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The Role of Language in Legal Interpretation: The Case Law of the Court of Justice of the European Union

Abstract

This paper will analyse the methods by which the Court of Justice of the European Union interprets the law of the European Union in cases where there is a conflict between the different official language versions. In its case law, the Court chose not to give priority to any particular language but many times it follows an interpretation related to the purpose and context of the rule in question. However, the extent to which such an approach can serve legal certainty is open to question. The problem recurrently appears in cases before the Court and the accession of new Member States further increases the chance of divergence between the various language versions. In the new Member States joining the EU in 2004, an additional problem has been the late publication of secondary EU law in the languages of the accession countries.

1. Introduction

According to the Nobel Prize winner *Imre Kertész*, "[t]he law of our world is the error, the misunderstanding, the non-recognition of each other. How easily […] we choose a bad interpreter for ourselves and how easy is to get lost in the language that shows only a torso of our thoughts in the end."[1] Thus, the author has perfectly described the complicated situation in which an individual finds himself when he is forced to interpret the conduct and words of his environment. And, what is more, he also has to interpret laws.

The description of the interpretation process and the analysis of the methods of interpretation have been discussed for a long time by legal scholars. This is also true for the examination of the role of language in the interpretation process. Beyond the traditional analysis, the multilingual nature of the law of the European Union (the "EU") compels us to assess how the

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[1] Imre Kertész, 'Haza, otthon, ország' in Imre Kertész, *A gondolatnyi csend, amíg a kivégzőosztag újratölt – Monológok és dialógok* <http://dia.jadox.pim.hu/jetspeed/displayXhtml?offset=1&origOffset=-1&docId=380&secId=34131&qdcId=3&libraryId=-1&filter=Kert%C3%A9sz+Imre&limit=1000&pageSet=1> accessed 30 November 2010 [own rough translation].

Court of Justice of the European Union (the "Court") interprets conflicts between the various language versions of EU legal sources.

The analysis of the interpretation of the multilingual EU law by the Court is also justified by the fact that twelve new Member States have recently joined the EU, which makes divergences between the various language versions of EU legal sources more probable. Inconsistencies may be found in the primary and secondary EU legal sources, but these discrepancies also affect the national laws implementing them.

Difficulties stem from the peculiarities of the linguistic regime of the EU. The Treaty on European Union, the Treaty on the Functioning of the European Union (the "TFEU") and the Treaty establishing the European Atomic Energy Community are authentic in the official languages of the Member States.[2] At the present, pursuant to Regulation No 1 determining the languages to be used by the European Economic Community, the EU has 23 official languages and the Official Journal of the European Union is published in all these official languages.[3] According to Article 297 (1) TFEU, "[l]egislative acts shall be published in the Official Journal of the European Union." Article 297 (2) TFEU provides that regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the Official Journal of the European Union. Other directives, and decisions which specify to whom they are addressed shall be notified to those to whom they are addressed and shall take effect upon such notification. Regulation No 1 adds that regulations and other documents of general application shall be drafted in the official languages.

There is no doubt that the aim of this system has been the strengthening of legal certainty and ensuring the accessibility of EU law. It was thought that Union citizens might arrange their legal affairs in their own languages. However, this intention resulted in precisely the opposite. This is due to the Court's case law, which seems to require private persons to consult other language versions of a given legislative act as well, making the observance of the law more difficult.

The result of the interpretation process depends on the person of the interpreter. Thus, the question of interpretation of divergent language versions may not be examined exclusively from the point of view of the Court. Indeed, the Court has the last say in a case pending before it, but it is not the sole interpreter of EU law. Other EU institutions, national authorities and

[2] Treaty on European Union art 55 and Treaty establishing the European Atomic Energy Community art 225.

[3] Council Regulation (EEC) No 1 of 6 October 1958 determining the languages to be used by the European Economic Community [1958] OJ Spec Ed Series I Chapter 1952-1958 p. 59 arts 1 and 5.

companies also have to apply EU law. However, it is ultimately individuals who interpret EU law. Language competences set, undoubtedly, a limit to their interpretation and observance of EU law.

First, it will be argued that the Court often has recourse to more than one method of interpretation and applies these methods with a 'confirmative approach', where it is possible. Then, it will be also pointed out that the Court did not give clear guidance whether Union citizens may rely on the language version of their own Member States that leads to legal uncertainty. In addition, it will be demonstrated that the accession of the new Member States led to a new wave of cases due to the conflicts between the increased number of language versions. In relation to the accession of 2004, the late publication of the EU legal sources in the official languages of the new Member States violated the principle of legal certainty. The related question, as to whether private parties can successfully bring action for damages for errors committed in the drafting process or for the delayed publication of EU law, has not yet been answered definitively by the Court. Finally, although several propositions have been made in the legal literature to minimise uncertainties stemming from the multilingualism of EU law, such suggestions are not always feasible and it seems that the lack of political will also makes the settlement of problems more difficult.

These statements are based on the analysis of the Court's judgments, the relevant provisions of primary and secondary EU law and the views expressed in legal literature. This paper deals exclusively with the Court's case law. The judiciary practice of national courts in interpreting multilingual EU law will be not discussed here in detail. Before analysing how the Court interprets multilingual EU law, it is worth making some theoretical remarks on the relation between law and translation.

2. Translation issues in the multilingual regime of the EU

There is always a certain degree of inherent uncertainty in language. In the course of the translation process, this uncertainty is further increased. Often, the original text and its translations cannot be totally equivalent. We can say that, as the EU endeavours to approximate the laws of the Member States, so the EU institutions may aim only at the approximation of the contents of the language versions drafted in parallel. However, a perfect uniformity of the meaning of translations is probably not attainable. The original text, unavoidably, goes through a modification in the interpretation process. The content of the terms used in the original version, on the one hand, becomes richer but, on the other hand,

loses something from the original meaning. This change is described by *Ortega y Gasset* as the coming into existence of exuberances and deficiencies.[4] Translation and interpretation require an analogous approach. Both translation and interpretation may be carried out only by continuous reference to the original text.[5]

In the context of EU law, this is shaded by the equivalence of the authentic and official languages, by virtue of which (in theory) there is not a single source language and additional translations, but only language versions that deserve equal 'source' status.[6] Thus, the relation between the source and the translations gets lost. As such, the various language versions may not be assessed in the light of a prior text, but against all the other language versions which were theoretically drawn up simultaneously.[7] However, it is illusory to believe that these language versions would be the same. The various language versions are in fact translations. Such an approach, that makes various language versions equally authentic and official, only postpones the interpretation problems as the different language versions frequently do not correspond to each other.[8]

Translation supposes interpretation and vice versa.[9] In translating a text, that original text must be formed and interpreted by the translator in order to give back its original meaning in a new language. Similarly, the interpretation of a text requires the adaptation or 'translation' of that text to new facts and circumstances. As *White* points out, the activities of drafting and translating cannot be separated from each other, or from interpretation either. He finds that these are "the same practice in different forms: in all three a person is seeking to elaborate the meaning of one text by composing another…"[10] This is true, in particular, in the EU, where the drafting and translation by the EU of legal acts are in fact inseparable.

When interpreting a legal text, concurrent interpretations appear. White demonstrates that courts must make a choice between these conflicting interpretations or 'stories'.[11] Some

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[4] Cited by James Boyd White, *Justice as Translation – An Essay in Cultural and Legal Criticism* (The University of Chicago Press, Chicago and London 1994) 235. White's theoretical statements may be helpful when assessing the linguistic settings of EU law. Therefore, his book '*Justice and Translation - An Essay in Cultural and Legal Criticism'* will often be referred in this chapter, although he examined the relation of law and language in a different - more general - context.

[5] Ibid., p. 236. See also Vivian Grosswald Curran, 'Comparative Law and Language' in Mathias Reimann and Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (OUP, Oxford and New York 2006) 675, 681. "Just as comparison is an act of translation, so too translation is an act of comparison…"

[6] Klaudia Gibová, EU Translation as the Language of a Reunited Europe Reconsidered, *Language, Literature and Culture in a Changing Transatlantic World - International conference proceedings* <http://www.pulib.sk/elpub2/FF/Ferencik2/pdf_doc/19.pdf> accessed 30 November 2010, 145, 147.

[7] Ibid., p. 148.

[8] White, n. 4 above, p. 245.

[9] Ibid., p. 241.

[10] Ibid., p. 243.

[11] Ibid., p. 263.

interpretations will be entirely set aside by the court, while certain elements of the interpretations offered by the parties will be accepted by the court. In addition, the court may follow an interpretation other than that suggested by the parties to the proceedings. Thus, in general the final judicial decision leads to some gain and some loss at the same time.[12]

The equal language versions are interpreted by the Court, other Union institutions and private persons. However, the Court has the last say in deciding which interpretation may be accepted and which not. To better understand the basis of the Court's choice, the methods of interpretation applied by the Court must be placed under scrutiny.

3. The methods of interpretation

"Language disguises the thought" says *Wittgenstein*.[13] This is especially true if more than one language constitute that disguise from which thoughts must be revealed. This happens through interpretation. It is frequently noted that the methods of interpretation of the different language versions of EU legal sources used by the Court do not differ considerably from the interpretation methods applied also by national courts.[14] But, probably due to its supranational character, as *Varga* remarks, at the same time the Court tries to avoid the adoption of the traditional attitudes of national courts. English courts focus on the wording of rules; the German courts more frequently apply a logical method, while the teleological method is preferred by French courts.[15] The same author adds that it is worthy of note that the Court plays a balancing role among national judicial attitudes when it does not adhere to any of the above methods.[16]

The Court enjoys the monopoly of interpreting EU law, based on Article 267 of the TFEU.[17] Nevertheless, neither the primary sources nor the secondary sources of EU law regulate how the Court can use this interpretation monopoly. The Treaties, regulations or directives do not determine – with a general character – how the Court should interpret EU law. The exception is the already binding Charter of Fundamental Rights of the European Union.[18] Title VII of

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[12] White, n. 4 above, p. 241.
[13] Ludwig Wittgenstein, *Tractatus Logico Philosophicus* (1921) http://www.gutenberg.org/files/5740/5740-h/5740-h.htm accessed 30 November 2010, point 4.022.
[14] L. Neville Brown and Tom Kennedy, *The Court of Jutsice of the European Communities* (4th edn Sweet & Maxwell, London 1994) 301.
[15] Csaba Varga, *Jogrendszerek, jogi gondolkodásmódok az európai egységesülés perspektívájában – Magyar körkép Európai Uniós összefüggésben* (Szent István Társulat, Budapest 2009) 144.
[16] Ibid., p. 144.
[17] Giulio Itzcovich, 'The Interpretation of Community Law by the European Court of Justice' 2009 (10) *German Law Journal* 537, 545-546.
[18] Ibid., pp. 539-540.

the Charter lays down certain interpretational rules, but these provisions are, of course, restricted to the interpretation of the Charter and the rights enshrined therein.[19]

It is widely accepted that the Court does not follow a single method of interpretation, but it turns with a pluralistic approach towards the interpretation of diverging language versions.[20] The Court relies basically on literal, comparative, contextual, teleological and historical methods of interpretation.

(i) Literal interpretation

Most frequently, the Court starts its analysis with a literal interpretation. Under certain circumstances, the Court has refused to accept an interpretation going beyond the words of a given legal source as it would have been detrimental to those economic actors who could have benefited from a tax advantage.[21] It happens that the Court remains and solves the interpretation problem at the level of the wording of the given legal source. In *van der Vecht*, the Court stated that the uniform interpretation of Community law requires an interpretation in the light of the versions existing in the other languages and applied a purely literal interpretation without recourse to any other method of interpretation.[22]

As it will be demonstrated in point (iv), sometimes the Court simply skips the literal interpretation and turns immediately to the teleological method. As will be discussed later, it also happens that the Court uses the literal method only to confirm the result received through the application of the teleological approach.

It is often argued that, in its earlier case law, the Court put a greater emphasis on the wording of legislative acts, while later it deviated from this approach and turned rather to the purpose of legislation. This argument undoubtedly has some merits. However, it cannot be said that the literal interpretation entirely disappeared from the Court's case law. When the Court had to decide on the expulsion of third country nationals based on Regulation 562/2006 on the Schengen Borders Code, it seems that the Court applied the literal method.[23] Regulation 562/2006 provided for the expulsion of third country nationals if they were not able to fulfil

[19] Charter of Fundamental Rights of the European Union, OJ C 83 of 30.3.2010, arts 52-54., see also the Preamble of the Charter.

