

Aspects of Interpretation of Multilingual *Acquis Communautaire*

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Introduction

EU legislation is enacted in twenty different, equally authentic, language versions²⁹⁴. As from the 1st of May 2004 Maltese has become an official language of the EU this meaning, *inter alia*, that the *acquis communautaire* is available in an authentic Maltese version which can be used by Maltese courts in their application and interpretation of EU law. In this paper we shall look at the implications of the Union's multilingual regime as arising from the interpretations of the European Court of Justice (ECJ) and how this affects national jurisdictions in their interpretation and application of EU and national law.

Background

Article 290 of the EC Treaty gives the Council the power to determine, by unanimity, the rules governing the languages of the institutions of the Community except for the ECJ which can define its own language regime. Council Regulation Nr 1 of 1958²⁹⁵ establishes 20²⁹⁶ official and working languages.

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²⁹⁴ The principle of 'equal authenticity' derives from Article 314 of the EC Treaty reading: 'This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic...'. With each accession, this Article has been amended to include the new official languages.

²⁹⁵ EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community
Community
OJ B 017, 06/10/1958 p. 385.

²⁹⁶ Initially 4 (Dutch, French, German and Italian), then increased to 6 in 1973 (English and Danish), 7 in 1981 (Greek), 9 in 1986 (Spanish and Portuguese), 11 in 1995 (Finnish and Swedish) and 20 in 2004 (Hungarian, Slovak, Slovene, Polish, Lithuanian, Estonian, Latvian, Czech and Maltese).

The distinction between official and working languages has never been formally defined, however it is generally accepted that 'official' languages are those which institutions are bound to use in their relations with their subjects of law while 'working' languages are those used internally by the various institutions in their daily work. In practice, each institution limits the use of working languages within its own structure to one or more languages while still remaining bound to communicate with the external world in all the official languages.²⁹⁷

EU legislation normally starts from a proposal drafted in one language version (normally one of the working languages of the Commission - English, French and German) which is then translated into all the other official languages. At this stage the translator has the task of faithfully reproducing the word and the spirit of the draft in his/her own mother tongue. Amendments to the draft at any stage are followed simultaneously in all the languages and all the legal instruments to be published pass through the scrutiny of a group of legal linguistic experts for each language²⁹⁸. Therefore, texts which started as translations are worked upon and become original drafts which are then presented for signature to the relevant legislative authorities in all the language versions simultaneously.

In view of the above, it could be said that the translators and linguists producing the various language versions are actually entrusted with a role at par with that of a drafter of legislation even though they are not assumed to be as conversant with the intention of the legislator as a drafter is meant to be²⁹⁹.

²⁹⁷ For an overview of language regimes within European institutions see S. Moratinos Johnston 'Multilingualism and EU Enlargement' *Terminologie et Traduction* (2000) n3. 5.

²⁹⁸ J. Morgan. 'Multilingual Legal Drafting in the EEC and the Work of Jurist/Linguists' *Multilingua* (1982) 109.

²⁹⁹ While a proposal for legislation in the 'original' language is prepared from a specialised Directorate General, the translation of that proposal is entrusted to a central translation unit catering for the translation needs of all the policy areas of the same institution.

Problems in Practice

The authentic nature of each official language version means that the word of law in a given version gives rise to defined rights and obligations. These rights and obligations as arising in one language version must in principle be the same as the rights and obligations as arising from each and every one of the other 19 official languages. But this contemplated uniformity must first overcome multiple difficulties at the pre-legislative stage of document production as well as at the post-legislative stage of interpretation.

