

**MAKING OF MULTILINGUAL LAW:
THE EFFECTS OF THE ORDINARY LEGISLATIVE PROCEDURE ON THE
LINGUISTIC UNIFORMITY AND RELIABILITY OF EU LAW**

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The aim of this thesis is to find out the effects of the ordinary legislative procedure on the linguistic uniformity and reliability of EU legislation. This thesis utilizes a legal linguistic approach to the topic. The development of EU legal language(s) is examined by using a method of legislative studies in the European Union context. This is done by examining how EU law is drafted and translated and whether the measures to secure the interlingual concordance of all the language versions are sufficient.

Equal authenticity of all the language versions guarantees the equality of Union citizens and access to EU law. Legal certainty as a common principle to all the Member States and as a fundamental principle of the European Union necessitates a certain level of clarity, stability, intelligibility and predictability from EU legislation. Fulfilling these requirements is highly challenging in the multilingual surroundings of the EU.

Several factors contribute to the linguistic uniformity of EU legislation. Most important ones of these are drafter's nationality and linguistic capabilities, the legal knowledge of the translator, the duration of the legislative procedure, the compliance of the drafting rules and the awareness of the special problems that lawmaking in multiple languages confronts.

Meeting the requirements of legal certainty in every official language can be viewed as a criterion for adequate consistency of the language versions. The corrigenda published in the *Official Journal of the European Union* and the case law of the European Court of Justice imply, however, that the legislative procedure as it is today, cannot guarantee the concordance of all the language versions in that sense.

Avainsanat: ordinary legislative procedure, multilingualism, discrepancies between language versions, legal certainty, linguistic equality, equal authenticity

Muita tietoja:

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ABBREVIATIONS

AG	Advocate General
CJEU	Court of Justice of the European Union (since 1.12.2009)
COREPER	Committee of Permanent Representatives
DG	Directorate-General
DGT	Directorate-General for Translation
EC	European Communities
EEC	European Economic Community
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EU	European Union
Euratom	European Atomic Energy Community
GC	General Court
MEP	Member of the Parliament
OJ	Official Journal of the European Union
TARIC	Integrated Tariff of the European Communities
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
VAT	Value Added Tax

1. INTRODUCTION

1.1 Setting the Scenes

Multilingualism is an undeniable fact in the European Union (EU) today. Most of the international organizations, like the United Nations, have delimited the amount of their official and working languages to one or few. However, this is not the case with the European Union. From the very beginning of the Communities there has been put a high value on the equality of the Member States and their citizens. Perhaps the most important expression of this principle is linguistic equality adopted by the European Union. According to the principle of linguistic equality no language is more equal than the other. Since many of the EU citizens speak only one language, EU must ensure they all have access to legislation, procedure and information in their national tongue. All official languages¹ enjoy equal status also in the way that EU citizens can use any one of them to communicate with the European institutions. This reasserts the democratic nature of the Union and its transparency and legitimacy as well, but it also brings great problems along.

Through the enlargements in the 21st century the amount of EU Member States has grown from 15 to 28, whereas the amount of EU's official and working languages has more than doubled from 11 to 24. The European Union was latest accompanied by Croatia which joined the Union in the beginning of July 2013 increasing the number of its official languages to 24. In these circumstances it is obvious that the quality of legal drafting and legal translating is of growing importance in the Union. Equally authentic language versions of EU instruments all have the force of law which means that each and every one of them must be prepared with utmost care. In this regard translating in the EU is not just translating in the strict sense of the word. It is an inseparable part of the legislative procedure through which binding legal rules are produced.

Multilingualism imposes great challenges for the uniformity of legislation in the European Union and the results often suggest that the legislators have bitten off more than they can chew. In the "mega enlargement" of 2004, ten new Member States joined the Union raising the concerns of the quality of Community law higher than ever. Those concerns were not totally gratuitous, since the ever-growing Union does not exist without

¹ At the time of writing this thesis, the official and working languages of the EU are: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish.

negative consequences on the quality of legislation. These consequences can be illustrated by the following example which shows how short the legislative quality sometimes falls.

The Czech Republic was one of the new Member States of the 2004 enlargement and only just beginning its journey in the Community in 2006 where this event dates back to. On 19 June 2006 the Czech version of Commission Regulation 865/2006 laying down detailed rules concerning the implementation of Council Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein was published in the Official Journal of the European Union (OJ). The Regulation entered into force 20 days after the publication and was applied by the administrative authorities ever since. More than a year later, the Regulation was rectified by means of corrigendum. The corrigendum contained 122 correction points in the Regulation which itself comprised only of 75 Articles. These corrections included even the title of the Regulation.²

If this kind of activity is a common trend in the EU, in what kind of a position does it place EU citizens who are the subjects of EU legislation? How does it conform to the expectations of legal certainty and equal treatment of EU citizens? Fallacious legislation raises many questions concerning the legal protection of individuals and it does that for a good reason. Guaranteeing the same rights and obligations in 24 different languages is an aspiring objective to which the Union is still keen to hold on. The decision-making procedures in which the multilingual legislation is created is still somewhat blurred to the general public. The quality and the reliability of EU legislation have raised discussion during the last years and the European Parliament election in the spring of 2014 as well.

1.2 Research Question and the Purpose of the Thesis

Keeping all the aforementioned aspects in mind, the aim of this thesis is to get the reader familiar with the ordinary legislative procedure of the Union and to shed light on the use of different languages during it. The linguistic perspective often gets neglected in this discussion even though it can have significant influence on fulfilling the political aims of the legislation. Therefore I am interested in to find out how the Union guarantees the linguistic uniformity of multilingual legislation in its decision-making procedures. By scrutinizing the procedure of making multilingual law in the Union I aim at evaluating the adequacy of those means by which the Union tries to secure the interlingual concordance

² Bobek 2009, pp. 952–953.

of all the language versions of EU legislation. I do this by pointing out the weak points of the legislative procedure and by suggesting improvements to it.

The adequacy of these means is reviewed from individual's point of view, taking into account her need for legal protection and the requirements of legal certainty. After all, natural and legal persons are the ones who suffer from the shortcomings of the legislation in the first place. Therefore, the procedure and the measures taken to assure the linguistic uniformity should be such as to guarantee an individual an access to law in her own language. The ultimate goal of this all is to give a well-grounded opinion about the reliability of Union legislation, and especially of authenticated translations, on the grounds of the procedure in which they are drafted and translated.

Due to the restricted length of this thesis, the examination does not cover all of the Union's decision-making procedures. I have chosen to concentrate on the ordinary legislative procedure, since the majority of Union's legal instruments are enacted through it. The current trend also appears to promote the even wider use of the ordinary legislative procedure; even the name of the procedure represents the mindset of the ordinary legislative procedure being the normal and the most common procedure to make legislation. Legally binding acts are, however, passed also through special legislative procedures, in which the European Parliament normally has only a consultative or consenting role. To examine all the special legislative procedures in detail as well would require the amount of time, space and information, which is out of reach of this thesis. This is why the scope of the thesis is delimited to the instruments enacted through the ordinary legislative procedure only. Furthermore, I can justify my choice of delimitation by the equal participation of the European Parliament in the ordinary legislative procedure. The European Parliament as a legislator adds interesting linguistic aspects to the examination, since there are no linguistic requirements for the Members of the Parliament (MEP).

The method of inspecting the ordinary legislative procedure I owe to Rosenne. Rosenne has stressed the importance of examining how legal texts were actually prepared when monitoring the reliability or interpretive value of authenticated translations. This examination includes answering questions where, when and by whom legal texts were prepared and which steps were taken in the legislative procedure to ensure the interlingual

concordance of equally authentic text versions.³ In this thesis these questions are put into the framework of the European Union's ordinary legislative procedure to examine the reliability of multilingual EU legislation.

This topic is important as such, since multilingualism is an in-built character of the European Union and it must be taken into account in its functioning. One could easily question whether it is meaningful to examine the reliability of authenticated translations, since it does not change the fact that each and every one of them carries the same weight in the interpretation anyway. However, being aware of how multilingual EU law is actually made gives the public a realistic view to its reliability and functionality. It may also inspire to think, how the quality of legislation could be improved further or what should be done in the Union to guarantee the citizens access to legally certain law.

To sum this up, the research questions this thesis attempts to answer are *i) how does the Union observe the interlingual concordance between all the language versions during the ordinary legislative procedure, in other words, what kind of measures are taken in the procedure to improve the linguistic uniformity of multilingual law, ii) are these measures adequate if taking into consideration the legal protection of individuals and iii) how does the ordinary legislative procedure effect on the reliability of EU law.*

1.3 About the Methodology and the Structure of the Thesis

The approach to the topic is legal linguistic. Legal linguistics is neither purely a branch of law, nor is it a branch of linguistics, but it can be described as a synthesis of both law and linguistics. The interrelationship between law and language is closer than one could realize at first sight. Legal texts and legal systems are built by means of language and consequently, language is the most important tool for lawyers. Legal linguistics as a special branch for this interrelationship examines the development, characteristics and use of legal languages. In the examination the emphasis can be given either to the lexicon of legal languages, to the rules and principles governing the sentence structure (*syntax*) or to the meaning of the words (*semantics*).⁴ In this thesis mainly the development of the EU legal language (or rather the *legal languages* of the Union) during the ordinary legislative

³ Šarčević 1997, p. 205. Originally by Rosenne, Shabtai in 'The Meaning of "Authentic Text" in Modern Treaty Law' in Bernhardt, R. – Geck, W.K. – Jaenicke, G. – Steinberger, H. (Eds.) *Festschrift für Hermann Mosler*, Berlin/Heidelberg/New York, Springer, 1983, pp. 782–783.

⁴ Mattila 2002, p. 15.

procedure is scrutinized. Syntax and semantics get though their fair share of attention as well, as I discuss the methods to enhance the linguistic uniformity of EU legislation.

Secondly, in this thesis the topic is reviewed from the perspective of legislative studies in the European Union context. Legislative studies examine the creation of regulative law. This field of legal research can be divided into two branches. The first one of them concentrates on the legislation as a whole, ie on the legislation as a fundamental legal institution while on the second branch single law reforms are the targets of the analysis. The latter type of legislative studies seeks for answers for many questions. Why a certain legal act was drafted? How was it drafted? How does it work in practice? Further, what kind of effects does it have in the society? Researchers of legal studies are interested in the whole life span of the legislative act. The scope of the research covers all the measures from preparation to drafting, from drafting to the implementation and even after coming into force of the act, to the effects of the act.⁵

This thesis belongs to the latter branch of legislative studies, since the focus is given to the aforementioned phases and to the outcome of the legislative procedure. The approach is though broadened from one single law reform to cover the whole of legislation adopted under the ordinary legislative procedure of the Union. This legislation comprises of regulations, directives and decisions. In focus are all the forms of secondary legislation, which have direct effect⁶, ie which may confer rights on individuals. In this respect, regulations form the most important group of legal acts, since they are binding in their entirety and directly applicable in every Member State, while directives are binding only as to the goal they try to achieve. Additionally, directives are addressed to the Member States, not to individuals. Decisions for their part are binding in their entirety for those to whom they are addressed to and they may also have a direct effect under certain circumstances.⁷

⁵ Tala 2004, pp. 379–380.

⁶ The principle of direct effect makes it possible for individuals to invoke a provision of Community law before their national courts or Court of Justice of the European Union. Vertical direct effect concerns relations between individuals and the State whereas horizontal direct effect exists in relations between individuals. Regulations have always direct effect but a directive can only have direct vertical effect when its provisions are unconditional and sufficiently clear and precise and if the Member State in question has not transposed the directive by the given deadline. Decisions may have only vertical direct effect. See e.g. Cases C-26/62 *Van Gend en Loos*, C-156/91 *Hansa Fleisch*, C-41/74 *Van Duyn v. Home Office*, C-148/78 *Pubblico Ministero v. Tullii Ratti*. Europa.eu, The Direct Effect of European Law, [online material, accessed on 16.12.2013].

⁷ See Article 288 TFEU.

Thirdly, the approach could partly be claimed to be institutional as well, since the thesis goes into the structures of the EU institutions and introduces the internal work, co-operation and interrelations of legislative organs.

As to the structure of this thesis, Chapter 2 functions as a short introduction to multilingualism in the European Union and to the legal norms it leans on. It discusses the principles of equal authenticity and linguistic equality and their interrelationship. The chapter aims at illustrating what equal authenticity means in practice and how it has been acknowledged in the case law of the European Court of Justice (ECJ). In this context, of the interpretation methods adopted by the ECJ concerning cases with linguistic discrepancies is given a short summary. Most importantly, the Chapter discusses the principles of legal certainty and equality which both promote individual's access to law in her own language. Here is also examined what kind of requirements legal certainty poses on the quality of legislation.

Chapter 3 makes the reader familiar with the ordinary legislative procedure. This is done first by the procedural point of view and followed by linguistic aspects. The aim is to show, what kinds of roles do all the 24 official languages of the Union play in the process and how complex the procedure really is with its multiple translation phases. To follow the method introduced by Rosenne, to monitor the reliability or interpretive value of authenticated translations, I examine the temporal and personal scopes of the procedure and assess their likely impacts on the quality and reliability of EU legislation.

Chapters 4 consider the first research question by representing the measures to enhance the interlingual concordance of Union legislation taken during the procedure. Rosenne's method required to take this aspect into account as well to test the reliability of legislation. These measures are roughly divided into the drafting, revision and translation stage. The Chapter is apt to highlight the responsibilities every professional group contributing to the legal text have.

After giving an in-depth analysis on the ordinary legislative procedure, Chapter 5 focuses on the outcome of the procedure. The quality of the legislation is reflected through the errors detected and corrected after the publication and through the errors, which go undetected until they raise legal proceedings. Through these remarks and through the requirements imposed on the quality of legislation by the principle of legal certainty, I assess the adequacy of the measures taken to enhance linguistic uniformity of EU

legislation. To sum up the topic, in Chapter 6 I evaluate the ordinary legislative procedure and its products, and present my conclusion.

1.4 On the Sources

This thesis is based on the relevant literature and on other publicly available documents. The legislative procedure is examined through the Treaty on the Functioning of the European Union (TFEU) and the Treaty on the European Union (TEU) in which it is regulated, utilizing also the Rules of Procedure of the institutions and the Joint Declaration of the institutions on practical arrangements on codecision procedure. However, if one wants to examine EU's legislative procedures from inside of the institutions, one should have access to them. As this was not possible, this thesis utilizes the views, opinions and articles presented by the persons involved in the legislative procedure. For this reason, the experiences shared by lawyer-linguists, translators and drafters in their articles were important sources of information about what happens within the institutions in practice. Official publications of the European Union, especially institutions' guidelines for drafting and the information and statistics offered on the official websites of the institutions were of great importance as well.

The judgments of the ECJ do not play as a central role in relation to the scope of this thesis, since in the ECJ only the text documents drawn up in the language of the case are considered to be authentic⁸. The case law of the European Court of Justice concerning the uniform interpretation of plurilingual texts and discrepancies between language versions is, however, used to illustrate the equality of language versions, principles of EU law and the differences found in the various language versions. These cases place between years 1969 and 2014 as to demonstrate that the problem of multilingual legislation is not a new one and that it has not been solved yet either.

⁸ See Article 41, The Rules of Procedure of the European Court of Justice.

2. MULTILINGUAL NATURE OF THE EUROPEAN UNION

The official motto of the European Union declares the Union to be “united in diversity”. The EU certainly is diverse in many ways and not least with its languages. The importance of one’s mother tongue cannot be underestimated. Language is an essential part of every human being: it forms our identity and makes us who we are as individuals. Additionally, it is a fundamental component of our national identity. A language can connect people but it also easily separates them. Therefore, if the EU wants its citizens to have a European identity, it must show respect for their national identity as well. In other words, the Union must make its citizens feel they are accepted, respected and understood in their own cultures. Equality is one of the EU’s cornerstones and the adoption of multilingual policy is a clear manifestation of Union’s commitment to promote equality between its citizens.⁹

It is written down in the Treaty of the European Union that the EU shall respect its rich cultural and linguistic diversity. As one of the Union’s task the Treaty declares ensuring that Europe’s cultural heritage is safeguarded and enhanced. Regardless of the considerable mix of cultures, traditions and languages there is within the Union, the ultimate goal of the EU is to create an ever closer union among the peoples of Europe. This unity is tried to be reached by means of harmonization of the European legislation from the Union level. At the same time, the TEU states that decisions in the Union “are taken as openly as possible and as closely to the citizen as possible”.¹⁰

The growing distrust towards EU’s decision-making policy and EU’s current development tells however another story. The only way decisions can be made openly and closely to the citizens, is to use their own language when doing so. People must be aware of what happens within the Union and be able to participate in its functioning in their own language. This chapter aims at opening the concept of multilingualism and explaining how the linguistic equality has been put into practice. In addition, the principles of EU law which necessitate the existence of reliable multilingual legislation are discussed.

⁹ Athanassiou 2006, p. 7; European Commission 2010, p. 59.

¹⁰ Articles 1(2) and 3(3) TEU.

2.1 Definition of Multilingualism

To begin with this thesis, the concept of multilingualism must be defined. The European Commission (hereinafter the Commission) has distinguished three layers of multilingualism. First of all, by multilingualism is meant individual's ability to communicate in several different languages. A common language is necessary for the communication and co-operation between citizens, Member States and the institutions of the Union. As a response to the challenges imposed by multilingualism EU promotes language learning at schools and encourages its citizens to learn at least two foreign languages in addition to their mother tongue.¹¹

According to the Eurobarometer survey¹² carried out in 2012, the most widely spoken mother tongue within the EU population is German. 16% of Europeans speak German as their mother tongue, followed by English and Italian with 13% each. On the other hand, English is the most widely spoken foreign language in the European Union. It was most widely spoken in 19 of the 25 Member States where it is not an official language. English was followed by French (12%) and German (11%). The survey also showed that just slightly more than half of Europeans (54%) are able to hold a conversation in at least one additional language, only 25 % reaches the Union's goal of mastering two additional languages and in three additional languages the percentage sinks to 10%.¹³ These numbers imply that there is still a practical need for maintaining the multilingual language policy in the functioning of the EU.

Secondly, multilingualism refers to the co-existence of different language communities in one geographical or political area. In addition to its 24 official languages, there are around 60 regional and minority languages spoken in the Union. Also the migrant communities within the Union speak numerous, non-indigenous languages.¹⁴ Although it is an impossible task to guarantee every EU citizen the possibility to communicate and to operate in the EU in their mother tongues, the Union has emphasized that all the European languages are equal in value and dignity, and that they form an integral part of European culture and civilization. Furthermore, the Union is aware of the immense

¹¹ Commission's New Framework Strategy for Multilingualism 2005, p. 3; European Commission, Multilingualism in the European Union, [online material, accessed on 09.12.2013].

