

The European Union between official and minority languages

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Abstract Deutsch

Die EU-Sprachenregelung schützt Marktregeln durch das Prinzip des gleichberechtigten Wettbewerbes und die Zugänglichkeit der EU-Gesetzgebung in einer gekannten Sprache. Doch diese Regelung kann paradox die Schnelligkeit und die Leitungsfähigkeit der EU-Institutionen im Markt und in der Gesetzgebung hindern. Die EU-Institutionen und der EU-Gerichtshof wenden daher eine tendenziell strenge Auslegung der Amtssprachen an, wobei sie die Sprachengleichheit verweigern. Respekt und Schutz der Minoritäten wurden in den Kopenhagen Kriterien und in dem EU-Vertrag aufgenommen, um Nationalitäten- und Minoritäten Konflikte in Osteuropa nach dem Zerfall der Sowjetunion zu lösen, obwohl einige Staaten dieses Prinzip nicht berücksichtigten. Die EU-Bürgerinitiative "Minority SafePack – one million signatures for diversity in Europe" stieß auf viele Hindernissen und erreichte kein effektives Ergebnis. Die Europa Idee fördert die Mehrsprachigkeit, aber die EU-Institutionen können nicht immer das in die Praxis umsetzen.

Abstract English

The European Union linguistic regime safeguards market rules through the principle of equal competition and the accessibility to the European legislation in a known language. However, paradoxically enough, this regime can hinder the speed and efficiency of the institutions in charge of the market and legislation. Therefore, the institutions of the European Union and the Court of Justice tend to adopt a strict interpretation of the official nature of EU languages, denying the principle of equality of languages. Respect and protection of minorities were introduced in the Copenhagen criteria and in the EU Treaty in order to settle the conflicts of nationalities and minorities in Eastern Europe after the fall of the Soviet Union, despite the fact that some Western States failed to apply this principle. The European Citizens' Initiative "Minority SafePack – one million signatures for diversity in Europe" came across many barriers and failed to achieve any effective results. The idea of Europe pushes towards cultural and linguistic exchanges, but the European institutions are not always in a position to put this into practice.

1. Introduction

The European Union is a unique international organisation for many reasons, including the direct applicability of certain EU legislation to its Member States and the number of its official languages: 24 official languages covering 27 Member States, an extraordinary number.

The United Nations, with its 193 Member States, has 6 official languages (Arabic, Chinese, English, French, Russian and Spanish). In the UN, a delegate may

use any official UN language to make a speech, with the same being translated simultaneously into the UN's other official languages. In certain circumstances, a delegate may choose to give a statement in an unofficial language: in these cases, the delegation must provide either an interpretation or a written text of the statement in one of the UN's official languages.

In the European Union, Members of the European Parliament may use any official language when speaking in Parliament. Parliament's Rules of Procedure recognise the right of all MEPs to read and write parliamentary documents, to follow debates, and to speak in their own language.

EU citizens have the right to use any of the 24 official languages when contacting the EU institutions, which are obliged to reply in the same language (Article 20(d) of the Treaty on the Functioning of the European Union). The EU's laws and legislative texts are published in all of its official languages.

The fact that the number of official languages is so high poses huge organisational problems, including the need to translate every official document, to coordinate communication between European citizens and European institutions, and to establish official working languages.

What level of attention has been given to minority languages within such a complex linguistic and legislative framework?

In fact, the role of minority languages was not taken into account until the early 1990s.

The outbreak of conflicts in Eastern Europe following the fall of the Soviet Union led to the European Union and the Council of Europe reconsidering the delicate position of minority languages and taking action in order to preserve them.

This paper provides an overview of the role and regulation of official and minority languages within European institutions and discusses the features and consequences of the EU's attitude towards multilingualism.

2. Official languages of the European Union: Market and legalisation

Multilingualism is a distinctive feature of the European Union¹. In the 1950s, French was the language of international law and treaties, such that the Treaty of Paris, establishing the European Coal and Steel Community in 1951, was written in French².

This rule was revised in the Treaty of Rome of 1957 which established Dutch, French, German and Italian as the official languages of the EEC, as they were the official languages of the six founder States. Since then, the same rule has been applied to all new members of the European Union.

1 See M. Viezzi, Linguistic Pluralism, Multilingualism and Plurilingualism in the EU, in: *Annuario di Diritto Comparato e di Studi Legislativi* 2015, vol. VI, Edizioni Scientifiche Italiane: Napoli 2015, pp. 503–519.

