Resolution of 20 February 1995, OJ 1995 C 43, at 91.

<sup>39</sup> For the assessment that “linguistic equality” is already fictional, see also Urban, *One legal language and the maintenance of cultural and linguistic diversity*, [2000] 8 ERPL 51, 57.

<sup>40</sup> Highlights included the European Adult Language Learning Week

5. At the ECJ and the CFI, 230 jurists work as translators. Each has a command of five to six languages. Some 330 000 pages of complicated texts are translated each year. There is a backlog despite considerable speed. At present, 140 000 pages await translation.<sup>41</sup>

In principle, every judge and Advocate-General can demand that any document be translated into the language they request. The members of the Court of Justice and the Court of First Instance forgo this possibility in order not to burden the language services any further. The translation service already must outsource to freelance workers in any event. Internal employees cannot manage the workload.<sup>42</sup>

6. Terminology databases<sup>43</sup> such as Eurodicautom, which was developed by EU organs, help as much as the multilingual glossary on European procedural law available from the ECJ.<sup>44</sup> Translation engines, as for instance that used by Babelfish,<sup>45</sup> for instance, offer only limited help, however.<sup>46</sup> In fact, the humour of such machines seems to originate from some other planet.<sup>47</sup>

#### V. Dryness and drabness of debates

1. Those listening in on parliamentary debates in Brussels or Strasbourg soon fall asleep. Since everything is more or less interpreted with a substantial time delay, the discussion loses liveliness and colour. Even the best interpreter cannot render in her own language the vagaries, the puns, the jokes, the slips of the tongue that bring roars of laughter in a split second. The speaker's style is fully lost. Translators serve as washing machines, whereby colourful garb is transformed into grey coveralls, stripped of embroidery and buttons.

2. Adding to this is the fact that some languages are only accessible via other languages – the so-called “relay languages”. The old saying in the European Parliament goes something like: “The Danes are the last to laugh.” That's not the result of

from 7 to 13 May and the European Day of Languages on 26 September. The European Union and the Council of Europe set up a special website with many links, i.e. [www.eurolang2001.org](http://www.eurolang2001.org) (no longer in service).

On the events in Switzerland, see the special 2001 issue of *Babylonia*, at 31 et seq., and *Universitas Friburgensis*, June 2001, at 9 et seq.

<sup>41</sup> Fischer, *Europas Babylon*, [2001/3] *Deutschland, Forum für Politik, Kultur, Wirtschaft und Wissenschaft* 31 et seq.

<sup>42</sup> See Report (*supra* note 28), at 12 (point 5.2.1). As Pirrung (*supra* note 28), comments at 24, the capacities of the translation service have been insufficient for several years. The backlog can only be overcome with a major increase in the number of posts. If further cost savings are made in this area, the equality of languages of the Union cannot be further sustained.

<sup>43</sup> Available at [europa.eu.int/comm/translation/index\\_en.htm](http://europa.eu.int/comm/translation/index_en.htm) (current 20 November 2002).

<sup>44</sup> [www.curia.eu.int](http://www.curia.eu.int).

<sup>45</sup> [www.babelfish.altavista.com](http://www.babelfish.altavista.com).

<sup>46</sup> See Geisel, *Der Traum von der Abschaffung der Wörter*, NZZ No. 162 of 16 July 2001, at 23.

<sup>47</sup> For the phrase “Das Wetter drückt auf die Zürcher Feststimmung” (“The weather is depressing Zurich's festive mood.”) Babelfish suggested: “The weather presses on the inhabitants of Zürich fixed tendency; The weather operates on the regulated tendency of the inhabitants of Zürich; The weather page run for the regulated tendency of the inhabitants of Zürich.”

a lack of humour, but rather that Greek or Portuguese are most often first translated into English or French and then into one of the Scandinavian languages.<sup>48</sup> One can only begin to imagine the time delay with 16 languages.

3. The model of reducing the interpretation and translation service's output by first translating into English or French and from that point translating or interpreting into the other official languages therefore hardly presents an appropriate means of coping with the growing linguistic diversity, in spite of all the premature praise and commendations.