At the pre-legislative stage we find problems related with the fact that legal terminology differs from one legal tradition to another³⁰⁰ and from one jurisdiction to another³⁰¹. A degree of discrepancy can also be the result of different, sometimes totally unrelated, linguistic families (e.g.: Finnish with French, Hungarian with English), different languages can only with difficulty render one uniform meaning to sometimes alien or supra-national legal concepts³⁰². Another problematic element lies in the nature of EU law itself, this being often the subject of hard-fought negotiations and multiple compromises, thereby producing Treaties, Regulations and Directives which are packed with unclear, yet very sensitive, expressions of political commitment (or the lack of it)³⁰³. These characteristics combined with the fact that translators are

³⁰⁰ Notably between common law and civil law systems.

³⁰¹ e.g. In the choice of legal terminology for the Dutch and French versions of Community law, legal/linguistic experts for these languages are sometimes presented with choices arising from the fact that different national jurisdictions (France and the Walloon region of Belgium for French and the Netherlands and the Flemish region of Belgium for Dutch) appertaining to the same system of civil law, assign different meanings to the same terminology or develop different terminology for the same legal concept.

³⁰² see R. Sacco 'L'interprète et la règle de droit européenne' *L'interprétation des textes juridiques rédigés dans plus d'une langue* (L'Harmattan Torino 2002) 233,234.

³⁰³ An illustrative example is found in Article 39 of the EC Treaty - 'Freedom of movement for workers shall be secured within the Community' The word 'workers' is not defined and after forty years the Court is still deciding on how long a person can remain within a territory of a member state looking for work still falling within the 'worker' definition e.g. Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* [1991] ECR I-745.

human and consequently are predisposed to error and inaccuracy³⁰⁴ means that in practice a literal and comparative interpretation of the same Community legislation in various language versions reveals various discrepancies of varying degrees.

At the post-legislative stage of interpretation, the problematic characteristics of the pre-legislative stage are accentuated with the fact that it is the different national courts that are entrusted with the day to day application of the *acquis* in the national territories. National courts coming from different legal traditions and schools of thought, possibly capable of referring to three or four official languages, but certainly more predisposed to rely on their national official language, cannot be said to sum up a homogeneous group capable of ensuring a uniform interpretation and application of the *acquis communautaire*.

Faced with these hurdles capable of jeopardising the uniform interpretation and application of Community law, the ECJ established a number of inter-related guiding principles of interpretation which shed light on the nature of the Community's multilingual regime and impose a number of implied duties on national courts.

Interpretation in the Light of all Language Versions

Given that each version is authentic, one could expect to rely solely on the interpretation of a single language version, however this reasoning falls short of considering the full importance of the qualification of 'equally' authentic, a qualification which, apart from establishing a principle of equality of languages is also intended to convey the meaning that each language version, even though having the full authority of the word of law, must be read in the full awareness that it forms part of a multilingual regime with 19 other language versions having the same force of law and with a

³⁰⁴ Morgan (n 6) 110 'Occasional differences in the different versions of the Treaty are not normally the result of different meanings put on the Treaty by negotiators for different countries, but rather accidents due to the haste in which the various translations were prepared'.

full awareness of the fact that there is only one interpretation for the 20 language versions. Advocate General Lagrange put this very concisely in **De Geus**; *'As you know, all four languages are authentic, which means that no single one of them is authentic'*³⁰⁵. This view is confirmed in **Stauder** where the Court pointed out that the necessity of uniform interpretation and application *'makes it impossible to consider one version of the text in isolation but requires that it be interpreted ... in the light in particular of the versions in all four languages'*³⁰⁶.

This view was restated in **Koschniske**³⁰⁷ where the validity of withholding payments from pension rights on the ground that the persons' husband was receiving income in another member state was challenged on the grounds that the Dutch version of Regulation 574/72 referred to 'diens echtgenote' (his wife), therefore excluding the case of a female, whose 'husband' is receiving income, from the application of the withholding payment provision. It was perfectly clear that all other language versions referred to 'spouse', the Dutch court making the reference asked the ECJ whether 'diens echtgenote' has to be interpreted as including spouses of both sexes. The ECJ replied that:

'the need for a uniform interpretation of Community regulations makes it impossible for that passage to be considered in isolation and requires that it should be interpreted and applied in the light of the versions existing in the other official languages' with the result that 'his wife' was to include 'her husband.'