2 See D.E. Tosi, *Diritto alla lingua in Europa*, Giappichelli: Torino 2017, pp. 318–319.

It can be argued that the extension of the role of official languages to all Member States' languages imposed by the Treaty of Rome was driven by economic and legislative reasons.

On one hand, the Treaty aimed to establish a common market and, as a consequence, to adopt common market rules. The core market principle is that of competition, which requires all independent stakeholders to be able to participate in the common market on an equal footing. The choice of any one Member State's language as the official language would have penalised the other Member States, thus contradicting the principle of competition. Multilingualism was therefore considered a guarantee of the equality of all parties on the market.

Similarly, the right to equal payment for women and men, established by Article 119 of the Treaty, was imposed primarily to preserve the principle of market competition. As the Court of Justice specified in the case of *Defrenne v. Sabena* (C-43/75), "the aim of Article 119 is to avoid a situation in which undertakings established in states which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-Community competition as compared with undertakings established in states which have not yet eliminated discrimination against women workers as regards pay".

On the other hand, the Treaty established a complex and unique system of sources of law, giving the EEC institutions the power to adopt legal acts to be applied generally, such as regulations. Such acts are binding on and directly applicable to the citizens of the Member States, even if they are incompatible with each individual State's national legislation. Just as national laws are only applicable after they have been published in the national official journal, European legislation is only valid if the citizens of all States are given access to it in their own language. The importance of this principle has been reiterated by the Court of Justice on numerous occasions.

In the case of *Skoma-Lux* (C-161/06), the company *Skoma-Lux sro*, a wine importer and merchant, committed violations of certain provisions of the customs law. *Skoma-Lux* claimed that the Community regulation was not applicable in the absence of publication in the Czech language of the provisions of Community law applied by the customs authorities when the disputed acts were committed.

According to the Court, European law precludes the obligations contained in generally applied legislation which has not been published in the Official Journal of the European Union in the language of the Member State concerned. In such cases, the legislation cannot be imposed on individuals in that State, even though those persons could have learned of that legislation by other means. The principles of legal certainty and equality of citizens are safeguarded by the formal requirement of proper publication of the legislation in the official language of the person to whom it applies. The parallel existence of a number of unofficial divergent translations only increases the legal uncertainty.

The principle only concerns sources of European law which are directly applicable, such as regulations. The case of *Polska Telefonia Cyfrowa* (C-410/09) concerned the 2002 Guidelines, i.e., Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory frame-

work for electronic communications networks and services. According to the Court, “the 2002 Guidelines do not lay down any obligation capable of being imposed, directly or indirectly, on individuals. Accordingly, the fact that those guidelines have not been published in Polish in the Official Journal of the European Union does not prevent the NRA” (National Regulatory Authority) of the Republic of Poland “from referring to them in a decision addressed to an individual”.

Limitations on the right of use of all EU official languages appear in other decisions of the Court of Justice. The most interesting are cases *Kik v. OHIM* (C-361/01) and *Spain v. Council of the European Union* (C-147/13)³.

The *Kik* case concerned the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and its refusal to register the word *Kik* as a Community trade mark. Council regulation no. 40/94 states that the application for a Community trade mark shall be filed in one of the official languages of the European Community, but the applicant must indicate a second language which shall be a language of the Office (English, French, German, Italian and Spanish), the use of which they accept as a possible language of proceedings for opposition, revocation or invalidity. Christine *Kik* submitted an application for a Community word trade mark in Dutch, and also indicated Dutch as the second language.

According to the Court, the Treaty contains several references to the use of languages in the European Union, but such references cannot be seen as supporting a general principle of Community law which grants every citizen the right to have a version of anything that might affect their interests drawn up in their own language in all circumstances. Therefore, an individual decision does not necessarily need to be drawn up in all official languages, even though it may affect the rights of a citizen of the Union other than the person to whom it is addressed, for example, a competing economic operator. The most relevant section of the decision is that confirming that Community law cannot be relied on in support of a possible principle of equality of languages.

Furthermore, the Community trade mark was created for the benefit not of all citizens, but of economic operators, and economic operators are not under any obligation to use it. Whilst the monopoly right to use a trade mark is recognised by a public authority, the trade mark right is essentially a tool used by economic operators in the context of their professional activities to produce profits. The legislature is therefore free to require that they should bear, in whole or at least in part, the operating costs of a body created to register Community trade marks. Finally, the language regime of a body such as the Office is the result of a difficult process which seeks to achieve the necessary balance between the interests of economic operators and the public interest in terms of the cost of proceedings, but also between the interests of applicants for Community trade marks and those of other economic operators with regard to accessing translations of documents which confer rights.