¹² Special Eurobarometer 386: "Europeans and their languages" Report 2012. [online material, accessed on 23.10.2013]

¹³ Ibid.

¹⁴ Commission's New Framework Strategy for Multilingualism 2005, p. 2.

linguistic diversity in its territory and acknowledges the need to preserve it and to promote multilingualism in the Union.¹⁵

Thirdly and most importantly regarding this thesis, multilingualism can be defined as organization's policy choice to operate in more than one language.¹⁶ This is the policy choice the EU has also made. There are numerous historical and political reasons which led to this decision. In particular, it must be borne in mind that the co-operation and the institutions, which have then evolved to the Union we have today, were created in the aftermath of the Second World War. After the war years the people in Europe desired for peace and it was thought that a new war in Europe could be avoided by a new model of political co-operation.¹⁷ The co-operation was about to bring old enemies together and thereby, adopting a multilingual language policy was considered necessary for the political equality of the Member States. As the European integration began in the 1950s it was obvious that none of the founding Member States wanted to be put in a worse position than the others. However, the decision to adopt all the four official languages of the six founder countries was not a mere political statement. It also aimed at avoiding new conflicts and loss of support among European citizens.¹⁸

On the other hand, the availability of legal texts defining one's rights and obligations in his or hers own language was considered as an essential guarantee for legal certainty.¹⁹ Because of the unique character of the Union the guarantee for legal certainty is even more important in the EU. The European Union stands out from many other international organizations on the grounds that its legislative output in most of the forms of secondary legislation is not addressed only to the governments of the Member States, but also to each citizen and legal person in those Member States where they are applicable.²⁰ The requirement of access to law is obvious: the persons, to whom the Union legislation is to be applied to, must be able to understand it in order to follow its rules. Furthermore, national courts do not have either any obligation to know foreign languages and therefore, to apply the EU law correctly, they also must be able to understand its provisions.

¹⁵ European Parliament Resolution on Regional and Lesser-used European Languages, points A and B.

¹⁶ Commission's New Framework Strategy for Multilingualism 2005, p. 3; European Commission, Multilingualism in the European Union, [online material, accessed on 09.12.2013].

¹⁷ Craig – de Búrca 2011, p. 4.

¹⁸ European Commission 2010, pp. 9–10.

¹⁹ Creech 2005, p. 17. Originally by Jean-Pierre Puissechet in "L'Élargissement des Communautés Européennes: Présentation et Commentaire du Traité et des Actes Relatifs à L'Adhésion du Royaume-Uni, du Danemark et de L'Irlande" 1974, p. 58.

²⁰ McAuliffe 2009, p. 100.

2.2 Legal Basis of Multilingualism

It is appropriate to take a brief look at the provisions which lay the foundation for EU's multilingual policy. To do this, we have to go back in time till the early years of the Communities. Where the Treaty of Paris establishing the European Coal and Steel Community (ECSC) signed by Belgium, France, Germany, Italy, Luxembourg and the Netherlands in 1951 was drawn up in French and the French version being the only authentic one, the Treaties of Rome establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) signed by the same six states in 1957 were drawn up in all four official languages among the states, each language version being equally authentic.²¹

After having established the Communities, the Member States came quick to realize the need to regulate the use of languages, since the first Treaties did not mention language matters at all. Therefore, with the very first Council Regulation No 1/58²², the Council of Ministers unanimously determined the languages to be used by the institutions of the EEC. Article 1 of the Language Regulation provided that the official languages and the working languages of the institutions of the Community shall be the official languages of the Member States: Dutch, French, German and Italian. For the sake of clarity, the difference between working and official languages can in a simplified manner be explained as follows: working languages are those used internally by the institutions and official languages those used by the institutions in their external relations with the Member States and their nationals²³. Since then, as more countries have joined the EU, the amount of these languages has increased.²⁴

Prior to the accession to the Union, the candidate country must decide which one of its languages it wants to become an official and working language of the Union. If the State has more than one official language, not all of them automatically become official and working languages. Article 8 provides that "if the State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law". The Article has been put into effect due to the enlargements of the Union. In the first enlargement in 1973, for instance, Denmark, Ireland and the United Kingdom joined the European Communities. English and Danish were added as Treaty

²¹ European Commission 2010, pp. 10, 14.

²² See Council Regulation (EEC) No 1/58 of 15 April 1958 determining the languages to be used by the European Economic Community.

²³ Berteloot 2001, pp. 7–8.

²⁴ Šarčević 2007, p. 36.

and Regulation languages. Irish however, although having the constitutional status as the “national language” and “first official language” of Ireland, became just a Treaty language but not a Regulation language.²⁵ Eventually, the era of Irish’s semi-official status came to an end in 2005 as the Council amended the Language Regulation by adding Irish as an official and working language of the Union.²⁶

The Language Regulation laid down the rules for access to EU law for all the citizens and national courts of the Member States. Pursuant to Article 4, regulations and other documents of general application shall be drafted in the official languages. Also the Official Journal shall be published in all official languages (Article 5). The existence of EU legislation in all official languages, guaranteed in Article 4, lays foundation for legal certainty in the Union. The principle of legal certainty embodies the idea that laws and adjudication must be predictable and accepted by the legal community in question. Therefore EU legislation must be clear, stable and intelligible, and available in all the official languages, so that its addressees can calculate the legal consequences of their actions.²⁷ The principle will be discussed in greater detail below.

From the rest of the articles it suffices here to say, that they provide the Member States or the persons subject to the jurisdiction of a Member State with a right to communicate with the institutions of the Union²⁸ in any one of the official languages.

2.3 Equal Authenticity as a Guarantee for Linguistic equality

Having access to EU law and being able to understand it is not, however, enough to fulfill the principle of linguistic equality. Furthermore, EU citizens must also be able to rely on their own language versions of EU legislation which constitutes their rights and obligations. This means that all the language versions must be equally authentic and none of them shall carry more weight in the interpretation of their meaning. The principle of equal authenticity is implicitly declared in the Language Regulation by making all the

²⁵ Creech 2005, pp. 15–16.

²⁶ See Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958. The amendment, however, included a derogation of a renewable period of five years during which the institutions of the Union weren’t obliged to draft all acts in Irish and to publish them in that language in the Official Journal of the European Union.

²⁷ Paunio 2011, pp. 65–66.

²⁸ See Article 13(2) TEU: “The Union’s institutions shall be: the European Parliament, the European Council, the Council, the European Commission (hereinafter referred to as ‘the Commission’), the Court of Justice of the European Union, the European Central Bank, the Court of Auditors.”

languages mentioned in it official and working languages. Explicitly the principle can be read e.g. in the language clauses in the final provisions of the Treaties. Article 55(1) of the Treaty on European Union provides that the Treaty is “drawn up in a single original” in all the official languages, “the texts in each of these languages being equally authentic”. The Treaty on the Functioning of the European Union contents itself with just referring to the provisions of Article 55 of TEU by saying that they “shall apply to this Treaty” aswell²⁹.

As noticed, equal authenticity is closely intertwined with linguistic equality. Equal authenticity also implies that in the matter of fact, there are not any translations of original instruments but only translated originals. Lawyer-linguists who work in the Union institutions even refuse to talk about translations since every language version has the status of an original.³⁰ Therefore, all the translated originals together are deemed to constitute a single legal instrument, not 24 separate ones. This, however, seems paradoxical. As originals, in accordance with the usual meaning of the word, are considered only those versions of the instruments, in which they first were drafted. All the other versions must therefore be translations. One could easily argue that the Croatian versions of the Treaties have less value in the interpretation of their real meaning than the French ones, because French was one of the key-languages in the drafting process and Croatian only just became a Treaty language. This way of thinking is however contrary to EU’s commitment to linguistic equality.

As we speak here about the authenticity of all language versions, it might be relevant to examine what is meant by “authentic” in the context of all language versions of EU law. The moment of authentication will have significance when we proceed to dissect the ordinary legislative procedure. An essential dimension of equal authenticity is that equally authentic language versions are presumed to have the same legal force. In EU law legal instruments have their legal force only after they have been signed and published in the Official Journal of the European Union. This suggests that instruments of EU law are not considered equally authentic when they are drafted but only after they become legally binding.³¹ European Court of Justice has confirmed the enforceability and authenticity of only published EU legislation in the *Skoma-Lux* case³². According to the Court “the only

²⁹ See Article 358 TFEU.

³⁰ Paunio 2011, p. 25.

³¹ Doczekalska 2009, pp. 358–359.

³² Case C-161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I-10841. The case is discussed in greater detail in sub-paragraph 2.6.1.

version of a Community regulation which is authentic, as Community law now stands, is that which is published in the *Official Journal of the European Union*”³³. Therefore, the moment of authentication must be understood as the moment when the legislative procedure is completed, or in the case of an accessing Member State, the moment when the language version is declared authentic through legislation.³⁴

2.4 Correspondence between Language Versions

The equivalence of all authentic legal instruments is the prerequisite for the existence and functioning of multilingual law in the European Union³⁵. Due to the equal authenticity, all legal instruments are presumed to have the same meaning in all the official languages. Since drafting simultaneously in 24 languages is impossible in the expanding Union, or at least way too time-consuming and ineffective, the majority of EU law is prepared by means of translation.³⁶ However, the principle of linguistic equality demands that equally authentic instruments, no matter if they were translations or originals, are consistent with each other both in linguistic and in legal respect.

When it comes to instruments of law, a mere linguistic equivalence between various language versions is not sufficient enough. Also the requirement of legal equivalence must be met.³⁷ In other words, to be equally authentic all the language versions of the legal instruments of the Union must be equally valid and have the same legal effect³⁸. As a result of equal authenticity, national courts all over the European Union should come in a similar case into a similar conclusion, no matter in which language version the court bases its judgment to, and the subjects of EU law should get identical judgments in similar cases, no matter which language version of the instruments they invoke. This is why the importance of producing high quality translations cannot be highlighted enough in the multilingual legal system of the European Union.

³³ Case C-161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I-10841, paragraph 50.

³⁴ Doczekalska 2009, pp. 358–359. Originally by Ruth Sullivan 2004, in *The Challenges of Interpreting Multilingual, Multijural Legislation* in *Brooklyn Journal of International Law* 29, pp. 986–1066, footnote 102.

³⁵ Doczekalska 2009, p. 339.

³⁶ *Ibid*, pp. 353, 355.

³⁷ Gémar 2001, pp. 116, 122.

³⁸ Doczekalska 2009, p. 344.

2.5 In Search of the “Real Meaning” at the European Court of Justice

Nonetheless, it is sometimes unclear what the legislator intended to say with the exact wording of the act. Unsuccessful and imperfect language versions also raise questions about the real meaning of EU law’s provisions. Discrepancies between language versions both jeopardize the equal authenticity and make the uniform interpretation and application of EU law in all Member States more difficult³⁹. The Court of Justice of the European Union⁴⁰ (CJEU) has an exclusive jurisdiction over the matters, which concern the interpretation of ambiguous provisions of EU law. According to Article 19 TEU, the CJEU shall ensure that “in the interpretation and application of the Treaties the law is observed”. In accordance with the Treaties, the Court shall give preliminary rulings on the interpretation of Union law.⁴¹

Besides the CJEU, also national courts of Member states are confronted with the application of EU legislation. However, they cannot interpret the ambiguities of EU law by themselves, but they have to refer the vague point of Union law to the CJEU for a preliminary ruling. If there arises a question of interpretation of EU provisions in one of the national courts, and if the court considers that a decision on the question is necessary to enable it to give a judgment in the case, it may request the CJEU to give a ruling thereon. If the national court is a court of last instance, it has an obligation to bring the matter before the CJEU.⁴²

Without going into any detail about the methods of interpretation applied by the Court of Justice, it can be mentioned that the ECJ has chosen either a primarily teleological or a literal interpretive method when dealing with the interpretation of discrepancies between language versions.⁴³ As to the principle of equal authenticity, the ECJ and the General Court (GC) have directly expressed and confirmed the equal authenticity of language versions in their case law. So have done the Advocate Generals (AG) in their opinions as well. Over the years the Court has persistently put all the language versions on an equal footing and stressed that the interpretation of EU law involves a comparison of the

³⁹ Baaij 2012, p. 217.

⁴⁰ As from the coming into force of the Lisbon Treaty, 1 December 2009, the whole court system of the Union is known as the Court of Justice of the European Union. The CJEU consists of the European Court of Justice, the General Court and specialized courts.

⁴¹ See Article 19 TEU.

⁴² See Article 267 TFEU.

⁴³ Baaij 2012, p. 217.

different language versions.⁴⁴ There is an extensive selection of cases concerning the interpretation of differences in language versions and the most influential ones, laying down the guidelines for interpretation of multilingual texts are shortly discussed in the following.

Since the early years of the Community, the ECJ has been confronted with linguistic discrepancies in Community law. Already in 1969 in the judgment to case *Stauder v City of Ulm* the ECJ stated that it is impossible to consider one version of the text in isolation, but it must be read in the light in particular of the versions in all languages.⁴⁵

“...[t]he necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.”⁴⁶

At the time of the judgment, there were however only four language versions to consult. In this respect, the reality in which the Court and all the individuals operate today has changed remarkably. Later in *CILFIT*, which has become a very important basis for interpretation of EU law ever since, the ECJ strengthened the principle of equal authenticity. The Court reminded that Community legislation is drafted in several languages and that all the language version are equally authentic.

“...[i]t must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions. --- [e]very provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole ---.”⁴⁷

On the other hand, it stated that the interpretation of a provision of Community law necessarily involves comparison of the different language versions and that one must dissect EU law as a whole when trying to find the real meaning of its vague points. As a consequence, the interpretation the Court has adopted restricts individual’s possibility to

⁴⁴ Doczekalska 2009, p. 345.

⁴⁵ Case 29/69 *Erich Stauder v City of Ulm* [1969] ECR 419, paragraph 3.

⁴⁶ *Ibid.*

⁴⁷ Case 283/81 *CILFIT* [1982] ECR 3415, paragraphs 18, 20.

trust only his or hers own language version. Also the most recent case⁴⁸ concerning the interpretation of differing language versions shows continuity of this interpretation rule.

The case at issue concerned the interpretation of the Integrated Tariff of the European Communities (the TARIC) and subsequently the obligation to pay anti-dumping duties on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China. GSV, the plaintiff, wanted to import goods consisting of fabric of glass fibres originating in China into the territory of the European Union. The Provincial Customs and Tax Directorate held the view that the goods fell within another TARIC code than that declared by GSV and were therefore subject to provisional anti-dumping duty.⁴⁹

The contested Hungarian version of the particular tariff heading however differed from the other language versions. The Hungarian term “*szítaszövet*” of the Regulation translates into English as “*bolting cloth*” and into French as “*gazes et toiles à bluter*”. The English and French language versions of that TARIC code used terms ‘*open mesh fabrics*’ and “*tissu à maille ouverte*”. A correct translation of these terms in Hungarian would have been “*hálós szövet*”. GSV based its claim on the tariff heading whereas the Tax Directorate on the factual classification of the goods.⁵⁰ The national court requested for a preliminary ruling by asking whether the anti-dumping duty should be waived “for a legal or physical person which, trusting in the wording of the Regulation published in the language corresponding to its nationality — without ascertaining potentially different meanings in other language versions — on the basis of the general and well-known understanding of the legislation in that person’s language”⁵¹. The Court held as follows

“As follows from the settled case-law --- the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions. EU provisions must be interpreted and applied uniformly in the light of the versions existing in all EU languages.”⁵²

Another rule established in the *CILFIT*–case concerned terminological issues in EU law. Here the Court introduced the concept of Community terminology. According to the Court “Community law uses terminology which is peculiar to it” and emphasized this

⁴⁸ Case C-74/13 *GSV Kft. v Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága* [2014].

⁴⁹ Case C-74/13 *GSV Kft. v Nemzeti* [2014], paragraphs 1, 2, 17–19.

⁵⁰ *Ibid*, paragraphs 1, 2, 20–23.

⁵¹ *Ibid*, paragraph 23(2).

⁵² *Ibid*, paragraph 48.

further by clarifying that “legal concepts do not necessarily have the same meaning in Community law and in the law of various Member States”⁵³. This is why EU law must be read as an independent legal system and references to national legal systems should be avoided.

The *EMU Tabac* –case concerned the interpretation of a directive. In this case, the Court pointed out for the first time that all language versions must, in principle, be given “the same weight” in the interpretation. The Court stated that the weight given to a language version cannot vary according to the size of the population of the Member States using the language in question.⁵⁴ This is one of the features, which make the EU so unique with its language policy. The Court explicitly articulated that even the least spoken official language is considered to carry the same weight in the interpretation as the most spoken one. None of the language versions prevail in the interpretation. Whether this is the state of affairs in reality or not, is a question to be answered in another study. The *EMU Tabac* ruling is, however, apt to highlight the principle of linguistic equality and generally speaking, the equal treatment of EU citizens as a whole.

2.6 Principles behind Linguistic Equality

The need for multilingual language policy and the accuracy of Union legislation can be justified by principles which protect the individual against the public authority on one hand and in relations to other individuals, on the other. Most important of these are the principle of legal certainty and the principle of equality. Moreover, the principle of legal certainty entails more specific sub-principles of law: those of legitimate expectations, acquired right and non-retroactivity.

2.6.1 Principle of Legal Certainty

Legal certainty has been mentioned as one of the most salient reasons for adopting multilingual language policy in the first place. However, the principle of legal certainty has been defined neither in the Treaties nor in the secondary law. Instead, the application and definition of legal certainty in the framework of the European Union has taken place

⁵³ Case 283/81 *CILFIT* [1982] ECR 3415, paragraph 19.

⁵⁴ Case 296/95 *EMU Tabac* [1998] ECR-I-1605, paragraph 36.

through the jurisprudence of the ECJ. What makes the application of legal certainty self-explanatory in the EU is its fundamental position in any democratic society. It is a principle common to the legal orders of all the Member States and can therefore be derived from their national legal systems. The concept of legal certainty is though wide and giving a precise definition to it is challenging, if not impossible.⁵⁵

In essence, legal certainty requires that laws must be clear, stable and intelligible. These requirements aim at the predictability of legal provisions in practice. In other words, a legal norm should be so easy to understand so that an individual could be able to foresee the legal consequences of her actions.⁵⁶ Clarity and intelligibility of law can also be understood as criteria for the quality of legislation. The norms must be written and formulated in a way as to enable individuals make themselves acquainted with their content. Stability of laws on the other hand, refers to the relative permanency of legal norms. One must be able to trust that laws will not be changed arbitrary and all of sudden. Additionally, legal certainty forces courts to apply legal norms equally and in a consistent way.