[20] Matthias Derlén, *Multilingual Interpretation of European Union Law* (Kluwer Law International, Alphen aan den Rijn 2009) 36-37.

[21] Joined cases C-283/94, C-291/94 and C-292/94 *Denkavit International BV, VITIC Amsterdam BV and Voormeer BV v Bundesamt für Finanzen* [1996] ECR I-5063, para. 27.

[22] Case 19/67 *Bestuur der Sociale Verzekeringsbank v J. H. van der Vecht* [1967] ECR 345, 353.

[23] Joined cases C-261/08 and C-348/08 *María Julia Zurita García (C-261/08) and Aurelio Choque Cabrera (C-348/08) v Delegado del Gobierno en la Región de Murcia* [2009] ECR I-10143.

the entry conditions set out in the Regulation. According to the Spanish version, in such cases expulsion was the obligation of the authorities, while all the other language versions considered expulsion as an option for Member States. Thus, the Spanish version remained in the minority and, upon examining the wording of the language versions, the Court found that expulsion is only an option. It was also added by the Court, however, that the wording in the given case was the clear reflection of the legislative intent.[24]

The same happened in the *Commission v Spain* case, where the European Commission (the "Commission") brought an infringement action against Spain.[25] The Commission argued that Spain failed to comply with Regulation 2092/91 when it considered only the word 'ecológico' and its abbreviation 'eco' as the term indicating the organic production method by which the labelled products were produced. The Commission alleged that Spain should have also included the terms 'biológico' and 'bio' in order to avoid confusion among consumers as to the origin of the products. The Court briefly examined the indications referring to the organic origin of the products in the national languages but it relied basically on the text of the Regulation in question. It, however, did not accept the purposive interpretation suggested by the Commission. The Commission argued that, in pursuance of the purpose of the Regulation, it would have been "inconceivable in the common market that the term 'bio' be protected in some Member States and not in others."[26] According to the Court, the Commission failed to meet its burden of proof since it did not show that the terms 'biológico' and 'bio' would have been so widely linked to the organic method that they generally implied to Spanish purchasers that the products concerned are organically produced. It also added that, in the absence of Community legislation, the Kingdom of Spain could not be required to reserve the terms in question for organically-produced products.

Interpretation based on the wording of a legal text is often considered to promote legal certainty in comparison to the other methods of interpretation, and especially to the teleological method. Nevertheless, in some cases the reliance on a literal interpretation does not eliminate the concerns related to legal certainty. First, in a multilingual legal environment the role of literal interpretation is necessarily restricted. It is seldom possible to reconcile the divergent language versions based solely on the wording of the given legal act. Secondly, when determining the exact content of a term, the Court sometimes relies on the everyday use

[24] Joined cases C-261/08 and C-348/08 *María Julia Zurita García (C-261/08) and Aurelio Choque Cabrera (C-348/08) v Delegado del Gobierno en la Región de Murcia* [2009] ECR I-10143., para. 56.
[25] Case C-135/03 *Commission of the European Communities v Kingdom of Spain* [2005] ECR I-6909. See Elina Paunio and Susanna Lindroos-Hovinheimo, 'Taking Language Seriously: An Analysis of Linguistic Reasoning and Its Implications in EU Law' 2010 (16) *European Law Journal* 395, 402-404.
[26] Case C-135/03 *Commission of the European Communities v Kingdom of Spain*, para. 16.

of the word and another time it has recourse to the professional (legal technical) meaning or an autonomous EU law meaning of certain terms. Many times, the terms used in EU law are autonomous concepts, meaning that the same word may have different meanings in EU law and national laws. Additionally, the everyday meaning and legal technical meaning of words varies in the different (legal) cultures of the Member States.[27] In *Endendijk*, the Court examined "the usual everyday accepted meaning of the word 'tether', when answering the question whether a Dutch stockbreeder violated of 91/629/EEC Directive laying down minimum standards for the protection of calves (as amended by Decision 97/182/EC).[28] In the given case, calves were tied individually by a rope. Within the meaning of the Dutch language version of the Directive, only tethers of a metallic nature were prohibited and, according to this interpretation, the Dutch stockbreeder could have avoided criminal liability. This interpretation was, however, found by the Court to be contrary to the ordinary or general terms contained in the other language versions and the discussed Directive.

In other cases, the Court gives an autonomous interpretation to a given term.[29] In the *Kingscrest Associates* case, when interpreting the term 'charitable' (which had significance in possible exemption from VAT) in the English version of the Sixth VAT Directive 77/388/EEC, the Court first stated that, in case of doubt, directives must be interpreted in the light of the versions existing in the other official languages.[30] Without examining the different language versions, the Court concluded that the word 'charitable' in the English version of the provision on VAT exemption of the Sixth Directive has its own independent meaning in Community law which must be interpreted taking into account of all the language versions of that Directive.

It is, however, not clear on what basis the Court decides to choose between the everyday, the professional or the autonomous meaning of a term. Therefore, it may be seen that the Court's literal interpretation involve some subjectivity that hinders predictability and legal certainty.[31]

(ii) Comparative interpretation

[27] Itzcovich, n. 17 above, pp. 550-551.
[28] Case C-187/07 *Criminal proceedings against Dirk Endendijk* [2008] ECR I-2115.
[29] See in particular also Case C-2/95 *Sparekassernes Datacenter (SDC) v Skatteministeriet* [1997] ECR I-3017 paras. 21-22.
[30] Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd v Commissioners of Customs & Excise* [2005] ECR I-4427.
[31] See Paunio and Lindroos-Hovinheimo, n. 25 above, pp. 395-404.

It can be said that any interpretation of divergent language versions of EU legal sources necessarily involves an element of comparative analysis. The Court starts its interpretation with the comparison of the different language versions in order to evaluate the possible results of interpretation suggested by the wording of the various language versions.[32] As *Kakouris* points out, from a legal-sociological point of view, comparative law pervades the deliberations of the Court, since judges contribute to the Court's decisions with their different legal backgrounds, legal culture and approaches. Kakouris phrases the Court's adjudications for these features as "a living comparative law in action."[33]

In addition, the Court frequently carries out a quantitative analysis using the comparative method. Thus, the Court establishes which possible interpretation is supported by the majority of language versions. However, the result of the quantitative comparison is not always automatically followed by the Court. It may also happen that the majority of the language versions are rejected and the Court accepts a language version in a minority instead. This was the case in *EMU Tabac* discussed below.[34]

When assessing the role of comparative method in the judiciary practice of the Court, we cannot overlook the interrelation between the Court's use of autonomous concepts and the room granted for the application of the comparative method. *Itzcovich* convincingly argues that the autonomy of EU law implies "autonomy from international law and domestic law." Thus, it may be inferred that the autonomy of EU law makes the reliance on the solutions available in national laws, and thus on comparative law, less significant.[35]

(iii) Contextual interpretation

In its judgments, the Court often refers to the context of a given rule together with the purpose thereof. Notwithstanding the mentioning of the context and purpose together, the Court in practice tends to focus only on the teleological interpretation without reference to the context of the given rule. The contextual interpretation seldom provided an independent basis for taking a decision. In the *Dürbeck* case, in order to determine the precise content of a term, the Court carried out a contextual analysis examining the relation between two regulations

[32] Paunio and Lindroos-Hovinheimo, n. 25 above, p. 400.
[33] C. N. Kakouris, 'Use of Comparative Method by the Court of Justice of the European Communities' 1994 (Spring) *Pace International Law Review* 267, 277.
[34] Case C-296/95 *The Queen v Commissioners of Customs and Excise, ex parte EMU Tabac and others* [1998] ECR I-1605.
[35] Itzcovich, n. 17 above, p. 553.

containing the term in question.[36] In other cases, contextual interpretation instead supports the result received through the application of other methods of interpretation.[37]

(iv) Teleological interpretation

In many cases, the Court applies the teleological method. This means that the Court attempts to define the purpose of the given provision. When applying teleological arguments, it can be said that the Court only follows the famous statement in *van Gend en Loos* that the EEC Treaty must be interpreted by taking the spirit, the general scheme and the wording of those provisions into account.[38] It is not mere coincidence that the spirit, implying the objective of the EEC Treaty, was mentioned in the first place in the van Gend en Loos decision.

The application of the teleological method may also be explained by the role conception of the Court, which involves the promotion of attaining the objectives laid down in the Treaties. The deliberations of the Court are influenced by this role conception and in this respect the Court's attitude is not necessarily neutral when it favours the teleological method as opposed to the literal one.[39]

Often, the Court first carries out a literal interpretation, and only if no conclusion may be drawn on that basis does it look for the purpose of the EU legislation. Interestingly, the teleological approach is also applied without prior literal or other interpretation. As the Court states that there is a divergence between the various language versions, it goes further and looks into the purpose and the scheme of the provision. This may be illustrated by the *W.N. v Staatssecretaris van Financiën* case.[40] Here, the question was when national tax authorities had to forward information to the tax authorities of another Member State upon their own initiative, pursuant to Directive 77/799/EEC. The Dutch version, together with several other language versions, laid down that the forwarding of information is obligatory only in the case of abnormal tax reduction, i.e., where the tax reduction took place contrary to the relevant provisions. In opposition to this, other versions referred to loss of tax. The Court simply acknowledged that there is a divergence between the various language versions and then stated that, in such an instance, the provision in question must be interpreted with reference to

[36] Case C-389/93 *Dürbeck v Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-1509, paras. 15-18.
[37] See, for example, Case C-420/98 *W.N. v Staatssecretaris van Financiën* [2000] ECR I-2847, para. 23.
[38] Case 26/62 NV *Algemene Transport- en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen* [1963] ECR English Special Edition p. 1. Point II-B. See Nial Fennelly, 'Legal Interpretation at the European Court of Justice' 1997 (20) *Fordham International Law Journal* 656, 664.
[39] Fennelly, n. 38 above, p. 672.
[40] *W.N. v Staatssecretaris van Financiën*.

the purpose and general scheme of the rules of which it forms a part. The Court found that the primary purpose of the Directive was not the elimination of tax evasion and avoidance but rather the correct assessment of taxes, and so it interpreted the Directive as requiring an unjustified saving in tax (as opposed to unlawful conduct) for information to be forwarded.

In the *Merck & Co. v Primecrown Ltd.* case, one of the questions referred to the Court was when the transitional period set out in the Act of Accession of the Kingdom of Spain and the Portuguese Republic expires, until the end of which the holder of a patent for a pharmaceutical product in another EU country could invoke the rights granted by that patent in order to prevent the import and marketing of pharmaceutical products put on the market in Spain and Portugal by himself or with his consent.[41] The transitional period started when the products in question became patentable in Spain on 7 October 1992 and in Portugal on 1 January 1992. Two possible interpretations arose. On the one hand, the transitional period could have expired exactly three years after pharmaceutical products became patentable, that is to say 6 October 1995 in the case of Spain and 31 December 1994 in the case of Portugal, or on the other hand it could have expired at the end of the third calendar year after the date on which the products became patentable, that is to say 31 December 1995 for both States. The question could not be decided on the basis of the wording of the different language versions. The Court applied the teleological interpretation and it stated that derogations from the free movement of goods must be interpreted strictly. The Court concluded that the transitional periods expire on the date which ensures the earliest application, in the field concerned, of the principle of free movement of goods in Spain and Portugal, i.e., on 6 October 1995 and 31 December 1994 respectively. The referring court also considered these dates applicable and it referred the case to the Court only taking into account that "were it not for the warnings often given that sometimes the Court may, when faced with a fresh question, do something unexpected, [he] would have found the matter *acte clair*."[42] Based on this remark, *Fennelly* points out that the Court reached the same conclusion as the referring court but its approach was different: the Court found that the divergence between the language versions could not be overlooked and applied the teleological method instead of the pure literal interpretation of the national court.[43]

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[41] Joined cases C-267/95 and C-268/95 *Merck & Co. Inc., Merck Sharp & Dohme Ltd and Merck Sharp & Dohme International Services BV v Primecrown Ltd, Ketan Himatlal Mehta, Bharat Himatlal Mehta and Necessity Supplies Ltd and Beecham Group plc v Europharm of Worthing Ltd* 1996 [ECR] I-6285.

