The Role of English Language in the European Union - English versus Multilingualism

Theodor JR Schilling
LE MULTILINGUISME
DANS L’UNION EUROPÉENNE

Sous la direction
de
Isabelle Pingel

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THE ROLE OF ENGLISH LANGUAGE IN THE EUROPEAN UNION
ENGLISH VERSUS MULTILINGUALISM

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When discussing multilingualism in the European Union (EU), one has to
distinguish between intra- and interinstitutional communications on the one hand
and communications between the institutions and Member States or citizens on
the other. The paradigms that should govern each of those situations are radically
different. For EU-internal situations, administrative expediency should be the
decisive criterion. For external situations, the twin requirements of the equality
of Member States, their citizens and their official languages and, for
communication with citizens, the legal certainty aspect of the rule of law should
be decisive. Nevertheless, the regulation chosen for internal situations may have
some influence on external situations.

Administrative expediency requires that there be only one language for intra-
and interinstitutional communications. This has been borne out by the tradition
of the European Court of Justice (ECJ) since its beginnings and increasingly by
the practice of the Commission. Expediency may be trumped by other
considerations where Member States or Members of the European Parliament
(MEPs) are directly involved. It is not obvious that opting for a unique working
language would burden Member States having another official language with
additional costs. The unique working language should be the language spoken
and understood by the greatest number of European citizens which at present is
English. Neither is there any intrinsic shortcoming in the English language which
makes it unfit for that purpose, nor an intrinsic advantage in any other language
requiring it to be preferred to English.

Legal certainty as traditionally understood in human rights law requires, in
principle, that every citizen can find out in her own language what the law asks
of her and what the consequences of her actions will be. This appears to fit well
with the concept of equality between official languages. However, equality
between official languages in the sense that all of them are equally authentic is
self-defeating. In view of the unavoidable differences in the meaning of
24 language versions of every law, the law, if it depends on the meaning of every
single version, becomes radically unknowable: ascertaining the meaning of one
version would, for anybody working in another language, involve translating the
version in question into that other language which would prevent the very
ascertainment sought. Equality between official languages in the sense indicated
is therefore incompatible with legal certainty as traditionally understood in

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human rights law. While the concept of legal certainty may be reconfigured to
make it compatible with language equality, such a reconfiguration would miss
the human rights aspect of the concept. To do justice to that aspect requires
rather, de lege ferenda, reconfiguring the idea of language equality. While there
should continue to be 24 official languages, and 24 language versions of every
law, only one of them should be authentic (weak multilingualism). This would
allow the citizen prima facie i.e. 'to a degree that is reasonable in the
circumstances' to know the law from her own language version of it, and in case
of doubt to refer to the unique authentic version.

In principle, the authentic version could rotate between the official languages,
thereby maximising respect for language equality. However, in view of the
argument made above for using English as the unique internal working language
of the institutions, and therefore also in the legislative work of the Commission,
it would better suit the correct transposition of legislative intent into the actual
text of the law to forego any linguistic translation between the two and to accept
the English version of Union laws as the one authentic version.

I. THE CASE FOR ENGLISH AS THE UNIQUE WORKING LANGUAGE OF THE EU

In the first part of this contribution, I shall not discuss communications
between EU institutions and Member States or communications between the
former and EU citizens, or communications within Member States i.e. the
question of the lingua franca. Rather, I shall try to answer one question only:
which language or languages should be used in intra- and interinstitutional
communications by the EU? The question obviously has two parts: the number
of languages to be used, and which they should be. In both parts, it is a question
first and foremost of expediency, not of law. It is also not a question of
defending, or campaigning for, one language – against what exactly? Against
other languages? How could such a defence against other languages at the same
time defend those very languages?

A. The case for a unique EU working language

1. How many languages should the institutions use in their communications?
Their actual practice is far from uniform. It ranges from the Court's French
monolingualism via the Commission's de facto English and French bilingualism
to the EP's traditional, though declining, near full multilingualism with the more
or less equal use of 24 languages. Those different practices are each influenced
by considerations other than pure expediency: as MEPs are not elected for their
language skills, it is necessary to communicate with them in their own
languages, which, in short, means the use of all 24 official languages in the EP.
Similar considerations apply insofar as non-expert Member State delegations are
directly involved in intra-institutional actions. The current practices of the institutions reflect these considerations.