3 See C.J.W. Baaij, *The EU Policy on Institutional Multilingualism: Between Principles and Practicality*, in: 1 JLL 2012, pp. 22 ff.

The case of *Spain v. Council of the EU* concerned the Convention on the Grant of European Patents (EPC) which establishes English, French and German as official languages of the European Patent Office (EPO). A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages. The Kingdom of Spain claims that, by adopting the contested regulation, the Council disregarded the principle of non-discrimination, since it establishes a language arrangement which is prejudicial to individuals whose language is not one of the official languages of the EPO. That arrangement results in unequal treatment of, on the one hand, European Union citizens and undertakings who have the means of understanding, to a certain level of competence, texts written in those languages, and, on the other, those who do not have such means and will have to produce translations at their own expense. Any restriction on the use of all official languages of the European Union should be properly justified, with due regard to the principle of proportionality.

According to the Court, those arrangements should aim to achieve the necessary balance between the interests of economic operators and the public interest, in terms of the cost of proceedings and the availability of technical information. This Regulation is based on the linguistic regime of the EPO and should not be considered as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.

In its jurisprudence, the Court of Justice has therefore established that the official nature of EU languages has the effect specifically envisaged by the Treaty but cannot be interpreted extensively. Above all, it does not implicate the principle of equality of languages.

The European Union linguistic regime safeguards the market rules with the principle of competition on an equal basis between the Member States and the accessibility of European legislation in a known language, but it must be balanced with the need to organise the European institutions efficiently. Unlike other international organisations, indeed, the European Union plays an important economic and legislative role. These principles seem to be contradictory: the linguistic regime must safeguard the market and the accessibility of the legislation, but the market and legislation need institutions which operate easily and efficiently, which the linguistic regime could hinder.

3. Official languages of the European Union: How to preserve cultural identity

The case of *Defrenne v. Sabena*, mentioned above, highlighted, firstly, the economic and market aim behind the principle that men and women should receive equal pay for equal work, but also stated that “this provision forms part of the social objectives of the Community, which is not merely an economic union”. In the same way, the European Union linguistic regime is driven by market and legislative purposes, but also aims to protect the cultural identity of the Member States.

The motto of the European Union is “United in diversity”. This came into use in 2000, when the European Union attempted to replace the European treaties with an EU constitution. It marked the EU’s attempt to become more democratic and cohesive, while respecting the cultural and linguistic diversity of the Member States.

This motto has analogies with the first motto of the United States, which was „E pluribus unum“. However, the EU motto emphasises the value of diversity, which must be preserved and safeguarded, while the US motto pronounced unity to be the ultimate goal.

Protecting the cultural identity of the Member States is at the core of multilingualism for market and legislative purposes, but also due to the evolution of the European unification process. Cultural identity is a particularly fertile soil for rejecting many of the proposals of recent years, which aim to solve problems connected to multilingualism by rationalising and simplifying the linguistic regime of the European Union.

Umberto Eco polemically argued that the language of Europe is translation⁴. He proposed the use of Esperanto as a second language for all European citizens⁵. Esperanto was created in 1873 by Ludovic Lazarus Zamenhof as an international auxiliary language. Eco observed that it was easier to learn than the other national languages and could become the common European language. According to Eco, the only argument against it was the egoism of the State governments.

Similarly, other authors suggest using a classical language – Latin or Ancient Greek – as the common language of Europe, at least for the most important documents and acts⁶.

With the aim of reducing translation costs, assuring that essential acts and documents were translated into all official languages, Beniamino Caravita suggested conducting the EU’s informal activities in the two most commonly spoken languages in Europe: English and French⁷.

However, most authors concur in believing that English could become the lingua franca of Europe, corroborated by the fact that English has become a de facto lingua franca in Europe in recent years⁸.

4 U. Eco, *Dire quasi la stessa cosa. Esperienze di traduzione* (To say almost the same thing), Bompiani: Milano 2003.

5 U. Eco, *La ricerca della lingua perfetta*, Laterza: Bari 1993. See also F. Gobbo, *L’esperanto e il federalismo europeo*, in: R. Lala (ed.), *ΕΕ ΠΑΤΡΙΔΑ ΓΑΙΑΝ*. Lingue per la patria europea, Alpina Dialexis: Torino 2019, p. 58.