Consequently, the requirements legal certainty imposes on EU law are of two kinds. Firstly, individuals must have access to EU law in their own language. Otherwise there are no premises for applying the principle of legal certainty. Secondly, the EU law must be clear, stable and intelligible in order to enable EU citizens to identify their rights and obligations deriving from it. The adoption of multilingual language policy often confronts the challenge of fulfilling the requirements of legal certainty. It can be asked whether making clear, stable and intelligible law in 24 different languages is possible and if the outcome corresponds to the requirements of legal certainty.

The ECJ has used legal certainty as a tool of interpretation, both for fostering and restricting the effective application of EU law.⁵⁷ The ECJ has considered the principle of legal certainty in relation to language matters in the *Skoma-Lux* –case⁵⁸, for example. The case concerned the effective application of EU law and the access to EU law in defendant's own language. The Czech Republic became a member of the European Union in the mega-enlargement of 2004. *Skoma-Lux* was a Czech importer of wine and a wine-merchant. Olomouk Customs Office accused *Skoma-Lux* of committing a customs

⁵⁵ Raitio 2003, pp. 101–102, 125–126; Groussot 2006, pp. 23–24.

⁵⁶ Paunio 2011, pp. 65–66.

⁵⁷ Groussot 2006, p. 191, 193.

⁵⁸ Case C-161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I-10841.

offence by submitting incorrect information concerning the customs classification of a certain red wine. Skoma-Lux denied the applicability of the Community regulation in question on the grounds that the Czech language version of the regulation was not yet properly published. Even though the Czech Ministry of Finance had published a Czech version of the relevant customs provisions and the regulation was available in Czech on the Internet, and taking account that Skoma-Lux as an experienced operator in the international trade was *de facto* aware of the content of the provisions, the Court however held⁵⁹

“[T]he principle of legal certainty requires that Community legislation must allow those concerned to acquaint themselves with *the precise extent of the obligations it imposes upon them*, which may be guaranteed only by the proper publication of that legislation in the official language of those whom it applies.”⁶⁰ (Italics added)

The Court based this opinion on its former case law⁶¹ highlighting the importance of legal certainty in EU law. Interestingly, the Court also stressed the precision of the legal norm. According to it, individuals must be able to acquaint themselves with the precise extent of the obligations imposed upon them in their own language. In relation to the topic of this thesis, it must be asked whether this precision is considered as necessary when the issue concerns discrepancies between language versions. Apparently it is often forgotten in the interpretation of differing language versions because of the need for uniform application as can be read from the cases presented earlier and below.

2.6.2 The Sub-Principles of Legal Certainty

As a corollary of legal certainty, the principle of legitimate expectations entails the idea that “the law should not be different from that which could be reasonably expected”⁶². Put it other way, “those who act in good faith on the basis of law as it is or seems to be should not be frustrated in their expectations”⁶³. The application of legitimate expectations is not however self-evident. The principle may be applied only if there is an expectation arising

⁵⁹ Case C-161/06 *Skoma-Lux*, paragraphs 12–15.

⁶⁰ *Ibid*, paragraph 38.

⁶¹ See cases 98/78 *Racke* [1979] ECR 69, C-370/96 *Covita* [1998] ECR I-7711, C-228/99 *Silos* [2001] ECR I-8401 and C-108/01 *Consorzio del Prosciutto di Parma and Salumificio S. Rita* [2003] ECR I-5121.

⁶² Moldén 1998, p. 1.

⁶³ Kaczorowsky 2013, p. 116. Originally by Søren Schønberg in *Legitimate Expectations in Administrative Law*, Oxford University Press, 2000.

from Union law or from a conduct and this expectation is worthy of protection. Additionally, individual's interest must be overriding in relation to the public interest.⁶⁴

It is evident that individuals' expectations may arise from the provision of Union law written in their own language. An individual may have acted in a way he or she thought would be in accordance with the law or restrained himself or herself from acting contrary to the law, which consequently has arisen expectations to that person. Proving these expectations to be worthy of protection is however more complicated. For an individual to have legitimate expectations, he or she must have acted in good faith and must not have been able to foresee the change of law⁶⁵. Keeping in mind the interpretation rules adopted by the ECJ, one single language version cannot serve as a sole basis for the interpretation of the provision in question. Consequently, false or incomplete information expressed in one language version cannot give rise to legitimate expectations⁶⁶. In principle, legitimate expectation is an important dimension of legal certainty but it is not so likely to be applied in case of diverging language versions. Public interest, ie the interest of the Union and of the uniform application of its law is more likely to override the interest of an individual in cases like these.⁶⁷

The principle of legitimate expectations is closely connected to two other sub-principles, to the principle of acquired rights and non-retroactivity of laws. Whereas the principle of acquired rights forbids the revocation of legal acts that create substantive rights, the principle of non-retroactivity prohibits the application of legal norms before their publication. These prohibitions are not absolute either. They require the same kind of conditions as legitimate expectation to become applied. In both cases there may be necessary to carry out a balancing test between the individual interest and public interest. Retroactive measures for their part require also proper motives and sufficient reasoning.⁶⁸

The principle of non-retroactivity has been discussed already in the context of the *Skoma-Lux* –case. A division in the treatment between delayed publications of certain language versions and mere corrections of discrepancies between language versions can be made. As can be read from the *Skoma-Lux* –case, a proper publication is a prerequisite for the application of EU law and therefore whole regulations cannot be applied in a country whose language version is missing. Translation errors and other restricted mistakes

⁶⁴ Groussot 2006, p. 204.

⁶⁵ *Ibid*, p. 209.

⁶⁶ *Ibid*, p. 207.

⁶⁷ *Ibid*, p. 211.

⁶⁸ Groussot 2006, pp. 194–200; Raitio 2002, pp. 190–191.

occurring in legal provisions are however corrected retroactively as will be explained below in sub-paragraph 5.2.

2.6.3 Principle of Equality

The adoption of multilingual language policy can be justified by the principle of equality as well. As long as EU citizens are to be treated equally they must have the same possibilities to acquaint themselves with the provisions of EU law. Unlike legal certainty, the principle of equality can be derived directly from the Treaty on the European Union. Equality is mentioned as a universal value already in the preamble and discussed more precisely in Articles 2 and 9 TEU. Articles recognize equality as one of the values on which the EU is founded and which stems from the values common to all the Member States. Furthermore, the Union commits itself to observe the principle of the equality of its citizens *in all its activities*.⁶⁹ In its case law the ECJ has recognized equality as a general principle of EU law, which can be used to fill the gaps in EU legislation⁷⁰.

In comparison to the principle of legal certainty, the concept of equality is fairly easy to define. According to it, cases alike should be treated alike and *vice versa*, cases that differ from each other should be treated differently. This definition is easy to understand in the context of jurisdiction. In its jurisprudence, the ECJ has developed a method to evaluate whether the principle of equality has been infringed. Hereby the Court is likely to run a threefold test. First it will prove whether two individuals are in a comparable situation. Next it will assess whether there is a difference of treatment and finally, whether this difference can be objectively justified.⁷¹ However, if individuals in different Member States are treated differently because of divergences in language versions, the principle of equality is violated even if there is no court case at hand.

Equality is, however, also intertwined with the principle of non-discrimination which has various legal bases in Union law. Article 18 TFEU prohibits any discrimination on grounds of nationality. The Charter of Fundamental Rights of the European Union, which nowadays has the same validity as the Treaties, goes even further and prohibits any discrimination based on language⁷². Discrimination on grounds of nationality does not

⁶⁹ See Articles 2 and 9 TEU.

⁷⁰ Groussot 2006, pp. 160–162.

⁷¹ *Ibid*, pp. 160–161, 167.

⁷² See Article 21(1) of the Charter.

limit to just some of EU's policies and activities. As a general principle of EU law, equality characterizes the whole functioning of the European Union.⁷³ Viewed from these premises, the equal treatment of all the EU citizens necessitates the existence of EU law in all the official languages. Offering access to EU law in only few languages would place EU citizens in unequal positions. Furthermore, giving authenticity to only some of the language versions would not foster the equality either. On the contrary, it would place some language versions (and languages as such?) in a more authoritative position than the others.

In the case law of the ECJ, the principle of equality has been invoked often. For instance, in the *Skoma-Lux* –case discussed earlier, the Court brought up the need to treat individuals in different Member States equally when it came to access to Union law in their own language. Due to the interpretation rules adopted by the ECJ it is highly dubious whether this model of interpretation could be extended to cover cases concerning linguistic discrepancies caused by translation errors and alike. In *Skoma-Lux* the Court however stated

“[I]t would be contrary to the principle of equal treatment to apply obligations imposed by Community legislation in the same way in the old Member States, where individuals have the opportunity acquaint themselves with those obligations in *the Official Journal of the European Union* in the languages of those States, and in the new Member States, where it was impossible to learn those obligations because of late publication.”⁷⁴

Every EU citizen has an equal right to make herself acquainted with the content of Union law in her own language. It would be untenable to imagine a situation in which one would need to resort to the help of a translator to make herself aware of the rights and obligations imposed on her. Another kind of solution would discriminate the individuals in whose language the law is not available.

⁷³ Groussot 2006, pp. 160–163.

⁷⁴ Case C-161/06 *Skoma-Lux*, para. 39.

3. MAKING OF MULTILINGUAL LAW IN THE EUROPEAN UNION

After introductory remarks on multilingualism, equally authentic language versions of Union legislation and on the importance of their accuracy, this chapter focuses on the decision-making and production of multilingual law in the EU, both from the procedural and linguistic perspective.

3.1 The Post-Lisbon Decision-Making

The Treaty of Lisbon simplified the highly complex system of Union's decision-making procedures and introduced a new way to make a distinction between legal instruments. Formally legislative instruments are nowadays divided in *legislative acts* and *non-legislative acts*. Regulations, directives and decisions adopted either through the ordinary or a special legislative procedure are considered as legislative acts. All other legal instruments, which pursuant to the Treaties are adopted through a non-legislative procedure, are known as non-legislative acts.⁷⁵ These are non-legislative acts adopted directly under the Treaties, where provided for by a specific legal basis⁷⁶, delegated acts given by the Commission governed in Article 290 TFEU and implementing acts, given either by the Commission or the Council under Article 291 TFEU.⁷⁷

When planning regulation on the European level by means of legislative acts, it is necessary for the legislator to take a look at the Treaty Articles which regulate the particular subject area. They will specify the legislative procedure applicable in the area that the planned regulation concerns.⁷⁸ After coming into force of the Lisbon Treaty, the ordinary legislative procedure has become the most important decision-making procedure of the Union. By far, most of the regulations, directives and decision are enacted through the ordinary legislative procedure. The application of the ordinary legislative procedure has been extended to cover even more areas than before. It is applied on 85 specific areas, including agriculture, services, environment and immigration, for example.⁷⁹ As explained, forming the greatest part of the Union legislation which is binding in every

⁷⁵ Dashwood – Wyatt et al. 2011, pp. 69–71.

⁷⁶ See Articles 74, 86(4), 132, 342, 329(2), for example.

⁷⁷ Dashwood – Wyatt et al. 2011, p. 83.

⁷⁸ Craig – de Búrca 2011, p. 124.

⁷⁹ European Parliament, Law-Making Procedures in Detail, [online material, accessed on 22.1.2014].

Member State, this study focuses therefore on the ordinary legislative procedure and the legal instruments adopted through it.

3.2 The Ordinary Legislative Procedure

The ordinary legislative procedure is regulated in Articles 294 and 297 TFEU. According to them regulations, directives and decisions of the European Union are to be adopted jointly by the European Parliament and the Council. Altogether three institutions participate in the ordinary legislative procedure, pre-Lisbon known as the codecision procedure, each of them representing different interest groups. The European Commission works in the interest of the Union, the Parliament represents the citizens of the Union and the Council represents the views of the Member States' governments.⁸⁰

The Commission has the right of initiative in the law-making process. After the Commission has submitted the proposal for a new legislation to the Council and to the Parliament for discussion, both of them are treated as equal partners in the process, ie to be adopted the draft legislation must be approved by both the Council and the Parliament.⁸¹ This may happen during the first, second or third reading. The equal weight given to the Council and the Parliament today has increased the decision-making powers of the European Parliament and hereby the democracy of the legislative procedure as a whole. On the other hand, in these circumstances coming into an agreement requires more inter-institutional cooperation. In the following, the ordinary legislative procedure is presented in more detail to make it easier to understand its linguistic dimension presented in sub-paragraph 3.3.

3.2.1 Preparatory Legislative Work

The European Commission is often called “the motor of European integration” because of its almost exclusive right to initiate legislation in the Union. Having this right means, that planning of the legislative agenda takes mostly place within the Commission. When the Commission enters office it publishes a five-year programme, in which it sets out

⁸⁰European Commission – Directorate-General for Translation 2010, p. 18.

⁸¹ *Ibid.*

strategic objectives for that period. These objectives are expressed at a rather high level of generality and subsequently they will be defined more precisely in the annual planning.⁸² The Commission presents its ideas, observations and objectives for new regulation in its Annual Policy Strategy and Annual Work Programme, in Green and White Papers⁸³ and in its notifications.⁸⁴ Legislative proposals are often inspired by the need to update existing rules and by the measures requested by the Council or the Parliament. Only a small percentage of them originate in the Commission.⁸⁵

An essential part of the legislative planning is the consultation process and carrying out of impact assessments. Both of these phases help to gather more information, public opinions and scientific facts about the subject-matter and they work as a great tool for decision-makers. The Commission may gather working groups from national experts, interest groups and from the members of the scientific community. It may also consult citizens, Member States and other interest groups by putting out an inquiry in the Internet or organizing a conference about the topic, for example.⁸⁶ Impact assessment is there to help the decision-makers to find the best possible solution by identifying the main options for achieving the objective and by analyzing their likely impacts in the economic, environmental and social fields.⁸⁷

A proposal for a legislative act is prepared and drafted by civil servants of the Directorate-General (DG) of the Commission competent in the subject area concerned. Once the draft is ready it will be sent for *Inter-Service Consultation*. This means a consultancy in other DGs within the Commission. Other DGs may propose amendments to the draft and these amendments must be included to the final draft proposal. Finally, the legislative proposal is sent to the Commissioner to whose competence area it belongs, and after his acceptance further to the College of Commissioners for final approval. In the College of Commissioners the proposal must receive the endorsement of all the 28 Commissioners.⁸⁸

⁸² Craig – de Búrca 2011, pp. 124–125.

⁸³ The purpose of Commission's Green and White Papers is to consult the Member States on the desirability of introducing new legislation at European level. Green Papers stimulate discussion and may give rise to legislative developments. These are then outlined in White Papers, which contain proposals for Community action in a specific area.

⁸⁴ Hyvärinen 2009, p. 7.

⁸⁵ Get Connected: Effective Engagement in the EU 2005, p. 13.

⁸⁶ Hyvärinen 2009, p. 8.

⁸⁷ Craig – de Búrca 2011, p. 146.

⁸⁸ Hyvärinen 2009, p. 8.

3.2.2 The Right of Initiative

The Commission has the right of initiative on the grounds of Articles 17(1) TEU, according to which “the Commission takes appropriate initiatives in the general interest of the Union” and 289(1) TFEU, pursuant to which “the ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission”. This is the normal course of the procedure. This does not however mean that there is no other way for initiatives to pop up than that from the action of the Commission. Article 17(2) TEU states further, that “legislative acts may only be adopted on the basis of a Commission proposal, except where Treaties provide otherwise”.

An ordinary legislative procedure may in very specific occasions be launched by an initiative from a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.⁸⁹ Measures in the field of police and judicial co-operation in criminal matters may be adopted on the initiative of a quarter of the Member States.⁹⁰ The Parliament may under Article 225 TFEU request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. The recommendations from the European Central Bank and the Court of Justice concern matters on their subject areas, such as establishment of specialized courts.

The Lisbon Treaty also brought along a further innovation concerning the initiation of legislative procedures. In Article 11(4) TEU is presented the European citizens’ initiative. At least one million EU citizens, coming from at least seven Member States can invite the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The Commission is not obliged to propose legislation because of the initiative but it must bring up the matter for a discussion. In case it considers it necessary, it may submit a legislative proposal to the Council and the Parliament and hereby start an ordinary legislative procedure.⁹¹

⁸⁹ See Article 289(4) TFEU.

⁹⁰ See Article 76 TFEU.

⁹¹ European Commission, European Citizens’ Initiative, [online material, accessed on 23.1.2014]. The first European citizens’ initiative strives for proposing legislation implementing the human right to water and

3.2.3 The First Reading

The actual legislative procedure begins when the Commission submits its legislative proposal to the Council and the Parliament. The proposal is discussed in parallel in both institutions. The Parliament shall first adopt its position which is then communicated to the Council for its approval. The phase of the legislative procedure where the Parliament adopts its position is called the first reading. Depending on the ability of the two institutions to come to an agreement about the draft text, the legislative proposal can be put into a vote in the plenary two times additionally. These are called the second and the third reading. The legislative act can however be adopted during any of the readings.⁹² A majority of them are however adopted already in the first reading. During the legislature 2009-2014 83% of legislative acts were agreed in the first reading. In 8% of the cases the agreement was reached in the early second reading and in 7% on the latter part of the second reading. Only 2% led to conciliation. This would not be possible without a proper preparation and close co-operation between the institutions.⁹³

In the Parliament the proposal is referred to the committee responsible, which is selected according to the subject-matter of the proposal. If the proposal falls within the competence areas of more than one committee, an associated committee may be selected to work simultaneously with the responsible committee. The parliamentary committee appoints a rapporteur whose task it is to prepare a draft report to the committee including his amendments to the Commission's proposal. He also guides the proposal through the whole procedure and advises the Parliament in the plenary stage. All Members of the Parliament can table amendments to the report prepared by the rapporteur, which are then voted in the responsible committee. After the committee has voted on the amendments, the legislative draft will be sent to the plenary. Also a political group or at least 40 MEPs can table amendments to the proposal. These amendments must be voted by the plenary. The Parliament adopts the legislative resolution by a simple majority.⁹⁴

At the same time the Commission's proposal is prepared in the Council working group consisting of representatives of the Member States and assisted by the Council's Secretariat. The working group reports its work to the Committee of Permanent

sanitation. It was signed by 1 659 543 citizens from 25 different Member States and submitted to the Commission on 20.12.2013.

⁹² European Parliament, Law-making Procedures in Detail, [online material, accessed on 24.1.2014].

⁹³ European Commission, Statistics on concluded codecision procedures (by signature date), p. 6, [online material, accessed on 26.1.2014]

⁹⁴ Hakala 2006, pp. 150–151.