The same rule is applied in **Ferriere** where an undertaking argued that the Commission was obliged to demonstrate both the object as well as the effect on competition of an agreement breaching Article 81 TEC as the Italian version held 'per oggetto e per effetto' instead of 'object or effect'.

³⁰⁵ Case 13/62 De Geus v Bosch [1962] ECR I-45.

³⁰⁶ Case 29-69 Erich Stauder v City of Ulm - Sozialamt [1969] ECR I-419 par 3.

³⁰⁷ Case 9/79 Marianne Wörsdorfer, née Koschniske, v Raad van Arbeid [1979] ECR I-2717. see also Case C-236/97 Skatteministeriet v Aktieselskabet Forsikringselskabet Codan [1998] ECR I-8679.

The Court dismissed the undertaking's argument holding that: 'That version cannot prevail by itself against all the other language versions, which, by using the term "or", clearly show that the condition in question is not cumulative but alternative'³⁰⁸.

The General Scheme Prevails over literal Interpretation

In **North Kerry**³⁰⁹, an undertaking applying for Community aid was to receive different amounts of Community aid depending on the interpretation of the relevant time, when the aid became due, in a Directive. The English version held '*the time when a transaction is carried out shall be considered as being the date... in which the amount involved in the transaction becomes due and payable*'³¹⁰ while the French version held '*est considérée comme moment de réalisation de l'opération, la date à laquelle intervient le fait générateur de la créance*'³¹¹. This led to a dispute between the undertaking relying on the English version (becomes due and payable) and therefore holding that the relevant date was that of the marketing of the relevant product and the Commission relying on the French and other language versions, holding that the relevant date was that of manufacture (*le fait generateur*). The Commission pointed out that the phrase as expressed in the English version was contrary to all the other language versions and that therefore the English version had to be interpreted in line with the other language versions.

The Court, confronted with this obvious discrepancy between various language versions, and with an implied majority rule by the Commission held:

³⁰⁸ Case T-143/89 Ferriere Nord SpA v Commission [1995] ECR II-00917 par 31.

³⁰⁹ Case 80-76 North Kerry Milk Products Ltd. v Minister for Agriculture and Fisheries [1977] ECR 425.

³¹⁰ Regulation No 1134/68 of the Council of 30 July 1968 laying down rules for the implementation of regulation no 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy OJ L 188 1 English Special Edition 1968 (II) 396.

³¹¹ *ibid.*

*the elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty, inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words. Consequently, it is preferable to explore the possibilities of solving the points at issue without giving preference to any one of the texts involved*³¹²

The Court suggests that for the sake of legal certainty, one should not adopt a semantic interpretation approach to the different language versions because this will inevitably reveal discrepancies and therefore differing interpretations. The Court's solution to this is exploring the possibilities of solving the discrepancies without recurring to any literal interpretation but deriving the interpretation from the wider context. Although this approach is to be regarded as the most practical and reasonable one in the circumstances, one still has difficulties in understanding how the requirement of legal certainty is safeguarded through the proposed solution. This latter concern is emphasised when one considers that certain legal systems do not look favourably at teleological methods of interpretation as proposed by the ECJ but attach great importance to the literal interpretation of the word of law³¹³. The question arises as to how can legal certainty be said to be safeguarded if the literal interpretation of the written word of law, in legal systems where this is the rule, can no longer be regarded as definitive testimony of the legal position.

The ECJ did finally find out an acceptable solution to the language discrepancy in the case at issue. By referring to other provisions of the same Regulation and to the practice of the Commission in granting the aid the Court pointed out that aid was paid out only after marketing and that without marketing it was also difficult or impossible to quantify the relevant amount. Therefore, the relevant date was that of marketing. The Court still manages to indirectly

³¹² North Kerry (n 17) par 11.