Beyond those practical necessities, however, full multilingualism in intra- and interinstitutional communications is obviously not feasible. As has often been shown, it would require a prohibitive amount of translation and interpretation which would translate into enormous costs and delays. It would also endanger the correct execution of orders from, and the correct flow of information to, superiors. Rather, a single language would be the most efficient means for those communications, for the obvious reason that it would allow staff to work in one language only, and would make translations superfluous for those communications. This, it is submitted, is borne out by the examples of the ECI, and also of the Commission: if looked at more closely, its bilingualism consists rather of two parallel monolingualisms. It is the language used by the unit from which a communication originates which is used throughout the communication in question.

2. Monolingualism so described has its drawbacks. One is that it reduces the pool of eligible candidates for any position within EU institutions. Yet this can be offset, to a large degree, by choosing a language which is widely known, and by providing for language courses as they are regularly offered by all institutions. A prime example of the latter mechanism at present is of course Donald Tusk, the President of the European Council.

A related drawback is that monolingualism favours native speakers. This should not be overrated, however. From the point of view of the career opportunities of officials it is, in general, sufficiently equalised by the principle that they are recruited on the broadest possible geographical basis.

A further possible drawback has been identified by our esteemed host i.e. that monolingualism would entail a transfer of resources towards the country whose language was chosen. Such a transfer does indeed appear possible in the highly

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3 See I. PINGEL (n. 2) at 332, with further references: ‘Il en résulte ... une remarquable qualité de travail que les observateurs se plaisent à relever’.
4 See e.g. William Robinson, Manuals for Drafting European Union Legislation, Legisprudence 4 (2010), 129, 131 et seq.
6 See, à propos of the ECI, I. PINGEL (n. 2) at 332.
7 See e.g. ECI, Case 17/68, Reinarz v. Commission, ECR 1969, 61, para. 37. This does not apply to the référendaires at the ECI; cf. I. PINGEL, ibid. and n. 48.
8 I. PINGEL (n. 2) at 334, with further references in n. 71.
hypothesis of the official introduction of a *lingua franca* for the EU as a whole but scarcely in the case of a unique working language. It is, for instance, difficult to see any financial advantage France might have gained from the ECJ's use of French as its only working language.

Finally, there might be untoward symbolic advantages for the one language chosen. Of course, no problem would arise, from this point of view, if a 'neutral' language were to be chosen, such as Latin, Volapük or Esperanto, or, after a possible withdrawal of the UK from the EU, English. However, with the exception of the latter language, such a choice does not appear feasible. If the language chosen is the official language of a Member State, symbolic advantages are most glaring if there are no valid reasons for that choice. Indeed, it might be said that there are no untoward symbolic advantages for a 'hegemonic' language which is chosen based on objective criteria. In any case, as long as only the language of intra- and interinstitutional communications is concerned, and only insofar as MEPs and Member States' delegates are not directly affected, that hegemony is not very visible to the people at large. Any symbolic advantages therefore cannot be especially great.

So while the drawbacks of monolingualism are real enough they do not suffice to call into question the important advantages it provides compared to full multilingualism. The question remains whether an intermediate, pluri- or bilingual solution would do even better.

3. Here we have to abandon the language neutrality of the investigation and become more concrete. Two models appear to a certain degree realistic. A plurality of working languages, e.g. English, French and German, would certainly somewhat diminish the drawbacks as compared with monolingualism. It would considerably enlarge the pool of eligible candidates. The number of advantaged native speakers would also increase or, more to the point, the number of disadvantaged non-native speakers would decrease. Possible symbolic advantages would be spread over more languages. At the same time however such plurilingualism would seriously diminish the advantages of monolingualism. Staff would have to work in three languages which means that officials whose mother tongue is none of those three languages would need to be fluent in four languages if translation were to be avoided. Outside the institutions' language services, there are not many officials who would fulfil that requirement today. Under such a model, therefore, the alternative would be either translation or language courses, both of which are costly in terms of money and time. This model has also proved impractical: while German is officially one of the three working languages of the Commission, and indeed most staff communications are published in at least the three languages discussed, in the

9 On which cf e.g. Theodor SCHILLING, *Eine neue Rahmenstrategie für die Mehrsprachigkeit: Rechtshandwerkliche Aspekte*, ZEU 3 (2007), 754, 782-784.
10 I. PINGEL (n. 2) at 334.
11 I. PINGEL (n. 2) at 334.
12 See T. SCHILLING (n. 1), 1470.
all-important legislative work of the Commission German is virtually nonexistent\textsuperscript{13}.