Representatives⁹⁵ (COREPER), which prepares all the Council decisions taken at ministerial level. After receiving Parliament's amendments and Commission's opinion on them, the Council takes its position. According to Article 294(4) and (5) TFEU the Council has two options: it can either approve the outcome of the Parliament's first reading or not approve it and instead suggest its own amendments to the legislative act. In the first case the act is adopted in the wording which corresponds to the position of the Parliament. In the second case, the Council adopts its own position in the first reading, also known as the "common position", and communicates it to the Parliament. If the Council is not able to approve the amendments proposed by the European Parliament the act is not adopted the procedure proceeds to the second reading stage.⁹⁶

Article 293(2) TFEU gives the Commission a possibility to alter or even withdraw its proposal any time during the legislative procedure as long as the Council has not acted. This could happen if the proposal encounters strong opposition in the Parliament or if the Parliament proposes too extensive alterations to the original proposal. Throughout the procedure the Commission must be informed about the amendments, which strengthens its position in the legislative procedure notably.⁹⁷

3.2.4 The Second Reading

The Council's position in the first reading is the object of the interaction in the second reading. The Parliament has three options it can do with the Council's position. It can either i) expressly or tacitly by staying passive within the time limit of three months, approve Council's amendments, ii) reject it by a majority of its component members or iii) propose, by a majority of its component members, amendments to it. The amendments are prepared by the parliamentary committee responsible for the legislative act and by its rapporteur. These amendments must be forwarded to the Council and to the Commission. If the Parliament adopts the Council's position, the act shall be deemed to have been adopted. If it rejects it, it shall be deemed to not have been adopted. The rejection can be

⁹⁵ The COREPER is divided in two sections, COREPER I and COREPER II. The first section consists of deputy permanent representatives and deals with such matters as the environment, social affairs, the internal market and transport. COREPER II is more important of these two. It is composed of ambassadorial rank permanent representatives and is responsible for more contentious matter, such as economic and financial affairs and external relations. See more Craig – de Búrca 2011, p. 43.

⁹⁶ European Parliament, Law-making Procedures in Detail, [online material, accessed on 24.1.2014].

⁹⁷ Craig – de Búrca 2011, p. 126.

proposed by the committee responsible, by a political group or by at least 40 MEPs. This ends the legislative procedure and it can be started again only by a new proposal from the Commission.⁹⁸

If the Parliament proposed amendments to the Council's position, it's the Council's turn to make decision again. It may now, acting by a qualified majority⁹⁹, approve all those amendments made by the Parliament or not to approve them. The preparatory work in the Council takes place in working groups and COREPER as in the first reading stage. If it approves the amendments, the act shall be deemed to have been adopted in accordance with the Parliament's position. Otherwise the second reading stage has unsuccessfully come to an end. Should this happen, the President of the Council must convene a meeting of the Conciliation Committee in agreement with the President of the European Parliament.¹⁰⁰

3.2.5 Conciliation and the Third Reading

Until the Conciliation Committee convenes, the Council and the Parliament work independently throughout the procedure. Behind the scenes, there is however continuous co-operation between the two co-legislators. Since legislative acts are adopted jointly by the Council and the Parliament, coming to an agreement demands willingness of both institutions to cooperate, and intensive exchange of information between them.¹⁰¹ In the Joint Declaration on Practical Arrangements for the Codecision Procedure (hereinafter the Joint Declaration) the three institutions have laid down common rules to facilitate and speed up the decision-making procedure.

According to the Joint Declaration the cooperation takes place in the form of "trilogues", informal tripartite meetings of the Council Presidency, the Parliament and the

⁹⁸ European Parliament, Law-making Procedures in Detail, [online material, accessed on 24.1.2014]. See also Article 294(7) TFEU.

⁹⁹ Until 1 November 2014, the qualified majority is calculated as 255 votes out of a total of 345, representing a majority of the Member States. In addition, a Member State may request that the qualified majority should represent at least 62% of the total population of the Union. Otherwise the decision is not adopted. The Treaty of Lisbon introduced a new "double majority" system. As of 1 November 2014 the qualified majority corresponds to at least 55% of the members of the Council comprising at least 15 of them. Secondly, it must represent at least 65% of the European population. At least four members of the Council can constitute a blocking minority.

¹⁰⁰ European Parliament, Law-making Procedures in Detail, [online material, accessed on 24.1.2014]. See also Article 294(8) TFEU.

¹⁰¹ European Commission – Directorate-General for Translation 2010, p. 23.

Commission. Trilogues may be held at all stages of the procedure.¹⁰² Owing to the trilogues, the Parliament may include the Council's propositions in its first or second reading amendments and the Council may commit itself to accept the legislative proposal as amended by the Parliament, which enables coming into an agreement in the first or in the second reading. Should this not happen, the Council and the Parliament must gather under the same roof for negotiations within the Conciliation Committee. The trilogues play an essential role in the conciliation phase as well.¹⁰³

Under the provisions of Article 294(10), (11) and (12) TFEU the Conciliation Committee consists of two delegations with an equal number of representatives from both institutions. Their task is to reach an agreement on a joint text. The Commission is also involved in the Conciliation to contribute to the agreement on the joint text. The Council delegation is composed of one representative from each Member State and the Parliament delegation from 28 MEPs. The Commission is usually represented by the Commissioner responsible for the dossier.¹⁰⁴

The Conciliation is confined to strict time limits¹⁰⁵. As of the first meeting of the Conciliation Committee, it has a six week time to reach an agreement. Should it fail on its task, the legislative act is deemed not to have been adopted. As a consequence, the only way to bring it back to life is to re-launch the legislative procedure on the proposal from the Commission. If the delegations, however, successfully reach a compromise on the text, a draft legislative text is prepared according to the results of the negotiations. After a successful conciliation the adoption of the legislative act prepared by the Conciliation Committee is still subject to the approval of the full Parliament and the Council. The ordinary legislative procedure moves on to the third reading in which the act must be adopted by a majority of the vote cast by the Parliament and by a qualified majority of the Council members. Depending on the result of the vote, the act is either adopted or it falls.¹⁰⁶ Before the adopted act can enter into force, there are still two procedural steps to commit. Firstly, the Presidents of the Parliament and the Council must sign the act after it

¹⁰² Joint Declaration on Practical Arrangements for the Codecision Procedure, 2007/C 145/02, points 7-8.

¹⁰³ European Commission – Directorate-General for Translation 2010, p. 23.

¹⁰⁴ European Parliament, Law-making Procedures in Detail, [online material, accessed on 24.1.2014].

¹⁰⁵ See more about the time limits of the ordinary legislative procedure in sub-paragraph 3.4.

¹⁰⁶ Dashwood – Wyatt et al. 2011, p. 75. The Conciliation Committee fails in extremely rare occasions. As to the late 2012, only two times the Committee had not been able to reach an agreement. These cases concerned Working Time Directive and Novel Foods Regulation.

has been adopted. Secondly, it must be published in the Official Journal of the European Union as explained earlier.¹⁰⁷

3.3 Linguistic Consideration in the Legislative Procedure

As mentioned, the functioning of multilingual law in the European Union requires the equivalence of all authentic legal instruments, most of which are actually authenticated translations. The production of multilingual EU legislation is often presented deceptively and in an overly simplified manner in the legal literature. Usually authors are satisfied with by stating that the legislative act will be translated into all the official languages of the Union once the Council and the Parliament have come to an agreement about its content. However, it would be misleading to imagine drafting and translation of EU law as two totally separate and different phases in the whole lawmaking process. Instead, they are often intertwined and overlapping and the final versions of the EU legal instruments have gone through a complex series of revision and rewriting¹⁰⁸. This is partly due to the complexity of the ordinary legislative procedure.

From the linguistic perspective the decision-making procedure can be divided in different stages within the institutions. At the Commission these stages are drafting in the source language and translating into all official languages or into the target languages needed. At the Parliament and at the Council respectively, the decision-making procedure includes also a legal-linguistic revision performed by lawyer-linguists.¹⁰⁹ The legal-linguistic verification takes always place where an agreement on the substance of the text between the co-legislators has been reached but before its formal adoption.¹¹⁰

The Commission

Drafting of a legislative instrument takes place in the competent DG at the Commission. Due to the ambitious amount of official languages, drafting simultaneously with all of them is by no means possible. This so called “co-drafting” may have taken place in the early years of the Union but nowadays the linguistic diversity forms an insuperable

¹⁰⁷ European Commission, *The Co-Decision Procedure (Art.251 TEU) Analysis and Statistics of the 2004-2009 Legislature*, p. 8, [online material, accessed on 26.1.2014].

¹⁰⁸ Paunio 2011, pp. 29–30.

¹⁰⁹ European Commission – Directorate-General for Translation 2010, p. 18.

¹¹⁰ See Joint Declaration, points 14, 18 and 23.

obstacle for drafters. This is why the drafting language of proposals is usually English or French. English has steadily gained grounds as a drafting language and after the accession of 1995 French eventually lost its status as the most widely used language within the Commission.¹¹¹ In 2010, 77% of all the texts drafted in the Commission were drafted in English, whereas only 7% in French¹¹².

All the institutions of the Union have their own translations services. European Commission's Directorate-General for Translation (DGT) is the in-house translation service of the Commission and it is in charge of translating the Commission's proposals. As a general rule, the DGT will translate the proposals into all the official languages of the Union but only after the text of the draft proposal is finalized. The College of the Commissioners, which gives the final approval for the proposal, must have all the language versions available when it adopts instruments¹¹³. Here instruments are however understood according to Article 288 TFEU. In Article 288 TFEU the list of instruments comprises of regulations, directives, decision, recommendations and opinions. It does not cover legislative proposals, which means that legislative proposals must be available in three procedural languages only (ie in French, English and German) by the time of its adoption by the College. This is usually the case in practice as well.¹¹⁴ After its adoption the proposal is submitted for translation in the DGT. Subsequently, the Commission transmits the proposal (the so called COM final document) in all language versions to the Council and the Parliament.

The European Parliament

It is important to notice that the Council and the Parliament represent the Member States of the Union and their citizens in the legislative procedure. That is to say, they are interested in the wording of the proposal in their own language as well and must therefore have these versions at hand. Commission's proposal is discussed in the European Parliament at the competent parliamentary committee and at a later stage in the plenary. Public debates in the Parliament and the transparency of the democratic process necessitate the existence of the draft text in all official languages in the plenary.

¹¹¹ European Commission 2010, p. 36.

¹¹² European Commission 2012c, p. 7.

¹¹³ See also Article 18 Rules of Procedure of the European Commission.

¹¹⁴ European Commission – Directorate-General for Translation 2010, p. 20.

Multilingualism is a basic character of plenary session, since all the MEPs have the right to participate in the discussion and read all the documents in their own language¹¹⁵.

At the parliamentary committee, all the MEPs may also propose amendments to the report prepared by a rapporteur in an official language of their choice. The draft version and the amendments are then translated into the working languages of the committee by the translation service of the European Parliament. The number of the languages in the committee varies between 10 and 20 depending on its composition. Once the texts are translated, the committee votes on the amendments and the final result is entered into the report, which is then translated by the Parliament's Translation Service into all the official languages of the Union and sent for an examination in the plenary session.¹¹⁶

The Council

In parallel to the work of the parliamentary committee, Commission's proposal is discussed in the Council at the competent working group. This is done in its source language version, ie usually in English. At this stage, national experts working within the working group may however table linguistic remarks and reservations to the draft text. They have the COM final document also in their own language although the work is based on the source language version.¹¹⁷

The working group may propose amendments to Commission's proposal and after it has accomplished its work, the draft text is translated by the Language Service of the Council and submitted to the COREPER. The Member States receive the draft text in their own language version through their representation in the COREPER. This is the forum where the Member States have a chance to influence on the wording of the act and lodge linguistic reservations and comments. From COREPER the text is sent to the Council of Ministers.¹¹⁸

Conciliation Committee & Trilogues

If an agreement has not been reached in the first or in the second reading, the Council and the European Parliament gather a Conciliation Committee. The Conciliation Committee normally operates in the languages of its full members, which means the documents must

¹¹⁵ See Article 146 of the Rules of Procedure of the European Parliament.

¹¹⁶ Hakala 2006, p. 150.

¹¹⁷ European Commission – Directorate-General for Translation 2010, pp. 21–22.

¹¹⁸ Ibid.

be translated in all of these languages. After the direct negotiations within the Committee, the agreement is usually reached in the third reading. As for preparing grounds for reaching the agreement in the Committee, trilogues take place throughout the conciliation procedure. The language used in the consultation and in the drafting in trilogues is usually the source language of the text, or either English or French.¹¹⁹ At trilogues at the conciliation stage the interpretation is however limited to a maximum of four languages and due to the fast pace of negotiations, the documents are usually available only in the original drafting language. Only after reaching an agreement the draft joint text will be translated into all the official languages of the Union. Finally, the joint text still needs to be adopted by the European Parliament and the Council in the third reading. Otherwise the act shall be deemed to be not adopted and the legislative procedure can only be restarted with a new proposal from the Commission.¹²⁰

3.4 The Temporal Scope of the Ordinary Legislative Procedure

The temporal scope of the ordinary legislative procedure should be understood here as the maximum length of the procedure within the limits of which the legislative instrument must be adopted. The temporal scope plays an important role in the examination of the reliability of authenticated translations, since possibly existing strict time limits set also time limits for legal revisers and translators. Both the duration of a legislative procedure and the moment, when the call for a certain regulation pops up, affect the wording of the act. Enacted laws – or in the case of the EU, regulations and directives – are products of their time and they reflect the attitudes and values in the society for that time being. The EU legal system is a legal system under development: its legal rules and principles are still in the process of developing into a more coherent legal system¹²¹. In this respect, the EU legal language cannot be complete either, thus the language and the EU terminology develop alongside the legal system.

Nonetheless, if we want to evaluate the impact of the duration of the ordinary legislative procedure on the quality and reliability of authenticated translations, we must once again turn our eyes on the Article 294 TFEU to find out how long completing a legislative procedure may take. This to say, the ordinary legislative procedure is partly regulated

¹¹⁹ Ibid, p. 23.

¹²⁰ Hakala 2006, pp. 156 – 159.

¹²¹ Kjær 2007, p. 70.

with strict time constraints, exceeding of which may lead to the lapse of the legislative act. The Treaties do not set any time constraints for the first reading, neither in the Council nor in the Parliament. This means they can take the time they need for shaping their opinion on the act. However, especially the Council Presidency, held by one of the Member States for a term of two and half years at a time¹²², is usually willing to come to a compromise during the first reading stage, since the arrangements for coming into an agreement in the first reading are much more flexible than those for the later stages of the procedure.¹²³

Pre-set time limits start to run, if the Council cannot approve the draft proposal as amended by the European Parliament in its first reading plenary and it holds on to its own position. After receiving the Council's common position the Parliament must within three months either adopt or reject the legislative proposal according to the wording of the Council or propose its own amendments. Failure in keeping up with the time limit leads to lapse of the act. Once the Parliament has proposed amendments to the draft text and communicated these to the Council, the Council is in the position of making a decision within an equal period of three months.¹²⁴ The periods of three months can be extended by one month respectively at the initiative of the European Parliament or the Council¹²⁵. In other words, the maximum duration of the second reading phase is 3+1 months in the Parliament and in the Council respectively and 6+2 months in total.

In those rare cases, in which the legislative act proceeds to the conciliation stage, the Conciliation Committee must convene for a meeting within six weeks from the Council's rejection of the Parliament's position in the second reading. After being convened the Committee has another period of six weeks to negotiate a draft text that pleases both of the parties. After a successful negotiation on the joint text it must be approved within a period of six weeks in the third reading, both in the Parliament and in the Council. Should it fail to do so at any of these stages, the act will fall. However, the periods of six weeks can be extended by two weeks respectively at the initiative of the Parliament or the Council.¹²⁶ Consequently, the maximum duration of the conciliation phase is 6+2 weeks for convening, 6+2 weeks for negotiations and 6+2 weeks for approval of the joint text in the third reading, making a maximum period of 18+6 weeks in total.

¹²² See Article 15(5) TEU.

¹²³ European Commission, *The Co-Decision Procedure (Art.251 TEU) Analysis and Statistics of the 2004-2009 Legislature*, p. 2, [online material, accessed on 26.1.2014].

¹²⁴ See Article 294(7) and (8) TFEU.

¹²⁵ See Article 294(14) TFEU.

¹²⁶ See Article 294(8), (10), (12), (13) and (14) TFEU.

Signing the legislative act and publishing it in the OJ take their time aswell. According to the Joint Declaration, the Presidents of the European Parliament and the Council sign important acts at a joint ceremony organized on a monthly basis. The publication should follow within two months of the adoption.¹²⁷ On average the signature has taken place in 1,4 months after the adoption and the OJ publication in 0,6 months after the signature.¹²⁸

The European Parliament compiles statistics on concluded codecision procedures on its website. According to the latest statistics from the five year period of 2009-2014, the average length of a procedure, in which the act was adopted already in the first reading, was 17 months. Acts adopted in the early stage of the second reading went through a procedure of 28 months on average and in the later stage of the second reading it took as long as 35 months. In cases in which resorting to conciliation was necessary and the act was adopted in the third reading, the average duration of the procedure was 30 months.¹²⁹

The duration of a legislative procedure can have a significant effect on the quality of legislation. Fast pace of negotiations and a great volume of documents to be translated and revised in a short period of time force translators and lawyer-linguists to work more efficiently. Consequently, lack of time and rush unquestionably has a negative impact on the quality of translations. Wagner has given us an extreme example of the hurry there is within the translation services at times: in 2000 the Commission adopted a fifty page long White Paper on European Food Authority. Final amendments to the text, which was written in English, came in at 8:30 in the morning and the French and German translations had to be ready for the press conference at noon the same day! Even though drafters are encouraged to take into account the time needed for translation and to plan drafting ahead according to it, it is not always possible. This is the case especially within the political institutions where finding a compromise may turn out very hard and unpredictable events may come along. Under these circumstances translators have no other choice than just to do their best.¹³⁰

The workload has been tried to ease by help of electronic translation tools, setting priorities on the documents to be translated and by narrowing down the length of

¹²⁷ See Joint Declaration, points 47 and 48.

¹²⁸ European Commission, The Co-Decision Procedure (Art.251 TEU) Analysis and Statistics of the 2004-2009 Legislature, p. 8, [online material, accessed on 27.1.2014]

¹²⁹ European Commission, Statistics on concluded codecision procedures (by signature date), [online material, accessed on 26.1.2014]

¹³⁰ Wagner 2002, p. 80–81.

documents to be translated¹³¹. Translation and legal revision as inseparable phases of the procedure must, however, be carried out within the time limits set out for the whole procedure.¹³² This gives a reason to believe that the linguistic quality of legal instruments, which have gone through the second reading and third reading phases may contain more discrepancies and incongruities than those adopted in the first reading without any time constraints. Consequently, the haste has likely more impact on acts, which are agreed in the conciliation. On the other hand, one must not forget that the more often translators have to deal with the same text, the more familiar they are with its terminology.