## VI. Paralysis and insecurity

1. Worse than drabness, flatness and barrenness are the probability of error and "Frutsch"<sup>49</sup> – the "Eurowelsch" dubbed "eurobabilage" by the French and elegantly dressed up as "eurospeak" by the English.<sup>50</sup> Noncomprehension or miscomprehension are perpetuated in a way that leads to considerable uncertainty, even among experts.

2. Technical legal terms used in the various official languages often amount to empty linguistic shells. The language into which a translation is made does not always have a functional equivalent.<sup>51</sup> For instance, if the *terminus technicus* "Rechtsgeschäft" is rendered by the terms "legal transaction" or "act of legal significance,"<sup>52</sup> the translation cannot convey to jurists from the Anglo-American legal system the precise meaning of this key concept in German private law.<sup>53</sup> The same holds true for notions such as "Treu und Glauben" and "Verwirkung" – although they may be translated by "good faith" and "forfeiture" or "estoppel by laches," these concepts do not match up in terms of their actual substance by any means. "Détournement de pouvoir" and "Ermessensmissbrauch" are not the same things. Are French doctrine and jurisprudence concerning "excès de pouvoir" or the German relating to "Ermessensfehlergebrauch" to be taken as the basis for these concepts?<sup>54</sup> It is possible to translate "Verfügung" with "acte de disposition," but to the French ear it fails to suggest the nuance between "Verpflichtungsgeschäft" and "Verfügungsgeschäft" – both dealing with concepts idiosyncratic to German law. "Actes de disposition" are transactions regarding material assets, such as the conclusion of long-term rental and lease contracts or the taking up of loans.<sup>55</sup>

<sup>48</sup> See *Ross* (*supra* note 25).

<sup>49</sup> *Mixtum compositum* of Fr(ançais) and (De)utsch.

<sup>50</sup> See *Kusterer*, *Das Sprachenproblem in den Europäischen Gemeinschaften*, [1980] 22 *Eur. Arch.* 693 et seq.; *Martiny* (*supra* note 21), at 238; *Heusse* (*supra* note 21), at 204.

<sup>51</sup> As *Martiny* (*supra* note 21), at 231, points out rightly.

<sup>52</sup> See *Dietl/Lorenz*, *Wörterbuch für Recht, Wirtschaft und Politik II*, 4<sup>th</sup> ed., Munich (D), 1992, at 581.

<sup>53</sup> Even the French expression "acte juridique" is not in alignment with the concept of "Rechtsgeschäft." In the French view, an "Angebot" ("offre") is not an "acte", but rather a "fait juridique". An "acte juridique" always requires a cause (Article 1108 C.civ.fr.), while a "Rechtsgeschäft" does not. See *Ferid/Sonnenberger*, *Das französische Zivilrecht I* 1, 2<sup>nd</sup> ed., Heidelberg (D), 1994, 1 F 23, 1 F 65, 1 F 605 et seq.

<sup>54</sup> The first decisions on of the ECJ confronted this very question. See *Riese* (*supra* note 28), at 521.

<sup>55</sup> See *Ferid/Sonnenberger* (*supra* note 53), 1 F 85.

3. Furthermore, linguistic diversity also leads to substantial interpretative difficulties with regard to expressions and phrases that do not bear the stamp of the doctrine and jurisprudence of individual Member States. The versions of treaties, regulations and directives often deviate from one another, and not insignificantly. Which text is controlling?

Pursuant to the case law of the ECJ, the authoritative version is the one that can best achieve the purpose pursued by lawmakers.<sup>56</sup> This can of course be a version that departs considerably from the one with which the applicant is familiar.

Parties and citizens of the Union can therefore never rely on the wording in their mother language. They must always bargain for surprises. The rug can suddenly be pulled out from under them.

4. The same applies to third states and international organisations entering into agreements with the EU. Should they not request that a specific version be controlling for the interpretation of agreement, they can run into the nightmare of having to contend with a multitude of variants.<sup>57</sup> Often the original version of the agreement cannot be identified, to say nothing of the languages in which it was drawn up. The brushing aside of translations would also run counter to the principle of linguistic equality.<sup>58</sup> It should of course not be denied that the original version constitutes an important guide to interpretation.<sup>59</sup>

5. The EU is aware of this problem, as demonstrated by Declaration 39 of the Final Act adopted at the Amsterdam Inter-Governmental Conference (1997), which forms part of the treaty. Parliament, Council, and Commission should not only accelerate the codification of Community law, but also develop amicable guidelines for improving the quality of drafting of Community legislation.