This leaves the model of English-French bilingualism as it is (still) practised in intrainstitutional communications at the Commission. As an official solution, that would be anathema to Germany\textsuperscript{14} and, I submit, for good reasons: on the one hand, it would still have fewer advantages than monolingualism, although, admittedly, much less so than the plurilingual model. Indeed, a certain fluency in two official languages (not necessarily English and French) in addition to one’s mother tongue is even today required of officials. This model would however seriously fail to mitigate the drawbacks of monolingualism. Thus, on balance, it would not do better than a monolingual model if that one language were to be English. On the other hand, while there are rational arguments for giving English prominent position as a working language of the EU, as we shall see in a minute, there are no comparable arguments for French. The symbolic advantages this model would give also to French, although not important in themselves, would therefore still be objectionable.

B. The case for English as the unique working language of EU institutions

1) My preference for the institutions' unique working language is English. This is not because English is particularly easy to learn for non-native speakers: it is not, at least at the level required to discuss rather complicated matters associated with intra- or interinstitutional communications\textsuperscript{15}. Rather, it is for a purely pragmatic reason: while English is not the language spoken by the greatest number of EU citizens as their native language (that language is German), it is, by far, the most widely used second language in the EU\textsuperscript{16}. The aggregate number of English native speakers and those for whom it is the second language is bigger, in the EU, than for any other language, with German coming second\textsuperscript{17}. The pool of candidates for EU positions having a command of English sufficient to participate meaningfully in intra- and interinstitutional communications is therefore bigger than that for any other language. For our purposes, the widespread use of English as a second language is particularly important. It makes it easy for the institutions simultaneously to require that candidates have a sufficient knowledge of English, in order to respect the principle

\textsuperscript{13} On the actual distribution of languages in the work of the institutions Victor Ginsburgh's contribution to this table ronde contains many interesting figures.

\textsuperscript{14} Obviously, a purely hypothetical English-German bilingualism in EU communications would similarly be anathema to France.

\textsuperscript{15} In this sense also I. PINGEL (n. 2) at 334.

\textsuperscript{16} Why is that so? One likely reason is the position of the USA as the leading power of the western world at least since WWII. Another is the concomitant decline of German in much of northern and eastern Europe as a consequence of the Nazi regime, and its replacement by English. See also Silvia FERRERI, Communicating in an International Context, in Multilingualism and the Harmonisation of European Law (B. POZZI and V. JACOMETTI, eds), (2006), 33, 43-44.

\textsuperscript{17} See e.g. Language statistics of the European Union, available at http://www.promotics.net/ticketack/survey/eustats.htm, and also the figures presented by V. GINSBURGH (n.13).
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recruiting staff on the broadest possible geographical basis, and to reduce the need for additional language courses.

2. This purely pragmatic reason could be outweighed either by intrinsic problems with English or by the intrinsic advantages of another language. As to the first point, I do not see that the use of English could pose any problems in depicting complex issues. English has become, of course, the universal language of science. In international law, it has been, for nearly a century, one of the two official languages of the International Court of Justice (ICJ) and its predecessor, and for more than half a century of the Council of Europe and the European Court of Human Rights (ECtHR), and I have never heard any complaint that the English version of their judgments, or the judgments drafted in English, were inferior, in any respect, to their French counterparts. More specifically for the EU, I think we have to accept that the quality of the legislative texts drafted in English equals that of the texts drafted in French. Similarly, if we accept, as I think we must, that the Court's English translation unit has been consistently able to render the Court's reasoning correctly into English, I do not see any reason to doubt that the Court could, with precision, formulate its judgments directly in English.  