³¹³ R. Bellis 'Implementation of EU Legislation - An independent study for the Foreign & Commonwealth office' (Nov 2003) 20. <<http://www.fco.gov.uk/Files/kfile/EUBellis.pdf>> (June 2004).

safeguard the interpretation as arising from the French and other language versions by holding that, in view of the interpretation of the other provisions of the same Regulation '*le fait générateur de la créance*' could not but refer to the marketing of the relevant product considering that in practice no aid was paid until this took place. Apparent linguistic discrepancies were therefore reconciled by reference to the broader contextual interpretation rather than through a majority rule or the choice of a superior language version.

The position in **North Kerry** is consolidated in **Bouchereau**³¹⁴. In this case an English Court made a preliminary reference to the ECJ asking whether the term 'measure' in Directive no 64/221/EEC includes a recommendation by a judicial authority. The UK government pointed out that the use of 'measures' in both Articles 2 and 3 of the English version shows that it is intended to have the same meaning in each case and that it emerges from the first recital in the preamble to the Directive that when used in Article 2 the expression only refers to '*provisions laid down by law, regulation or administrative action*', to the exclusion of actions of the judiciary. The Court observed that with the exception of Italian, all the other language versions used two different words in the two articles '*with the result that no legal consequences can be based on the terminology used*'. The Court went further to clarify the position expressed in **North Kerry** by holding that '*the different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part*'. This reaffirms the view in **North Kerry** that, in the case of diverging language versions, there is no scope for a literal comparative interpretation - the existence of a single diverging language version gives the court a free hand at teleological interpretation.

³¹⁴ Case 30-77 Régina v Pierre Bouchereau [1977] ECR 1999.

Referring to the general scheme, and that is to the scope of the Directive of protecting nationals from any usurpation of their right of free movement not based on a good enough reason to justify an exception from this basic principle, the ECJ held that this protection is intended to cover all the stages of decision making, including that of the judiciary, and therefore the term 'measure' was to be interpreted in a wide sense to cover the decision at issue. The broad scope of a Community measure has been used on several other occasions as an indication of the general scheme favouring the least restrictive interpretation possible³¹⁵.

The importance of the reference to the 'purpose and general scheme' as the only solution to linguistic discrepancies was reiterated in **Commission v UK and Northern Ireland**³¹⁶. In this case the Commission and the UK Government made an extensive semantic analysis of the different language versions, the UK was holding that 'taken out from the sea' and '*extraits de la mer*' as mentioned in Article 4 of Regulation No 802/68 referred to the action by which fish in a net are landed on a fishing vessel, the Commission disagreed holding that the term referred to the action by which fish are entrapped even though remaining in the sea. The interpretation of the term was crucial because it decided whether fish netted by Polish vessels but landed by British vessels would qualify as goods from a third country or goods from a member state with the evident discrepancy of treatment. Apart from a semantic analysis, the parties, evidently aware of the precedent of **North Kerry and Bouchereau** cases, proposed their arguments basing themselves on the 'general scheme'. In particular the UK argued that from an overview of Community legislation related with the issue it was clear that the term was to be interpreted as the action by which the fish are landed on board the vessel. The Commissions' arguments were less extensive and were centred on the argument that the base Regulation did not even consider the

³¹⁵ e.g. Case C-72/95 *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, Case C-236/97 *Skatteministeriet v Aktieselskabet Forsikringselskabet Codan* [1998] ECR I-8679.

³¹⁶ Case 100/84 *Commission v United Kingdom of Great Britain and Northern Ireland* [1985] ECR 1169.

case at issue with two vessels with different flags involved in two distinct phases of the fishing operation.