Sure enough, a legally non-binding agreement of this sort was reached on 22 December 1998.<sup>60</sup> Three points are emphasised under this agreement:

- The role of the institution's legal services is to be strengthened.

<sup>56</sup> Thus the teleological method, generally accepted by the ECJ for the interpretation of the European treaties, is ultimately controlling. See also Article 33(4) Vienna Convention on the Law of Treaties of 23 May 1969: "[In cases of doubt] the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted." See *Mathijssen*, *Teleologische Interpretation der europäischen Verträge*, Nimwegen (NL), 1970, at 17 et seq.; *Bleckmann*, *Zu den Auslegungsmethoden des europäischen Gerichtshofs*, [1982] *NJW* 1177, 1180; *Martiny* (*supra* note 21), at 241 et seq.; *Ackermann*, *Das Sprachenproblem im europäischen Primär- und Sekundärrecht und der Turmbau zu Babel*, [2000] *WRP* 807, 809; *Bleckmann/Pieper*, *Rechtssquellen des EG-Rechts*, in: *Dausen*, *Handbuch des EU-Wirtschaftsrechts* (current 8/2000), B I para. 15 et seq.; *Pieper/Schollmeier/Krimphove*, *Europarecht*, 2<sup>nd</sup> ed., Cologne (D), 2000, at 37 et seq.; ECJ 28 March 1985 – 100/84 – *Commission v United Kingdom* ECR I-1169.

<sup>57</sup> Pursuant to Article 33(1) of the Vienna Convention (*supra* note 56), the text is equally authoritative in each language version. Article 33(3) establishes the presumption that the treaty terms possess the same meaning in each authentic text.

<sup>58</sup> As *Martiny* (*supra* note 21), at 242, points out rightly.

<sup>59</sup> *Dölle*, *Zur Problematik mehrsprachiger Gesetzes- und Vertragstexte*, [1961] 26 *RabelsZ* 4, 22 et seq., 37 et seq.

<sup>60</sup> OJ 1999 C 73, at 1.

- The content of legislative acts must be homogenous, the terminology coherent; identical concepts should consistently be expressed in the same legal terms.

- Such terms should not stray too far from their meanings in ordinary language. Concepts specific to any one national legal system are to be avoided as much as possible.

### VII. De facto privileging of the English

1. English is privileged in multiple respects: It is at once re-ly language<sup>61</sup> and business idiom.<sup>62</sup> Moreover, the Commission's calls for tender do not appear simultaneously in all languages, but are instead delayed and initially issued in English and French for the most part.<sup>63</sup> Candidates speaking other languages are consequently disadvantaged. Those able to speak English and French have a clear initial advantage – a pole position.

2. The factual dominance of English also benefits the United Kingdom economically: English as a Foreign Language is Great Britain's second largest revenue source after North Sea oil.<sup>64</sup> The British music and film industry also profits from this supremacy of the English language, irrespective of the fact that a country with a language that is so widespread has it easier in the export market.

3. Forty-seven percent of EU citizens speak more or less good English, admittedly 31 % only as a foreign language.<sup>65</sup> A "Germish" plague is downright rampant in Germany.<sup>66</sup> Even in Switzerland, a country with four official languages, English is gaining ground.<sup>67</sup> There have been intense debates as to whether a national language or English should be taught as the first foreign language.<sup>68</sup> In German-speaking Switzerland, French and Italian lag far behind. Scant few German-speaking trainees and students opt for a year-long exchange in a French-speaking canton. In Geneva, more lawyers and business people speak English than German or Italian. The chair for French law was eliminated at the Faculty of Law of the University of Lausanne. In its place, professors from the USA offer lectures and seminars in English on American law.<sup>69</sup> The German language skills of Lausanne law students are so weak that, even after year-long terminology courses, many are un-

able to translate into French the German-language decisions of the Federal Court which have already been discussed in detail in the French-language lecture class.<sup>70</sup>

### VIII. Proposed relief

1. The following systems offer an escape from the linguistic maze:

- a) the single language model: English;
- b) the three-language model: English, French, German;
- c) the five-language model: the aforementioned languages plus Italian and Spanish;
- d) the differentiated three-language model;
- e) the prohibition on use of native languages;
- f) asymmetrical translation concepts.