3. But it could still be the case that another language, especially French, is more capable than English of expressing complex issues or complex reasoning. Professor Pingel has argued this point. She speaks of 'la précision et la richesse du français' unparalled, apparently, by other languages. I shall not venture to dispute this claim. I do however dispute that the claim applies to the French as used by the only institution whose unique working language is French i.e. the ECJ. My contention, based on a quarter century of experience as a lawyer-revisor at the Court, will rely largely on anecdotes. At the start, French colleagues at the Court used to report that they had been asked by French lawyers not connected with EU institutions why the Court's judgments were translated so badly ... into French. Admittedly, this was quite a long time ago. A case in point may have been the so-called conditionnel de la Cour, a grammatical construction quite unknown to standard French but well known to German, which the Court used in the parties en fait of early judgments to indicate reported speech of the parties but which, in standard French, indicated, quite unintentionally, that the Court did not believe the parties.

The Court of course realised in due time that some of its members, and their référendaires, had difficulties with French. Not much could be done about that during the délibéré in which only judges take part. However, for the written

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18 This is not to deny the very important practical difficulties that would be involved should the Court decide to switch its working language from French to English. Such a switch would require more English and fewer French référendaires and lawyer-linguists, and some judges, chosen precisely for their knowledge of French, might not be able to participate in English deliberations as efficiently as in those in French. However, see Lord SLYNN OF HADLEY, Some Thoughts on Language and the Law in Europe, in Law and Language — Recht und Sprache [Th. LUNDMARK und A. WALLOW (eds.), Münsterische Juristische Vorträge 17, 2006], 45, 49 f.  
19 I. PINGEL (n. 2) at 332.
work resulting from the deliberations the Court has created the position of a lecteur d'arrêts whose job description is to read and, if necessary, linguistically correct all drafts of a judgment. In addition, it has become the custom of the Court's judges to appoint at least one native French speaker as référendaire to their cabinet.

These developments notwithstanding, some problems remain. Concerning la précision du français (the precision of French), one of the main difficulties I encountered when translating from the Court's French used to be finding German language which adequately reflected the very indeterminateness of many of the Court's pronouncements. Of course it is possible to claim that it is exactly la précision du français which allows it to express precisely that indeterminateness. This, I submit, would nevertheless be a specious argument. Concerning la richesse du français de la Cour (the richness of the Court's French), it remained, in my experience, much easier all the same to translate judgments of the Court than opinions of French Advocate Generals or judgments of French courts. I attribute this experience to the rather formulaic language used by the Court. The undoubted richesse of French is therefore hardly reflected in the Court's language.

One example must suffice. Since Nold, the Court holds invariably that fundamental rights are not 'prerogatives absolues'. This is undoubtedly true, but my point is that fundamental rights are not 'prerogatives' at all. Rather they are, well, rights, that is to say, 'droits'. This is the terminology chosen both by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the ECtHR and by the Charter of Fundamental Rights of the European Union. 'Prerogatives' with its flavour of ancien régime and of special privileges is quite the wrong term for rights which every human being or, as the case may be, at least every European citizen has, not because of any special position, but intrinsically. Still, the Court has never discussed, amended or interpreted that early choice of quite inadequate terminology.

None of this means that French is not suitable as a language of intra- or interinstitutional communication. It clearly is. It only means that French does not have intrinsic advantages which outweigh the purely pragmatic reason given above for preferring English. Especially, the impoverished and adulterated Euro-English many deplore, and with good reason, unfortunately has its counterpart in a similarly impoverished and adulterated Euro-French.

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20 On the lecteurs d'arrêts see Alfredo Calot Escobar, in this volume.
21 See I. PINGEL (n. 2) at 332, n. 48.
23 JO C 326/2012, 391, especially Article 52: 'Any limitation on the exercise of the rights and freedoms recognized by this Charter ...'.
24 Understandably, the German translation had difficulties to render that concept in German. This is shown by the existence of at least five different translations, which is of course a disservice for German readers. Cf Theodor SCHILLING, Bestand und allgemeine Lehren der bürgerschützenden allgemeinen Rechtsgrundätze des Gemeinschaftsrechts, EuGRZ 27 (2000), 3, 12-13 and n. 119.
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C. Interim conclusion

In conclusion, I submit that for reasons of expediency there ought to be a unique working language for the EU institutions, and that this language ought to be English. I do not see any valid objections to this submission either in the relative quality of the English language or in the cost such a solution might impose on the EU or on non-English language Member States. Indeed, in the context of drafting laws this stage has already been reached at least in part. While 90% of all EU laws are drafted in English25, at the very end of the legislative procedure the English version of a draft law is, without exception, the langue source for the lawyer-revisors' finishing touches26. It is rather ironic that the Court, still rooted in a bygone era, primarily relies not on this version of a law but on the French one.

