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(In) coherence in multilingual versions of European regulations and legal impact

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Abstract

This study shall focus primarily on the 24 language versions of the European Union (EU) Regulations on Private International Law (PIL). These Regulations are generally directly applied in all Member States. This means that national legal practitioners (judges, lawyers, notaries, registrars, judicial systems) use their language version directly when applying these Regulations and thus when applying it to private relations between citizens and companies.

This should guarantee the achievement of a European Legal Area. However, despite the unification of European PIL legislation, uniform application is not guaranteed. In our understanding, this is due to a number of factors:

a) Inconsistencies and errors across the 24 language versions of the regulations (errors, vertical and horizontal consistency as well as matching across all language versions). In this short paper there is an example.

b) A lack of unified definitions in substantive European PIL, and a consequent lack of vertical consistency (not linguistically but substantively vis-a-vis other regulations and directives) which would favour the technical requirements of application. While EU legislation cannot technically ensure uniformity in the use of concepts, this situation gives rise to implementation difficulties, as national legal practitioners are faced with definitions that differ depending on the instrument, and are variance with those of their own domestic law. This can lead to misapplication of EU law.

Keywords: *EU multilingualism, language versions of EU Regulations, Eurolanguage*

Introduction

One of the characteristics of the EU is that it is multilingualism (Athanassiou, 2006). Multilingualism is the fundamental principle of the language regime chosen by the European Union as set out in *Regulation 1/1958* determining the languages to be used by the European Economic Community, which lays out the official and working languages of European Union Institutions (OJ 017, 06.10.1958). Multilingualism guarantees the equality of every language and respect for linguistic and cultural diversity (Georgieva, 2015). The number of official languages has increased steadily along with the number of Member States, and the number of alphabets has increased from one to three (Fernández Vítores, 2010). The original 4 official languages (1957) now stand at 24 (Art. 1 Regulation 1/1958: "Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish".), until Brexit comes into force, after which English language will lose its official status, theoretically (*see later*).

Multilingual legal regime implies that documents produced by the EU Institutions must have a version for each official language (equally authentic), each of which would also be considered working languages. This study shall focus primarily on the 24 language versions of the European Union (EU) Regulations on Private International Law (PIL). These Regulations are generally directly applied in all Member States. This means that national legal practitioners (judges, lawyers, notaries, registrars, judicial systems) use their language version directly when applying these Regulations and thus when applying it to private relations between citizens and companies. Namely, the EU's goal is to develop civil legal cooperation so as to allow people and businesses to access the courts and authorities of any Member State under the same conditions as in their Member State of origin in civil matters with cross-border implications.

Vertical and Horizontal Coherence of Different Language Versions of EU PIL Regulations

As we previously mentioned, all official languages are working language. Despite this mandate, it is clear that only one language (English) is basically used as a working one both for drafting and communication between EU institutions, officials and bodies (*see later*). Hence, the English version is the source text for translating into the rest of the versions. In this context, from a purely linguistic standpoint, legal practitioners must be able to understand and interpret their language version of EU PIL Regulation. Therefore, they cannot read it like a translation. If the legal practitioners make their own, it is not enough for it to be in their language, but rather it must also read like the

language they use (in the use of verbal tenses, for example). Furthermore, it should not appear to be a foreign corpus only distantly-related to their national law. In other words, the European texts should not simply be "copied and pasted" into the national legal corpus, but rather streamlined with pre-existing legislative texts. This should happen not just on a substantive level, but also on a terminological one. This does not necessarily mean modifying the national legal language, although at times this terminological adjustment has taken place (Font-Mas, 2019).

It seems that this trying task falls upon the EU translator. The translator is required not only to translate the text from the English to the target language and ensure coherence within the text, preamble and annexes, but also other related legal instruments (vertical coherence) and streamline it with the target country's national law (so that it will not read like a translation). Furthermore, it must be horizontally coherence with the other 23 language versions (Guggeis, 2014); and even more difficultly in my view, both adapted to the target language of the Member State while also maintaining its EU singularity. And not just linguistically and in terms of drafting, but also substantially.

These general prerogatives, among many specific ones, are meant to make texts easier to understand for the legal practitioner belonging to a legal system with its own style, who then has to apply European Law as part of that legal system as it was meant under Union Law.