6 J. Trabant, *Was ist Sprache?*, C.H. Beck: Munich 2008, pp. 94 ff.; R. Lala, *Confrontarsi con le politiche linguistiche degli stati sub-continentali*, in: idem (ed.), *ΕΕ ΠΑΤΡΙΔΑ ΓΑΙΑΝ*, pp. 207–224.

7 B. Caravita, *How many languages the Europeans speak?*, in: *Osservatorio sul Federalismo 2003*, <https://www.federalismi.it/nv14/articolo-documento.cfm?artid=828>.

8 See J. Jenkins, *English as a lingua franca: interpretations and attitudes*, in: *28 World Englishes 2/2009*, p. 200; A. Cogoa/J. Jenkins, *English as a lingua franca in Europe, A mismatch between policy and practice* in: *2 European Journal of Language Policy 2/2010*, p. 271; C.J.W. Baaij, *The EU Policy on Institutional Multilingualism*, p. 26;

According to Philippe van Parijs, English is without doubt the world's most widespread lingua franca. Disagreements over language arose in the Austrian Empire and still continue in Belgium (where the author lives) and in the European Union. They tend to stress the *Nationalitätenfrage* over the *Sozialfrage*. Indeed “language quarrels risked tipping into a precipitous decline” Belgium’s national welfare state, while “the stagnation of ‘social Europe’ admits of no structural solution in the absence of a fair and efficient solution to Europe’s central language problem”. Therefore, the dissemination of the lingua franca “should not be halted but accelerated”, as the best way of achieving linguistic justice “consists in combining an accelerated worldwide democratization of competence in English with the territorial protection of a large number of languages”⁹.

The former president of Germany, Joachim Gauck, in a famous speech on European federal perspectives in 2013, said: “We lack a lingua franca. There are 23 official languages in Europe, plus countless other languages, and dialects. A German who does not also speak English or French will find it difficult to communicate with someone from Portugal, or from Lithuania or Hungary. It is true to say that young people are growing up with English as the lingua franca. However, I feel that we should not simply let things take their course when it comes to linguistic integration. For more Europe means multilingualism not only for the elites but also for ever larger sections of the population, for ever more people, ultimately for everyone! I am convinced that feeling at home in one’s native language and its magic and being able to speak enough English to get by in all situations and at all ages can exist alongside each other in Europe”¹⁰.

In some respects, English as a lingua franca could be accepted even more easily following the United Kingdom’s withdrawal from the European Union. English remains an official European Union language, both because any change to the EU institutions’ language regime is subject to a unanimous vote of the European Council and because it is the second official language in Ireland and in Malta, after Irish and Maltese, respectively. English is still the most spoken language in Europe: prior to Brexit, 13% of EU citizens were English native speakers; after Brexit, this number dropped to just 1%, but 44% of EU citizens can speak English¹¹. English as a lingua franca in Europe becomes Euro-English, a means of communication simpler than British English, and which can be seen as “the very essence of liberation linguistics”¹². In this way, no Member State achieves a dominant po-

L. Levi, Multiculturalismo e multilinguismo nel progetto federale europeo, in: R. Lala (ed.), ΕΣ ΠΑΤΡΙΔΑ ΓΑΙΑΝ, pp. 3–30.

- 9 Ph. van Parijs, *Linguistic Justice for Europe and for the World*, OUP: Oxford 2011. See H. De Schutter/D. Robichaud (eds.), *Linguistic Justice: Van Parijs and his Critics*, Routledge: London 2016.
- 10 Speech on the prospects for the European idea <http://www.bundespraesident.de/SharedDocs/Reden/EN/JoachimGauck/Reden/2013/130222-Europe.html>.
- 11 D. Keating, *Despite Brexit, English remains the EU’s most spoken language by far*, in: *Financial Times*, London, 6 February 2020.
- 12 M. Modiano, *English in a post-Brexit European Union*, in: *36 World Englishes* 1/2017, p. 325.

sition through language. It has been said that “any language that performs as a lingua franca ... has the ability to include many speakers without creating language hierarchies between them”¹³.

From another perspective, despite the fact that global English has become an indispensable language for any international communication, it cannot be denied that it also becomes a „Sprachenkiller“¹⁴. Europe is a culture that speaks many languages. A second European language should be learned as a language of relationships (Verkehrssprache). At least three languages should therefore be learned: the first for one’s own European identity, the second (English) for international communication, the third to understand the other European¹⁵.