II. THE CASE FOR ENGLISH
AS THE UNIQUE AUTHENTIC VERSION OF EU LAWS

In this second part of my contribution, I shall discuss communications between EU institutions and citizens27. The considerations applying to those communications are very different from those discussed above for intra- and interinstitutional communications. Expediency is of no great importance here. Rather, legal, especially human rights, requirements have to be satisfied28. More specifically, considerations relating to the accessibility of laws and the foreseeability of the legal consequences of actions or omissions are decisive here. Those considerations are important under the ECHR and therefore determined, to a large extent, by rules outside the narrow EU context.

Accessibility requires the citizen to have access to EU law in her own language, at least in her own State29. Indeed, as Hegel put it, 'to hang the laws so high, as Dionysius the tyrant did, that no citizen could read them, or to bury them in ... a foreign language so that knowledge of the law in force is accessible only to those learned in it, is one and the same wrong'. However, EU multilingualism as it exists now, while it guarantees, or aims to guarantee, such access, may be at odds with foreseeability which is equally important.

25See e.g. W. ROBINSON (n. 5), 131.
26See H. LEGAL, in this volume.
27On the Member States as addressees of EU law see Theodor Schilling, Beyond Multilingualism. On Different Approaches to the Handling of Diverging Language Versions of a Community Law, 16 ELJ 47, 63 (2010).
28Another aspect is stressed in bilingual Canada by Ruth Sullivan, The Challenges of Interpreting Multilingual, Multijural Legislation, 29 Brook. J. Int'l. L. 986 (2003-2004) 1008: 'it is arguable that the primary purpose of bilingual legislation is ... to build community'. In contrast, in a Union comprising 24 official languages, this cannot be the primary purpose of multilingualism.
29See in this sense I. PINGEL (n. 2) at 334, with further references.
A. The requirements of legal certainty in a multilingual context

*De lege lata,* all language versions of EU law are equally authentic. According to the usual reading of Article 33 (1) of the Vienna Convention on the Law of Treaties (VTC), this means that a State or other beneficiary of a treaty may rely on its own language version of that treaty without having to look at the other versions. This is not the position taken by the ECJ in *CILFIT.* Rather, according to that judgment it is only possible to determine whether there is a clear meaning of a Union act if one takes into account all language versions. Taking this approach seriously would imply, first, translating the other language versions of a law into one's own language. This in itself would amount to a kind of reverse engineering of the original translation and would necessarily fail to render the exact meaning of those other versions with all their connotations. The approach to the meaning of a text in another language by means of translation necessarily changes that meaning, albeit ever so slightly, in a way analogous to Heisenberg's uncertainty principle in physics. This alone makes the meaning of the law radically unknowable. But taking the *CILFIT* approach seriously would additionally imply, secondly, applying, one by one, all those other versions to the facts at issue and comparing the results of each comparison. With 24 official languages, this is unimaginable.

Indeed, the ECJ itself rarely refers to all language versions of a law and, if it does, it is mostly to reveal relatively straightforward differences in meaning. In such a case, the Court applies the principle of uniform interpretation which is indeed required by the principle of citizens' equality before the law: the law must be the same for all citizens irrespective of their language. Such interpretation, which is, of necessity, basically teleological, will necessarily fit some of the equally authentic language versions better than others. There will therefore be tension between the principle of equality and the principle of legal certainty.