2. Cost reduction, simplicity and efficiency all speak for the single English language model: Multilingualism is replaced by English, which is already making gains as *the* working language and which is the most widely known language in the EU.<sup>71</sup> Moreover, English is the language of international trade.<sup>72</sup>

In many countries, English is already a primary school subject. In Germany, the fraction of students learning English in the general school system amounts to 95.94 %. Only 24.52 % opt for French.<sup>73</sup>

Implications: Every citizen of the Union understands English and can communicate in this language. There is no need for interpreters and translators.

The disadvantage of the single language system is not the disregard for European cultural diversity as such. The Community language must be technical in one way or another. The language is designed for the creation of a network of norms and must convey legal rules. It is thus a specialised language. Only experts can understand it in its entirety. Neither the original text nor the translations are meant to be memorials to culture. To the contrary – the clausal, juristic style of the Community language would scare off any European who loves his mother tongue, its promotion and cultivation.

The drawbacks of the single English language model are twofold:

- The depletion of European cultural diversity necessarily entailed by a focus on English: Learning other languages is no longer worthwhile. One would get by everywhere with English. All important transnational texts are drafted in this koine.

<sup>61</sup> *Supra* V 2 et seq.

<sup>62</sup> *Vorpeil*, Business Idioms - oder: Freundliche Übernahme der englischen Sprache, [2001] EWS 95.

<sup>63</sup> *Manz* (*supra* note 22).

<sup>64</sup> *Ross* (*supra* note 25).

<sup>65</sup> *Zipf*, Vielfalt bewahren, [2001/3] Deutschland, Forum für Politik, Kultur, Wirtschaft und Wissenschaft 33.

<sup>66</sup> *Wicharz-Lindner*, Lust auf Abenteuer?, Entdecken Sie die deutsche Sprache!, [www.europarl.eu.int/language/apprendrede\\_en.htm](http://www.europarl.eu.int/language/apprendrede_en.htm) (current 20 November 2002).

<sup>67</sup> In its decision of 24 July 2001, the Swiss Federal Court had to urge the federal communication commission (ComCom) to write orders in the future in an official language, not in English. NZZ No. 206 of 6 September 2001, at 15.

<sup>68</sup> Mit welcher Sprache spricht die Schweiz?, NZZ No. 225 of 27 September 2000, at 15.

<sup>69</sup> Of course, only a infinitesimally small number of French Swiss take part in these training seminars.

<sup>70</sup> Over one third of the students did not fulfil the curricular goals and thus would have had to have left the university due to inadequate language and subject skills.

<sup>71</sup> See III 3 and VII 3 *supra*.

<sup>72</sup> See *Vorpeil* (*supra* note 62) and *Moréteau*, L'anglais pourrait-il devenir la langue juridique commune en Europe?, in: *Sacco/Castellani* (eds), *Les multiples langues du droit européen uniforme*, Turin (I), 1999, at 143, 145, 154, 158.

<sup>73</sup> *Bliesen*, Fremdsprachenunterricht in Deutschland, [1998/4] *Bildung und Wissenschaft* 2, 6.

- The hegemony granted to Great Britain and Ireland: A person able to speak in his mother tongue becomes advantaged, privileged. He has no limits; he can bamboozle. Someone who must learn a language cannot even remotely acquire the same linguistic finesse. His ability to express himself can never match that of the native speaker. A person speaking a foreign language more or less remains a rank amateur whose imperfect pronunciation only disquiets his listeners.<sup>74</sup>

Language means power. People who formulate technical legal texts shape their content, directly or indirectly, grafting their own understandings and thoughts into the formulations through the structure of the text.

On top of this, English is also the language of the USA, the global superpower. The question is whether the EU can establish a counterbalance or attain any measure of independence whatsoever if the Anglophone world already has the say by and with its language, dominating Europe.<sup>75</sup>

3. The three-language model of English, French, and German<sup>76</sup> at least acknowledges the fact that native German speakers make up the largest contingent among EU citizens.<sup>77</sup> Dominance by the states with the three strongest economies – two of which are founding members – would be seen as tyrannical by smaller states, which would be relegated to the level of provinces and linguistic minorities in terms of political influence.