[42] Opinion of AG Fenelly delivered on 6 June 1996 in *Merck & Co. Inc., Merck Sharp & Dohme Ltd and Merck Sharp & Dohme International Services BV v Primecrown Ltd, Ketan Himatlal Mehta, Bharat Himatlal Mehta and Necessity Supplies Ltd and Beecham Group plc v Europharm of Worthing Ltd*., para. 18.

[43] Fennelly, n. 38 above, pp. 664-665.

Some authors conclude that the Court's case law is built on the application of the teleological (and contextual) interpretation. Chronologically, it can be observed that the Court indeed turns more frequently to the purpose of the given rule. As it was discussed above, it cannot, however, be overlooked that even in the more recent case law there are judgments that focus rather on the literal interpretation.[44]

(v) Historical interpretation

Moreover, the quest for the purpose of legal provisions also implies a historical analysis that focuses on the intention of the EU legislator or the function of a given rule.[45] It may happen that in the lawmaking process Member States intentionally use vague terms in order to reach an agreement and to leave a greater room for divergent national interpretations. National governments cannot, however, normally refer to their previous negotiations. The expressions of intent on the part of Member States in the course of negotiations have no legal status if they are not actually expressed in the legislation. In accordance with the principle of legal certainty, those concerned by a legislative act must be able to rely on the actual content thereof.[46]
Another way of using the historical method is the reference to the recitals of legal sources. The legislative intent may be revealed in recitals and referrals to them are frequently accepted by the Court. Furthermore, the Commission, as the drafter of the legal text, may express its view on the interpretation of the provision in question but this is of course not binding on the Court.[47]

Two remarks must be made. First, the Court tends not to apply these methods in a mechanistic way in accordance with a step-like structure. *Arnull* finds that the Court first tries to interpret provisions in a way which is in conformity with all (or nearly all) of the language versions, and only if such an attempt fails does the Court apply a teleological and contextual approach.[48] According to *Van Calster*, the Court starts with a grammatical, semantic analysis and if this does not lead to a solution, the linguistic approach will be completed by a

[44] Case C-135/03 *Commission of the European Communities v Kingdom of Spain* [2005] ECR 6909. See point (i) above; Paunio and Lindroos-Hovinheimo, n. 25 above, pp. 402-404.
[45] Albertina Albors Llorens, 'The European Court of Justice, More Than a Teleological Court' in Alan Dashwood and Angela Ward (eds), *Cambridge Yearbook of European Legal Studies*, Vol. 2 (Hart, Oxford 2000) 373, 379.
[46] *Denkavit*, paras. 28-29.
[47] Trevor C. Hartley, 'Five forms of Uncertainty in European Community Law' 1996 (55) *CLJ* 265, 269.
[48] Anthony Arnull, *The European Union and its Court of Justice* (OUP, Oxford 1999) 522.

systematic and teleological one.[49] In *Regina v Pierre Bouchereau*, the Court first established that all language versions used different terms with the result that no legal consequences could be based on the terminology used. Only after this statement did the Court proceed, by examining the purpose and the general regulatory scheme.[50] Indeed, there are some judgments where the Court followed a similar step-like structure,[51] but such an approach is not applied consistently, as many times the Court simply applies the teleological method in itself. Secondly, the Court's approach is pragmatic. It appears that it applies a 'confirmative approach': it tries to buttress its final conclusion with several arguments, using more than one method where it is possible. Methods are not exclusive, they are complementary instead. Accordingly, in *Denkavit* the Court applied the literal method and that was also supported by the teleological interpretation of the Directive that had to be interpreted.[52] In the Denkavit case, the Court had to decide whether, in accordance with Directive 90/435/EEC, the German authorities could reject granting certain tax advantages on the grounds that, before granting the tax advantage, the parent company did not maintain a holding in its subsidiary throughout a given period of time. Through the literal interpretation of the various language versions of the Directive, the Court stated that it was not necessary that the required period of time should have come to an end at the time when the tax advantage is granted. This conclusion appeared to be confirmed by the purpose of the Directive, namely the promotion of cross-border cooperation between companies. And, conversely, in the *Henke* case the teleological approach was confirmed by the literal interpretation.[53] In addition, contextual analysis may also support other arguments. In *W.N. v Staatssecretaris van Financiën* the result of the teleological analysis was buttressed by the contextual approach.[54] In the *Abels* case, the Court combined the comparative analysis with the contextual-teleological method.[55] In this case, the basic question was whether the protective provisions contained in Directive 77/187/EC on the approximation of the laws of the Member States relating to the safeguarding of employees'

[49] Geert Van Calster, 'The EU's Tower of Babel – The Interpretation by the European Court of Justice of Equally Authentic Texts Drafted in more than one Official Language' in Ami Barav and Derrick Wyatt (eds), *Yearbook of European Law* (Clarendon Press, Oxford 1998) 363, 375.
[50] Case 30/77 *Regina v Pierre Bouchereau* [1977] ECR 1999, paras. 13-14.
[51] Case 100/84 *Commission v United Kingdom* [1985] ECR 1169, paras. 16-17; Case C-449/93 *Rockfon v Specialarbejderforbundet i Danmark, acting on behalf of Søren Nielsen and others* [1995] ECR I-4291, para. 28; Case C-72/95 *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, para. 28; Case C-643/06 *UAB Profisa v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos* [2007] ECR I-3239. paras. 13-14.
[52] *Denkavit*, paras. 25-26; See also *UAB Profisa*, paras. 13-17.
[53] Case C-298/94 *Annette Henke v Gemeinde Schierke and Verwaltungsgemeinschaft Brocken* [1996] ECR I-4989, para. 15.
[54] *W.N. v Staatssecretaris van Financiën*, paras. 21-23.
[55] Case 135/83 *Abels v Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie* [1985] ECR 469.

rights in the event of transfers of undertakings, businesses and parts of businesses are also applicable to transfers taking place due to the insolvency of the transferor. First, the Court carried out a formal linguistic comparison of the language versions and stated that the term 'transfer of undertakings' means, in many language versions, a transfer resulting from a contract, but according to the English and Danish versions it referred to a wider scope. As a next stage, the Court examined and compared the actual content of the insolvency laws of the Member States. The Court concluded that "the concept of contractual transfer is different in the insolvency laws of the various Member States" and it added that "[w]hilst certain Member States consider that in certain circumstances a sale effected in the context of liquidation proceedings is a normal contractual sale, even if judicial intervention is a preliminary requirement for conclusions such a contract, under other legal systems the sale is in certain circumstances regarded as taking place by virtue of a measure adopted by a public authority." Then, the Court turned to the context and purpose of the given rule, and it found that the Directive is not applicable to transfers of undertakings where the transferor has been adjudged insolvent, although the Member States are free to apply the principles of the Directive to such a transfer on their own initiative. The extension of the scope of the Directive might have led to the deterrence of potential transferees and the separate sale of the undertaking's assets instead of the rescue of the undertaking and jobs.

The confirmative approach may help the Court to avoid the appearance of exaggerated judicial activism, in particular when using the teleological interpretation. Teleological interpretation leaves a great room for subjective discretion, since finding the actual intention of the legislator often runs into difficulties.[56] In the majority of cases, neither the literal interpretation nor the teleological interpretation can eliminate in itself the subjective element of the decision making. Therefore, the persuasive force of a judgment may be greater if the result deduced by the teleological method can be reinforced by the literal or any other method of interpretation. In fact, sometimes it appears that the pragmatic legal argumentation simply takes the place of the principle of legal certainty. It may be suggested that the teleological argumentation is more transparent.[57] If the Court followed the teleological approach (supported eventually by other methods) consistently, this assumption might be true. However, as discussed later, based on the Court's case law it is not entirely clear under what circumstances the Court refers to the purpose of EU legislation and when the Court remains

[56] Petra Braselmann, 'Transnational Law and Multilingualism – Linguistic Observations Concerning Language Problems in Decisions of the European Court of Justice' in Volkmar Gessner, Armin Hoeland and Csaba Varga (eds), *European Legal Cultures* (Dartmouth, Aldershot 1996) 536.
[57] Paunio and Lindroos-Hovinheimo, n. 25 above, pp. 410-412.

instead at the level of the literal interpretation. Therefore, in the judiciary practice of the Court, the application of the purposive approach does not necessarily represent a more transparent argumentation.

4. Legal certainty

Although legal certainty is not defined anywhere in EU law,[58] based on the Court's case law it presupposes clear and precise provisions that permit economic actors to know unequivocally what their rights and obligations are and to take steps accordingly without incurring unnecessary costs and inconvenience.[59] Thus, legal certainty requires foreseeability in the situations and legal relationships governed by EU law.[60] In addition, legal certainty is described as a multi-faceted principle or a group of principles that encompasses other related principles, such as the principle of legitimate expectations and the principle of non-retroactivity.[61] In the legal literature, it is frequently stressed that the Court's case law on the interpretation of conflicting language versions implies derogation from the principle of legal certainty and, more specifically, the principle of legal expectations. There is no doubt that this statement is true. According to *Szabó* the indeterminacy of meaning is of crucial significance for the law: it directly affects our expectations of legal certainty.[62] The Court itself acknowledges that "[t]he elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty."[63]

This view is also reflected in the Court's judicial practice.[64] The Court's case law seems to require private persons to consider EU legal sources not in isolation, but in the light of the

[58] Juha Raitio, *The Principle of Legal Certainty in EC Law* (Springer, Dordrecht 2003) 125; James R. Maxeiner, 'Legal Certainty and Legal Methods: A European Alternative to American Legal Indeterminacy?' (2007) 15 *Tulane Journal of International & Comparative Law* 541, 549.

[59] Case C-1/02 *Privat-Molkerei Borgmann GmbH & Co. KG v Hauptzollamt Dortmund* [2004] ECR I-3219, para. 31; Case C-169/80 *Administration des douanes v Société anonyme Gondrand Frères and Société anonyme Garancini* [1996] ECR I-569, para. 17; John Temple Lang, 'Legal certainty and Legitimate Expectations as General Principles of Law' in Ulf Bernitz and Joakim Nergelius (eds), *General principles of European Community Law* (Kluwer Law International, The Hague 2000) 163, 165.

[60] Case C-63/93 *Duff and others v Minister for Agriculture and Food and Attorney General* [1996] ECR I-569, para. 20.

[61] Raitio, n. 58 above, p.125; Temple Lang, n. 59 above, p.164.

[62] Miklós Szabó, 'Szó szerint… A jog és a nyelv interferenciájáról' in Miklós Szabó and Csaba Varga (eds), *Jog és nyelv* (Osiris, Budapest, 2000) 1, 39.

[63] Case 80/76 *North Kerry Milk Products Ltd. v Minister for Agriculture and Fisheries* [1977] ECR 425, para. 11.

[64] In other cases not discussed here in detail the Court had to examine the effects of the cross-border service of documents, where the documents were sent to the addressee in a language he did not understand. The service of documents in the official language of that Member States where the addressee lives is, of course, significant from the aspect of legal certainty. See in particular, Case C-443/03 *Götz Leffler v Berlin Chemie AG* [2005] ECR I-9611 and in the Central and Eastern European countries joining the EU in 2004 see also Case C-233/08 *Milan Kyrian v Celní úřad Tábor* [2010] ECR nyr.

versions existing in the other languages. Consequently, in the event of a divergence between the language versions, the parties probably cannot successfully assert that they acted in accordance with the version drafted in the official language of their Member State. In the *van der Vecht* case, the Court stated that the need for a uniform interpretation of Community regulations prevents the text of a provision from being considered in isolation, but in the event of doubt it must be interpreted and applied in the light of the versions existing in the other languages.[65] It would follow that other language versions must be consulted only in case of doubt. The later judgments have a three-fold relation to the van der Vecht decision. First, in several judgments the Court explicitly follows van der Vecht. The van der Vecht judgment is referred to, for instance, in *Cricket St. Thomas*, where the question was whether pasteurised milk is considered as a processed milk product that is covered by the exclusive right to purchase of the Milk Marketing Board of England and Wales, based on Regulation 804/68 as amended by Regulation 1421/78.[66] Although the English version of the Regulation appeared to exclude from the Board's exclusive purchasing right any milk which has been processed, referring to van der Vecht, the Court found that doubts may arise concerning the interpretation, since the text of the English version was not terminologically consistent in the use of the terms "processing", "manufacture" and "conversion".[67] In opposition to this, the French and German versions made a clear distinction between the concept of the treatment of milk and processing operations. The Court concluded that Cricket St. Thomas, a milk producer, could not rely on the English version and leaving the other language versions out of consideration and therefore the exclusive right to purchase was also exercisable in relation to pasteurised milk. Secondly, it also happens that the Court remains totally silent as to the criterion of doubt. Thirdly, in other cases the Court refers to van der Vecht, but it seems to deviate from its earlier stand requiring the examination of a text in all official languages in all cases. Such an approach was followed in *Ferriere*, where the Court established that Community provisions must be interpreted and applied uniformly in the light of the versions existing in the other Community languages.[68] The background of the case was that the Italian version of Article 85 (1) EC Treaty (the equivalent of the current Article 101 TFEU) clearly required an agreement to have both an anti-competitive object and an anti-competitive effect to fall under the scope of that provision. This was contrary to all other language versions, which considered the two elements as alternatives. The Court went further, saying that its conclusion is unaffected by