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31 The provision presumes that treaty terms have the same meaning in each authentic text, 'thus making it unnecessary to compare language versions on a routine basis (that is, when no allegation of an ambiguity in one version or a difference among versions has been made)'; Christopher B. Kuner, *The Interpretation of Multilingual Treaties: Comparison of Texts versus the Presumption of Similar Meaning,* 40 ICLQ 953 (1991) 954, with references.
32 ECJ, *CILFIT* (n. 31), para. 16.
33 According to Advocate General Jacobs' Opinion in case C-338/95, *S.I. Wiener v Hauptzollamt Emmerich* [1997] ECR 1-6495, para 65, delivered at a time when the EU had only 11 official languages, 'reference to all the language versions of Community provisions is a method which appears rarely to be applied by the Court of Justice itself, although it is far better placed to do so than the national courts.'
34 See e.g. ECJ, case 30/77, *Regina v Bouchereau* [1977] ECR 1999, para 13; ECJ, case 100/84, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1985] ECR 1169, para 16: 'a comparative examination of the various language versions ... does not enable a conclusion to be reached in favour of any of the arguments put forward and so no legal consequences can be based on the terminology used'.
which requires that a law be 'formulated with sufficient precision to enable [a citizen] – if need be, with the appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'\textsuperscript{35}. That law must be taken to be the – equally authentic – version of the EU law in the citizen's language\textsuperscript{36}. Inevitably, there will be cases in which it is not possible, on the basis of that version, to foresee the result of uniform interpretation of the law.

The tension between uniform interpretation and legal certainty is widely admitted. There are two strategies open to the academic for dealing with this issue \textit{de lege lata}: to accept a pre-established meaning of legal certainty, derived predominantly from the ECtHR's jurisprudence, and to show that, at least in practice, it is possible to apply the two principles in such a way that they lead to largely acceptable results, or to redefine legal certainty in a way that eliminates the incompatibility. A recent study\textsuperscript{37} has tried the second strategy. By considering legal certainty from the viewpoint of legal practitioners (national courts, lawyers etc.) instead of citizens, it redefines legal certainty in such a way that the problems disappear. Legal certainty there is seen less as protecting the citizens' legitimate expectations that the law be applied according to the citizen's language version (which indeed is ridiculed as 'the straightjacket of formal predictability')\textsuperscript{38}. It is seen rather as 'protecting people's predictions and expectations concerning their rights and obligations'\textsuperscript{39} which may be based on aspects other than the relevant law, especially on the dialogue between the ECJ and national courts. Legal certainty in this sense requires acceptance of an ECJ interpretation of EU law by a 'particular ideal audience'\textsuperscript{40} i.e. by the EU legal community which in turn is said to require discursive reasoning by the ECJ.

Apart from the point that the ECJ's reasoning in general can hardly be described as discursive\textsuperscript{41}, my problem with this approach is simple. EU law is not free to reconceptualise legal certainty. Rather, the meaning of this concept is largely predetermined by human rights law. The approach discussed appears to try to define away the real, if rare, problems that the multilingualism of EU law may create for legal certainty as traditionally understood.

\textit{De lege lata}, in a case of conflict between the principles at issue – equality and legal certainty – the requirements of legal certainty, as developed by the ECtHR, must be balanced against the principle of non-discrimination which translates

\textsuperscript{35} ECtHR, \textit{Refah Partisi (The Welfare Party) and others v. Turkey}, 41340/98 et al., 13 February 2003 (GC), para. 57.

\textsuperscript{36} To admit that the 'law' addressed by the ECtHR is EU law in all its 24 language versions would make things even worse: as just shown, that law is radically unknowable so that no 'appropriate advice' could help the citizen.

\textsuperscript{37} Elina PAUNIO, Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice, Farnham: Ashgate, 2013.

\textsuperscript{38} Ibid. at 154.

\textsuperscript{39} Ibid. at 53.

\textsuperscript{40} Ibid. at 190.

\textsuperscript{41} In this sense also ibid. at 192.
into that of uniform interpretation\textsuperscript{42}. In the cases the Court has had to decide to date, there was, without exception, good reason to decide in accordance with the non-discrimination principle\textsuperscript{43}. Indeed, in cases involving a citizen in her economic capacity, or in which there are specific reasons to doubt the meaning of one's own language version, in general the principle of non-discrimination should prevail\textsuperscript{44}.

Things are different if a private citizen is involved. When her own language version of an EU law having direct effect is formulated in such a way that she has no reason to doubt its meaning or its validity, she may legitimately expect that the legal consequences foreseeable under the wording of that version of a law are also the consequences foreseeable under its other versions and therefore under the law in its entirety. This expectation should be protected in principle precisely because the citizen may rely on the promise that her language version is authentic.\textsuperscript{45} In such a case, which apparently has not yet come before the ECJ, the principle of legal certainty should in general prevail, \textit{de lege lata} and \textit{de iurisdictione ferenda}.