Translation and Legislative Drafting Errors in EU PIL Regulations: Example of a Word Choice Error

As the European Court of Justice (ECJ) has reiterated, all language versions of multilingual EU Law [Regulations] have equal value, and should not be interpreted in a stand-alone fashion but rather in light of other EU language versions in a combined manner (EU:C:1969:57; EU:C:1997:375) so as to reach a uniform interpretation and application of the law while bearing in mind the goal of the legislator. Other examples of translation errors, lack of concordance or other ambiguities in other areas of EU Law could be consulted in case-law recollected in different European studies (DG for Translation, 2014).

A translation mistake that altered the legal effect, and has since been corrected after ten years in application can be found in Annex III and IV of *Regulation 2201/2003* (Brussels IIbis), on the certificate referred to in article 41 (1) concerning judgments on rights of access, and on the certificate referred to in article 42 (2) concerning the return of the child. In both forms we find the following question:

(EN): "Is the judgment *enforceable* in the Member State of origin?"

(IT): "La decisione è *esecutiva* nello Stato membro di origine?"

(FR): “La décision est-elle susceptible de *recours* selon la loi de l'État membre d'origine?”

(ES): “¿Es *recurrible* la resolución conforme al Derecho del Estado miembro de origen?”

Clearly, it is not the same to say a legal judgment is enforceable (*ejecutivo, exécutoire, esecutiva*) and that it can be appealed (*recurrible, recours, impugnata*). This wording stood for ten years until the Spanish, Danish, Greek, French, Maltese, Romanian and Finnish versions were amended in 2013 (OJ L 82, 22.3.2013).

It should be pointed out that the Italian version of Annex III was correct in using “esecutiva”. However, inexplicably in Annex IV on the certificate referred to in art. 47.1 on the return of the child, the question was: “La decisione può essere *impugnata* secondo la legislazione dello Stato membro di origine?”, whereas it should have read “esecutiva”. This mistake was corrected in 2006 (OJ L 174, 28.6.2006). Until then, there was vertical incoherence throughout the Italian language version despite the fact it was meant to be internally consistent throughout the entire text, including the preamble, articles, and annexes in addition to being consistent across language versions.

Concepts Specific to European Private International Law

PIL Regulations included definitions and articles that lay out the scope, which is essential to determine whether the Regulation at hand is applicable in a particular case, in the same way that the time or spatial framework is used to determine its applicability in a specific situation. These are stand-alone concepts in EU Law which means they should be interpreted and applied uniformly and with their EU meaning (Peraldi, 2011). The substantive definitions included in PIL Regulations are only aimed at determining their material scope. They are by no means intended to regulate a Private European Law, which in most subject matters does not exist. European PIL is still being formed and developed as a result of on-going legislation and interpretation by the European Court of Justice (ECJ). This stand-alone EU PIL system was born prematurely due to a lack of European private law and no common historical legal background. It attempts to bring together different legal traditions, of the member states legal systems, in fact, or even more if we include States with more than one system (e.g. Spain). Concepts specific to PIL are sometimes incorrectly applied, or are overlooked by national legal practitioners. Practitioners use their own definitions on private legal relationships as regulated in their national legal systems to determine the applicability of EU PIL Regulations, and if their concepts do not match up they don't apply them. One illustrative example can be found in maintenance obligations (*obligación de alimentos, obligations alimentaires, obbligazioni alimentari*) regulated in Regulation 4/2009 and the Hague Protocol of 2007 (applicable by virtue of the reference to it in R. 4/2009). The stand-alone concept of EU PIL of maintenance

obligations includes "compensatory payments/provision of compensation" (*prestaciones compensatorias derivadas de una ruptura conyugal, prestazione compensative, prestations compensatoires*) which in Spanish (and Catalan) Law is not considered part of maintenance obligations. These differing concepts imply that some Spanish national legal practitioners erroneously fail to apply the EU Regulation because they use their own domestic concept of "prestación compensatoria" ("compensatory payment") and not the EU concept of maintenance obligations. This erroneous practice continues despite ECJ judgments (EU:C:1980:70), and the Spanish Supreme Court's ruling (2000) which makes abundantly clear that the "pensión compensatoria" is included in maintenance obligations when applying the EU legislation.

The Crisis of Institutional Multilingualism and the post-Brexit Language Situation

Notwithstanding the general multilingual framework, there are clearly different policies applied depending on the body, institution or agency in question. Translation (and Interpreting) services are not unified across the EU even though they all use some of the same tools (e.g. IATE (InterActive Terminology for Europe), EU Vocabularies, MT@EC an automatic translation system). Part of both the translation and interpreting services are provided by external companies. Given this diversity, the European Ombudsman launched "*Public Consultation- The use of languages in the EU institutions, bodies, offices and agencies*" (July 2018). The aim is to receive feedback regarding new policies or possible legislative proposals, "on how the EU institutions can best communicate with the public in an acceptable balance between the need to respect and support linguistic diversity, and administrative and budgetary constraints".