[65] *Van der Vecht*, p. 354.
[66] Case 372/88 *Milk Marketing Board v Cricket St Thomas* [1990] ECR I-1345.
[67] Ibid., para. 19.
[68] Case C-219/95 P *Ferriere Nord v Commission* [1997] ECR I-4411, para. 15.

the fact that the Italian version of Article 85, considered on its own, is clear and unambiguous, since all the other language versions expressly render the condition set out in Article 85 (1) of the Treaty in the form of an alternative. In the later *EMU Tabac* case, the question was whether the excise duty on tobacco is payable by a company acting as agent for private individuals in the UK (the place of residence of the concerned private individuals) or in Luxembourg (the place of purchase), where the level of excise duty was lower. In accordance with Directive 92/12/EEC, if the products were acquired by private individuals for their own use and were transported, the excise duty was charged in the Member State in which the products were purchased. Only the Danish and Greek versions of the Directive provided clearly that, for excise duty to be payable in the country of purchase, transportation must be effected personally by the purchaser of the products subject to duty. The applicants who intended to pay the lower excise duty argued that two Member States represented in total only 5% of the population of the 12 Member States and their languages are not easily understood by the nationals of the other Member States. The Court rejected this argumentation and reiterated the requirement that EU legal sources should be interpreted and applied in the light of the versions existing in the other official languages. The Court also added that all the language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question.[69] This statement would seem conclusive but the judgment falls into the trap of multilingualism. As *Derlén* points out, although the English language version of the judgment does not contain any reference to the 'in case of doubt' criterion, the German and French versions do.[70] He also demonstrated that several later decisions refer back to the EMU Tabac case, while retaining the 'in case of doubt' requirement.[71]

Although the Court repeatedly held that the requirement of legal certainty must be observed all the more strictly when concerning rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them,[72] the principle of legal certainty and legitimate expectations may not be successfully relied upon very often.[73] Thus, in EMU Tabac the Court rejected the applicants' argumentation on legal certainty. The Court noted that there was no ambiguity at all in the interpretation of the relevant provision of Directive 92/12/EEC, therefore an allegation to

[69] *EMU Tabac*, para. 36.
[70] Derlén, n. 20 above, pp. 35-36.
[71] Ibid., p. 36.
[72] Case 325/85 *Ireland v Commission of the European Communities* [1987] ECR 5041, para. 18; Case C-30/89 *Commission v France* [1990] ECR I-691, para. 23.
[73] Temple Lang, n. 59 above, p. 170.

legal certainty could not be accepted.[74] This strict approach seems to be alleviated by the *Borgmann* case.[75] Borgmann, a dairy, intended to comply with a deadline for provision of information set by Regulation 536/93; it sent the information to the competent authority within the deadline, but it was received only after the date of the deadline. The Court stated that the majority of the language versions required only that the information must have been sent before the deadline. However, the Greek, Dutch and Finnish versions suggested that the information should have been received before the deadline. The Court noted that in the interpretation of secondary Community law, preference should as far as possible be given to the interpretation which renders the provision consistent with the principle of legal certainty. Nevertheless, as *Derlén* points out, this statement is to be understood in the light of the fact that the Court found that the interpretation favourable to the private entity was not contrary to the purpose of the Directive.[76] The favourable interpretation would not, however, be applicable if it would defeat the purpose of the legal source.

It may be argued, however, that the way the Court interprets EU law does not necessarily violate the concept of legal certainty. At the theoretical level, *Klimas* and *Vaiciukaite* argue that the Court's approach does not diminish legal certainty as the law always requires interpretation and it is indifferent to whether one is dealing with one text or several authentic translations of the same text.[77] In addition, all those concerned are or at least should be aware of the fact that the Court's case law expects everybody to take into account all language versions in advance and the requirement may also be considered as the enforcement of the *nemo ius ignorare censetur* principle in the multilingual regime of the EU.[78] From a practical perspective, in the *SNUPAT* case the Court held that the principle of legal certainty cannot be applied in an absolute manner.[79] As a corollary of this, in certain cases a restriction on legal certainty may be justified, for instance, based on other principles such as legality and eventually the uniform interpretation of law. If the Court allowed the reliance on divergent national versions, this would lead to the fragmentation of EU law along national borders. Moreover, to a certain extent, uncertainty may be balanced with the potential right of Union

[74] *EMU Tabac*, paras. 38-40.
[75] *Privat-Molkerei Borgmann GmbH & Co. KG v Hauptzollamt Dortmund,* see n. 59 above.
[76] Derlén, n. 20 above, p.55
[77] Tadas Klimas and Jurate Vaiciukaite, 'Interpretation of European Union Multilingual Law' Social Science Research Network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265518> accessed 30 November 2010., 1, 7.
[78] Van Calster, n. 49 above, p. 365.
[79] Joined cases 42 and 49/59 *Société nouvelle des usines de Pontlieue - Aciéries du Temple (S.N.U.P.A.T.) v High Authority of the European Coal and Steel Community* [1961] ECR p. 53., p. 87.

citizens to claim damages on the basis of the non-contractual liability of the EU in accordance with Article 340 TFEU, as will be discussed later.[80]

As *Singer* states, "[d]eterminacy is necessary to the ideology of the rule of law, for both theorists and judges. It is the only way judges can appear to apply the law rather than make it."[81] We can add that private persons also have an expectation of legal certainty, of course. However, it is not easy to strike a balance between the uniform interpretation and legal certainty, since it seems that they are mutually exclusive principles.[82] The Court did not so far give a final and definite answer whether it expects Union citizens to be aware of all language versions of EU legal sources in all cases or only in the case of doubt. The preference for legal certainty would require that Union citizens should consult legal texts in other languages only in case of doubt. In the opposite case, EU law would impose a practically impossible obligation on Union citizens who cannot read legal documents in all the languages of Member States. The survey by Eurobarometer shows that in 2006 56 % of Union citizens spoke at least one foreign language, meaning that 44% of Europeans speak only their own mother tongue.[83] Under such circumstances, it would be odd to expect private individuals to be familiar with all language versions of EU legal sources. The possibility of comparing all twenty-three language versions is in reality reserved for the Court and other EU institutions possessing the required financial and human resources.

If the 'in case of doubt' criterion was eventually accepted by the Court, the term 'doubt' itself would also need further clarification. Thus, a self-contradictory regulation would certainly raise noticeable doubts even for non-lawyers and might justify the restriction of legitimate expectations.[84]

5. Consequences of the accession of new Member States

Twelve new Member States joined the EU in the last six years. Due to the accessions, eleven more languages became official languages of the EU. The enlargement burdens further the

[80] Réka Somssich, 'Az európai közösségi jog fogalmainak nyelvi megjelenítése, különös tekintettel az európai magánjogra' (PhD thesis, Eötvös Lóránd University, 2007) 193; Bobek, Michal, 'The Binding Force of Babel, The Enforcement of EC Law Unpublished in the Languages of the New Member States' 2007 (6) EUI Working Paper Law <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=973589> accessed 30 November 2010, 1-27.

[81] Joseph William Singer, 'The Player and the Cards: Nihilism and Legal Theory' 1984 (94) *The Yale Law Journal* 1, 12.

[82] Varga, n. 15 above, p. 148.

[83] Special Eurobarometer Survey, Europeans and their Languages <http://ec.europa.eu/education/languages/pdf/doc631_en.pdf> accessed 30 November 2010, 1, 8.

[84] Theodor Schilling, 'Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of a Community Law' 2010 (16) *European Law Journal* 47, 61.

linguistic regime of the EU. This phenomenon has an impact on the judiciary practice of the Court as well as national courts. First, the chance of conflict between the various language versions increased and the Court also has to interpret EU law in relation to its transposition into the laws of the new Member States. Secondly, in the case of the accession of 2004 the secondary EU law was not available in the languages of the new Member States, which obviously contradicted the principle of legal certainty. Thirdly, not only the Court but also national courts have to interpret EU law. This task is not facilitated by the Court's case law as it did not provide any consistent guidance on the applicable methods of interpretation.

5.1 Conflict between the language versions

After the accession of the Central and Eastern European states, legislative acts must be drafted in 23 official languages. This undoubtedly increases the chance of the divergence between the various language versions. The parallel drafting of legislative acts in 23 languages gives a more challenging job for EU institutions. The Court is forced to resolve the difficulty of reconciling an increased number of official languages.

Even before the accession of the Central and Eastern European countries, these states played a role in the development of the Court's case law on geographical grounds. In the eighties, Polish and Community vessels trawled together in joint fishing operations in the Baltic Sea. The Polish trawlers took over the nets of the British trawlers and completed the trawl. The Polish vessels passed the nets to the British trawlers, which took the nets on board and brought the fish to the United Kingdom. This was the background of the *Commission v United Kingdom* case,[85] where the Court had to decide whether the fish caught were of Community or Polish origin. The relevance of the question was that in the former case no import duty would have been payable. Pursuant to Council Regulation 802/68 on the common definition of the concept of the origin of goods, the expression 'goods wholly obtained or produced in one country' meant, among others, products of sea-fishing taken from the sea by vessels registered or recorded in that country and flying its flag. Thus, the Court had to interpret the precise meaning of the expression 'taken from the sea'. The Commission argued that the phrase 'taken from the sea' referred to the act of catching fish and separating them from the sea, which was carried out by Polish vessels. Therefore, the Commission deemed the fish to be of Polish origin. According to the government of the United Kingdom, the fish were of

[85] Case 100/84 *Commission v United Kingdom* [1985] ECR 1169.

Community origin since they were taken on board UK vessels. The Court pointed out that 'a comparative examination of the various language versions of the regulation does not enable a conclusion to be reached' and it followed an interpretation in the light of the purpose and the context of the rules in question. The Court finally established that, in the context of participation in joint fishing operations, the origin of the fish depended on the flag flown by the ship carrying out the essential part of the operation of catching fish. Therefore, the payment of import duties was not avoidable in such a case.

After the accession wave of 2004 and 2007, the number of the official languages increased, which also increased the likelihood of conflict between the various language versions. The continuous enlargement of the EU has an interesting impact on the principle of the equality of languages. Language versions are theoretically equal. This is also true for the language versions of new Member States. The language versions of the states which joined later the EU are in reality translations. However, as *Ćapeta* remarks, this fact has been disregarded by the Court in its judgments.[86]

In the *UAB Profisa* case, the Lithuanian version of a Directive adopted in 1992 was in question. Here, the Court had to examine whether the chocolate products containing ethyl alcohol imported by Profisa may be exempted from excise duties.[87] Directive 92/83 stipulated that ethyl alcohol used directly for the production of foodstuffs shall be exempted from excise duties under certain circumstances. Only the Lithuanian version of the Directive exempted ethyl alcohol "intended to be used in chocolate products." Lithuanian authorities argued that the exemption does not apply to finished imported chocolate products. The Court inferred "[f]rom a comparative examination of the various linguistic versions […] of Directive 92/83" that, with the exception of the Lithuanian version, all other language versions laid down that Member States shall exempt the products at issue from excise duty if they are used in the production of foodstuffs, irrespective of the place of adding the ethyl alcohol. This conclusion was also confirmed by the objective of the Directive, which is to provide special tax treatment to alcohol as an intermediate product. Due to the later accession of Lithuania, the Lithuanian version was clearly a translation, but the Court did not attach any importance to this fact. Although, through the application of the teleological method, the wording of the Lithuanian version was not accepted by the Court, it declared that it does not give preference to any of

[86] Tamara Ćapeta, 'Multilingual Law and Judicial Interpretation in the EU' 2009 (5) *Croatian Yearbook of European Law & Policy*, 1, 6.
[87] Case C-643/06 *UAB Profisa.*

the language versions.[88] However, this is also true for any other judgment given by the Court on the interpretation of EU legal sources drafted in the language versions of the new Member States.