From a similar viewpoint, it is very interesting to analyse the Proposals from the Group of Intellectuals for Intercultural Dialogue set up at the initiative of the European Commission to advise it on the role that multilingualism could play with regard to intercultural dialogue and mutual comprehension of European Union citizens. The Group, formed by persons active in the area of culture and chaired by Amin Maalouf, presented, in 2008, a report entitled “A Rewarding Challenge. How the Multiplicity of Languages Could Strengthen Europe”¹⁶.

According to the Group, respecting linguistic diversity is not only essential in order to acknowledge cultural reality stemming from history: it is the very basis of the European ideal as it emerged from the ashes of the conflicts that marred the 19th century and the first half of the 20th. The Group suggests that all European citizens should be encouraged to choose a language of international communication, such as English, and a *personal adoptive language* for personal reasons, such as individual or family background, emotional ties, professional interest, cultural preferences or intellectual curiosity. “The personal adoptive language would in no way be a second foreign language but, rather, a sort of second mother tongue. Learned intensively, spoken and written fluently, it would be part and parcel of the school and university curriculum of every European citizen, and of everyone’s occupational curriculum. Learning that language would go hand in hand with familiarity with the country/countries in which that language is used, along with the literature, culture, society and history linked with that language and its speakers”. In this way, the rivalry between English and other languages would be overcome. The choice of a comparatively rare language could give the individual specialist knowledge, which could also lead to professional advantages. Following this approach, every European language would have a special place in bilateral exchanges with all European partners, while none would be condemned to disappearance. “Every language is the product of a unique historical experience, each is the carrier of a memory, a literary heritage, a specific skill, and is the legitimate basis of cultural identity. Languages are not interchangeable, none is dispensable, none is

13 U.C. Jacobsen, English in the European Union after Brexit: Inclusion effects of a language without an owner, in: 2 Culture, Practice and European Policy 1/2017, p. 10.

14 J. Trabant, Was ist Sprache?, p. 93; idem, Globalesisch, Oder Was?: Ein Plädoyer Für Europas Sprachen, C.H. Beck: Munich 2014.

15 J. Trabant, Was ist Sprache?, pp. 102–103.

16 http://www.språkförsvaret.se/sf/fileadmin/PDF/Rewarding_challenge.pdf PDF file.

superfluous”. Preserving all languages of our heritage strengthens “the very idea of a Europe of peace, culture, universality and prosperity”.

The reaction of the European institutions to this report was not positive. In an *Opinion of the European Economic and Social Committee on ‘Multilingualism’* (2009/C 77/25), the Committee observes that “the idea of learning one international language and one ‘personal adoptive language’... assumes that everyone is equally interested in languages and has the time to devote to them, which is by no means the case, for cultural reasons but also because the majority of European citizens cannot afford to engage in what Pierre Bourdieu has defined as the requisite cultural practices.... The Committee notes that this does not solve the question of the choice of English as the leading living language; apart from leaving it entirely up to the Member States and parents, and that the Commission does not properly raise the issue for debate. ‘English is not enough’ is all very well, but it remains the language accepted by the EU for international communication. The proposal is a start, not a solution”.

It could nevertheless be argued that the proposal of the Group chaired by Amin Maalouf should be seen in a positive light, as it offers good reasons to safeguard and encourage the spread of the less spoken languages in Europe and their cultural heritage.

Despite the rejection of the Group’s proposal, the official website of the European Union declares that, by ensuring the principle of multilingualism, the EU aims to enable every EU citizen to communicate in two languages other than their mother tongue and that the best way to achieve this would be to introduce children to two foreign languages from an early age. The EU supports language learning in order to help more people study and work abroad; to help people from different cultures understand one another; to trade effectively across Europe; to boost the language industry (translation and interpreting, language teaching, language technologies, etc.). The Council of the European Union emphasised these concepts in its Recommendation of 22 May 2019 on a comprehensive approach to the teaching and learning of languages (2019/C 189/03).

European policy thus aims to protect Europe’s rich linguistic diversity and to promote language learning. Article 165 of the Treaty on the Functioning of the European Union indeed specifies that the Union shall contribute to the development of quality education respecting the cultural and linguistic diversity of each State, developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States, and encouraging the mobility of students and teachers.

4. Minority languages in the European Union

The attention towards minority languages in European as well as international law increased after the fall of the Soviet Union. Many Eastern European countries, which had been partly under the domination of the Austrian Empire, the Ottoman Empire or the Russian Empire, and then of the Soviet Union, achieved their

independence in the early 1990s. It was a new period of nationalisation and of (re)conquering their own cultural, religious, and linguistic heritage.