Thus, whatever the case, it is likely that the required need for balance will mean that one or the other of those principles will have to be pushed aside. It is true, in the case of the private citizen, that a proper balance requires that the non-discrimination principle also be upheld. Conceivably, there may be cases in which the discrimination necessarily created by applying the principle of legal certainty is so outrageous as to require the balancing to have a different outcome. However, that different outcome would then be likely to be the jettisoning of legal certainty in favour of the principle of non-discrimination i.e. uniform interpretation. This is also the effect of the \textit{iurisdictio lata} which, in the case of a citizen in her economic capacity, prefers, for good reasons, the non-discrimination principle, to the detriment of legal certainty.

This likely outcome is unsatisfactory because it does not allow for a middle way: also in her economic capacity, a citizen has a claim to legal certainty even if in her case there are good reasons, in case of conflict, to let all her competitors' claim to equal treatment prevail. \textit{Vice versa}, all other citizens have a claim to equal treatment even if in the case of a purely private citizen her claim to legal certainty should prevail in case of conflict. This unsatisfactory outcome, which may or may not be compatible with human rights requirements, is due to the fact that the two principles to be balanced are, in the present context, mutually exclusive. To put it bluntly, under the principle of legal certainty the applicable language version of an EU law must matter, and under the principle of equality it

\textsuperscript{42} T. SCHILLING (n. 27), 58 et seq.
\textsuperscript{43} T. SCHILLING (n. 27), 64
\textsuperscript{44} On those cases see Schilling (n. 27), 61-3.
\textsuperscript{45} In the bilingual Canadian context, however, according to Sullivan (n. 28), 1010, quoted from Karine MCLAUREN, in this volume, n. 5, 'il est dangereux pour un citoyen de se fier uniquement à une seule version'. More exactly, according to R. SULLIVAN, \textit{ibid.}, 1007, 'citizens can safely rely on a single version only if they can be sure that both say the same thing. And in practice, this assurance can never be achieved.'
must not. Accordingly, although balancing allows for the best solution, *de lege lata* and under the circumstances, by making that principle prevail which best meets the requirements of the individual case, there is clearly room to improve upon it.

B. The case for one authentic version of EU laws (which should be English)

1. As the principle discussed has its origin in the *lex lata* i.e. the equal authenticity of all 24 language versions of an EU law, principled avoidance of the principle appears possible only *de lege ferenda*. This is where my concept of weak multilingualism comes in.²⁶ It tries to combine as far as possible the advantages of traditional EU multilingualism with enhanced legal certainty. The main positive feature of multilingualism from a human rights perspective is that it guarantees, or aims to guarantee, the citizen’s access to EU law in her own language. However, as discussed, the disadvantage of this advantage is that, because of the lack of a truly authentic version of any EU law, this feature creates problems for legal certainty. Weak multilingualism aims at maintaining the advantage by insisting that EU law should continue to be published in all official EU languages. However, it dispenses with equal authenticity which is merely illusionary in any case; as has been validly said, “the principle that all language versions are equally authentic means that no single version is authentic.”²⁷ Rather, it requires that a unique authentic version be determined for each individual law. Thus a citizen who is in doubt about the meaning of a provision can have recourse to that single authentic version. While this version will be in most cases in a language foreign to the citizen, it will still be easier to access this one version and to construe and to translate it, or have it translated, compared with having to rely on a set of 24 languages. While weak multilingualism presents a compromise, it is submitted that in contrast to strong multilingualism which provides for 24 equally (un)authentic language versions, it allows the citizen to foresee, if need be with appropriate advice, to a degree that is reasonable in the circumstances, the consequences that a given action may entail, as required by the ECtHR’s jurisprudence.²⁸

2. It remains to determine the language that should provide the authentic version. Weak multilingualism does not decide that question. Under weak multilingualism, any language would do.²⁹ Under the principle of language