In another Lithuanian case, the *Sabatauskas* case, the Lithuanian Constitutional Court requested a preliminary ruling from the Court.[89] Based on Directive 2003/54/EC concerning the common rules for the internal market in electricity, Member States shall ensure access to the transmission and distribution systems to third parties. After its amendment, the Lithuanian Law on Electricity provided that new customers may connect to a distribution system. Connection to the transmission system was only exceptionally permitted when the connection to the distribution systems was refused by the distribution network operator because of technical or operating requirements. The Members of the Lithuanian Parliament, who initiated the proceedings, claimed that Lithuanian law fails to allow customers to choose between connecting to the transmission or distribution system. Thus, the Lithuanian MPs argued that the Lithuanian Law on Electricity is in conflict with Directive 2003/54/EC, which should prevail due to the primacy of EU law. The Court first stated that a distinction must be made between the concepts of 'access' and 'connection'. The term 'access' must be construed in the context of the electricity supply on non-discriminatory tariffs, while the term 'connection' relates to the physical connection to the network. However, this distinction was not reflected in all language versions. The Court laid down that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would have been considered to be incompatible with the requirement for uniform application of Community law. Then, the Court turned to the examination of the purpose of the provision, which is the open access to the electricity system. It stated that Directive 2003/54/EC imposed obligations on Member States only in respect of access to the system and not in respect of connection thereto. The Court concluded that customers have a right of access to the electricity system but Member States may decide that the connection is to be made on one or another type of system. Interestingly, in this judgment the Court referred explicitly only to the purpose and the scheme of regulation as the means of interpreting Community law, but it still carried out a literal interpretation by defining the terms 'access' and 'connection'.

[88] Ćapeta, n. 86 above, p. 6

[89] Case C-239/07 *Julius Sabatauskas and Others* [2008] ECR I-7523.

In the *Uzonyi* case, the Court had to decide on granting payments to Hungarian farmers.[90] The background of the case was that the Office for Agriculture and Rural Development refused Mr. Uzonyi's application for separate sugar payment as he did not deliver sugar beet produced by him directly or through a producer group to a manufacturer, but he delivered it through a so-called integrator, an intermediary and coordinator. The interpretation of the amended version of Regulation 1782/2003, which provided for the separate sugar payment to farmers, was in question. Six language versions of the Regulation, including Hungarian, left uncertainty as to whether objective and non-discriminatory criteria must be applied when granting the payment or when determining the so-called representative period. The other language versions supported the Court's finding that Regulation 1782/2003 requires the new Member States to apply objective and non-discriminatory criteria when granting a separate sugar payment. Interestingly, the Court did not pay much attention to the problem of conflict between the language versions. It only stated that the Regulation in question confirms the general prohibition of discrimination in the context of the common agricultural policy laid down in Article 34 (2) EC Treaty. Consequently, the Court found that it is not allowed to make a distinction between those delivering sugar beet directly or through a producer group and producers delivering indirectly through an intermediary concerning the separate sugar payment.

The *Kirin Amgen* case is a good illustration of the Court's confirmative approach.[91] When interpreting the term 'grant' used in Regulation 1768/92/EEC concerning the creation of a supplementary protection certificate for medicinal products, the Court stated that it is necessary to consider not only the wording of the provision but also the context in which it occurs and the objectives pursued by the rules of which it is part. Certain language versions of the regulation in question distinguished between the phrases 'obtaining' and 'granting' a marketing authorisation. These versions, however, were in a minority and the Court found that obtaining a marketing authorisation occurs at the time when it is granted. The Court's argumentation was further confirmed by the purpose of the legislation and the Court also applied the historical method, making reference to the recitals of the regulation.

In the recent *Polska Telefonia Cyfrowa* case, the president of the office for electronic communication contended that Polska Telefonia Cyfrowa, the Polish telecommunications provider, applied a direct charge that deterred subscribers from porting their numbers to other

[90] Case C-133/09 *József Uzonyi v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve* [2010] ECR nyr.
[91] Case C-66/09 *Kirin Amgen Inc. v Lietuvos Respublikos valstybinis patentų biuras* [2010] ECR nyr.

operators and fined the firm.[92] The legal question was whether the president of the office for electronic communication was required to take into account the number portability costs incurred by the operator under Directive 2002/22/EC, the Universal Service Directive, when assessing whether the direct charge to the subscriber acted as a disincentive. This was crucial as the president's assertion that the direct charge had a disincentive effect was based on the subjective results of a consumer survey and not the costs incurred by the operators. The Universal Service Directive provided that "the national regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability is cost-oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities." Interpreting this provision, Advocate General Bot noticed that French version of the Directive used the term '*redevance*' meaning a sum charged to a user, the amount of which depends on the cost of the service rendered, while the other language versions were less precise and referred to the concepts of costs, charges, tariffs, subscriptions, contributions or shares.[93] After this comparison, Advocate General Bot intended to solve the conflict through the examination of the purpose and the scheme of EU legislature.[94] According to the Advocate General, the authorities have a certain degree of discretion when assessing the disincentive effects, but this may not be unfettered. The cost-based analysis was considered as an objective method, and was found decisive in the matter, ensuring predictability and transparency for the service providers. Other demand-related factors, such as a consumer survey, might have been taken into account, but these were deemed to be not entirely reliable by the Advocate General.[95] The Court confirmed that the national regulatory authorities are obliged to take the costs incurred by the operators into account when assessing the disincentive effect of the direct charges. However, the amount of the direct charge may be less than the costs incurred by the service providers when, based on the information available to the national regulatory authorities, the direct charge calculated only on the basis of the costs may dissuade users from porting their number. It is also interesting that this conclusion was drawn by the Court so that it did not deal with the problem of the divergence between the various language versions at all.

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[92] Case C-99/09 *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej* [2010] ECR nyr.
[93] Opinion of Mr Advocate General Bot delivered on 15 April 2010 in Case C-99/09 *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej*, para. 48.
[94] Opinion of Mr Advocate General Bot delivered on 15 April 2010 in Case C-99/09 *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej,* para. 49.
[95] Opinion of Mr Advocate General Bot delivered on 15 April 2010 in Case C-99/09 *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej,* paras. 61-66.

The cases from the new Member States are important since they represent the most recent case law on the interpretation of the various language versions of EU law and they help to depict the Court's current approach. Nevertheless, no consistent structure of interpretation may be crystallised in these judgments. In this respect, there is no difference between the cases referred to the Court from the Central and Eastern Europe countries and the previous case law. What is clear is that the Court tends not to follow a step-like structure when interpreting the divergences between the various language versions. In practice, the teleological and contextual interpretations remain in the focus of the Court's decisions.

5.2 The late publication of legal sources in the languages of the new Member States

After the accession of the new Member States in 2004, secondary EU legislation was not published in the languages of the new Member States in the Official Journal for a relatively long time. This gave rise to fewer problems for directives that were implemented in national laws. However, for regulations and decisions, the absence of official publication can be considered as a special type of conflict between the language versions of the old Member States and the totally missing versions of the new Member States. Nationals of the new Member States did not have the opportunity to get to know EU law in their own languages. The Commission published a notice promising that a special edition of the Official Journal containing the legal sources in the languages of the new Member States would be published by the end of 2004. At the same time, the notice also stated that the electronic version of the texts was available on the EUR-Lex website and would in the meantime constitute publication in the Official Journal for the purposes of Article 58 of the Act of Accession. Nevertheless, it was quite clear that this notice did not have a legally binding force.[96] The situation was obviously contrary to the principle of legal certainty. As *Király* remarks, it is unfortunate that the application of Community law in the new Member States started with the violation of the principle of legal certainty.[97]

The regulatory framework of the 2004 enlargement was determined by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,

[96] *Commission Notice*, OJ 2004 L 169.
[97] Miklós Király, *Egység és sokféleség – Az Európai Unió jogának hatása a kultúrára* (Új Ember, Budapest 2007) 43.

and the adjustments to the Treaties on which the European Union is founded (the "Act of Accession").[98] Article 2 of the Act of Accession set out that "[f]rom the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act." In addition, Article 58 of the Act of Accession provided that "[t]he texts of the acts of the institutions, and of the European Central Bank, adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present eleven languages. They shall be published in the Official Journal of the European Union if the texts in the present languages were so published." Therefore, the application of Community law was made dependent of its publication in the official languages of the ten new Member States.

The problems stemming from the lack of publication in the Official Journal first appeared before national courts. The question was whether the directly applicable regulations binding on Member States may be enforced against individuals in the absence of publication. As is shown in the legal literature, the national courts in the Central and Eastern European countries gave different answers to these questions.[99] In Poland a regional administrative court annulled the decision of customs authorities taken on the basis of unpublished Community customs law. The court considered that the application of Community law in the absence of publication in the Polish language would have infringed the principle of legal certainty. As opposed to this approach, the Estonian Supreme Court found the non-publication of Community law to be irrelevant, since a company acting through a customs agent was expected to be able to learn of its rights and obligations following from Community legislation.[100]

Shortly after the accession, the Court gave a judgment where the question of non-publication had to be marginally addressed. In *Republic of Poland v Council of the European Union,* Poland asked for the annulment of a provision of Council Decision 2004/281/EC.[101] The

[98] Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236/33 23 September 2003.

[99] Bobek, n. 80 above, pp. 2-3; Krzysztof Lasiński-Sulecki and Morawski, Wojciech, 'Late Publication of EC Law in Languages of New Member States and its Effects: Obligations on Individuals Following the Court's Judgment in Skoma-Lux' 2008 (45) *CMLR* 705, 707-710; see in particular the Administrative Chamber of the Supreme Court of Estonia judgment of 15 April 2009 in administrative case no. 3-3-1-6-09 available at <http://www.juradmin.eu/docs/EE01/EE01000029.pdf> accessed 30 November 2010.

[100] Bobek, n. 80 above, pp. 2-3.

[101] Case C-273/04 *Republic of Poland v Council of the European Union* [2007] ECR I-8925.

Polish government claimed against the Decision that extended the mechanism providing for a gradual introduction of direct payments ('phasing-in' mechanism) in the new Member States to new direct payments. Under the earlier regulation, the phasing-in mechanism was restricted only to a narrower group of direct payments. It was stressed by the Polish government that this mechanism resulted in a considerable diminution in payments to Polish farmers. Article 23 of the Act of Accession lays down that the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may make the adaptations to the provisions of this Act relating to the Common Agricultural Policy which may prove necessary as a result of a modification in Community rules. However, the Polish government argued that the amendment of the system of the direct payments was not a necessary adaptation, but a substantive alteration of the conditions of accession. Before deciding on the merits of the case, the Court had to address the Council's submission that the action was inadmissible since it had been brought out of time. The basis of this plea was that, according to Article 230 EC Treaty, the proceedings "shall be instituted within two months of the publication of the measure." The Council claimed that the contested decision was published in the Official Journal on 30 March 2004 and the Republic of Poland lodged its application only on 28 June 2004, thus failing to observe the deadline. Nevertheless, the Polish government asserted that the edition of the Official Journal of 30 March 2004 was not available on that date in the official languages of the ten new Member States and that the Polish edition of the Official Journal was forwarded to the Polish public authorities only at a later date. Since publication in the official languages of the new Member States only took place well after 30 March 2004, the Polish government even inferred from this that the Council deliberately pre-dated the number of the Official Journal in question. Advocate General Poiares Maduro referred back to the information provided by the Director-General of the Office for Official Publications of the European Communities in reply to the question of the Court, confirming that the number of the Official Journal in question was available in all the languages of the new Member States on 30 March 2004. The Advocate General found that the reply could not be called into question in the absence of sound evidence.[102] Furthermore, it was pointed out that the Official Journal is deemed to be available on the date when the Official Journal is actually available in all the Community languages at the Publications Office of the European Union in Luxembourg. Taking the above into account, the Advocate General considered that the deadline for bringing procedure for the annulment of the Decision

[102] Opinion of Advocate General Poiares Maduro delivered on 21 June 2007 in case C-273/04 *Republic of Poland v Council of the European Union*, para. 19.

started on 30 March 2004. The Court did not discuss the problem of the pre-dating but it decided to rule on the merits of the case. The Court rejected the Polish claim and found that the amendment of the system of the direct payments was a necessary adaptation.