4. The same holds true for the five-language model.<sup>78</sup> Here too, all of the difficulties of the present eleven-language system would come up sooner or later. Therefore, this model must also be rejected.

5. Manuel Schubert has recently suggested a differentiated three-language model.<sup>79</sup> English, French, and German are the only official languages. Legal acts of the EU are drafted solely in these languages. Member States with other official lan-

guages must then translate texts from one of these three EU languages into their own language. However, English is the only working language. The Union languages – i.e. the languages of *all* Member States – must content themselves with a much weaker position. Correspondence between the EU and Member States and Union citizens is made in these languages. Enquiries may still be directed at the European institutions in a Union language. The reply must then also be in this language.

The differentiated three-language model would certainly help in coping with the problems of multilingualism, which have been largely underestimated with regard to the EU's planned Eastern enlargement. Schubert's solution must be rejected for two reasons, however: He grants precedence to the English language and does not indicate whether his model also applies to debates in the European Parliament. This would compel all representatives to express themselves in one of the three official languages or at least read all documentation and submittals in one of these languages. Such hegemony on the part of the three great powers, practically resulting in English supremacy, creates a two-class system of privileged and underprivileged.

6. In an effort to eliminate the advantage enjoyed by representatives and officials who are native speakers of an official language, it was proposed<sup>80</sup> that they must make use of a foreign language in negotiations and debates.<sup>81</sup> Native speakers are forbidden to use their own language. Thus, the native speaker would also have to search for words and not be able – even surreptitiously – to steer the decision-making in a specific direction by virtue of his linguistic advantage.

This model deserves note because it actually and earnestly engages with the equality of languages and makes a dent in the dominance of the great powers that the smaller States find so unbearable. On the other hand, the already very low linguistic level of the Union is depressed even further if a native speaker is unable to exploit his competence, confidence and expertise.

7. Translation in relay languages benefits from asymmetrical concepts.<sup>82</sup> Interpretations and translations are initially done only in English and French and then from these languages into the remaining official languages, which report submittals, comments and decisions with a time delay or in an oversimplified and often incorrect manner.

Is it therefore not possible for translation into other official languages to fall away? Should representatives, ministers, Commission members and officials not merely be required to have passive linguistic knowledge of one of the universal languages, i.e. English and French? Should those not having such skills or knowledge not just stay home and graze in their own pastures?

<sup>74</sup> See *supra* note 36.

<sup>75</sup> "International English", as spoken world-wide at international meetings and negotiations, has nothing in common with "Oxford English"; moreover, it is sadly lacking in comparison to the classical English. Even "Pidgin English" is English. This is overlooked by *Moréteau* (*supra* note 72), at 146.

<sup>76</sup> This model goes back to the German EU official Hermann Kusterer, who developed it in: Note de la direction générale des études du Parlement européen sur "Le multilinguisme en Europe: une vue générale et perspectives" IV/WIP/96/09/078 (printed in extracts by *Heusse* (*supra* note 21), 205). However, in his essay published the same year (mentioned *supra* note 50), he is willing to dispense with German. Unfortunately, German is no longer a global *lingua franca*. Nevertheless, the three-language model was recently advocated by the French linguist Claude Hagège and the German socio-linguist Ulrich Ammon. See *Hagège, Welche Sprache für Europa?* (von Ow, tr.), Frankfurt/Paris (D/F), 1996, at 100, 105; *Ammon, Die Stellung der deutschen Sprache in Europa und Modelle der Mehrsprachigkeit* (unpublished lecture, Bonn (D), 2001). References were especially made to his monographs: *Die internationale Stellung der deutschen Sprache*, Berlin (D) 1991; *Ist Deutsch noch internationale Wissenschaftssprache?*, Berlin (D) 1998.

<sup>77</sup> Around 100 million EU citizens are native German speakers, i.e. 24 %, whereas only 16 % of EU citizens are native English speakers.

<sup>78</sup> This model dates back to *Alain Lamassure*, Agence Europe No. 6384 of 22 December 1994.

<sup>79</sup> Die Sprachenvielfalt der EU. Modelle zur künftigen Funktionsfähigkeit der Union, [2001] 56 Internationale Politik 43 et seq.