3.5 The Personal Scope of the Ordinary Legislative Procedure

Representatives of many different occupational groups participate in the legislative procedure and have influence on legislative acts. By the personal scope of the ordinary legislative procedure is here thus meant the scope of people who contribute to the writing of the dossier of a certain legal instrument. These are *inter alia* drafters, national experts, civil servants, politicians, translators, interpreters and lawyer-linguists. The imperative to recruit according to merit and geographical balance leads to a multinational staff in the institutions of the Union. Furthermore, this multilingual staff has to be able to communicate with each other to achieve common goals¹³³. The people working within the institutions have different linguistic capabilities and interests in language matters. Additionally, individuals' linguistic capabilities cannot be underlined enough, since political agreements are often reached on the basis of a one single language version and talks held in one single *lingua franca*, which is usually not the mother tongue of most of the parties¹³⁴.

Draftsmen and experts at the Commission technically write up the proposals but pressure comes also from outside of the Union, from lobbying groups and stakeholders. Drafters, mostly being experts and civil servants of the EU, are expected to know two Union languages in addition to their mother tongue. One of these languages must be one of the working languages of the EU (ie English, French or German). Nevertheless, they often

¹³¹ Šarčević 2007, pp. 41–42.

¹³² See Joint Declaration, point 42.

¹³³ Gravier – Lundquist 2011, p. 79. Originally by Gravier, M., in “The 2004 Enlargement Staff Policy of the European Commission: The Case for Representative Bureaucracy” in *Journal of Common Market Studies*, 46(5), 1025–1047.

¹³⁴ Hakala 2006, p. 154.

work in a foreign tongue and the quality of the draft texts occasionally turns out poor. In most cases, the drafters are non-native speakers of the major drafting languages, which easily cause misunderstandings in the interpretation of proposals. This is the case especially in countries where they are official languages, since the English and the French used in the Union differ from the legal English or legal French used in the UK and France, for example.¹³⁵ Furthermore, this may increase the risk of interpretive doubts in translation.

European Parliament creates an interesting dimension to the personal scope of the legislative procedure. Being representatives of the citizens, national politicians and MEPs are not required to know any other languages in addition to their mother tongue. Even then, they have a right to documents and discussion in their own language. This is why the whole process leans on an extensive translation and interpretation machinery.¹³⁶ The parliamentary stage of the decision-making procedure could be considered linguistically seen as the weakest one. There is no guarantee of the language skills of the MEPs who work on the draft text. Although interpretation is advisedly left out of the scope of this thesis it has an important role in the lawmaking process. This is the case especially in the European Parliament where plenary sessions are interpreted simultaneously into all the official languages.

Two occupational groups in the EU are specialized in taking care of linguistic purity and legal certainty. Lawyer-linguists are literally expected to have a law degree and thorough knowledge of two additional official languages. Less frequently they have also a degree from translations studies. Lawyer-linguists and translators of the Union are selected through open competitions. A university degree, not exclusively in translation studies but also in other relevant fields of EU politics, such as environment or economics, and a thorough command of two additional languages, are required from EU translators.¹³⁷ According to Šarčević, “in order to produce reliable translations of EU legislation, translators must have basic knowledge of Union law, be thoroughly familiar with the structure of EU texts and understand how they operate in the mechanism of the law”. The solution that EU translators are under the same roof enables interaction between drafters and translators and between translators of different languages as well.¹³⁸ This and any

¹³⁵ European Commission – Directorate-General for Translation 2010, p. 19.

¹³⁶ Schilling 2011, p. 1470.

¹³⁷ Euroopan komissio 2009, p. 8.

¹³⁸ Šarčević 2001, pp. 87–88.

cooperation between various actors during the legislative procedure contributes to the unity of different text versions.

4. SECURING THE INTERLINGUAL CONCORDANCE IN MULTILINGUAL EU LAW

This chapter reviews how the interlingual concordance between all language versions is secured during the process to enhance the uniformity of multilingual EU law. As seen previously, legislative texts are the outcome of lengthy political compromises and multiple phases of translation and redrafting. Both the Parliament and the Council work simultaneously on the same text in multiple languages whereupon the original version is likely to merge during the process. Keeping in mind the equal authenticity of all the language versions, the outcome of the legislative procedure should, however, convey the same meaning in all 24 languages of the Union and have the same legal effect in every Member State.

As the draft of a legal instrument passes on from an institution to another, being discussed by native-speakers of multiple languages and translated by various different translators, the methods and techniques to enhance the linguistic quality are undeniably of great importance in ensuring the legal-linguistic consistency in all language versions. These measures are the ones which should guarantee the legal certainty of Union legislation. Throughout the procedure, the coherence of multilingual legislation is secured in three alternate stages within every legislative institution. Firstly, measures for interlingual concordance can be taken at the drafting stage, in which the linguistic revision takes place and the drafting style of the act is checked. Secondly, the correspondence between language versions can be assured at the stage of translating legislative acts. Thirdly, after legislative acts are translated but before they come into force, they go through a legal revision, in which legal consistency between different language versions is verified.

4.1. Improving the Drafting Quality

Transparency of the legislation is crucial in bringing the Union closer to its citizens. Sadly the Union legislation is often criticized to be difficult and ambiguous “EU jargon”, which a fact does not conform to every individual’s universally recognized right of having access to law. To enable this, the legislation must be drafted and translated properly. Despite of this, translation is often considered by the drafters as a “necessary evil” which

just slows down the process. Even more so, if drafters get complaints about incomprehensible originals.¹³⁹ EU translators can do little about the intelligibility of EU legislation if the problem lies in the bad quality of the originals. Nowadays the legislative institutions of the Union have, however, become conscious of the fact that good-quality originals can help to create good-quality texts in other language versions and to avoid discrepancies between them¹⁴⁰. Calls for better lawmaking in the Union have struck a chord and today all the institutions, which take part in the legislative procedure, have established their own drafting guidelines.

Already the Edinburgh European Council of 1992 recognized the need for clearer and simpler acts and gave thus impetus to taking actions for good legislative drafting¹⁴¹. In 1993 the Council passed the Resolution on the quality of drafting of the Community legislation¹⁴², setting down ten guidelines to make the Community legislation clearer, simpler and more accessible. The need for better lawmaking was reaffirmed by Declaration No 39 on the quality of the drafting of Community legislation¹⁴³ annexed to the Treaty of Amsterdam. The Declaration advised the Council, the Parliament and the Commission to establish by common accord guidelines for improving the quality of the drafting of Community legislation and to follow those guidelines in the drafting process. In 1998 the Commission adopted the Interinstitutional Agreement¹⁴⁴ whose drafting guidelines were implemented e.g. by the *Joint Practical Guide*, issued by the three Legal Services of the institutions.¹⁴⁵

Joint Practical Guide is a shared instrument for all the persons who are involved in the drafting of legislation within the Community institutions. It comprises of 22 guidelines for better drafting, which are explained thoroughly and illustrated with examples.¹⁴⁶ The drafting guidelines are of use both for the drafters and for the translators of legal texts in the Union. Anyone having read the Joint Practical Guide understands that the guidelines, if followed, contribute tremendously to creation of more understandable EU language.

¹³⁹ Wagner 2002, p. 87.

¹⁴⁰ European Commission 2012a, p. 19.

¹⁴¹ Šarčević 2007, p. 43.

¹⁴² See Council Resolution of 8 June 1993 on the quality of drafting of Community legislation, p. 1–1.

¹⁴³ See Declaration on the quality of the drafting of Community legislation, p. 139.

¹⁴⁴ See Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, pp. 1–4.

¹⁴⁵ The guidelines are implemented also by means of more specific instruments, such as the Council's Manual of Precedents, the Commission's Manual on Legislative Drafting, the Interinstitutional Style Guide and the LegisWrite.

¹⁴⁶ Joint Practical Guide, preface, pp. 5–6.

Translating legal texts would certainly be even more challenging if things mentioned in the Joint Practical Guide were not taken into account. On the other hand, Joint Practical Guide did not introduce any epoch-making changes to the drafting of EU legislation¹⁴⁷. This to say, the most important ones from the perspective of multilingualism and translation are discussed here.

4.1.1 Writing Simpler – Keeping in Mind the Reader

The very essence of the principle of legal certainty is to guarantee that laws are accessible and their application is foreseeable. All the guidelines in Joint Practical Guide aim at the intelligibility of EU legislation as well. The legislation must be accessible and foreseeable to individuals and without a doubt, the starting point of making it more comprehensible and easier to approach is by cutting down the unnecessary jargon and writing clear and understandable text. This is declared in the first guideline of Joint Practical Guide:

“Community legislative acts shall be drafted clearly, simply and precisely.”

According to it, the wording of Union legislation should be comprise and leave no uncertainties in the mind of the reader. To achieve this, drafters should e.g. avoid writing overly complicated sentences which comprise several phrases, subordinate clauses or parentheses. Sometimes drafting precisely can however be challenging because of the various political interest of the legislators. Such a self-evident thing as following rules of grammar and punctuation, too, make a text easier to read. To avoid overly complicate language and the much-maligned EU jargon, everyday language should be used whenever it is possible. The reader of the text should not be left in doubt either, for example, as to which part of the clause an object relates to. This can be avoided by making the grammatical relationships between the different parts of the sentence clear.¹⁴⁸

The first guideline can also be described as a common-sense principle, which stands for the general principles of EU law, like aforementioned equality of citizen and legal certainty. The aim of simplifying the legislation is twofold. On one hand, it strives for more comprehensible legislation and on the other hand, it aims at avoiding disputes

¹⁴⁷ Wagner 2002, p. 73.

¹⁴⁸ Joint Practical Guide, points 1.2., 1.2.1., 1.2.2., 1.4.1., 1.4.2., 5.2.2. and 5.2.3..

stemming from poor drafting.¹⁴⁹ Taking into account the fact that Community legislation is mainly drafted only in a one single language and subsequently translated into the rest 23 languages, the quality of the draft text should be one of the main concerns of drafters. Grammatically correct draft text facilitates the job of translators. As a consequence of poor drafting, any lack of clarity in the draft text is potentially multiplied during the translation.¹⁵⁰

It is also in the interest of the drafter to express his or hers intent as clearly as possible, since any obscurity increases the risk of mistranslations and misinterpretation by the courts. This can lead to the just opposite interpretation of what the drafter intended to say.¹⁵¹ The case law of the ECJ shows that if there is doubt about the definition of EU legal concept, the Court may give an autonomous interpretation to that concept which goes beyond the original intent of the drafter. In this sense the EU legal system is however self-reconstructing, since the case law of the Court may catalyze future law-making. The legislator has later on an opportunity to confirm or to alter the interpretation of the Court by redefining the legal concept in question.¹⁵²

It is notable that the guidelines underline the idea to draft as having the addressee of the legal text in mind. As the third guideline of the Joint Practical Guide reminds, the drafter should take account of the persons to whom acts are intended to apply. Addressees of legislative acts cover the whole spectrum of population from layperson to experts and they all are entitled to understand legislative texts. More importantly, they must be able to identify their rights and obligations unambiguously. Regulations have direct effect and even directives can have one in certain cases. Usually directives are addressed to the national authorities for them to implement them efficiently. This does not, however, exclude the fact that they impose rights and obligations on individuals as well.¹⁵³

However, while keeping it simple the legislator should not forget the good legislative style of the legal instrument. The addressee “must perceive it not as a translation in a negative sense – but as a text which corresponds to a certain legislative style¹⁵⁴”. Overly long articles and sentences should be avoided and sentences should express just one idea. Articles should not be written too long either and each one of them should contain only

¹⁴⁹ Ibid, points 1.2. and 1.2.2..

¹⁵⁰ European Commission 2012a, p. 19.

¹⁵¹ Šarčević 2007, p. 44.

¹⁵² European Commission – Directorate-General for Translation 2010, p. 133.

¹⁵³ Joint Practical Guide, point 3 and 3.1.

¹⁵⁴ Ibid, point 5.4.

one provision or rule.¹⁵⁵ The work of a drafter is thus balancing between the best interest of an individual and the authoritative style of legislation.

4.1.2 Legal Terminological Issues

The Joint Practical Guide reminds drafters of the fact that drafting of EU law differs from drafting of national law. Not only make the guidelines the drafters aware of the effects of multilingualism on drafting quality which for its part, as explained earlier, has a direct effect on the translation quality, they also guide on one of the most challenging points of multilingual drafting and legal translation.¹⁵⁶ That is, finding the correct legal term in the target language. Bearing in mind the multilingual nature of the EU legislation, the fifth guideline recommends using terms and sentence structures which respect the multilingual nature of Community legislation throughout the legislative procedure. The fifth guideline reads as follows:

“Throughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts and terminology specific to any one national legal system are to be used with care.”

Legal terminology is very much system-bound with slight exceptions of international, European and harmonized international private law where terminology is to a certain extent “internationalized”. In principle, every state has its own legal system whose concepts are presented in the legal language (or legal languages) of that state.¹⁵⁷ Their legal languages and laws reflect the history, evolution and culture of that specific legal system, which is why an exact correspondence between legal concepts in different legal systems does not exist. A term in one language may have a totally divergent meaning in another language although they look like the same at first sight. Some terms do not even exist in other legal languages and they must be explained some other way.¹⁵⁸

Because of the system-bound character of legal languages, a translator of legal text must come across cultural barriers. Producing a correct translation requires not only good

¹⁵⁵ Ibid, points 4., 4.4., 4.5., and 4.5.2..

¹⁵⁶ Šarčević 2007, p. 44.

¹⁵⁷ de Groot 1999, p.12–13.

¹⁵⁸ Cao 2007, pp. 23–24., 28–29. For more alternatives for translation techniques see, for example, Mattila 2002, pp. 517–527.

command of the source and the target language but also good knowledge of the legal systems behind these languages.¹⁵⁹ De Groot has pointed out that translation between different legal systems is the easier, the more alike those legal systems are¹⁶⁰. The legal system of the EU constitutes a legal system of its own but it is far from independent of the legal systems of its Member States. Most strikingly, it does not have a language of its own but it operates through all the official languages of the Union. The legal languages of the Member States are tied to their own legal systems but at the same time they should cover the legal system of the EU as well! Therefore the translation of a legal instrument of the Union is both translation between legal systems of the Member States and translation within the legal system of the Union.¹⁶¹

To facilitate the choice of equivalents in the translation phase, the Joint Practical Guide advises not to use legal terms or expressions which are too closely linked to national legal systems. Drafters are citizens of different Member States and they usually have the legal system corresponding to their native country in mind. Consequently, they tend to use terminology peculiar to that system.¹⁶² Terms bound to a certain legal system are however not translatable at all, because they do not have an equivalent in the target legal system. If terms like these are used, they must be translated through approximations and paraphrases which inevitably results in semantic divergence between language versions.¹⁶³ As a result, to avoid translation problems, drafters should favor neutral and general terms.

The need “to speak the same language” and to avoid system-bound terminology results in the standardization of EU terminology. Two most important characters of new EU terms are transparency and translatability. In the formation of Community terminology literal equivalents are preferred, since they are easier to recognize in all languages. The ECJ has also stated in its CILFIT judgment, that “Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily

¹⁵⁹ Ibid, pp. 29–32. For this reason, to be able to produce a good translation a legal translator should be competent in law as well and practice legal comparison. According to Šarčević, he or she should have “an in-depth knowledge of legal terminology, thorough understanding of legal reasoning, ability to solve legal problems, to analyze legal texts and to foresee how a text will be interpreted and applied by the courts”. See more e.g. de Groot, Gerard-René, *Das Übersetzen juristischer Terminologie* in de Groot, Gerard-René – Schulze, Reiner (Hrsg.), *Recht und Übersetzen*, 1999, pp. 11–46; Cao, Deborah, *Translating Law*, 2007, pp. 37–52; Šarčević, Susan, *New Approach to Legal Translation*, 1997, pp. 113–115.

¹⁶⁰ de Groot 1988, 409–410.

¹⁶¹ Kjær 2007, pp. 74–76, 79.

¹⁶² Gallas 2006, p. 127.

¹⁶³ Join Practical Guide, points 5.3., 5.3.1., 5.3.2.

have the same meaning in Community law and in the law of various Member States¹⁶⁴”. Consequently, every official language of the Union can be argued to have two environments in which they function: that one of the national legal system and that of the Union.¹⁶⁵

The sixth guideline of the Joint Practical Guide stresses the importance of consistent use of terminology. The guideline refers to both the internal and external consistency. The terminology used in a given act should be consistent throughout that single act and additionally with the other EU legislation in force as well. Drafters and translators should express identical concepts in the same terms and *vice versa* – another term should be chosen to express another concept.¹⁶⁶ A switch in the use of term to express the same legal concept gives the reader the impression that reference is being made to a different concept¹⁶⁷. The failure to follow this rule in the drafting stage doubles the risk of misinterpretation, since it firstly confuses the translators. Subsequently, it may also confuse the addressee of the act, if the translation or legal services have not interfered with the inconsistent use of terminology.

A recent case of the ECJ case law illustrates perfectly the problem of inconsistent use of terminology. The case *European Commission v Kingdom of Spain*¹⁶⁸ concerned Spain’s failure to fulfill its obligation on the common system of value added tax (VAT) on the basis of the Sixth Directive of 1977 on the harmonization of the laws of the Member States relating to turnover taxes. The inconsistent use of terms “*customer*” and “*traveler*” in various language versions formed a part of the problem and the Court had to deliberate whether the Sixth Directive and the VAT Directive were to be interpreted by following a traveler– or a customer –based approach.

The Sixth Directive was originally drafted in French. All the six equally authentic originals at that time in Danish, Dutch, English, French, German and Italian except the English version used consistently the term “*traveler*”, whereas in the English version term “*customer*” was mistakenly used once. When the Sixth Directive was later translated into other languages, the Estonian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene and Swedish versions stayed true to the English version by using the term

¹⁶⁴ Case 283/81 *CILFIT* [1982] ECR 3415, paragraph 19.

¹⁶⁵ Šarčević 2001, pp. 83–87.

¹⁶⁶ Joint Practical Guide, points 6., 6.2. and 6.2.1..

¹⁶⁷ Šarčević 2001, pp. 86–87.

¹⁶⁸ Case C-189/11 *European Commission v Kingdom of Spain*.