The Court more directly dealt with the problem of the consequences of the lack of publication in the *Skoma-Lux* case.[103] After the accession of the Czech Republic to the EU, the Czech customs authorities fined Skoma-Lux, a wine importing company, for the submission of incorrect information. The customs authorities claimed that the firm failed to comply with Commission Regulation 2454/93 laying down the provisions for the implementation of Council Regulation 2913/92 establishing the Community Customs Code. Skoma-Lux argued that Regulation 2454/93 may not be enforced against it as it was not published in the Czech language when the acts in dispute were committed. The Czech authorities, however, asserted that the company could get to know the relevant provisions as they were available in Czech on the internet and that a company active in the international trade for a long time may be expected to have information on the rules in question. The Court stated that a Community regulation cannot take legal effect unless it is published in the Official Journal and hence it cannot be enforced against individuals before they have the opportunity to make themselves acquainted with it by its publication in the Official Journal. The Court explained its conclusion through the principle of legal certainty and the principle of equal treatment. Under the latter, the opportunity for nationals of the new Member States to learn of their rights and obligations based on provisions published in the Official Journal, in the same way as earlier the citizens of the old Member States, had to be ensured. The Court also established that making the legislation available by electronic means, such as on the EUR-LEX website, is not equivalent to the publication of the Official Journal, which is the only authentic version of Community Law. Thus, the Court essentially recognised that the parallel existence of non-official versions would undermine the principle of legal certainty. This is true even if the persons concerned would have the opportunity to learn of the relevant legal provisions from sources other than their publication in the Official Journal and even if a company operating in the international trade could eventually use another language version of the same regulation.

An additional question was the validity of non-published EU law. The Court established that, in the absence of publication in the Official Journal, the legislative act is still valid and binding (also) on those Member States in the languages of which the publication did not take place. The lack of publication only delays the enforceability of the provisions in question

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

against private persons who could not acquaint themselves with them in an official manner. *Lasiński-Sulecki* and *Morawski* raised the interesting question whether the regulation was unenforceable only by the Czech Republic (and similarly in countries where the publication of the regulation did not take place) or also by the old Member States against the Czech citizens (and nationals of those Member States where publication was missing). Through a comparative analysis of the different language versions of the judgment, the authors show that the decision prevents the invocation of the provisions 'in' a certain Member State and not 'from' a Member State. This view is also confirmed by the wording of the question referred to the Court.[104]

After the Skoma-Lux judgment, national courts followed that decision.[105] Moreover, the Czech Supreme Administrative Court declared that courts have to take into account "*ex officio*" the lack of publication of EU legislation in Czech even if the complainant did not refer to the absence of publication in the judicial procedure.[106]

The constitutional law concerns stemming from the lack of publication must have been addressed by the Hungarian Constitutional Court. In 2004, the President of the Republic of Hungary requested the constitutional review of the Act on the measures related to the commercial surplus stocking of agricultural products adopted by the Hungarian Parliament.[107] This Act required market actors to identify the stocks owned by them on 1 May 2004 in a form and make a statement on stocks in the event of surplus stocks as determined by Community regulations. A charge was levied on holders of surplus stocks owned on 1 May 2004. In addition, in the event of the reduction of the stocks subject to the above charge after 1 January 2004, the Act presumed the speculative nature of the underlying contract and provided for the addition of the quantities sold to the basis of payment. The Act was based on EU regulations, but these were not published in the Official Journal of the European Union in Hungarian. The President argued that the provisions of the Act violate the requirements of legal certainty due to the retroactive effect of the legislation. The argument was based on the fact that the Act was intended to enter into force in the second half of May 2004 at the earliest,

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[104] Lasiński-Sulecki and Morawski, n. 99 above, pp. 721-722.

[105] See in particular Judgment of the Administrative Law Chamber of the Supreme Court of 13 October 2008 in administrative matter no 3-3-1-36-08, a summary is available at <http://www.juradmin.eu/docs/EE01/EE01000027.pdf> accessed 30 November 2010.

[106] The Supreme Administrative Court – Judgment no. 1 Afs 21/2008-98 of 18 June 2008 a summary is available at <http://www.juradmin.eu/en/jurisprudence/jurifast/jurifast_en.php?PHPSESSID=1b2utpdt7elitjj84fqvvtujp5&page=detail&id=505> accessed 30 November 2010.

[107] Request for a constitutional review submitted by the then-president, Ferenc Mádl on 13 April 2004 to the Constitutional Court of the Republic of Hungary.

although the Act imposed the obligation of stock identification, taking into account the stocks existing on 1 May 2004 and that the payment obligation linked to the quantities existing at this date came into existence before the entry into force of the Act. Additionally, the President of the Republic objected to the provisions that in fact prohibited the sale of stock after 1 January 2004. The President of the Republic pointed out that the stock accumulation after 1 January 2004 was not prohibited by Hungarian law and the regulations of the Commission would have been mandatory on market actors only in the event of the publication thereof in the Official Journal of the European Union.

In its decision, the Constitutional Court first stated that the regulations of the Community laid down the obligations of the new Member States and not those of their citizens.[108] The relevant regulations required the Member States to set up a system in order to ensure the observance of the regulations. The Hungarian Act on legislation laid down that laws cannot establish obligations for the time before their entry into force. The Constitutional Court identified the retrospective effect of the legislation concerning the date of 1 January 2004 that was to be taken into account in relation to the identification of the stocks. In relation to the identification of and report on stocks, the Constitutional Court rejected the allegation of its retrospective effect, as the publication of the act (if signed and published without the delay caused by the submission of the President of the Republic) could have preceded the application of the rules on 1 May 2004. Nevertheless, according to the Constitutional Court, the market actors did not have sufficient time to adapt to the new legislation; therefore the act violated the principle of legal certainty and was considered unconstitutional. The lack of publication was addressed here by the Constitutional Court. The Constitutional Court remarked that it is totally insignificant that four Hungarian ministries published a joint notice, with the Hungarian texts of the relevant Community regulations, of an informative character. The requirement of legal certainty supposes that the rights and obligations of citizens are determined by appropriately published and accessible laws, and that laws may not establish obligations for the time before their entry into force.

It must be added that the lack of publication may also have other implications. In a recent reference for a preliminary ruling, the question whether European Commission guidelines may be relied on against individuals if the guidelines were not published in the language of the Member State of their nationality was referred to the Court.[109] More precisely, the Court

[108] Decision No 17/2004 of the Constitutional Court of the Republic of Hungary of 25 May 2004 (378/A/2004).
[109] Case C-410/09, Reference for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 28 October 2009 - *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej*.

was asked whether Article 58 of the Act of Accession allows reliance to be placed against individuals in a Member State on the basis of European Commission guidelines related to Directive 2002/21/EC, of which the national regulatory authority should take the utmost account when carrying out an analysis of the relevant markets, when those guidelines had not been published in the Official Journal of the European Union in the language of that State and that language is an official language of the European Union. It is a usual practice that soft law documents adopted by the Commission, such as recommendations, guidelines or notices, are not always published in all the languages of the Member States. It may be argued, however, that these are not documents of general application within the meaning of Regulation No 1 of 1958. Similarly, Article 297 TFEU does not provide for the publication of such non-binding documents. This Article only concerns legislative acts in the first paragraph and regulations, directives and decisions which do not specify to whom they are addressed in the second paragraph as acts to be published in the Official Journal. Thus, these provisions suggest that it is not required to publish guidelines and other non-binding acts in all official languages.

However, it may be argued that the absence of publication of guidelines and notices is not in conformity with the requirements of predictability and legal certainty. These documents are not binding, but they have an important role in the interpretation of EU legislation. In the *Grimaldi* case the Court had to decide whether individuals may base a claim on a recommendation aiming at the provision of compensation for those suffering from occupational diseases.[110] In Grimaldi, the Court stated that "true recommendations, that is to say measures which, even as regards the persons to whom they are addressed, are not intended to produce binding effects. Consequently, they cannot create rights upon which individuals may rely before a national court."[111] Thus, the Court reaffirmed that recommendations do not have legally binding force. Non-binding documents cannot create legal obligations even if they are followed by the persons concerned.[112]

However, the Court added that "it must be stressed that the measures in question cannot therefore be regarded as having no legal effect. The national courts are bound to take recommendations into consideration in order to decide disputes submitted to them, in particular where they cast light on the interpretation of national measures adopted in order to

[110] Case C-322/88 *Salvatore Grimaldi v Fonds des maladies professionnelles* [1989] ECR 4407. See in paticular Silver Lefevre, 'Interpretative communications and the implementation of Community law at national level' 2004, 29 (6) *E.L.Rev*. 808-822; Anthony Arnull, 'The legal status of recommendations' 1990 *E.L.Rev*. 318-321.
[111] *Grimaldi*, para. 16.
[112] Case T-113/89 *Nederlandse Associatie van de Farmaceutische Industrie "Nefarma" and Bond van Groothandelaren in het Farmaceutische Bedrijf v Commission of the European Communities* [1990] ECR II-797, paras. 75-76.

implement them or where they are designed to supplement binding Community provisions."[113] Hence, in the Polish telecommunication case, in my view, it would raise legal certainty concerns if national authorities could rely on otherwise non-binding guidelines against individuals. Those guidelines can be used, however, as a tool for interpretation.
But a crucial corollary of the statement on the legal effects of recommendations in Grimaldi is that recommendations (and presumably other non-binding instruments) have an influence on the outcome of the case to be decided by the national courts and, indirectly, they affect the legal position of private parties. In my view, the situation that recommendations and other non-binding instruments are not published in all official languages, therefore, weakens the principle of legal certainty.

5.3 Interpretation of EU law by the national courts

Another important consequence of the enlargement is that national courts in the new Member States have to interpret EU law and judges should also take into account language versions other than the official language of their Member State. National courts have to resolve conflicts between the divergent language versions applying various interpretation methods. However, this may be difficult since the Court did not provide precise guidance for the interpretation of EU law. It must be noted, however, that in this respect their situation does not differ substantially from that of the courts of the 'old' Member States.

6. Action for damages in the context of the EU linguistic regime

If individuals suffer damage due to any breach of EU law, they may claim damages from the European Union or the Member States, depending on the circumstances of the case. In the context of the linguistic regime of the EU, the breach of EU law may consist of (a) an error in the drafting process leading to the divergence between the various language versions or (b) the late publication of the legislative acts. The liability for these acts will be considered below.

(a) Mistake in the drafting process leading to the divergence between the various language versions

[113] *Grimaldi*, para. 18.

The errors in the multilingual drafting process are, in fact, translation errors. Principally, the drafting of the legislative acts in the national languages is carried out by the institutions of the EU. Therefore, where private persons suffer damage due to an error in the drafting process, the liability of the EU arises. Normally, Member States are not in a position to be made liable for errors committed in the drafting process.

Article 340 TFEU states that "[i]n the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties." Article 268 TFEU adds that the Court shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340. Article 256 TFEU provides that the General Court has jurisdiction to hear and determine at first instance actions or proceedings referred to, among others, in Article 268.

The question is how can the abovementioned articles and the related case law be applied to mistakes made in the drafting process? On the basis of the above provisions, private persons suffering loss due to drafting errors in the multilingual lawmaking process may claim damages from the Union (e.g., if due to a drafting error, they are deprived of the exercise of a right granted in the other language versions). This action is independent, i.e., it does not suppose any prior proceedings or decision such as a preliminary ruling establishing or settling the conflict between the language versions.[114]

EU institutions may be held liable if it is proven that they committed a breach of law; there was a causal link between the act (or omission) and the loss; and the damage was in fact suffered by the claimant. In the event of proof of these elements, a claim alleging a drafting (translation) mistake could be successfully brought against the EU institutions. The proof of the causal link and the existence of the actual damage causes fewer problems. At a theoretical level, it is questionable, however, whether a breach of law may be evidenced. It could be argued that EU institutions appear not to breach any EU law when they produce legal texts in various languages even if there are inconsistencies between the various language versions. These inconsistencies may be settled by interpretation that follows from the uniform interpretation of EU law. As it was demonstrated in Chapter 4, the Court's case law seems to require that Union citizens also take into account other or even all language versions drafted in parallel when interpreting EU legislative acts. Under very exceptional circumstances, the liability of the European Union may be conceivable even without unlawfulness, but it is

[114] Robert Bray (ed.), Procedural Law of the European Union (London, Sweet & Maxwell, 2006) 370-371.

doubtful whether this would be also applicable to drafting mistakes.[115] The question of lawfulness/unlawfulness may thus influence the success of any action.