From the result of the feedback which was sent to the consultation (February 2019) and taking into account the aim of this study, it is worth highlighting that, in short, there is widespread support for multilingualism. Restricted multilingualism would be accepted so that information would always be available in at least 3 or 5 official and commonly-used languages (English, French, German and, if possible, Italian and Spanish). English is the *de facto* working language in most EU institutions, bodies and agencies. These data spur further discussion on whether multilingualism as it stands is worthwhile, and in light of the economic and administrative arguments if it would make sense to put forth English as the only working language. Furthermore, after Brexit, English language will lose its official status, theoretically, and *Regulation 1/1958* will have to be amended, however, it has not yet happened. In the academic world, there are two opposing trends (Pingel, 2017). Some argue that this is the best time for English to become the only working language. On the other hand, there are those who believe that Brexit could raise the profile of multilingualism; or the opportunity to have few official languages as working languages, taking into account the numbers of

citizens who use and have knowledge of these respective languages (German, French, Italian or Spanish).

Conclusions

We advocate in favour of maintaining multilingualism and believe that it cannot be lessened when it comes to communicating with citizens or between Members of the European Parliament.

While there could be fewer working languages and languages for inter-institutional communication in order to speed up administrative processes and bring down costs, that is to say, a “restricted multilingualism”. However, European Legislation (and the ECJ case-law for its interpretation) must always be available in all official languages. This guarantees that it will be applied by national legal practitioners.

Translation errors could be remedied by improving the usage of translation resources and ensuring that these professionals are supported by the legal experts that participated in the legislative process and who are well aware of the objective behind the European Law. Furthermore, translation errors could be remedied if the texts were better drafted.

While EU Laws necessitate the technical limitation and reduction of the unity of concepts, this situation poses difficulties of application for the national legal practitioner since he/she is faced with definitions that differ according to the instrument, on top of their own domestic law. This can lead to a misapplication of laws.

PIL Regulations have introduced autonomous legal concepts which are often uncoordinated when reproduced in different European regulations. This gives rise to problems of interpretation which the ECJ often resolves through "pseudo-legislation". The root cause of the problem is that, despite the EU having introduced its own legal language, there is no a European background of substantive law which supports European regulations and their interpretation.

References

[1]. Athanassiou, P. (2006). The application of multilingualism in the European Union context, *Legal Working Papers series, European Central Bank,* 2.

[2]. Directorate-General for Translation (European Commission), (2014). *Translation and multilingualism*, Luxemburg.

[3]. European Ombudsman (2019). *Multilingualism in the EU institutions-Report on public consultation.* (SI/98/2018/TE) https://www.ombudsman.europa.eu/es/correspondence/en/110044

[4]. Fernández Vítores, D. (2010). El régimen lingüístico de la Unión Europea: luces y sombras en el proceso de ampliación, *Revista de Llengua i Dret*, 54, 67-201.

[5]. Font-Mas, M. (2019). XX Jornades de Dret català de Tossa. Els Reglaments europeus i l'evolució del Dret català de contractes, família i successions (UdG. Ed), *Els conceptes jurídics de Dret internacional privat europeu i els de dret civil català: excloents o compatibles?* (pp. 545-560). Girona.

[6]. Font-Mas, M. (2017). Llenguatge jurídic europeu i els reglaments de dret internacional privat: problemes pràctics juridicolingüístics, *Revista de Llengua i Dret,* 68, 19-32.

[7]. Guggeis, M. (2015). Translating the DCFR and Drafting the CESL, in B. Pasa & L. Morra, H*ow and when lawyer-linguists of the EU institutions intervene during the legislative procedure for the adoption of the regulation on a common european sales law*, (pp. 215 ss), Munich.

[8]. Peraldi, S. (2011). Traduire le droit: vers des normes de référencement européennes?, *Arch. Phil. Droit*, 54,124-125.

[9]. Petrelli, I. (2017). General Reports of the XIXth Congress of the International Academy of Comparative Law In M. Schauer & B. Verschraegen (eds.), *Language as a Bridge Between Legal Cultures and Universal Justice: Linguae Aliena Novit Curia?*, (pp. 607 ss).

[10]. Pingel, I. (2017). Le Brexit et le régime linguistique des institutions de l'Union europeénne, *RTDEur*, 53, 660.

Multilingual academic and professional communication in a networked world

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