⁶² T. SCHILLING (n. 1), passim.
²⁸ The result would therefore be similar to the one found in Canada; see n. 46. This is not surprising: from the citizen’s point of view, weak multilingualism would resemble a bilingual situation, with the additional advantage that there would be only one authentic version.
²⁹ Tough luck for the citizen if she is Portuguese and the authentic version is in Maltese or one of the Baltic languages. But even in this case she would be better off than if she had to look at all those languages in addition to the more current ones.
equality, one might consider having authenticity rotate among the 24 languages. More practical however, and more conducive to a correct transposition of legislative intent into the authentic version of the law, is a different solution. In the first part of this contribution I have argued in favour of English as the unique language of intra- and interinstitutional communications. Under this proposal, all legislation would originally be drafted in English. As reported above, this is the case even now for some 90 % of legislation. While other languages come to play a role in the legislative stages before the Council and the EP, the English text is, without exception, the basis of the lawyer-revisors' work at the very last stage of the legislative procedure. It is therefore even now the most authentic version, in a factual sense, of the legislative act in question. It therefore appears only reasonable to make it de lege ferenda also the unique authentic version in the legal sense.

C. Interim conclusion

There is an irresolvable tension between the EU's claim to equal (strong) multilingualism and the requirements of practice. This tension is reflected in the several requirements human rights law makes of language regimes. On the one hand, the law must be accessible to the citizen, and this requirement is best served if the law is authentic in the citizen's language. However, in the EU context, equal authenticity means that no version is authentic. On the other hand, in the EU context, equality before the law requires that all EU citizens be treated equally irrespective of their language (or the official language of the relevant State). The solution invariably chosen by the ECJ to date, and for good reasons, satisfies the second requirement but neglects the first. However, there will be cases in which this one-sided approach will not do. De lege ferenda the tension should be attenuated by abandoning the claim to the equal authenticity of all 24 language versions of EU law in favour of a unique authentic version and 23 official translations. While not perfect, this model would greatly facilitate citizens' access to the law while at the same time ensuring their equality before the law. The specific language chosen as the authentic language is immaterial for that purpose. However, should English be chosen as the unique working language of EU institutions there would be good reasons also to make the English version of an EU law the authentic version.

50 See text at and after n. 25.
51 See T. SCHILLING (n. 1), 1472-3.
52 This is the solution chosen in two Hong Kong cases; see Deborah CAO, Inter-lingual uncertainty in bilingual and multi-lingual law, 39 Journal of Pragmatics 69 (2007) 80. In contrast, it is rejected in Canada; see K. McLAREN (n. 46), sub 5.
III. CONCLUSION

For bilingual States, a strong case can be made that simultaneous drafting of laws in both languages may lead to laws whose meaning can be determined more exactly, by comparing the two linguistic versions i.e. by linguistic triangulation\(^{53}\), than would be possible in the case of monolingual laws\(^{54}\). Indeed, in both Canada and Switzerland, practice has accepted that this is the case and follows that model. But whatever advantages it may offer especially in terms of legal certainty in the bilingual context\(^{55}\), this model cannot usefully be transferred to a system with 24 equally authentic languages. In such a system, simultaneously drafting the law in all those languages is clearly impossible, and, after its adoption, the law expressed in those languages will be all but unknowable, as triangulation of 24 versions of a law is not feasible. The remedy on both counts is similar. The law should be drafted in one language only and then, in the absence of a *lingua franca*, be translated into the other languages. This is largely the case in the EU even today. After its adoption, The law should be authentic only in the language in which it was drafted. This is the *petitum, de lege ferenda*, of weak multilingualism which, as has been argued in this contribution, is in line with the requirements of human rights law.

\(^{53}\) On this concept see T. SCHILLING (n. 1), 1466.

\(^{54}\) See for Canada K. McLAREN (n. 46), *sub* 5 b), for Switzerland Gérard Caussignac, *Empirische Aspekte der zweisprachigen Redaktion von Rechtserlassen, in Rechtssprache Europas. Reflexion der Praxis von Sprache und Mehrsprachigkeit im supranationalen Recht* (F. MÜLLER/ I. BURR, eds.) (Duncker & Humblot Berlin, 2004), 157, 177. The fact the Switzerland is tri- or quatrolingual has apparently not entered the discussion.

\(^{55}\) R. SULLIVAN (n. 28) 1009 adds a cultural perspective: 'At home is a bilingual ... place where two cultures ... interact with one another in a shared space.' Again, this factor does not apply to a Union with 24 languages.