A related question is against whom the proceedings should be initiated. EU lawmaking is a multipolar process in which several EU institutions play a decisive role. In the case of the ordinary legislative procedure, legal acts are adopted for the proposal of the Commission by the European Parliament and the Council. If there is more than one potential defendant, it is suggested that an action for damages is to be brought against all institutions contributing to the damage.[116]

(b) Non-publication of legislative acts of the EU

As with the example of a mistake in the drafting process, another possible situation is where a legislative act confers some right to an individual but this cannot be exercised due to the lack of publication. As we have seen in Skoma-Lux, the Court stated that in the absence of publication, regulations imposing a payment obligation on individuals may not be enforced against private persons. In addition to the unenforceability, a second step could be a claim for damages on the part of individuals suffering damage.

Three interrelated questions arise in relation to damage actions for non-publication. First, who is liable for the lack of publication and the eventually unlawful collection of payments from private persons? The EU, the Member States or the two jointly? Secondly, against whom may such proceedings be initiated? Against the Member State that enforced a regulation even in the absence of publication, against an EU institution or both of them? Thirdly, where should the proceedings be initiated: before the Court in Luxembourg or before the national courts? The answer to these questions is made difficult by the fact that no case law exists that would have addressed these issues.

(i) In a situation where rights may not be exercised because of the lack of publication, the liability of the EU may be established and an action may be brought against the appropriate EU institutions before the Court. The EU institutions may be held liable where they breach a provision of EU law. As has been already cited, Article 297 (1) TFEU provides that „[l]egislative acts shall be published in the Official Journal of the European Union."

[115] Anthony Arnull and others, WYATT and DASHWOOD'S *European Union Law* (5th ed London, Sweet & Maxwell 2006) 492-494.
[116] Bray, n. 114 above, p. 374.

Moreover, Article 4 of Regulation 1/1958 provides that regulations and other documents of general application shall be drafted in the official languages. Article 5 adds that the Official Journal of the European Union shall be published in the official languages. In the absence of publication, the obligations imposed by Article 297 (1) TFEU and Regulation 1/1958 are not performed. [117] If, in such a scenario, the existence of the damage and the causal link are also established, the claim may be successful. Since in this case Member States would not play a role, only the liability of the EU may arise. The next question is against whom should be the action brought? The drafting process takes place within the EU in an inter-institutional context. Therefore, generally it is difficult to determine exactly which institution caused the delay with the drafting work. But finally, an inter-institutional office, the Publications Office of the European Union, is responsible for the publication of EU legislation.[118] In relation to a claim for the absence of publication, Decision 2009/496/EC helps to determine the potential defendant. Pursuant to Article 13 (2) Decision 2009/496/EC, "[a]ny legal action within the areas of competence of the Office shall be brought against the Commission." As the omission of the EU can be established only by the Court, the action should be brought before the Court.[119]

(ii) The other possible situation is where (as was the case in Skoma-Lux) national authorities collect payments from private persons based on legislative acts not published in the language of the given Member State. Publication is the obligation of a EU organ, the Publications Office of the European Union. As *Bobek* points out, however, after the accession Member States themselves contributed to the enforcement of legislative acts even though they were aware of the lack of publication. In such a scenario, it is debatable whether the liability is borne by the EU, the Member States or the two jointly.[120] The establishment of joint liability generally runs into difficulties. As *Oliver* emphasises, the case law on the joint liability of the Community and the Member States is in fact lacking and, from a procedural law aspect, "it appears to be impossible, in the absence of a contract, to bring an action against the

[117] As was demonstrated Article 58 of the Act of Accession provided similarly that "[t]he texts of the acts of the institutions, and of the European Central Bank, adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present eleven languages. They shall be published in the Official Journal of the European Union if the texts in the present languages were so published."

[118] According to subsection 1 of Article 1 (1) Decision 2009/496/EC, "[t]he task of the Publications Office of the European Union, [...] shall be to publish the publications of the institutions of the European Communities and the European Union under optimum conditions."

[119] Ernő Várnay and Mónika Papp, *Az Európai Unió joga* (Complex, Budapest 2006) 423-424.

[120] Bobek, n. 80 above p. 23-25.

Community and the Member State jointly in one forum."[121] Moreover, the allocation of liability is made more difficult by several concerns and any person intending to bring a damages action faces procedural barriers.

The Court's case law on damages actions shows that an action may be brought against the European Union only if the plaintiff has exhausted all available remedies before national courts. Therefore, it would appear that a plaintiff alleging the late publication of EU law should turn first to the national courts. Here, the problem arises that national courts cannot establish the omission of the EU institutions. Only the Court can do this.[122] Thus, in such cases national courts are not appropriate forums to enforce rights, but the Court has yet to deal with the proceedings.

Taking into account the above, it would follow that the first step would be a procedure aiming at the establishment of the omission before the Court and then only the next step could be the damages action before the appropriate forum (the Court or a national court). The Court has not had to deal with the issue of damages action due to the lack of publication so far and therefore it cannot be predicted how the Court would address the concerns discussed above.

7. The way forward?

The linguistic regime of the EU takes the equality of the languages of the Member States as a point of departure. This means in practice that the languages of the Member States are equally authentic. The implications of this system were set out above. In most cases, the Court's case law seems to require that Union citizens should consult all language versions, albeit this requirement is not viable in fact. This is clearly against legal certainty as individuals are unable to get to know their rights and obligations precisely. In the legal literature, several proposals were devised in order to solve language difficulties. Although this is a political rather than a legal question, such concerns are to be examined in order to outline the potential ways for the European linguistic regime.

Many authors suggest that the EU should have a single authentic language.[123] This view has several ramifications (e.g., a single authentic language for all legal sources or permanent rotation of authentic languages), but neither of them seems feasible. *Schilling* argues that there

[121] Peter Oliver, 'Joint Liability of the Community and the Member States' in Ton Heukels and Alison McDonnell (eds.), *The Action for Damages in Community Law* (Kluwer, The Hague 1997) 285, 285.
[122] Várnay and Papp, n. 119 above, pp. 423-424.
[123] Schilling, n. 84 above, pp. 64-66; See on a monolinguist regime: Jean-Pierre Puissochet, 'La question des langues dans la Communauté et L'Union Européennes' in Anne-Marie Le Pourhiet, *Langue(s) et Constitution(s)* (Economica, Paris 2004) 239, 246-248.

should be only one authentic language version of every EU legal source. Furthermore, he opines that legal sources could also be published in other languages regarded as official translations. In his view, such a system would be similar to that of international treaties.[124] However, this opinion seems less convincing. First, his suggestion overlooks the fact that the parties to international treaties usually stipulate more than one authentic language.[125] Secondly, even in the event of a single authentic language version, a term used in an EU legal source may have different meanings in different Member States. Such differences could not be eliminated even through the creation of a monolingual system. Thirdly, as *Van Calster* points out, a system working in an unknown, foreign language would probable undermine the trust of the majority of Union citizens.[126]

What is certain is that no political consensus was intended to be reached in this respect in the course of the negotiations leading to the Treaty of Lisbon.[127] This shows that there is a lack of political will to settle the decades-long struggle around the linguistic regime of the EU.

And what remains behind? The refinement of the Court's case law may be another potential solution. The current linguistic regulation together with the Court's vague case law do not encourage better lawmaking, therefore the Court could make it clear that it requires the consultation of language versions other than the official language of the Member State of the citizen concerned only in case of doubt. Such an approach would certainly promote legal certainty, albeit the actual use of the 'in case of doubt' criterion would require further clarification.

8. Conclusions

The EU respects democratic values, including the possibility that Union citizens will be able to use their own languages. This is because the EU recognises 23 official languages that are also considered as authentic. The language policy of the EU imposes huge burdens on the EU institutions and also causes flaws in the judicial practice of the Court.

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[124] Schilling, n. 84 above, pp. 65-66. See also Glézl who speaks similarly about one reference language and additional official translations. Andrej Glézl, 'Lost in Translation: EU Law and the Official Languages – Problem of the Authentic Text' <http://www.cels.law.cam.ac.uk/events/Glezl.pdf> accessed 30 November 2010, 1, 10.

[125] See, for example, the Charter of the United Nations is authentic in five languages. UN Charter art 111.

[126] Van Calster, n. 49 above, p. 391.

[127] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.

It is almost always emphasised that the Court follows a teleological interpretation, taking into account the purpose and the context of a given rule. Others argue that the Court's interpretation is based on a step-like structure. Although it is true that the Court sometimes follows a step-like argumentation, it seems that the Court's judicial practice is not as consistent as it is often thought to be. A long line of cases instead demonstrate that the Court tends to apply a 'confirmative approach'. The Court does not rely exclusively on a single method such as the teleological approach. It also applies literal, comparative, contextual and historical methods. The use of them is, however, not consistent and the choice between the methods appears sometimes arbitrary. The 'confirmative approach' implies that the final conclusion of the Court is frequently supported by more than one interpretation method even if one of them, for example the teleological approach, in itself would enable the Court to draw a conclusion. The Court wants to be sure that it can provide a convincing answer to any question referred to it. In my view, this is quite a pragmatic approach as the Court wishes to prevent the accusation of exaggerated judicial activism.

Union citizens have a legitimate expectation that they can get to know their rights and obligations based on clear and precise legal provisions. This legitimate expectation as a specific form of legal certainty is violated when the Court does not recognise a right to rely on one's own language version of a legislative act, where there is a conflict between the language versions. Legal certainty is, however, not an absolute principle. We can agree with *Temple Lang* who pointed out that "[l]egal certainty is less a legal principle than a policy and an objective or ideal which influence the Court of Justice."[128] It appears that the Court gives priority to the uniform interpretation of EU law over the principle of legal certainty. The methodological problems and the issue of legal certainty arise also in relation to the Central and Eastern European countries joining the EU in 2004. Furthermore, the Court essentially established the violation of the principle of legal certainty in the case of the late publication of legal sources. Nevertheless, the question of the outcome of potential damages actions in the linguistic context is still unanswered by the Court.

EU law must be applied by national courts too. The Court in Luxembourg gave little guidance to them on the interpretation of EU law. The choice of the interpretation method and the level of protection of the legitimate expectations of private individuals vary case-by-case. Moreover, as in the case of Union citizens, it is also unrealistic to expect national courts to be familiar with all language versions of a legal source while settling disputes.

[128] Temple Lang, n. 59 above, p.183.

Finally, the role of the Court is also underlined by the fact that the EU legislator is not willing to alter the current linguistic regime. Therefore, the Court should clarify its position on how it interprets EU law. It could further make clear, eventually through the use of the 'in case of doubt' criterion, when Union citizens can invoke their own language version and when they have to consult versions written in foreign languages. The refinement of case law would the increase the accessibility of EU law and, more generally, legal certainty.

9. Bibliography

Books, articles

Arnull, Anthony, 'The legal status of recommendations' 1990 *E.L.Rev*. 318-321.

Arnull, Anthony, *The European Union and its Court of Justice* (OUP, Oxford 1999).

Arnull, Anthony and others, WYATT and DASHWOOD'S *European Union Law* (5th ed London, Sweet & Maxwell 2006).

Bobek, Michal, 'The Binding Force of Babel, The Enforcement of EC Law Unpublished in the Languages of the New Member States' 2007 (6) *EUI Working Paper Law* <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=973589> accessed 30 November 2010, 1-27.

Braselmann, Petra, 'Transnational Law and Multilingualism – Linguistic Observations Concerning Language Problems in Decisions of the European Court of Justice' in Volkmar Gessner, Armin Hoeland and Csaba Varga (eds), *European Legal Cultures* (Dartmouth, Aldershot 1996) 532-538.

Bray, Robert (ed.), *Procedural Law of the European Union* (Sweet & Maxwell, London 2006).

Brown, L. Neville and Kennedy, Tom, *The Court of Jutsice of the European Communities* (4th edn Sweet & Maxwell, London 1994).

Ćapeta, Tamara, 'Multilingual Law and Judicial Interpretation in the EU' 2009 (5) *Croatian Yearbook of European Law & Policy*, 1-18.

Curran, Vivian Grosswald 'Comparative Law and Language' in Mathias Reimann and Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (OUP, Oxford and New York 2006) 675-707.

Derlén, Matthias, *Multilingual Interpretation of European Union Law* (Kluwer Law International, Alphen aan den Rijn 2009).

Fennelly, Nial, 'Legal Interpretation at the European Court of Justice' 1997 (20) *Fordham International Law Journal* 656-679.