<sup>80</sup> See *Ross* (*supra* note 25), who does not cite any source, however.

<sup>81</sup> The Danish model is similar: Nobody may speak only his mother tongue in an EU institution, even if this is the working language. Instead, the working languages would be alternated so that all persons would have to express themselves in these languages and no person benefit from constant use of his native language.

<sup>82</sup> See V 2 et seq. and VII 1 *supra*.

Given that this solution is unsatisfactory, it becomes crystal clear that citizens of Member States with languages that are not “relay languages” must either be satisfied with second-hand expressions and risk being led astray by adulterated or unclear phrases or otherwise suffer discrimination. They must be able to understand the foreign idiom in order to avoid being excluded from co-operation and critical opinion.

### IX. Lingua Latina salus

1. Many authors<sup>83</sup> deplore the fact that today’s world lacks a *lingua franca* apart from English. The Latin Middle Ages have long been forgotten, with barely a trace remaining in the present. The introduction of Latin as the official and working language has been considered in isolated cases,<sup>84</sup> although never seriously.<sup>85</sup>

But Finland has taken this route. In July 1999, when German Chancellor Gerhard Schröder exercised the “politics of absenteeism” (*Politik des leeren Stuhls*) due to the lack of interpretation from and into German, the Finnish government, presiding in the Council of Ministers at that time, responded in Latin. Whether this letter was understood by the chancellor’s office remains an open question.

2. Latin as the sole official language of the EU could offer the solution to all of the problems addressed in this article.

a) The rape of the Romance family of languages (to which all the same three large countries and three small countries belong), the colonisation by the Anglo-American world, as it were, would come to an end. Thousands of years’ tradition would be revitalised again. It would be possible to revert to that equally old heritage, Roman law, which left its stamp on the terminology and substance of all the continental legal orders. The harmonisation of laws would be facilitated to a considerable extent.

b) If Latin were the only official language, the Community would save billions of euros on interpretation and translation services. This department would remain responsible only for replying to petitions and enquiries submitted by Union citizens, which may, of course, still be expressed in their native languages. This department would take charge of correspondence with third countries. As for the rest, the Member States would be responsible for conveying Community laws and communiqués to citizens who could not learn Latin at school or who have forgotten these skills and for assisting members of Parliament, ministers, commissioners and civil servants by means of language courses. This would also be an incentive for a sensible school reform. Latin instead of pidgin English!

Classical Roman literature in place of American songs. Only an ignorant Philistine would believe that Latin has nothing more to offer in this day and age.

c) With this model, Europe would also focus on its common history and enhance its own identity,<sup>86</sup> which Member States risk losing should the Union completely fall under the influence – cultural as well as economic – of the USA. This is not just a matter of developing self-esteem and preserving independence. It concerns the protection of millennia of culture envied the world over against corruption and oblivion. Latin is more than a mere technical, artificial language. It took root in all European languages and also directly or indirectly enriched the vocabulary and rhetoric of the Germanic languages.

d) It is common wisdom in the literature that if English were the only official language, a European legal terminology distinct from the Anglo-American legal language would need to be created.<sup>87</sup> It is also clear that decades of preparatory work would be required.<sup>88</sup> A uniform European terminology is indeed still in the fledgling stages.<sup>89</sup>

This leads to the question of why legal intelligence should be wasted on the creation of something new in English by discarding, in a blinding display of nationalism, the thousands of years’ of brainwork of classical Roman jurists, glossators, post-glossators and humanists in order to make the law understandable for all social classes.<sup>90</sup>

e) Until modern times, jurists in Europe commonly moved from one school to another. They did not stay in the universities of their home countries. The abandonment of Latin as an instructional language rendered the transnational exchange of students nearly impossible. Today’s Erasmus and Socrates programmes may indeed facilitate study within Europe. But these programmes offer nothing more than a brief insight into foreign legal systems and methods. In any event, the certificates accorded are deceiving in that only a passive linguistic understanding of the respective subject area could be conveyed, and this at a very low level.

f) Those wanting to engage in comparative or historical legal studies cannot get by with just one language. Besides Latin, they must also be familiar with English, Dutch, French, German, Italian, Portuguese, and Spanish. There are important publications in all of these languages. And soon, the Eastern European languages will also follow suit.