The ECJ pointed out that the phrase at issue can be interpreted differently in each of the Greek, French, Italian and Dutch versions of the Regulation. It referred to the **Bouchereau** case and the 'general scheme' and continued by favouring the Commissions' arguments based on the lack of foresight or scope of the base Regulation. The Court's sequence of thought does not clearly justify the conclusion that the location and entrapment of fish in a net was to be considered as the '*essential part of the operation of catching fish*'³¹⁷ and that therefore the vessel which did this part was to condition the origin of the goods themselves. In my view this case shows the difficulty of the Court in giving clear indications of the 'general scheme' by concrete references to other Community legislation or principles and highlights therefore the risk that the 'general scheme' method of interpretation as established in **North Kerry and Bouchereau** serves as a tool to interpret legal text against its literal meaning without giving a clearly visible and appropriate justification. The reliance on the 'general scheme' presents also difficulties when it comes to the day-to-day application of *acquis communautaire* in national courts who cannot reasonably be expected to reach the same conclusions in the interpretation of the general scheme therefore prejudicing the legal certainty mentioned as a reason for departing from a literal interpretation in **North Kerry**.

The above shows that in the case of conflict between two or more authentic legal texts the Court will go beyond the apparent meaning of any language version to analyse the legislators' intention. The existence of 20 equally authentic language versions of the same legal instrument must not mislead us into believing that we have 20 potentially different legal interpretations but rather one interpretation conveyed in 20 different languages whose interaction is only meant to contribute to a better understanding of the

³¹⁷ *ibid* par 21.

legislators intention in the particular legal instrument. This does not exclude however that the semantic interpretation of one or more conflicting language version may possibly offer a challenge, through a reference to the interpretation of the legislators' intent by the Court, of the apparently clear word of the law in one or more language versions.

The emphasis on the refusal of a comparative semantic analysis in **North Kerry, Bouchereau and Commission v UK and Northern Ireland** contrasts with the simple comparison of language versions, excluding the odd one out, undertaken in **Koschniske** and **Ferriere**, however, it is submitted that this contrast arises only due to the evidently erroneous nature of the Dutch and Italian versions in the last mentioned cases where the Court was more predisposed to treat the diverging version as evidently subject to a translation error³¹⁸. There seems to be no indicator of the distinction of cases of translation errors from those where the differing language versions are all faithful indicators of the general scheme, however, one may point out the overt contradiction to the principle of non-discrimination on grounds of sex in **Koschniske** and the long established line of case-law to the contrary of the undertakings' claim in **Ferriere** as indicative of when a diverging language is more likely to be interpreted as a translation error.

No Majority Rule, No Superior Language Version

In **North Kerry**, the Commission proposed a majority rule to solve apparent conflicts of interpretation of different language versions of the same Community provision. It argued that given that the phrase as expressed in the English version was contrary to all the other language versions, the English version had to be interpreted in line with the other language versions. The Court dismissed this approach as this would mean that “*one or more of the texts*

³¹⁸ see 'Correction ex officio' in G. 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' Yearbook of European Law 1997, n. 17, 385.

*involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words*³¹⁹.

The approach of the Court in this case shows considerable caution and respect to the authentic nature of each language version. With this in mind, the court does not dare to proclaim a linguistic version as prevailing over another in any particular case but must always find a more indirect reason for favouring one interpretation for another giving the impression that it is actually favouring none of the language versions.

In **EMU Tabac**³²⁰ the Court analysed whether purchase through an agent fell within Council Directive 92/12/EEC. The applicants held that agents were covered by the Directive and that although the Greek and Danish versions of the Community law in question preclude the involvement of an agent,

*“Those versions are not consistent with the other versions [and so] they are to be disregarded, on the ground that, at the time when the Directive was adopted, those 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.”*³²¹

The Court dismissed these arguments outright by reference to established case law holding that Community law has to be interpreted in the light of all language versions and 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”*³²².

³¹⁹ North Kerry (n 17) par 11.

³²⁰ Case C-296/95 The Queen v Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd, John Cunningham [1998] ECR I-1605.