Gibová, Klaudia. EU Translation as the Language of a Reunited Europe Reconsidered, *Language, Literature and Culture in a Changing Transatlantic World - International conference proceedings* <http://www.pulib.sk/elpub2/FF/Ferencik2/pdf_doc/19.pdf> accessed 30 November 2010, 145-153.

Glézl, Andrej, 'Lost in Translation: EU Law and the Official Languages – Problem of the Authentic Text' <http://www.cels.law.cam.ac.uk/events/Glezl.pdf> accessed 30 November 2010, 1-11.

Hartley, Trevor C., 'Five forms of Uncertainty in European Community Law' 1996 (55) *CLJ*, 265-288.

Itzcovich, Giulio, 'The Interpretation of Community Law by the European Court of Justice' 2009 (10) *German Law Journal* 537-559.

Kakouris, C. N., 'Use of Comparative Method by the Court of Justice of the European Communities' 1994 (Spring) *Pace International Law Review* 267-283.

Kertész Imre, 'Haza, otthon, ország' in Imre Kertész, *A gondolatnyi csend, amíg a kivégzőosztag újratölt – Monológok és dialógok* <http://dia.jadox.pim.hu/jetspeed/displayXhtml?offset=1&origOffset=-1&docId=380&secId=34131&qdcId=3&libraryId=-1&filter=Kert%C3%A9sz+Imre&limit=1000&pageSet=1> accessed 30 November 2010.

Király Miklós, *Egység és sokféleség – Az Európai Unió jogának hatása a kultúrára* (Új Ember, Budapest 2007).

Klimas, Tadas and Vaiciukaite, Jurate, 'Interpretation of European Union Multilingual Law' Social Science Research Network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265518> accessed 30 November 2010, 1-9.

Lasiński-Sulecki, Krzysztof and Morawski, Wojciech, 'Late Publication of EC Law in Languages of New Member States and its Effects: Obligations on Individuals Following the Court's Judgment in Skoma-Lux' 2008 (45) *CMLR* 705-725.

Lefevre, Silver 'Interpretative communications and the implementation of Community law at national level' 2004, 29 (6) *E.L.Rev*. 808-822.

Llorens, Albertina Albors, 'The European Court of Justice, More Than a Teleological Court' in Alan Dashwood and Angela Ward (eds), *Cambridge Yearbook of European Legal Studies*, Vol. 2 (Hart, Oxford 2000) 373-398.

Maxeiner, James R., 'Legal Certainty and Legal Methods: A European Alternative to American Legal Indeterminacy?' (2007) 15 *Tulane Journal of International & Comparative Law* 541-606.

Oliver, Peter, 'Joint Liability of the Community and the Member States' in Ton Heukels and Alison McDonnell (eds.), *The Action for Damages in Community Law* (Kluwer, The Hague 1997) 285-309.

Paunio, Elina and Lindroos-Hovinheimo, Susanna, 'Taking Language Seriously: An Analysis of Linguistic Reasoning and Its Implications in EU Law' 2010 (16) *European Law Journal* 395-416.

Puissochet, Jean-Pierre, 'La question des langues dans la Communauté et L'Union Européennes' in Anne-Marie Le Pourhiet (ed.), *Langue(s) et Constitution(s)* (Economica, Paris 2004) 239-248.

Raitio, Juha, *The Principle of Legal Certainty in EC Law* (Springer, Dordrecht 2003).

Schilling, Theodor, ‘Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of a Community Law’ 2010 (16) *European Law Journal* 47-66.

Singer, Joseph William, ‘The Player and the Cards: Nihilism and Legal Theory’ 1984 (94) *The Yale Law Journal* 1-70.

Somssich Réka, ‘Az európai közösségi jog fogalmainak nyelvi megjelenítése, különös tekintettel az európai magánjogra’ (PhD thesis, Eötvös Lóránd University, 2007).

Szabó Miklós, ’Szó szerint… A jog és a nyelv interferenciájáról’ in Miklós Szabó and Csaba Varga (eds), *Jog és nyelv* (Osiris, Budapest, 2000) 1–55.

Temple Lang, John, ‘Legal certainty and Legitimate Expectations as General Principles of Law’ in Ulf Bernitz and Joakim Nergelius (eds), *General principles of European Community Law* (Kluwer Law International, The Hague 2000) 163-184.

Van Calster, Geert, ‘The EU’s Tower of Babel – The Interpretation by the European Court of Justice of Equally Authentic Texts Drafted in more than one Official Language’ in Ami Barav and Derrick Wyatt (eds), *Yearbook of European Law* (Clarendon Press, Oxford 1998), 363-393.

Varga Csaba, *Jogrendszerek, jogi gondolkodásmódok az európai egységesülés perspektívájában – Magyar körkép Európai Uniós összefüggésben* (Szent István Társulat, Budapest 2009).

Várnay, Ernő and Papp, Mónika, *Az Európai Unió joga* (Complex, Budapest 2006).

White, James Boyd, *Justice as Translation – An Essay in Cultural and Legal Criticism* (The University of Chicago Press, Chicago and London 1994).

Wittgenstein, Ludwig, *Tractatus Logico Philosophicus* (1921) □http://www.gutenberg.org/files/5740/5740-h/5740-h.htm□ accessed 30 November 2010.

Cases from the practice of the Court of Justice of the European Union

Joined cases 42 and 49/59 *Société nouvelle des usines de Pontlieue - Aciéries du Temple (S.N.U.P.A.T.) v High Authority of the European Coal and Steel Community* [1961] ECR p. 53.

Case 26/62 NV *Algemene Transport- en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen* [1963] ECR English Special Edition p. 1.

Case 19/67 *Bestuur der Sociale Verzekeringsbank v J. H. van der Vecht* [1967] ECR 345.

Case 80/76 *North Kerry Milk Products Ltd. v Minister for Agriculture and Fisheries* [1977] ECR 425.

Case 30/77 *Regina v Pierre Bouchereau* [1977] ECR 1999.

Case C-169/80 *Administration des douanes v Société anonyme Gondrand Frères and Société anonyme Garancini* [1996] ECR I-569.

Case 135/83 *Abels v Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie* [1985] ECR 469.

Case 100/84 *Commission v United Kingdom* [1985] ECR 1169.

Case 325/85 *Ireland v Commission of the European Communities* [1987] ECR 5041.

Case C-322/88 *Salvatore Grimaldi v Fonds des maladies professionnelles* [1989] ECR 4407.

Case 372/88 *Milk Marketing Board v Cricket St Thomas* [1990] ECR I-1345.

Case C-30/89 *Commission v France* [1990] ECR I-691.

Case T-113/89 *Nederlandse Associatie van de Farmaceutische Industrie "Nefarma" and Bond van Groothandelaren in het Farmaceutische Bedrijf v Commission of the European Communities* [1990] ECR II-797.

Case C-63/93 *Duff and others v Minister for Agriculture and Food and Attorney General* [1996] ECR I-569.

Case C-389/93 *Dürbeck v Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-1509.

Case C-449/93 *Rockfon v Specialarbejderforbundet i Danmark, acting on behalf of Søren Nielsen and others* [1995] ECR I-4291.

Joined cases C-283/94, C-291/94 and C-292/94 *Denkavit International BV, VITIC Amsterdam BV and Voormeer BV v Bundesamt für Finanzen* [1996] ECR I-5063.

Case C-298/94 *Annette Henke v Gemeinde Schierke and Verwaltungsgemeinschaft Brocken* [1996] ECR I-4989.

Case C-2/95 *Sparekassernes Datacenter (SDC) v Skatteministeriet* [1997] ECR I-3017.

Case C-72/95 Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland [1996] ECR I-5403.

Case C-219/95 P *Ferriere Nord v Commission* [1997] ECR I-4411.

Joined cases C-267/95 and C-268/95 *Merck & Co. Inc., Merck Sharp & Dohme Ltd and Merck Sharp & Dohme International Services BV v Primecrown Ltd, Ketan Himatlal Mehta, Bharat Himatlal Mehta and Necessity Supplies Ltd and Beecham Group plc v Europharm of Worthing Ltd* 1996 [ECR] I-6285.

Case C-296/95 *The Queen v Commissioners of Customs and Excise, ex parte EMU Tabac and others* [1998] ECR I-1605.

Case C-420/98 *W.N. v Staatssecretaris van Financiën* [2000] ECR I-2847.

Case C-1/02 *Privat-Molkerei Borgmann GmbH & Co. KG v Hauptzollamt Dortmund* [2004] ECR I-3219.

Case C-135/03 *Commission v Spain* [2005] ECR 6909.

Case C-443/03 *Götz Leffler v Berlin Chemie AG* [2005] ECR I-9611.

Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd v Commissioners of Customs & Excise* [2005] ECR I-4427.

Case C-273/04 *Republic of Poland v Council of the European Union* [2007] ECR I-8925.

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

Case C-643/06 *UAB Profisa v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos* [2007] ECR I-3239.

Case C-187/07 *Criminal proceedings against Dirk Endendijk* [2008] ECR I-2115.

Case C-239/07 *Julius Sabatauskas and Others* [2008] ECR I-7523.

Case C-233/08 *Milan Kyrian v Celní úřad Tábor* [2010] ECR nyr.

Joined cases C-261/08 and C-348/08 *María Julia Zurita García (C-261/08) and Aurelio Choque Cabrera (C-348/08) v Delegado del Gobierno en la Región de Murcia* [2009] ECR I-10143.

Case C-66/09 *Kirin Amgen Inc. v Lietuvos Respublikos valstybinis patentų biuras* [2010] ECR nyr.

Case C-99/09 *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej* [2010] ECR nyr.

Case C-133/09 *József Uzonyi v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve* [2010] ECR nyr.

Case C-410/09, Reference for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 28 October 2009 - *Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej*.

Legal sources of the European Union and other related EU documents

Treaty on European Union.

Treaty on the Functioning of the European Union.

Treaty establishing the European Atomic Energy Community.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.

Treaty establishing the European Community.

Charter of Fundamental Rights of the European Union, OJ C 83 of 30.3.2010.

Act of Accession of Spain and the Portugese Republic OJ L 302 of 15 November 1985.

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, 23 September 2003, OJ L 236 p. 33-49.

Council Regulation (EEC) No 1 of 6 October 1958 determining the languages to be used by the European Economic Community [1958] OJ Spec Ed Series I Chapter 1952-1958 p. 59.

Council Regulation (EEC) 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods [1968] OJ L 148, p. 1-5.

Council Regulation (EEC) 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1968] OJ L 148, p. 13-23.

Council Regulation (EEC) 1421/78 of 20 June 1978 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products [1978] OJ L 171 p. 12-13.

Council Regulation (EEC) 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs [1991] OJ L 198, pp. 1-15.

Council Regulation (EEC) 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products [1992] OJ L 182, p. 1-5.

Commission Regulation (EEC) 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products [1993] OJ L 57, p. 12-17.

Commission Regulation (EEC) 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1993] OJ L 253, p. 1-766.

Council Regulation (EC) 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [2003] OJ L 270, p. 1-69.

European Parliament and Council Regulation (EC) 562/2006 of the of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) [2006] OJ L 105, p. 1-32.

Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses [1977] OJ L 61, p. 26-28.

Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment [1977] OJ L 145, p. 1-40.

Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation [1977] OJ L 336, p. 15-20.

Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States [1990] OJ L 225, p. 6-9.

Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves [1991] OJ L 340, p. 28-32.

Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products [1992] OJ L 76, p. 1-13.

Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages [1992] OJ L 316, p. 21-27.

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) OJ L 108, p. 33-50.

European Parliament and Council Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) [2002] OJ L 108, p. 51-77.

Council Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC [2003] OJ L 176, p. 37-56.

Commission Decision 97/182/EC of 24 February 1997 amending the Annex to Directive 91/629/EEC laying down minimum standards for the protection of calves OJ L 76, p. 30-31.

Council Decision 2004/281/EC of 22 March 2004 adapting the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, following the reform of the common agricultural policy [2004] OJ L 93, p. 1-17.

2009/496/EC, Euratom Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions of 26 June 2009 on the organisation and operation of the Publications Office of the European Union [2009] OJ L 168, p. 41-47.

Commission Notice [2004] OJ 2004 L 169.

Special Eurobarometer Survey, Europeans and their Languages <http://ec.europa.eu/education/languages/pdf/doc631_en.pdf> accessed 30 November 2010.