“customer” just once. The Finnish, Greek, Hungarian and Spanish versions followed the other original languages instead and used the term “*traveler*” throughout. Furthermore, the Czech version used only the term “*customer*” throughout the Directive.¹⁶⁹

In the VAT Directive of 2006 on the common system of value added tax the pattern changed to be even more inconsistent. All the other five original languages from 1977, excluding English, together with Czech, Estonian, Greek, Hungarian, Latvian, Lithuanian, Slovene and Spanish used the term “*traveler*” throughout the Directive whereas the impact of the English version concerned the Bulgarian, Maltese, Polish and Swedish versions. There again, in the VAT Directive the term “*customer*” is used throughout in Portuguese, Romanian and Slovak. Term “*customer*” is used in three instances and “*traveler*” in two in the Finnish version.¹⁷⁰

The Commission argued that the source of false terminology was the English version from 1977 which used the term “*customer*” by mistake and this interpretation does not respond to the intention of the European Union legislator. The Court however finally took the view that the Directive must be interpreted as following the customer-based approach even though the majority of the original language versions did not mention the term “*customer*” at all.¹⁷¹ The case shows how a failure to use terminology consistently undermines legal certainty and the reliability of EU legislation. One misplaced term can affect the whole nature of the act and like in this case, broaden the scope of the legal provision.

4.2 Linguistic and Legal Revision in the Legislative Institutions

All the institutions involved in the lawmaking process are increasingly paying attention to the aforementioned guidelines in order to enhance the quality of EU legislation. Throughout the ordinary legislative procedure several bodies are involved in this task by means of linguistic and legal revision, the legal linguistic service being the most important of them. The legal linguistic service was set up in 1966 to compare the language versions of Community legal acts and to ensure that they faithfully reflected the

¹⁶⁹ Ibid, paragraph 50; Opinion of AG Sharpston on C-189/11 *European Commission v Kingdom of Spain*, paragraphs 11–13.

¹⁷⁰ Opinion of AG Sharpston on C-189/11 *European Commission v Kingdom of Spain*, paragraph 14.

¹⁷¹ Case C-189/11 *European Commission v Kingdom of Spain*, paragraphs 20–27, 69.

real intention of the legislator and were in harmony with other language versions.¹⁷² Structurally, lawyer-linguists are part of the Legal Services within the institutions. Their contributions to the legislative texts are discussed in the following.

4.2.1 In the European Commission

In the Commission, the proposal is drafted usually either in English or in French. As we have learned, in most cases the drafters are not however native speakers of the drafting language and it may result in poorly written texts, which complicates the work of the translators. After becoming aware of the problem *the Editing Service* was established to ease the translation of such texts.¹⁷³ Revision in the Editing Service is the first step besides drafters' attempts to enhance the quality of the draft text. In the framework of the Editing Service revision, the draft text is examined by native speakers of the source language, focusing on layout, grammar, punctuation, syntax and spelling issues, as well as on overall stylistic and contentual improvements on the text. Revising the text right in the beginning can prevent misunderstandings and ambiguities from piling up later. Regardless of this possibility, the competent DG responsible for preparing the draft proposal can freely decide whether it wants the text to be revised by the Editing Service.¹⁷⁴

Subsequently, after the competent DG has finalized the draft proposal it is submitted to *inter-service consultation* in the Commission. At this step the Legal Service, the Secretariat-General of the Commission, other competent DGs and the Editing Service may express their views and opinions concerning the text. The draft proposal is examined in the original language since no other language versions are available at this stage. The consultation of the Legal Service is compulsory for legal instruments¹⁷⁵. The main task of the legal revisers working within the Legal Service is to monitor the drafting quality and the legality of the proposal and the legal content of the text. By doing so, legal revisers

¹⁷² Morgan 1982, p. 112–113.

¹⁷³ European Commission – Directorate-General for Translation 2010, footnote 15, p. 19.

¹⁷⁴ *Ibid*, p. 19.

¹⁷⁵ See Article 21 (2) of the Rules of Procedure of the Commission: “The Legal Service shall be consulted on all drafts or proposals for legal instruments and on all documents which may have legal implications.”

ensure the coherence of the drafting techniques in all legislative sectors and facilitate the translation into all the other languages.¹⁷⁶

After the inter-service consultation the draft proposal is submitted to the DGT for translation. Nowadays the language versions produced by the DGT are no longer revised by legal revisers before they are sent to the Council and the Parliament.¹⁷⁷ It can be asked whether a compulsory revision of translations at this point would enhance the interlingual consistence of the language versions. The earlier mistakes and errors are discovered, the smaller is the risk of their accumulation later. On the other hand, the draft text is likely to go through changes in its wording, and making too much effort at an early stage can turn out costly if the proposal gets rejected by the legislative organs.

4.2.2 In the Council of European Union

Once the Commission's proposal is complete, all the language versions are sent to the Council and the Parliament, where modifications to the draft text are made and amended texts are translated into official languages. In the Council the lawyer-linguists of the Directorate for the Quality of Legislation of the Council's Legal Service are liable for the revision of the draft text discussed by the working group. In order to avoid the situation in which the lawyer-linguists would meet the text out of context and without being aware why a certain wording was chosen during the working group meetings, the lawyer-linguists or at least one of them, participate in the working group's work. Consequently, lawyer-linguists who represent other languages may consult this person at a later stage if they have any doubts concerning the text. Also so-called *équipes qualité* (quality teams) with a legal adviser and *conseiller qualité* (quality adviser) are established to advise the working group on drafting. The involvement of the *conseiller qualité* is however not self-evident for every legislative act.¹⁷⁸

The greatest challenge in drafting in several languages is the consistency of legal terminology. The Council's lawyer-linguists work to ensure the consistency between all the language versions of the text. This includes, *inter alia*, ensuring the consistent and correct use of legal terminology so that the terms used would have the same significance

¹⁷⁶ Dragone 2006, pp. 101 – 102.

¹⁷⁷ European Commission – Directorate-General for Translation 2010, p. 20.

¹⁷⁸ *Ibid*, p. 22.

in all the official languages. The base text of the legislative act, to which the amendments are made in the Council, is usually written in English or in French. The amended text will be then translated into all the official languages and the lawyer-linguists harmonize the translations using the reference text as a base. The legal revision by the lawyer-linguists takes place after a political agreement is reached within the Council but before its adoption. In addition to their ensuring task, the lawyer-linguists of the Council also control the drafting quality and the compliance with the drafting guidelines.¹⁷⁹

4.2.3 In the European Parliament

In the European Parliament legal revisers have a twofold task as well. The Legal Service of the Parliament helps the parliamentary committees to improve the drafting quality of the texts adopted by the Parliament and to ensure the high quality of all the different language versions. A lawyer-linguist, “the file coordinator”, together with a native speaker lawyer-linguist, “the language coordinator”, assists the committee secretariat and verifies the draft report of the committee and the proposed amendments before they are sent for translation to all the languages used in the committee. After the committee has voted on the amendments, the final report will be revised again by lawyer-linguists and sent for translation into all the official languages.¹⁸⁰

The tasks of the lawyer-linguists of the two institutions are alike and to be able to produce a single coherent text, they work in close cooperation with each other. The final result of a legislative text is also produced in cooperation of lawyer-linguists. According to the Joint Declaration, “where an agreement is reached at first or second reading, or during conciliation, the agreed text shall be finalized by the legal-linguistic services of the European Parliament and of the Council acting in close cooperation and by mutual agreement¹⁸¹”. These documents are normally exchanged twice between lawyer-linguists of the two institutions, the second time of which is called *relecture*. Before signing the legislative act, it still comes back for further reading. In this phase terminology or phrasing adjustments cannot be made. Only typing errors may be corrected.¹⁸²

¹⁷⁹ Guggeis 2006, pp. 109–110, 114.

¹⁸⁰ European Commission – Directorate-General for Translation 2010, p. 23.

¹⁸¹ Joint Declaration on Practical Arrangements on Codecision Procedure, 2007/C 145/02, point 40.

¹⁸² European Commission – Directorate-General for Translation 2010, p. 24.

Lawyer-linguists so to say add the finishing touches on legislative acts. As a conclusion, it could be said that the lawyer-linguists of the Council and the Parliament carry the gravest responsibility for the coherency of legislative acts and the compatibility of all language versions. However, too much pressure cannot be put on the lawyer-linguists at the final revision stage, for their possibilities to amend a politically compromised text are very limited. Lawyer-linguists can only make formal amendments and amendments to the substance are to be made by legislative organs¹⁸³.

4.3 Translating for Europe

Translation of draft texts is an inseparable and necessary part of the legislative procedure. Instead of using national translation staffs the three EU institutions have established in-house translation services of their own and brought the translators of EU texts under the same roof, which facilitates the co-operation and consultation between the translators of different language units on one hand and between translators and drafters as authors of the texts, on the other¹⁸⁴. Today, 552 possible combinations can be made from the 24 official languages, so it goes without saying that substantial amount of trained translators is needed to keep alive the dream of multilingualism. The translation service ran by the EU institutions is the largest in the world, yet is there a need to resort to external translation as well.

In 2012 76% of Commission's output was translated by the DGT and the rest by contractors. However, legislative texts and politically sensitive, confidential or very urgent materials are always translated by the in-house translation services.¹⁸⁵ Due to its nature as having the initiative of making legislative proposals, the Commission's DGT is the biggest translation service within the EU. The need for greater capacity can also easily be explained by the fact that the Commission's translation service is often faced with translations of completely new texts whereas the translation services of the Council and the Parliament work on the basis of translations produced by the Commission's DGT.

¹⁸³ Morgan 1982, p. 110.

¹⁸⁴ Šarčević 2001, p. 88.

¹⁸⁵ European Commission – DGT, Translation, Frequently asked Question about DG Translation, [online material, accessed on 27.11.2013].

Under these circumstances the work in the DGT entails a higher difficulty and more research, mainly in the field of terminology.¹⁸⁶

All the translation services of these three institutions have 24 translation divisions, one for each language. On a regular basis, translators work in teams made of translators working into the same target language. This means their nearest colleagues are often of the same nationality and mother tongue. Divisions are managed by heads of the division, who are usually more experienced translators. In some of the divisions the head of the division or a specially designated coordinator deals out the texts to translators, whereas in others translators are allowed to choose their own work. All the translators within the divisions do essentially the same job, ie translate and revise translated texts. In addition, there are secretaries doing clerical and administrative work and planning offices, which receive translation requests and channel them further to the right division.¹⁸⁷

There are opinions for and against whether a translation can ever reach the level of the original in its style and precision. In addition to the quality of the source text, a bunch of other factors influence on the quality of the translation and on the fidelity to the source text. The knowledge and talent of the translator, translation tools, the time scale for the translation and the revision of translated texts, for instance, have a significant importance.¹⁸⁸ In the EU legal texts are often translated with help of electronic translation tools. To speed up the translation process, translations are often made on the basis of machine translated texts. Subsequently these will be edited by translators. Translators in the institutions have also access to translations memories, which are used especially for highly repetitive texts, and terminology databases. Terminology work is done in the language departments of the DGT and in terminology services in other institutions.¹⁸⁹

4.3.1 Translation in Practice

In legal translation it was believed for a long time that strict interlingual concordance could be achieved only by translating legal texts literally. In literal translation the letter of

¹⁸⁶ Special report No 9/2006 concerning Translation Expenditure incurred by the Commission, the Parliament and the Council together with the institutions' replies, Commission's Reply, 2006/C 284/01, point I.

¹⁸⁷ Wagner 2002, 83–86.

¹⁸⁸ European Commission 2012a, p. 13.

¹⁸⁹ European Commission 2012b, pp. 11–14.

the law is tried to be preserved by reproducing the form and content of the original as closely as possible. Consequently, legal translations were prepared on word-by-word basis, respecting the fidelity to the original text as far as possible. This resulted in translations written in unnatural language, which was hard to understand for the native speakers of the target language. Although many lawyers still consider the degree of interlingual concordance as the reliability of multilingual parallel texts, attitudes towards literal translation have nowadays however changed. In the EU, too, texts are translated in a more free manner to produce understandable legislation. A good translator is, however, careful about being too creative, especially when there are several language versions. Sometimes it is better to give interlingual concordance priority over linguistic purity.¹⁹⁰ It has been aptly pointed out by Pierre Pescatore, a former judge at the ECJ that an ideal translation reads as if it were drafted originally in that language¹⁹¹. A translation like this is what the translators of the institutions should strive for.

If one takes a look at a certain EU regulation and compares it with its other language versions, he will be amazed how uniform they are by their visual appearance. EU texts are strongly standardized in form, and because of this translators cannot create as free translations as they maybe would like to create. A rule constraining translators' freedom remarkably is the one, according to which all language versions must contain the same sentence breaks. This is necessary to enable uniform citation in communication between actors of different Member States: a citation of a certain provision must have the same content in every language version.¹⁹²

Sometimes this is challenging because the 24 official languages of the Union belong to various different language families, whose grammar and sentence structures work in a different way. Finnish, for example, is a Uralic language and it was the first non-Indo-European language in the Union. Its structure and vocabulary differs to a great extent from Indo-European languages, such as German and Spanish for example. Translation work into Finnish by following the EU's rules for translation turned out to be very challenging and the outcome was often of a horrible quality.¹⁹³ In cases like these, the rejection of the strict literal translation method has made the translation work easier for sure. Nevertheless, the required degree of uniformity still poses great challenges.

¹⁹⁰ Šarčević 1997, pp. 202-203; Šarčević 2001, pp. 79, 87 and 89.

¹⁹¹ Pescatore 1999, p. 92.

¹⁹² Šarčević 2001, pp. 89–90.

¹⁹³ Creech 2005, p. 18. See also footnote 40 on p. 18.

Producing a good translation requires perfect mastery of the target language and at least excellent comprehension of the source language¹⁹⁴. As a general rule, EU translators translate into their main language ie into their mother tongue. In addition to this traditional method, translator may also use a “two-way” method and translate out of their main language. In this case translators need, however, an excellent knowledge of the target language, if it is not their mother tongue as well. Even greater expertise is required when using a “three-way” method, in which neither the source language nor the target language is the main language of the translator. To ensure the quality of translations made by non-native speakers of the language they are, however, always revised by translators whose main language the target language is.¹⁹⁵

The plurality of official languages has led to the situation that it is sometimes difficult to find someone able to translate from given source language into a given target language. Even though direct translations are always preferred, translation through a “relay” language takes place especially in the case of the least widely spoken languages in the Union and of uncommon combinations like Finnish-Greek. In relay translation the text is first translated into one of the most widely used languages, into so called “relay” languages, after which a second translator puts it into the target language requested. Nowadays English, French and German are normally used as relay languages.¹⁹⁶

Paunio has made a felicitous remark on the “Chinese Whispers-like” effect the complex law-making processes and use of relay languages may have on the outcome. The same way the phrases whispered by the first player of Chinese Whispers into the ear of next player and from him or her again onwards, change in the course of the game and the sentence heard by the last player differs notably from the original one, the same change is likely to happen in the EU legislative procedure. The more alterations to the draft legislation are made and the more often the text is translated, even by multiple different translators, the greater is the risk for cumulative errors to occur.¹⁹⁷

One critical point, which EU translators must bear in mind when translating EU legislation is the settings in which EU legislation is created. A legislative act is the outcome of a lengthy process between the Commission, the Council and the Parliament,

¹⁹⁴ Gémár 2006, p. 70.

¹⁹⁵ European Commission – DGT, Translation, Frequently asked Question about DG Translation, [online material, accessed on 27.11.2013].

¹⁹⁶ McAuliffe 2009, pp. 210–211.

¹⁹⁷ Paunio 2011, pp. 35–36.

organs which all represent their own views and strive to achieve their own goals. Reaching a consensus in every point of the act is not always possible and a compromise which satisfies all the parties must be negotiated. This results often in vague, obscure or ambiguous wording. Translators must be cautious not to clarify these vague points, obscurities and ambiguities as to be able to express the true intent of the parties. They do not, however, participate in negotiations during the legislative procedure and consequently, do not know the actual intentions of the drafters¹⁹⁸. Yet, when translating a legal instrument, translators should work to preserve the achieved balance of interests and try to replicate all the slight nuances of the original text.¹⁹⁹

4.3.2 The Revision of Translated Texts

It is also appropriate to ask whether translators' work is supervised somehow. After all, translators are responsible for transmitting the content of the draft text into other languages tenably. In the EU translated texts are usually however revised by translators before they are sent back to the requester. In practice the revision is organized in a similar flexible way in which the translation is. The text may be handed to a certain reviser or revised by some translator on his or hers own initiative. Some translations, if translated by an experienced translator or if being of mere informal sort for instance, are not revised at all. There is not any certain group of translators specialized in revision. All the translators are obliged to revise as well, though junior staff is often encouraged to revise translation for the sake of training and bringing a fresh view to the work of more experienced colleagues.²⁰⁰

The degree of revision however varies in different translation services. At the Commission's DGT a quality control, which consists of revision and review, is carried out. By revision is meant the examination of the translation for its suitability for purpose. This includes a comparison of the source and target texts for terminology, consistency, register and style and ensuring that any necessary corrective measures are implemented. Review is a mere monolingual review to assess the suitability of the translation for the

¹⁹⁸ Doczekalska 2007, p. 63.

¹⁹⁹ Šarčević 1997, pp. 204–205.

²⁰⁰ Wagner 2002, pp. 86–87, 92.

agreed purpose. Corrective measures can be recommended at this stage, if they are considered necessary.²⁰¹

The quality control at the Council and the Parliament is less structured though legislative acts are, as mentioned before, always revised by lawyer-linguists before their publication. Additionally, the Directorate for Translation at the Parliament evaluates the quality of both internal and external translations through bi-monthly random checks. Random checks concern, however, mainly linguistic errors and the use of correct terminology, for example, is not checked.²⁰² A request to correct a translation error may also come from outside the translation services, e.g. from national authorities and legal persons.²⁰³

The revision of translated texts as arranged in the Commission is absolutely necessary for the reliability of legal texts. It can and surely does help to avoid cumulative mistakes to occur later in the procedure. It is also understandable that the revision procedure is not as extensive in the Parliament and in the Council, both of which work on the basis of translations produced by the Commission's DGT.

²⁰¹ European Commission 2012a, footnotes 29 and 30, p. 15.

²⁰² Special report No 9/2006 concerning Translation Expenditure incurred by the Commission, the Parliament and the Council together with the institutions' replies, points 38–39, 2006/C 284/01.

²⁰³ European Commission 2012a, footnotes 29 and 30, p. 30–31.

5. A LOOK AT THE OUTCOME – THE RELIABILITY AT STAKE?

5.1 A Perfect Translation – Is There a Such?

Despite the urge to avoid calling pieces of EU legislation translations, a vast majority of them is made by means of translation and these versions get their authentic status only after authentication. The quality of legally binding translations, like of those of regulations and directives, is measured primarily by their reliability. According to Šarčević their reliability consists of two main elements: linguistic purity and legal certainty²⁰⁴.