³²¹ *ibid* par 34.

³²² *ibid* par 36.

The position above subsists even where the particular legislation in question was conceived to cater for mainly one member state. In **Cricket St. Thomas**³²³, in the interpretation of the English version in conflict with a number of other Community languages, the Court held that even though the particular Community legislation in question was drawn up in order to take account of the special situation of the Milk Marketing Boards in the United Kingdom. *“The English version ...cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in this regard”*³²⁴

This principle translates itself into a duty on national authorities dealing with the implementation of Community rules to consult various language versions of a particular Community law. In **Konservenfabrik**³²⁵ the German version of a Regulation referred to **Suesskirschen** (sweet cherries) instead of **Sauerkirschen** (sour cherries). The Regulation's application to sour cherries before the entry into force of a corrigendum was contested. The ECJ held: *“since that version mentioned the CN codes applicable to sour cherries, that ambiguity could perfectly well have been resolved by reference to the other language versions of the regulation.”*³²⁶. In this case the Commission had warned the national authorities beforehand of the evident mistake in the Regulation in question, thereby taking away any good faith which the national authorities could have claimed in their reliance on the misleading German version. It is however not clear whether, in a case where a subject of law shows that it was relying in all good faith on a misleading language version, the court would be ready to give that party some advantage based on legitimate expectations, benefit of the doubt or any other ground.

³²³ Case C-372/88 Milk Marketing Board of England and Wales v Cricket St. Thomas Estate [1990] ECR I-0134.

³²⁴ *ibid* par 18.

³²⁵ Case C-64/95 Konservenfabrik Lubella Friedrich Bükler GmbH & Co. KG v Hauptzollamt Cottbus [1996] ECR I-05105.

³²⁶ *ibid* par 18.

Notions of National law should not interfere with the Interpretation of EU law - Community law has a 'Community meaning'

In **Rockfon**³²⁷ the ECJ was confronted with important questions as to whether provisions of national law of a member state can be used to aid the interpretation of a phrase in Community law. The case concerned Council Directive 75/129/EEC relating to collective redundancies. The Directive imposed specific obligations on 'establishments' but did not define the term. The Danish law transposing the Directive provided for the possibility of ministerial orders on the definition of 'establishment'. Such an order was passed and specified that an establishment "*shall be a unit ...which has a management which can independently affect large-scale dismissals*"³²⁸. **Rockfon** was being sued for dismissing 24 employees and held that it did not fall under the definition of the term 'establishment' as it did not have a management which can 'independently effect large-scale dismissals'. The Danish district court analysed whether **Rockfon** was able to 'independently effect large-scale dismissals' according to the ministerial order and decided that it was actually capable of doing so. The preliminary reference was made on appeal. The ECJ started by pointing out that the term is not defined in the Directive and continued by holding that "*the term "establishment", as used in the Directive, is a term of Community law and cannot be defined by reference to the laws of the Member States*"³²⁹.

This declaration holding that the interpretation of Community law cannot rely on reference to the laws of the member states sheds an important light on the very nature of the language of Community legislation. The case at issue is not so stark to enable us to derive

³²⁷ Case C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark* [1995] ECR I-4291.

³²⁸ Order No 755 of 12 November 1990.

³²⁹ *Rockfon* (n 35) par 25, see also preceding Case 64/81 *Nicolaus Corman & Fils SA v Hauptzollamt Gronau* [1982] ECR 13 par 8 where the Court held that the definition of 'edible ice cubes' in a Regulation is to be based on CCT and other Community acts 'which do not refer to legal systems of the Member States in determining their meaning and scope ; the Community legal order does not in fact aim in principle to define its concepts on the basis of one or more national legal systems'.

general conclusions, given that this is also a clear case of unlawful limitation of a Directive's scope, however, one cannot exclude that the Court here suggests that Community legislation gives rise to a 'Community meaning' which is to be interpreted free from any influence of interpretation deriving from the legal tradition and meaning of national law.