Is now not the time to reduce the enormous expenditures and efforts imposed on scholars in this regard to the bear essentials: a language everyone understands and in which every-

<sup>83</sup> *Martiny* (*supra* note 21), 243; *Moréteau* (*supra* note 72), at 147. Moréteau talks of “repli éthnocentrique,” for which he believes France is to blame.

<sup>84</sup> So e.g. by *Moréteau* (*supra* note 72), at 159.

<sup>85</sup> The articles by *Kremps*, EU erwägt Einführung des Lateinischen als Amtssprache, and *Stausbergs*, Vatikan und Radio Finnland: EU-Initiative ist positiv, *Die Welt* of 1 April 2000, at 7, were April Fools’ jokes. The Internet site [www.welt.de/go/latein/](http://www.welt.de/go/latein/) enlightened disappointed readers.

<sup>86</sup> *Waiblinger*, Latein für Europa. Von der Aktualität einer großen Tradition, *Süddeutsche Zeitung* of 25/26 April 1992, available in German at [www.klassphil.uni-muenchen.de/~waiblinger/lateuro.html](http://www.klassphil.uni-muenchen.de/~waiblinger/lateuro.html) (current 20 November 2002).

<sup>87</sup> *Moréteau* (*supra* note 72), at 159 et seq.

<sup>88</sup> For the perhaps naive perception that this venture will succeed more or less in no time, see *Campana*, Vers un langage juridique commun en Europe, [2000] 8 ERPL 33, 49 et seq.

<sup>89</sup> *Martiny* (*supra* note 21), at 243.

<sup>90</sup> For full details, see *Wacke*, Lateinisch und Deutsch als Rechtssprachen in Mitteleuropa, [1990] NJW 877, 884 et seq.



one can communicate, without one language or group of languages having an unjustified advantage of location that demands legitimation?

### 3. Are there any obstacles?

The impediments surely do not include the notion that Latin is a “dead language” or the inconceivable progress made in the natural sciences (incomprehensible to even an educated layman) since the 19<sup>th</sup> century, when many dissertations were still being written in Latin. “Latin” does not mean the Latin of Cicero or the Latin of the Church Fathers, but rather the Latin that was further developed in observance of the classical rules. Expressions for “Internet” (*interreticulum*), “television” (*imaginum transmissio per electricas undas*), “refrigerator” (*frigidarium*), “diesel locomotive” (*diseliana machina vectoria*) and “striptease” (*devestitio*) may be found in Latin.<sup>91</sup> There is by no means a dearth of translation dictionaries for modern concepts, expressions and phrases.<sup>92</sup> Radio programmes are aired in Latin not only by the Vatican, but also by Finnish Broadcasting<sup>93</sup> and Radio Bremen.<sup>94</sup>

4. Olivier Moréteau<sup>95</sup> has correctly noted that the linguistic diversity presently being practised by the EU is basically a disaster. The absurd waste of resources and energy does not promote the notion of Europe.<sup>96</sup>

It is certainly questionable whether Europe’s politicians have the insight to appreciate this. Can they still abandon their credo of multilingualism in their present mental inertia and campaign for the introduction of an official language that has left its mark on European culture and bestowed splendour upon the Old World in its intellectual and religious unity? Leibniz, who himself championed the cause of the German

language during the drafting of the by-laws of the Berlin Academy of Sciences, nevertheless considered Latin indispensable. It is the *lingua Europae universalis et durabilis ad posteritatem*.<sup>97</sup> The great French socialist Jean Jaurès made a similar remark in his dissertation at the Sorbonne, written in Latin and titled *De primis socialismi Germanici lineamentis apud Lutherum, Kant, Fichte et Hegel*.<sup>98</sup> He concludes with the following observation: “Nec mihi displicet ad res hodiernas Latinum usurpasse sermonem, quando in hoc sermone et ius humanum antiquae philosophiae moralis, expressum sit, et Christiana fraternitas suspiraverit ac cecinerit, et ille Latinus sermo hodie adhuc solus sit omnium populorum universus et communis sermo et sic universali socialismo conveniat. ita Latinus sermo isti integrali socialismo, quem Benoît Malon descripsit, conformis est, in eo socialismum non quasi exiguam factionem sed quasi ipsam humanitatem, videmus; et sub specie humanitatis et aeternitatis socialismus adspicitur.”