As we have seen, the Union has noticed the need to take actions to enhance both linguistic purity and legal certainty. The enlargements of the Union have forced the legislator to rethink how to organize the production, translation and revision of legislative texts. Drafting guidelines and different stages of revision are good examples of the endeavor to improve both drafting and translation quality. It could be though stated that holding tightly onto democracy impairs the quality of legislation, since the involvement of multiple languages in the legislative procedure complicates the procedure itself and increases the risk of mistranslation. On the other hand, multilingualism is a prerequisite for genuinely democratic lawmaking and it cannot be bargained over.

It has been suggested that translations can even help make the originals more precise. Furthermore, the impact a second or further language version can have on the quality of a legal text, is the greater the earlier this impact happens. In the ordinary legislative procedure, this impact is not possible in its full scale until at the deliberations at the Council and the Parliament.²⁰⁵ This notion speaks for the involvement of various languages already in the Commission stage. In practice this would mean some form of co-drafting²⁰⁶.

However, as it has been pointed out earlier in this thesis, many factors also diminish the reliability of different linguistic versions of EU law. Language and translation problems are caused e.g. by poor drafting quality, use of vague language in draft texts, lack of time

²⁰⁴ Šarčević 2001, p. 75.

²⁰⁵ Schilling 2011, p. 1468.

²⁰⁶ More about co-drafting methods, see for example: Doczekalska, Agnieszka, 'Drafting and Translation – Production of Multilingual Legal Texts' in Olsen, Frances (Eds.) – Lorz, Alexander (Eds.) – Stein, Dieter (Eds.), *Translation Issues in Language and Law*, Palgrave Macmillan, 2009, pp. 116–135.

in translation and by terminological non-equivalences between various languages.²⁰⁷ One half of the problem is, however, the ambitious amount of official languages in the Union. The increasing number of official languages increases also the risk of errors occurring in legal instruments. As we know very well, both drafting and translation are human activities, since there is no other way to perform these tasks. Though, machine translation is used in the EU to some extent. Human activities as such are always prone to errors. Original texts include drafting errors, if they are not in line with the will of the legislator. These errors are potentially repeated in the translation into other official languages, or new errors may occur in the translation phase. Some mistakes are easy for the reader to recognize but some of them blend in well and go undetected all the way into the official published versions of legislation.²⁰⁸

Translators know the fact that there is no such a thing as a perfect translation. Perfect equivalence between two language versions cannot be achieved – every translation is an approximation at the best.²⁰⁹ What does this mean to the reliability of Community law? If there is no way to produce perfect translations, how can the EU adhere to linguistic purity? And most importantly, how can the EU satisfy the requirement of legal certainty? As it seems, as long as the EU holds on to its multilingual language policy, it must learn to get along with a certain degree of unreliability when it comes to its legislation. In the following two examples of how this unreliability appears in the EU legislation are discussed. I concentrate first on errors which have been spotted before they cause more severe problems followed by errors which have already evolved to a legal dispute.

5.2 Errors Discovered in the Corrigenda of Published Legislation

Since errors are unavoidable in the production of multilingual law, legislative institutions have had to find ways to correct them. Some of the errors get detected soon after their publication and are corrected by means of corrigendum. As said, corrigendum concerns legislative texts which have already been published and which thereby already have the force of law. Corrigendum's purpose is to remove the mistakes made in the course of the legislative procedure and to replace them with the original will of the legislator. Corrected

²⁰⁷ McAuliffe 2009, pp. 105–107.

²⁰⁸ European Commission – Directorate-General for Translation 2010, pp. 142–143.

²⁰⁹ McAuliffe 2009, pp. 105–107.

legislative texts are published in the Official Journal, in the same OJ series as that in which the original document was published.²¹⁰

The enlargements of the Union and the increase in languages resulting from it have caused exponential growth in the number of corrigenda. Publishing corrigenda has thus become a common practice in the Union. The mistakes which occur in legislative texts are various. There are minor mistakes, like misspellings and missing capital letters, but also major ones, which amount to substantial rewriting of already published legislative instruments. The latter are sometimes even comparable to amendments, which has raised criticism against too extensive corrective measures carried out without the participation of legislative organs.²¹¹ Corrigenda practice has also been described as mere “catching up on translation work which should have been done at the drafting stage”²¹².

Corrigenda are considered as having a retroactive effect. They derive their authority from the initial texts they rectify. This includes their legitimacy, legal force and provisions on their temporal application. Therefore, a corrected text is conceived valid starting already from the publication of the initial act. By means of corrigendum the original will of the legislators, which somehow got lost in the legislative process, is just put straight. This is dubious from the perspective of EU citizens, who are entitled to understand their rights and obligations stemming from Community law and to rely on to their own language versions. Non-retroactivity is a predominant principle but an exception has been made with corrigenda of legal texts. Major corrigenda may, however, notably change the legal state of affairs, which potentially causes damages to individuals relying on the letter of law.²¹³

A request for rectifying an error occurred in Community legislation may come from various sources. Anyone who detects an error or is affected by one can take the initiative for correction by sending a correction request for the relevant institution. Member states do not have any more privileged position as regards to requests for correction, but every natural or legal person may make a request as well. Requests from the Member States are though made through the Permanent Representations of the Member States in the relevant institutions.²¹⁴ It is also important to identify what kind of error there is at hand, since

²¹⁰ Bobek 2009, pp. 950–951.

²¹¹ Ibid.

²¹² Ibid, p. 957.

²¹³ Ibid, p. 950.

²¹⁴ European Commission – Directorate-General for Translation 2010, p. 147.

different institutions and departments carry out the correction procedures according to it. If the error is made during the publication process, it is the Office for Official Publications which will launch the corrigendum process. But then again, if the error existed already in the original text, the Directorate-General responsible for the act is in charge of launching the corrigendum procedure.²¹⁵

5.2.1 Two Types of Corrigenda

Two types of corrigenda can be distinguished on the grounds of the degree to which the initial text is altered in the corrigenda procedure. These types are purely formal corrigenda and meaning-changing corrigenda.²¹⁶ Rectification of errors, no matter of which type they are, is important because they violate the equality of EU citizens and may lead to serious legal consequences and eventually to inconsistent application of Community law in the Member States. The risk is high especially in the case of directly applicable provisions, like those of regulations, which are binding in their entirety and directly applicable in every Member State.²¹⁷

Purely formal and meaning-changing corrigenda differ from each other in their origin and in character. The title itself suggests that purely formal corrigenda concern minor mistakes which do not interfere with the wording of the act. Purely formal errors are those emerging from writing and type-setting caused by factors like carelessness or pressures to meet deadlines. They include, *inter alia*, things like typographic mistakes and omissions, omitted letters, inaccurate use of capital letters, incorrect internal references and wrongly type-set sentences and paragraphs. Purely formal errors arise typically after the adoption of the act, during the publication process.²¹⁸ The time in which legislative acts must be finalized and proofread before their publication is also short and this lays them open to errors.

The scope of meaning-changing corrigenda is much wider. Meaning-changing errors do not usually stem from writing or type-setting work but from the mistakes made in the translation phase. Their legal consequences are more serious, since they may alter

²¹⁵ Bobek 2009, p. 952.

²¹⁶ Ibid, p. 951.

²¹⁷ European Commission – Directorate-General for Translation 2010, p. 148.

²¹⁸ Bobek 2009, p. 951.

substantively the content of the legal norm and thereby unavoidably decrease the reliability of authenticated translations. Meaning-changing errors can be translation mistakes, which for example, have changed a positive sentence into a negative one or even given a completely opposite meaning to the original will of the legislator. Other significant errors are also the ones, which narrow or broaden the scope of the legal provision and this way lead to inconsistent application of Community law in different Member States.²¹⁹ Meaning-changing corrigenda certainly interfere with legal certainty. Corrections that alter the content of a legal norm alter also the legal position of an individual. This is very questionable from the legal certainty point of view, since individuals have to bear the mistakes made by the legislators.

Meaning-changing corrigenda concerns also errors of technical nature so to say, like those in numbers, figures or references. Technical errors are usually minor though they may have significant legal consequences when they are applied. A good example of a plain technical error, which changed the content of the act significantly, occurred in Council Regulation (EC) No 1226/2009 fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2010. The regulation set out a catch limit of 5 594 tonnes for Atlantic salmon for Lithuania in all published language versions. Later the number was corrected reducing the catch limit substantially to 4 559 tonnes.²²⁰ Undetected the error could had led to notably generous fishing policy than the legislator originally intended, giving Lithuania an unintended advantage while not being aware of the possible effects on the salmon population.

5.2.2 Corrigendum of Legislative Acts Adopted under the Ordinary Legislative Procedure

Corrigenda procedures within legislative institutions vary according to the nature of the act. Aforementioned non-legislative acts and other instruments adopted by the Commission are corrected within the Commission, either by the secretary General or the relevant departments in a procedure similar to that followed for the adoption of the initial act.²²¹ Corrigenda procedures of acts adopted under the ordinary legislative procedure are however regulated in the Manual of precedents for acts established within the Council of

²¹⁹ Ibid, pp. 951–952; European Commission – Directorate-General for Translation 2010, p. 148.

²²⁰ European Commission – Directorate-General for Translation 2010, p. 149.

²²¹ European Commission – Directorate-General for Translation 2010, pp. 143–144.

the European Union and in the Rules of Procedure of the European Parliament. They contain instructions for corrigendum procedures in both institutions respectively.

The corrigendum procedure of acts adopted under the ordinary legislative procedure resembles the procedure in which the initial text was originally drafted. The correction procedure is under way simultaneously both in the European Parliament and in the Council and adopting the corrigendum is always subject to agreement by the Parliament. If an obvious error is introduced after the signature of the legislative act, the legal linguistic experts of the Council prepare a corrigendum, which is then sent to the legal linguistic experts of the Parliament. In the Parliament the President must seek for an agreement with other institutions on the necessary corrections and where appropriate, refer the corrigendum to the committee responsible for a deliberation. For adoption of the corrigendum the agreement of the Parliament is finally needed.²²²

In the case of major error committed before the adoption of the act, the draft corrigendum is once again prepared by the Council legal linguistic experts and sent to their counterparts in the Parliament and to the Council delegations. In the Parliament the President is first obliged to seek for an agreement on the necessary corrections with the Council, after which the draft corrigendum is submitted to the committee responsible. The committee examines the text and submits it to the Parliament if it is satisfied that the error can be corrected in the proposed manner. The draft corrigendum is examined in the plenary and is deemed to be approved unless a political group or at least 40 MEPs request it to be put to vote. If the corrigendum is not approved as a result of the vote, it is referred back to the committee for further amendments or closing the procedure. In the Council the corrigendum is deemed to be approved if there are no comments from the Member States to prevent the publication. If there is no objection from the institutions and the Presidency gives its agreement, the corrigendum is eventually published in the OJ.²²³

This way legislative acts adopted under the ordinary legislative procedure are corrected with the participation of both of the legislative institutions. This seems reasonable, since meaning-changing corrigenda may propose notable amendments to the language versions in which the error occurs. Corrigenda are necessary if there occur errors in published legislation but they should not be used as safety valve and as an excuse for sloppy

²²² See Rules of Procedure of the European Parliament, Rule 216, p. 121; the Manual of Precedents, Annex II, pp. 165–166.

²²³ *Ibid.*

drafting. The emphasis should be and formally also is on high-quality drafting. Tight schedules, however, certainly leave room for improvements in the quality checks in the drafting and especially in the translation phase, in which most of the significant errors emerge.

5.3 Errors Discovered in the Case Law of the European Court of Justice

The amount of corrigenda is just the visible part of the errors in the EU legislation, since they are published in the OJ. However, other discrepancies do not come up until applying those provisions in practice. They cause disputes of the interpretation of the provision in question and make it necessary to get first the opinion of the European Court of Justice in order to solve the legal dispute. After all, the interpretation of a legal text is the best criteria to test whether or not equivalence between different language versions has been achieved²²⁴.

Both translation and revision are human activities and therefore always subject to error. Despite of all quality measures taken, some discrepancies and incongruities are most likely to go undetected.²²⁵ If a provision of Community law is brought in front of the ECJ because of its doubtful meaning in relation to the same provisions in other languages, it is already enough to show unreliability of the authenticated translation in question. However, only a small percentage of all translated legislative acts are examined by the ECJ. This leaves the public in the illusion of faultlessness of EU legislation and may lead to inconsistent application of Community law in the Member States.²²⁶

Baaij has carried out a research concerning ECJ judgments in which the Court has performed a comparison of language versions. Between 1960 and 2010 246 judgments could be found in which the Court included a comparison of language versions. This study truly ascertains the myth of perfect translations, since in 170 of them the Court observed discrepancies between language versions.²²⁷ At least two types of discrepancies can be identified in these disputes brought in front of the Court due to linguistic obscurities. These are translation errors and errors in the semantic scope of the act. Here

²²⁴ Gémar 2001, p. 120.

²²⁵ European Commission 2012a, p. 15.

²²⁶ Gémar 2001, p. 120.

²²⁷ Baaij 2012, pp. 218–19.

these two types are discussed in more detail, illustrated with examples of the case law of the ECJ.²²⁸

5.3.1 Translation Errors

Translation errors are simply caused by mistranslations, a choosing of a wrong term which occurs in one or more specific language versions. Translation errors are to be found if distinctly different terms are used in one or more language versions. Errors of this nature do not play a significant role in the interpretation process at the European Court of Justice as the following two cases show. They are treated only as textual flaws if the error made by a translator is obvious.²²⁹

In the *Koschniske* case²³⁰ the cause of the dispute can also be best explained by a mistranslation in the Dutch version of the Regulation No 574/72 of the Council concerning the application of social security schemes to employed persons and their families moving within the Community (hereinafter the Regulation). Koschniske, a woman of German nationality was entitled to a Netherlands invalidity pension and was thereby receiving a Netherlands family allowance. Raad van Arbeid, the competent Netherlands institution suspended the payment of this allowance by the virtue of Article 10 (1)(B) of the Regulation basing its decision on the fact that Koschniske's husband was exercising a profession or trade in Germany and was drawing dependent child benefits there.²³¹

According to the provision in question, the payment of a family allowance can be withhold from anyone entitled to it as a result of an invalidity pension if “*his spouse*” exercises a profession or trade activity in the territory of a Member State where entitlement to family benefits is not subject to conditions of insurance or employment. The Dutch version of the Regulation used however the word “*diens echtgenote*”, meaning “*his wife*”, instead of the gender-neutral expression “*his spouse*”. Since Koschniske's husband was receiving family benefits in Germany, the question was raised whether the Regulation should be applied on both of the marriage partners or only on the wife.²³²

²²⁸ Ibid, 229–230.

²²⁹ Baaij 2012, p. 229.

²³⁰ Case 9/79 *Marianne Wörsdorfer, née Koschniske v Raad van Arbeid* [1979] ECR 2717.

²³¹ Case 9/79 *Koschniske*, paragraph 2.

²³² Ibid, paragraph 3.

The Dutch version of the Regulation expressly laid down that the provision refers only to a person of the female sex. The Court stated, however, that provisions of Community law cannot be considered in isolation. Instead, they should be interpreted and applied in the light of the versions existing in other official languages. All the other language versions referred to both of the marriage partners using words “*æktefællen*”, “*Ehegatte*”, “*spouse*”, “*conjoint*” and “*coniuge*”. Taking this account and interpreting the Regulation in the light of its purpose, the Court concluded that the Dutch version should be read as referring both to married men and women.²³³ Confusion like this could have been avoided by using a correct term in the Dutch translation in the first place.

A translation error can also be illustrated by the *Lubella* case²³⁴. The case brought in front of the Court concerned the validity of Commission Regulation (EEC) No 1932/93 establishing protective measures as regards the import of sour cherries. The plaintiff, a cannery Koservenfabrik Lubella, contested the Regulation invalid e.g. on the grounds of its dubious content. The Regulation was issued on 16 July 1993. All the other language versions referred to sour cherries whereas the German language version used the term *Süßkirschen*, “*sweet cherries*”. The erroneous term was used in the title, in the preamble and in the wording of Article 1(1) to describe the products covered by the protective measures. Four days later, on 20 July 1993 the error was rectified by a corrigendum and the term was replaced by *Sauerkirschen*, “*sour cherries*”.²³⁵

In its judgment the Court affirmed the validity of the Regulation and its applicability on Lubella’s import into Germany on 19 and 20 July 1993 of fresh sour cherries. Taking into account all other language version and other measures taken, the incorrect term used in the German language version did not make the Regulation to be regarded as uncertain. Despite the wrong term used, the CN codes²³⁶ in the Regulation referred correctly to sour cherries. Moreover, the competent German authorities were informed of the error and were therefore capable of applying the Regulation correctly. Referring e.g. to its Koschniske case, the Court repeated that all other language versions should be taken into account in the interpretation of Community law and no provision of Community law can be considered in isolation. Accordingly, the error in the German language version was

²³³ Ibid, paragraphs 6–9.

²³⁴ C-64/95 *Konservenfabrik Lubella v Hauptzollamt Cottbus* [1996] ECR I-5105.

²³⁵ C-64/95 *Lubella*, paragraphs 5–6.

²³⁶ CN codes ie Combined Nomenclature is the common nomenclature of the European Community. They are used in export declarations and in statistical declarations on internal trade.

treated as a material error, which did not affect on the validity and real content of the Regulation.²³⁷

The Lubella case shows, however, how a mistake made at the drafting or translation stage can even raise a question of the validity of the legal instrument and how a minor mistake can lead to lengthy court proceedings, place unnecessary work on the court system and incur extra costs for the parties in a very short period of time. This is why corrigendum should not be considered as yet another chance to improve the legal instrument but this work should be done before its publication. The Lubella case is also apt to highlight the importance of the reliability of legislation. The plaintiff Lubella complained also about the retroactive effect the corrigendum of the German version had, since the rectified Regulation was applied to events which took place before the corrigendum was published. The Court rejected these claims by stating that correcting a material error did not alter the scope of the contested Regulation²³⁸.

5.3.2 Errors in the Semantic Scope

Another type of errors tried in the European Court of Justice, are errors which are not translation errors or mere textual flaws but involve the semantic scope of terminology. As explained earlier, translating from one language to another contains also a switch of cultures and thereby not all the terms or phrases have the same semantic scopes or fully overlapping semantic scopes in various languages.²³⁹ From a translator's point of view Wagner has pointed out that also playing with words, using catchy slogans and alike complicates the translation work, since finding equivalents in other languages may be troublesome²⁴⁰. Existence of errors in the semantic scope is unavoidable under the multilingual circumstances. A good way to avoid them would though be to include clear definitions at least for the most salient terms used in legal instruments. This way a European terminology, common to all the Member States, would be created as well. The Court is likely to interpret the errors in the semantic scope in the light of the purpose of the act by using a teleological method of interpretation.²⁴¹

²³⁷ C-64/95 Lubella, paragraphs 16–18.

²³⁸ C-64/95 Lubella, paragraph 20.