The above view is confirmed in **Cilfit**³³⁰ where the ECJ was asked to give a preliminary reference ruling on whether national courts have any discretion in making an 'obligatory' preliminary reference under paragraph 3 of Article 234 TEC. The Court conceded that national courts have the discretion not to make a preliminary reference if they are sure that the interpretation of the Community provision in question was beyond doubt in all the language versions of the Community law in question bearing in mind that:

*“Even where the different language versions are entirely in accord with one another ... Community law uses terminology which is peculiar to it ... it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.”*³³¹

National Reactions

National courts of different member states have differing reactions to the above guiding principles established by the ECJ and to its rulings in general. It has been suggested that national courts should cooperate better in their implementation of Community law and that some system of facilitated access and reference to decisions of courts of other member states is set in place thereby creating at

³³⁰ Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982] ECR 3415.

³³¹ *ibid* par 19. A good example of the peculiar 'Community meaning' which terminology used in Community law acquires is illustrated in the words 'Regulation' and 'Directive', which are given various different meanings when used within national legislations certainly diverging from the precise denomination that the words have in Community law.

least an awareness of the decisions taken in parallel courts, in other member states, in the interpretation of Community law³³².

With the Treaties setting only a loose framework of preliminary reference, the relationship between the ECJ and national courts is set to depend largely on cooperation³³³ and mutual trust. This cooperation relationship has lately been reinterpreted in **Köbler**³³⁴ where the ECJ extended the principle of state liability for infringement of Community law to decisions of supreme courts in the member states possibly including a decision not to refer for a preliminary ruling. However, this latter development does not modify the reality whereby the factual interpretation and implementation of Community law depends ultimately on the National courts.

As earlier indicated, uniformity of application of Community law has to counter problems related with different legal traditions. The main resistance in this regard is presented by systems of common law which cannot but find difficulties in following the ECJ's recommendations on teleological interpretation, on the importance of the general scheme and the necessity of not getting lost in too much literal analysis. For a court within a common law system, the test of interpretation of a legal provision is what would an average man in the street, and not what the European Court of Justice with one judge from every capital city of the European Union, would understand by the provision in question. However, in spite of inherent difficulties, UK courts seem to be going through a process of transition whereby the literal interpretation is giving way to the teleological interpretation when it comes to National law deriving from Community law³³⁵. In *H.P. Bulmer*, the Master of the Rolls, learned Lord Denning declared:

³³² T. Lundmark 'Soft stare decisis and harmonisation' *L'interprétation des textes juridiques rédigés dans plus d'une langue* (L'Harmattan Torino 2002) 143.

³³³ Acknowledged also in *Cilfit* (n 38) par 7.

³³⁴ Case C-224/01 *Gerhard Köbler v Republik Österreich* [2003] ECR.

³³⁵ It has been suggested that this process is also effecting the method of interpretation in purely national law related cases - House of Lords, *Regina v Secretary of State for Health* [2003] in R. Bellis 'Implementation of EU Legislation - An independent study for the Foreign & Commonwealth office' (Nov 2003) 20

*“...English courts dealing with a problem of interpretation must follow the European pattern. No longer must they examine the words in meticulous detail nor argue about precise grammatical sense. They must look at the purpose or intent. In the words of the European Court, ‘they must deduce from the wording and the spirit of the Treaty the meaning of community rules’. They must consider, if need be, all the authentic texts in eight languages. The Judges must divine the spirit of the Treaty and gain inspiration from it.”*³³⁶

Maltese Law

Section 74 of The Constitution of Malta holds: *“Save as otherwise provided by Parliament, every law shall be enacted in both the Maltese and English languages and, if there is any conflict between the Maltese and the English texts of any law, the Maltese text shall prevail.”*

Section 3 of the European Union Act³³⁷ provides an umbrella provision holding that national law shall be invalid insofar as in conflict with Community law while declaring existing and future Community legislation as part of the national law of Malta. Section 5 of the said act provides for an obligation on national courts to refer to the case-law of the ECJ.