5. Latin as the only official language of the EU! It sounds utopian. The exasperated or incensed reader should therefore take note: Utopia could catch on – as a beacon of hope in a confused world!

<sup>97</sup> See *Hattenhauer*, Zur Geschichte der deutschen Rechts- und Gesetzesprache, Berichte aus den Sitzungen der Joachim Jungius-Gesellschaft der Wissenschaften V 2, Hamburg (D), 1987, at 22 et seq, 25.

<sup>98</sup> Toulouse (F), 1891, at 83. The title translates as “The origins of German socialism”; the dissertation appears in Latin at [www.fh-augsburg.de/~harsch/jau\\_soc4.html](http://www.fh-augsburg.de/~harsch/jau_soc4.html) (current 20 November 2002).

<sup>91</sup> See the small dictionary *Helpers*, Lexicon Auxiliare, Ein deutsch-lateinisches Wörterbuch, 3<sup>rd</sup> ed., Saarbrücken (D), 1991; and the journal *Vox Latina*, published by the Benedictine padre *Caelestis Eichenseer*, a lecturer at the chair for comparative cultural studies at Saarland University (D). The journal’s full title is: *Vox Latina, Commentarii periodici, quibus copia verborum Latinorum convenienter augeatur, institutioni Latinae subsidia didascalica praebeantur, sermo Latinus intra Europam et extra probetur communicabilis, omnesque Latini intellegentes delectentur*.

<sup>92</sup> See, e.g., *Bacci*, Lexicon vocabulorum quae difficilium Latine redduntur, 4<sup>th</sup> ed., Rome (I), 1963; *Perugini*, Lexicon Italo-Latinum, Rome (I), 1976; *Eichenseer*, Latinitas Viva, Pars lexicalis, Saarbrücken (D, L: Saraviponti), 1981; as well as *Amata*, Lexicon recentioris Latinitatis, Lexicon auxiliare sive thesaurus novitiorum, Rome (I), 2000, available online under [www.ups.urbe.it/proposta/facolta/flcc/lexicon/lex\\_ind.html#top](http://www.ups.urbe.it/proposta/facolta/flcc/lexicon/lex_ind.html#top) (current 7 September 2001).

<sup>93</sup> The foreign service of Radio Finland, YLE, broadcasts news in Latin (nuntii Latini) on short- and medium-wave, over Hotbird 5, Intelsat 707, Ariasat 2 and the Internet every Friday at 9:55 and 18:55. The news is also printed in part. Up to now, five volumes have been published. The Vatican has congratulated the Finnish initiative; see *Pikkänen/Pitkäranta*, Nuntii Latini, Helsinki (FIN), 1992, 10 et seq.

<sup>94</sup> For more information see [www.radiobremen.de/online/latein/](http://www.radiobremen.de/online/latein/) (current 20 November 2002).

<sup>95</sup> See *Moréteau*, *supra* note 72, at 158.

<sup>96</sup> “Today’s multilingualism is a waste and an illusion. A financial waste, because public monies can be spent more usefully. A political waste, because this proliferation of texts in eleven languages does not do much to advance the ideals of Europe’s founding fathers. A intellectual and human waste, because the energies and talents spent on the colossal task of translating and interpreting – which is necessary for achieving a high quality – could undoubtedly be put to better use.” (English translation from the French).

## ECJ 26 November 2002 – C-100/01 – *Ministre de l’Intérieur v Aitor Oteiza Olazabal*

Articles 6, 8a and 48 of the EC Treaty (now, after amendment, Articles 12, 18 and 39 EC) and of Council Directive 64/221/EEC<sup>1</sup> – Freedom of movement for persons – Restrictions – Public policy (*ordre public*) – Police measures limiting the right of residence of a national of another Member State to part of the national territory

Neither Article 48 of the EC Treaty (now, after amendment, Article 39 EC) nor the provisions of secondary legislation which implement the freedom of movement for workers preclude a Member State from imposing, in relation to a migrant worker who is a national of another Member State, administrative police measures limiting that worker’s right of residence to a part of the national territory, provided

<sup>1</sup> Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, at 117).