The wars and conquests that had taken place had regularly altered the borders of the States, and, over the years, this led to the relocation of many minority groups who spoke a different language to that of the State. The nationalisation processes of States that had achieved their independence pushed them to favour their own language even to the detriment of minority languages.

The situation gave rise to great tension between people of different languages and religions. Conflicts arose in Kosovo and in the former Yugoslavia; there were clashes between countries that had been under Soviet domination, where a strong Russian minority remained, such as the Baltic republics. In 1989 Russian native speakers in Latvia made up 40% of the population; in Estonia 35%. This had major consequences on the citizenship policy both in Latvia and in Estonia, which still today have a large number of stateless people. The legislation on languages and on education was modified several times in both countries. In 2012, a referendum vote in Latvia to recognise Russian as an official language for the country was rejected, with about three-quarters of the votes against.

International law attempted to solve or to put forward a feasible solution to the problem of minorities in Eastern Europe after the fall of the Soviet Union, due to the fact that, as stated in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990, “respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States”¹⁷.

The United Nations’ Universal Declaration of Human Rights of 1948 did not contain any provision on minorities. Eighteen years later, the International Covenant on Civil and Political Rights of 1966 stated, at Article 27, that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”, but the real meaning of this provision was specified in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly on 18.12.1992.

17 See *G. Gornig*, Schutz von Minderheiten und Volksgruppen in einer europäischen Friedensordnung, in idem/A.M. Rafael (eds.), *Minderheitenschutz. Eine interdisziplinäre Betrachtung. Minority Protection. An International View*, Klages: Hannover 2013, pp. 73–136; E. Sándor Szalay, Minderheit – ein permanentes Konfliktpotential? Ein Mythos aus mitteleuropäischer Sicht, in: D. Blumenwitz/G.H. Gornig/D. Murswiek (eds.), *Minderheitenschutz und Demokratie*, Duncker & Humblot: Berlin 2004, pp. 167–184; G. Pentassuglia, The EU and the protection of minorities: ‘The Case of Eastern Europe’ in: 12 EJIL 1/2001, p. 3; P. Hilpold, The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment, in: 17 Max Planck Yearbook of United Nations Law 2013, pp. 92–93.

In the same way, the European Convention on Human Rights stated at Article 14 that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”, but the European Charter for Regional or Minority Languages was adopted on 25.6.1992 and the Framework Convention for the Protection of National Minorities was adopted on 10.11.1994 and opened for signature by the Member States of the Council of Europe on 1.2.1995.

The problem of minorities in Eastern Europe led the European Union to insert respect for and protection of minorities among the political criteria established by the Copenhagen European Council in 1993 to define whether a country is eligible to join the European Union. Article 2 of the Treaty of European Union states that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” and, according to Article 49, “any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”¹⁸.

Western democracies, however, have not always set a good example in this regard, as “linguistic issues are far from being ‘resolved’ in the West either”¹⁹. France, for instance, has always refused to recognise national, religious, or linguistic minorities, claiming that this contrasts with the concept of “absolute equality”: every individual must be treated equally. The State must protect the rights of individuals, not of groups. This idea of absolute equality, together with the desire to protect and promote the French language as opposed to English has prevented any recognition of the rights of linguistic minorities. After the Maastricht Treaty, rather than including in the Constitution the rights of minorities, a constitutional reform affirmed, in Article 2, the official nature of the French language²⁰.

In Italy, Article 6 of the Constitution rules that the Republic must protect linguistic minorities. For many years, however, the Italian system protected only minority languages recognised by special constitutional or international sources, such as the German minority in South Tyrol or the French minority in Aosta Val-

18 See D. Blumenwitz/G. Gornig (eds.), *Der Schutz von Minderheiten- und Volksgruppenrechten durch die Europäische Union*, in: *Wissenschaft und Politik* 1996.

19 A. Patten/W. Kymlicka, *Introduction: Language Rights and Political Theory: Context, Issues, and Approaches*, in idem (eds.), *Language Rights and Political Theory*, OUP: Oxford 2003, p. 4.

20 See D.E. Tosi, *Il mito fondativo della nazione e la difficile coabitazione tra lingua nazionale e lingue regionali e minoritarie in Francia*, in: G. Raimondi/D.E. Tosi (eds.), *Le lingue minoritarie nell’Europa latina mediterranea. Diritto alla lingua e pratiche linguistiche*, Edizioni dell’Orso: Alessandria 2019, pp. 39–57.

ley: these “superprotected” minorities were considered regardless of Article 6 of the Constitution²¹.