In view of the guiding principles of interpretation outlined in this paper, section 74 of the Constitution of Malta needs to be re-interpreted in the light of the obligations arising from Malta's accession to the EU as transposed in the European Union Act provisions cited above. Section 74 is an expression of national identity and sovereignty that now finds its rational application only in the interpretation of national law clearly falling outside the scope of Community competence.

<<http://www.fco.gov.uk/Files/kfile/EUBellis.pdf>> (June 2004).

³³⁶ H.P. Bulmer Ltd. and Showerings Ltd. v. F. Bollinger S.A. and Champagne Lanson Père et Fils 23 May 1974 The Times (London).

³³⁷ Chapter 460 Revised Edition of the Laws of Malta.

Its application to national law deriving from Community law as well as to all national law in areas where transposition of Community law is due³³⁸ could be interpreted as too sovereignty-friendly and certainly contravening the principle of equality of languages and the importance of interpretation in the light of all language versions as proposed by the ECJ.

Conclusions

In practice, the reliance of Maltese courts on the constitutional provision above seems to be a rare occurrence³³⁹. But as we have seen, the duties on national courts arising from the Union's multilingual regime extend well beyond the lack of preference for one language version. National courts are in fact expected to refer to the various language versions of Community legislation, interpret them while taking full cognisance of the general scheme of the Community provisions in question and exclude any pre-conditioning from notions of national law keeping in mind that Community law has a 'Community meaning'.

The European Court of Justice in *Cilfit*³⁴⁰, in conceding that national courts have the discretion not to make a preliminary reference to the ECJ when the point of law in question is beyond doubt, held that, in deciding that the point is beyond doubt, its interpretation is to be beyond doubt in all the language versions of the Community legislation in question. In this case, as in most of the other cases analysed above, the message from the ECJ is that of highlighting the difficulties of interpreting Community law in a uniform manner and pointing out the limitations of this being done by the numerous national, regional or local courts. One could also be tempted to say that the European Court, through the setting of

³³⁸ In Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I par 8 the ECJ held 'in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by it'.

³³⁹ One of the very few cases in which this provision is expressly referred to is *Lawrence Borg v Wilfred Miggiani et al* 10 October 1986 Commercial Appeals.

³⁴⁰ *Cilfit* (n 38).

hard-to-reach requirements (for instance, expecting Maltese courts to make an analysis of Community provisions in Lithuanian, Greek, Finnish and all the other Community languages), is actually giving the message that national courts, in the interpretation of Community law, need not take much trouble but just make a simple preliminary reference, which may delay procedures by a year or two, but which will ensure that Community law is applied uniformly in all the European Union.

In this paper we have seen that the Union's multilingual character has a considerable effect on the interpretation of the *acquis communautaire*. Considering the overriding necessity for uniformity in a Union which strives to guarantee the same rights to all its citizens spread around 25 countries, the existence of 20 different language versions of the same normative force could be seen as an added hurdle to achieving this already difficult task. However, this linguistic diversity enhances the communication abilities of a Union which is committed to ensure a better access to its workings - to all its citizens. The various language versions can finally ensure that Community law is reproduced through the different lenses and expressions which inevitably precondition the use of different languages, thereby ensuring that a combined interpretation of all the language versions gives the most comprehensive interpretation possible of the legal provision in question.

Finally, putting the Union's multilingual regime within the traditional tensions between an inter-governmental and a supra-national system, one can point out that while the authentic nature of each language version is in line with an inter-governmental approach, the focus on the general scheme and on one implied interpretation which overrides the literal interpretation of the several language versions is in line with a supra-national line of thought. In conclusion we observe that this solution is a hybrid one, just as hybrid as one could expect from a hybrid entity like the EU.

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