²³⁹ Baaij 2012, pp. 229–230.

²⁴⁰ Wagner 2002, p. 65.

²⁴¹ Baaij 2012, pp. 229–230.

An often cited case, in which a phrase used in the legal provision arouse interpretation problems as to its semantic scope is the *United Kingdom of Great Britain and Northern Ireland* case²⁴² concerning a joint fishing operation of Britain and Poland. The event took place in international waters in the Baltic Sea where British trawlers cast empty nets into the sea which were then taken over and trawled by Polish trawlers. After completing the trawl, the nets were passed to the British vessels and lifted on the board of the British trawlers, which subsequently took the fish to the United Kingdom. In the case it was questionable whether the fishing operation had been performed by British or Polish vessels as Poland was not a Member State of the Communities at that time. Furthermore, as a result of this it was questioned, whether the British vessels were obliged to pay import duties of the fish catch.

The contested provision stated that “goods wholly obtained or produced in one country means -- products of sea-fishing and other products taken from the sea by vessels registered or recorded in that country and its flying flag”²⁴³. The expression “*taken from the sea*” caused differing interpretations from behalf of the Commission and the United Kingdom. The Commission contended that the phrase should not be understood as concerning only the act of taking the fish out of the sea but rather the act of separating the fish from the sea where they lived, which was performed by netting by the Polish vessels. Conversely, in the opinion of the United Kingdom the fish catch could be said to become “taken from the sea” only when the nets were raised and landed on the deck.²⁴⁴

A comparative examination of the various language versions revealed discrepancies between the language versions. The French version used phrase “*extraits de la mer*”, which can be interpreted meaning both the act of taking out of the sea and the act of separating the fish from the sea. The versions in Greek, French, Italian and Dutch were alike. The German version was more accurate in its wording “*gefangen*”, meaning “*caught*” and therefore supported the Commission’s interpretation of the Regulation. Because of the unclarity in different language versions, the Court stated that no legal consequence can be based on the terminology used and the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms

²⁴² Case 100/84 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1985] ECR 1169. See also the interpretation of “canalization and flood-relief works” in case C-72/95 *Aannemersbedrijf P. K. Kraaijeveld BV and Others v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403.

²⁴³ Articles 4(1) and 4(2)(f) of the Regulation No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods.

²⁴⁴ Case 100/84 *United Kingdom of Great Britain and Northern Ireland*, paragraphs 9–11.

a part.²⁴⁵ As a result, the Court stated that netting the fish was the essential part of the fishing operation and that the United Kingdom had therefore failed to fulfil its obligations under the Regulation. As this case shows, discrepancies between language versions may not always be the cause of disputes but they are used as arguments in the interpretation. If the semantic scope of the error varies notably between different language versions, the interpretation cannot be based on any of them particularly.

The need for clear definitions for EU terms came up in the *Rockfon A/S* case²⁴⁶. The crucial question here was how to interpret the term “*establishment*” in compliance with the Directive 75/129 on the approximation of the laws of the Member States relating to collective redundancies. Rockfon A/S was a Danish company which produced and marketed insulating materials made from mineral wool. It was a part of the Rockwool multinational group and shared a joint personnel department responsible for recruitment and dismissals with three other production companies. In November 1989 Rockfon dismissed 24 or 25 of its employees as a result of which the Specialarbejderforbundet i Danmark, a Danish trade union for semi-skilled workers began proceedings against Rockfon for breach of the provisions relating to establishments’ large-scale dismissals.

The term “*establishment*” was not defined in the Directive but instead, the Danish Ministry of Labour had defined establishment as “a unit which produces, buys or sells goods or services -- and which has a management which can independently effect large-scale dismissals”. Rockfon contented that it did not constitute an establishment in the sense of the Ministry’s order, since it had no management which could independently effect large-scale dismissals and that power was laid with another company in the group.²⁴⁷

In its judgment, the Court reminded that the term “*establishment*” used in the Directive is a term of Community law and it cannot be defined by reference to the laws of the Member States. A look at the different language versions revealed, however, that somewhat different terms were used to convey the concept of establishment. Along with the terms referring to establishment also terms like local unit “*plaatselijke eenheid*”, work place “*arbetsplats*” and work center “*centro de trabajo*” were used. To enable uniform interpretation of Community law, referring to its settled case law the Court concluded that

²⁴⁵ Ibid, paragraphs 15–17.

²⁴⁶ C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark* [1995] ECR I-4291. See also the interpretation of “transfer of undertakings” in the Case 135/83 *Abels* [1985] ECR 469.

²⁴⁷ Ibid, paragraphs 9 and 17.

“the provision must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part”. Consequently, the term establishment must be understood as the unit to which the workers made redundant are assigned to carry out their duties. Whether this unit has a management which can independently affect collective redundancies, is not relevant as to the definition of an establishment.²⁴⁸

The United Kingdom of Great Britain and Northern Ireland and the *Rockfon* –cases show how terms or phrases used in the Community law may cause interpretation problems in relation to their semantic scopes. In absence of clear definitions the responsibilities of national administration and national courts to recognize that EU law uses a terminology of its own is emphasized.

5.4 Adequacy of the Measures

Previous chapters have given a relatively in depth analysis of the lawmaking in the multilingual surroundings of the European Union. The measures to improve the linguistic uniformity of EU law have been presented to the extent it is possible here. However, there does not exist any specific criteria to assess whether these measures are adequate. Since this thesis aims at assessing the adequacy from individual’s perspective, some guidance can be taken from the principle of legal certainty which poses certain criteria for the quality of legislation. This is arguable because alongside linguistic purity, legal certainty is another element that defines the reliability of a legal provision. From reliable legal texts individual’s rights and obligations can be read as they *de facto* are. They do not disappoint individual’s expectations.

As discussed in the beginning, according to legal certainty, laws must be clear, stable and intelligible. In addition to this, predictability is probably its most important aspect.²⁴⁹ As noticed, these requirements are very much the same as the content of the drafting guidelines established for the EU institutions to make Union law more comprehensible and accessible. Therefore the outcome of the legislative procedure should be viewed against these requirements. This means that the measures taken during the legislative procedure are deemed to be adequate only if the outcome fills the requirements of clarity, intelligibility and predictability. In other words, the measure taken during the legislative

²⁴⁸ Ibid, paragraphs 25–28, 34.

²⁴⁹ Paunio 2011, pp. 65–66.

procedure are adequate only if legal norms are clear, intelligible and predictable enough for a reasonable person to be able to identify the rights and obligations it imposes on her.

In the framework of the Union, it must be added that these requirements must be filled in every language version in the same way as to guarantee the uniform application of EU law in every Member State. To be adequate, the measures must also guarantee that the law is as clear and intelligible in all the 24 languages and will consequently be applied uniformly in similar cases all around the European Union. In other words, the law should bring about same legal effects in every Member States.

Of course Union legislation cannot be expected to be easy to understand for everyone. This is why the obligation should limit only to reasonable persons. In account must be taken the fact as well, that a fair share of Union's legislation covers specific policy areas with specific terminologies and are even directed to people working within that policy area. In that event, as a reasonable person should be considered someone familiar with the special features of that branch. Union legislation should meet the requirements of clarity, intelligibility and predictability taking account the provision at hand and its addressee.

Apparently this is not always the case, since legal provisions of EU law include errors that in worst cases even lead to court proceedings. This does not exclude the possibility of successful legislative acts. In the matter of fact, for the most parts Union legislative acts are intelligible and linguistically uniform. Mistakes may appear only in some minor parts of the acts. However, these minor parts may turn the whole intention of the act upside down. If there was such a thing as perfect translation and Community terminology would be understood the same way in every Member State, there would be no disputes concerning discrepancies between language versions and interpretation of certain terms.

However, there are different types of errors that make EU law to fall short of these requirements. There are errors that are detected right away after the publication and corrected in an appropriate manner and errors that cause legal disputes and get corrected at the proceedings at the ECJ. Finally there are those errors that just go undetected and whose volume we do not even know. According to Schilling, extensive legal texts of Union law usually include at least one significant divergence between at least two

language versions²⁵⁰. In light of the cases presented in this thesis, this claim is more than acceptable.

²⁵⁰ Schilling 2010, p. 51.

6. CONCLUSIONS

6.1 On the Ordinary Legislative Procedure

The ordinary legislative procedure is a rather complex process in regard to its different stages and to the languages used in it. If co-legislators have political controversies and divergent opinions of the content of the act, the procedure is likely to last longer and proceed to next stages. The more stages the procedure includes, the more rewriting and retranslating the act requires. In addition, the more complex the procedure gets, the more the reliability of different text versions and the legal certainty of the act are apt to suffer. Luckily, the current trend aims at simplifying the procedure as has been done in the Lisbon Treaty as well. Moreover, the amount of legislative acts agreed already in the first reading is substantial and still increasing. It is though interesting to see how these statistics will change when the new composition of the European Parliament is assembled and the 8th Legislature gets down to work.

It is appropriate to say few words about the arrangement of the legislative procedure in practice as well. As I have contended from the very beginning, the image people have from the progress of the ordinary legislative procedure is false. Linguistically the procedure is not as easy as is often implied. It should be noticed especially, that the ordinary legislative procedure does not divide in just two separate phases, to those of drafting and translation. Instead, these phases overlap and alternate making the procedure more complex. Even by using common sense one can tell that this increases the risk of cumulative errors like argued also by Paunio. Even if taking account the fact that translators get more familiar with the text the longer the procedure lasts, the possibilities for mistakes to occur increase without a doubt.

The negative impacts of the complex procedure and multilingualism are however tried to be diminished by investing in simple drafting and legal and linguistic revision of draft texts. The importance of the main elements of reliability – linguistic purity and legal certainty – is recognized and measures are taken to produce high-quality texts, both in linguistic and in legal respect. There are many players in the game of lawmaking in the Union and not all of them have linguistic abilities that could secure the interlingual concordance of the language versions. This shortcoming is patched up with linguistic and

legal specialists. The measures taken to enhance the linguistic uniformity are, as we have seen, relatively massive and this is why they will not be repeated here. It is though notable that legal linguistic revision does not take place in the Commission after the draft text is translated into other official languages. It has though not always been so. On the grounds of cumulative mistakes, it can be argued that multilingual legislation would include lesser mistakes, was the interlingual concordance of different language versions inspected right in the beginning. It would be interesting to know why the revision at this stage has been abolished and how it has affected the linguistic uniformity ever since.

On the grounds of aspects presented earlier in this thesis, there can also be noticed a disparity in the attitudes towards drafting and translating. More attention is paid to drafting which constitutes the content of the act whereas translation just comes along. This is highly suspicious, since those translations have an equal force of law once they get authenticated. As can be read from the case law of the ECJ, not even the original drafting version can prevail other language versions. All the different language versions as a whole constitute the interpretative basis for the ECJ. If the legislator wants its real intent to take effect, it should better make sure that translation gets the respect it needs.

It has always been clear that translation is not perfectly infallible. It seems, however, that drafters are not always aware of the fact how much their contribution would help in the creation of uniform multilingual law. Drafters probably have to deal very little with different languages and linguistic problems, since the drafting language is usually either English or French. As a consequence, they presumably do not know to appreciate the work of the translators enough and do not understand how much time and precision translation work requires. Since translation is totally dependent on the drafting of the legal text and tied to the time limits posed by the legislative procedure, it easily gets neglected. Translation's role as an equally important phase in the procedure should be safeguarded. This would help to guarantee that every language version really embodies what the legislator intended to say with the act.

As suggested by Schilling, the earlier the impact of other language versions happens, the greater impact it can have on the quality of the legal text²⁵¹. In the current procedure this impact is not possible until the first version of the draft text has already been finalized. There is no denying either, that co-drafting in 24 different languages is a mere impossibility. However, if at least few languages were used in the drafting of legislative

²⁵¹ See footnote 205.

acts, it could have a positive impact on the linguistic uniformity of all language versions. Let's say that EU law was drafted simultaneously in English, French and German and subsequently translated into the rest 21 languages. Under these circumstances already drafters should pay attention to linguistic aspects, uniform terminology and structure. This would probably "open their eyes" and force them to think outside their own legal system they have in mind. Moreover, translators would have three texts as a basis to create a new translation. In the current procedure translators do not participate in negotiations, so they cannot know exactly what was meant with a certain expressions. If a certain term would cause trouble for the translator, she could easily see the other two versions and check what was meant with the term. This would of course work only if the three originals were identical with each other and the translators used the same original as a basis. Drafters' language skills would play an even greater role as well. It is though presumable that any changes that slow down the legislative procedure or cause more costs will be out of the question.

More interaction between different persons involved in the procedure could also have positive impacts on the linguistic uniformity of EU legislation. As it has been told, the EU translators have already been brought under the same roof so that consultation between different language departments could work easily. Maybe it would be justified to allow translators an access to certain political negotiations as well, to ensure that the will of the legislator will be presented correctly in all the official languages. It is though clear that translators of the Union are up to their eyes in work already, but some kind of possibility to consult the drafter should exist.

6.2 On the Adequacy of the Measures

One question I aimed to answer in this thesis was whether the measures to secure interlingual concordance of all the language versions are adequate if taking into consideration the legal protection of individuals. In this context, the legal protection of individuals as I understand it, means primarily individual's access to law in her own language so that she is aware of the legal consequences her actions may have and can plan them accordingly. Otherwise she could be punished for a crime she committed unaware of the obligations the law imposed on her. Secondly, the legal protection can be viewed against the rights and obligations imposed on other EU citizens and whether these

can be considered as discriminative in the light of the equal treatment of EU citizens. This is where the need for uniform application comes into play again.

The measures can be roughly divided to those taken by the drafters, translators and legal linguists. In the end, legal linguists carry the responsibility for the legal and linguistic uniformity of the acts. I came into the conclusion that the measures are considered to be adequate only if the outcome of the legislative procedure fulfills the requirements of clarity, intelligibility, foreseeability and uniformity in every Member State. However, the current legislation is often subject to meaning-changing corrigenda and includes errors which give rise to legal proceedings. The errors that go undetected and whose quantity we do not know, cannot be considered any better either, since they silently undermine the uniform application and put EU citizens in an unequal position.

The continuous practice of meaning-changing corrigenda and court cases concerning differences between language versions, show that perfect uniformity in all the official languages cannot be guaranteed in the procedure and in that sense, the measures cannot be deemed to be adequate. It must be though asked whether they ever can be adequate, since there does not exist such things as perfect translations. This for its part raises again questions about the vitality of the multilingual language policy itself in the Union.

Common sense tells that legislator's failure to produce uniform legislation should not in any case cause loss to individuals who are subject to that legislation. As AG Kokott has noticed in the *Skoma-Lux* –case, “it is rightly the responsibility of those involved in the decision-making process to ensure that the translation which is authoritative for them is consistent with the other versions of a legislative proposal”²⁵². The Court of Justice has however taken the approach that one language version cannot be read in isolation but all the other language versions should be taken into account as well. From this it is clear that an individual can never base her claim on a translation mistake, since that is just how the Court will treat it – as a translation mistake.

6.3 On the Reliability of EU Law

The reliability and accuracy of Union legislation is of fundamental importance. Not only because of the principles of legal certainty and equality as such, but because of the

²⁵² Opinion of AG Kokott in C-161/06 *Skoma-Lux sro v Celní ředitelství Olomouc*, paragraph 29.

negative impacts that erroneous legislation has on individuals and on the whole European legal system. Shortcomings in the legislation cause uncertainty in legal relations and give impetus to court proceedings that could have been avoided. Court proceedings place unnecessary costs on individuals which seek for justice in national courts and in the ECJ as well, and slow down the already congested European Court of Justice. Additionally, all kinds of shortcomings in legislation jeopardize the uniform interpretation of Union law, which for its part is the very basis for the functioning of the EU legal system as mentioned before.

As to one of the objects of this thesis, to examine the reliability of authenticated translations by answering the questions where, when and by whom EU's legislative acts are prepared and how the linguistic uniformity of multilingual EU law is ensured, some notions can be made on the grounds of procedures explained earlier. The measures to secure the interlingual concordance of language versions and their adequacy have already been discussed so they will not be assessed here anymore. Instead, the temporal and personal scope of the procedure still needs a summary.

In context of the temporal scope of the procedure I assessed the impact of the duration of the procedure to the reliability of its outcome. The further the procedure proceeds, the more it includes rewriting and retranslating. Even though translators, and in the matter of fact all the people that work on the act, become more acquainted with its content and terminology the longer the procedure lasts, every new translation phase still allows a new potential for errors to occur. Additionally, the first reading stage does not impose any time limits on drafters unlike the following stages. Translations made in a rush are not as certain as those made with enough time. It could be thus stated that the further the procedure goes, the more likely the reliability of the act is apt to suffer. Fortunately, in vast majority of the cases the agreement has been reached already at the first reading stage.

This thesis introduced also the personal scope of the legislative procedure. As the drafting languages in the EU are *de facto* just English and French, most of the drafters are not national speakers of these two languages. Furthermore, the EU legal languages used in the drafting differ from the national legal languages drafters have in mind. The European Parliament is an even weaker link in the chain, since it does not have any requirements concerning language skills. Civil servants of the Union are, however, required to possess good language skills. The requirements are even more demanding for translators and legal

revisers. All in all, the procedure cannot be said to be built on strong linguistic knowledge due to the considerable amount of official languages. It remarkably leans on massive translation and interpretation machinery. The amount of official languages is so large that this fact must be just accepted. Against this background, Union's mission to promote language learning to its citizens comes across as a vital measure.

If taking into account the securing measures, how does the ordinary legislative procedure then affect the reliability of Union law? The existence of different types of errors in EU law is rather a rule than an exception. One thing is for sure: in a court case an individual should never blindly rely on her own language version. Paradoxically, she cannot either be obliged to know other languages to be able to consult other language versions. On the other hand, the possibility of discrepancies between them cannot be ruled out, since the possibility of human error in drafting, translation and revision is always present. Therefore, the question is whether a "relative reliability" is enough for a legal instrument? The growing workload and increase in languages create their own challenges. As I see it, the biggest threats to the reliability of EU legislation in the framework of the ordinary legislative procedure are, however, the complexity of the procedure and the lack of time for producing accurate texts.

A lot has been written about the EU language regime and this trend is likely to continue as long as the language problems caused by multilingualism remain unsolved. The language topic in the European Union offers interesting themes for further examination, one of these being the improvements in drafting and translation techniques. In relation to the reliability of authenticated translations, an interesting question lies also in the translation of *acquis communautaire* by accessing Member States. Those translations do not go through the complex legislative procedure. How does this affect their reliability? A whole another topic is, of course, whether multilingual language policy is a vital choice in the ever-larger Union anymore or would it be wiser to move on to using a *lingua franca* or delimit the number of authentic language versions.