The Copenhagen criteria and the other EU law provisions were effective not only in Eastern countries, but also in the West. The law on the protection of all minority languages in Italy (Friulan, Ladin, German, Slovene, Occitan, French, French Provençal, Albanian, Greek, Sardinian, Catalan, and Croatian) was adopted in 1999 (Law no. 482 of 15 December 1999), while a minor recognition of minority languages was introduced into the French Constitution by the 2008 constitutional reform: the new Article 75-1 provides that “regional languages are part of France’s heritage”²².

Are the Copenhagen criteria and the EU law on safeguarding linguistic minorities effective enough?

In the European Union, as we have seen, there are 24 official languages, but around 60 minority languages. In the case of Kik, the Court of Justice ruled that there is no principle of equality between the official languages. It can be argued that the same could be said for minority languages.

Catalan is the most widely spoken minority language in the European Union. It is not an official language, yet it is still more widely spoken than many official languages, such as Danish, Finnish, Slovakian, or Croatian. The Spanish Constitution defines Spanish (i.e., “castellano”) as the State’s only official language, but provides that Catalan, Basque and Galician are co-official languages in their Autonomous Communities.

Therefore, administrative agreements between Spain and the European institutions (Council of Ministers, Committee of the Regions, European Commission, Economic and Social Committee, European Parliament and European Ombudsman) have granted special status to Catalan, Basque and Galician: they are not official languages of the European Union, but citizens have the right to address the European institutions in their own language, and certain acts published in the Official Journal of the European Union may be translated. Catalan may be used for making contact with institutions at the European Union’s Barcelona office²³.

With reference to minority languages, it is worth mentioning the European citizens’ initiative to improve their protection and to strengthen cultural and linguistic diversity within the EU²⁴, which has had a long and difficult path. Article 11(4)

21 See E. Palici di Suni, *Intorno alle minoranze*, Giappichelli: Torino, 2nd ed. 2002, pp. 33–59. For a comparison between the Austrian and the Italian system for the protection of minorities see P. Hilpold, *Modernes Minderheitenrecht – Eine rechtsvergleichende Untersuchung des Minderheitenrechts in Österreich und in Italien unter besonderer Berücksichtigung völkerrechtlicher Aspekte*, Manz: Vienna 2001.

22 On the protection of minorities in Germany after the Framework Convention for the Protection of National Minorities, see G. Gornig/Ch. Trüe, *Minority Protections in Germany*, in: 6 *Tilburg Law Review* 1/1997, p. 69.

23 On the relationships between Catalonia and the EU, see S. Öner, *The Relations between Catalonia and the European Union and Catalan Independence Referendum*, in: 27 *Marmara Journal of European Studies* 1/2019, p. 29.

24 F. Palermo, *Le sfide del diritto delle minoranze in ambito internazionale e il ruolo dell’UE*, con particolare riferimento all’iniziativa *Minority Safepack*, in R. Toniatti

of the Treaty of the European Union states that “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”. Regulation no. 211/2011 specified that the involvement of one quarter of the Member States is required. The European Citizens’ Initiative “Minority SafePack – one million signatures for diversity in Europe” presented by the FUEN (Federal Union of European Nationalities) was signed by 1,215,789 EU citizens from eleven States of the European Union (Romania, Slovakia, Hungary, Latvia, Spain, Croatia, Denmark, Bulgaria, Slovenia, Lithuania, and Italy).

The proposal was for EU legal acts to be adopted to improve the protection of people belonging to national and linguistic minority communities and to strengthen cultural and linguistic diversity within the EU. For this purpose, they called for “a pact between minorities and majorities to create favourable conditions for linguistic and cultural diversity to thrive, to preserve and promote the identity of the minority communities, to stop their assimilation, to make them feel entirely at home on the territory where they have been living traditionally, to have a say in decisions that affect their lives, and to exercise autonomously their cultural, educational and linguistic rights” through policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, also with the support of states or regions. The goal was to create an EU legal framework on the protection of national minorities and language groups, in order to promote a society where all languages and communities are equal, respected and cherished.

Commission Decision C(2013) 5969 of 13.9. 2013 refused to register the initiative on the grounds that it manifestly fell outside the powers enabling the Commission to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties.

The Commission Decision was annulled by the General Court (First Chamber) of the European Union in its judgment of 3 February 2017 (case T-646/13). The Court observed that the Commission had completely failed to identify which of the eleven proposals for legal acts manifestly did not, in its view, fall within the framework of powers under which it is entitled to submit a proposal for a legal act of the European Union and had also failed to provide any reasons in support of that assessment, notwithstanding the precise suggestions provided by the organisers on the proposed type of act as well as the respective legal bases and content of those acts.

The proposed citizens’ initiative was then registered by Commission Decision (EU) 2017/652 of 29.3.2017. The Commission specified that the proposed citi-

(ed.), *Le minoranze linguistiche nell’Unione Europea: le prospettive di nuovi strumenti di tutela e promozione*, Università di Trento/LIA 2019, http://www.liatn.eu/images/Toniatti_Le_minoranze_linguistiche_dellUnione_eBook_completo_compressed.pdf, pp. 33–54; Marc Röggla, *Le Minoranze, l’Unione Europea e il Minority SafePack*, *ibid*, pp. 55–63.

zens' initiative in some points did not fall manifestly outside the framework of the Commission's powers, but in other points manifestly fell outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. According to the Commission, the procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly, and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible.

The initiative was submitted to the Commission on 10.10.2020 and the organisers met with European Commission Vice President for Value and Transparency, Věra Jurova, and the Commissioner for Innovation, Research, Culture, Education and Youth, Mariya Gabriel, on 5.2.2020.

The Public Hearing on the Minority SafePack European Citizens' Initiative took place in the European Parliament on 15.10.2020. The Citizens' Committee and experts of the Minority SafePack Initiative presented their proposals in the presence of Members of the European Parliament, the European Commission, the Council of Europe, the EU Agency for Fundamental Rights, the Committee of the Regions and the European Economic and Social Committee. The initiative was debated at the European Parliament's plenary session on 14.12.2020. In the resolution adopted on 17.12.2020 the European Parliament expressed its support for the initiative.

The Commission adopted, at last, a Communication on 14.1.2021 in response to the initiative. The Commission stated that inclusion and respect for Europe's rich cultural diversity is one of the priorities and objectives of the European Commission. A wide range of measures addressing several aspects of the proposals have been implemented in recent years and since the initiative was originally presented in 2013. The Communication assesses the merits of the proposals, taking account of principles of subsidiarity and proportionality. While no further legal acts are proposed, the full implementation of the legislation and policies already in place constitutes a powerful arsenal in support of the initiative's goals.

5. Final remarks

As we have seen, the European Union linguistic regime safeguards market rules through the principle of equal competition and the accessibility of European legislation in a known language; however, this regime can, paradoxically, hinder the speed and efficiency of the institutions in charge of the market and legislation.

Therefore, the institutions of the European Union and the Court of Justice tend to adopt a strict interpretation of the official nature of EU languages, denying the principle of equality of languages. The proposal presented in 2008 by the Group on multilingualism chaired by Amin Maalouf aimed to empower the less spoken languages: it was not accepted. The prevailing approach does tend to favour English and the most spoken languages, which are the working languages of the European Union institutions.

Respect and protection of minorities were introduced in the Copenhagen criteria and in the EU Treaty (Article 2 and Article 49) in order to settle the conflicts

of nationalities and minorities in Eastern Europe after the fall of the Soviet Union, despite the fact that some Western states failed to apply this principle. The European Citizens' Initiative "Minority SafePack – one million signatures for diversity in Europe" came across many barriers and failed to achieve any effective results.

Multilingualism is a political, cultural, and social goal: the European Union encourages it, but largely in a generic way, as the European institutions tend to avoid as much as possible limitations on their actions.

According to Armin von Bogdandy, Union law is an instrument for the promotion of cultural diversity in the sense of cultural pluralism, but cultural diversity cannot become an international legal principle: it should remain a mere "topos". Without the power to enact binding decisions, the Union's diversity policy can be pursued from the perspective of governance in multi-level systems. The European Union, according to Bogdandy, can become a Global Promoter of Cultural Diversity, playing a role in global diversity politics²⁵.

It appears that the European Union is still a Global Promoter of Cultural Diversity and Multilingualism. However, the European institutions tend to apply some limitations – at times inevitable, at times excessive – on its operability. To some extent, it can be argued that Europe is a promoter of cultural diversity, but the European institutions do not always put this into practice.

The idea of Europe pushes towards cultural and linguistic exchanges. Indeed, the mobility of people, entrepreneurs, workers, scholars, and students within European borders is constantly increasing. Perhaps, in future, the European institutions will be more inclined to integrate multilingualism, where possible, into their daily work, despite the inevitable difficulties and hurdles.

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