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**THE FUTURE OF THE ENGLISH LANGUAGE AFTER BREXIT:  
SHOULD ENGLISH STILL BE A LINGUA FRANCA IN EUROPE?**

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# **THE FUTURE OF THE ENGLISH LANGUAGE AFTER BREXIT: SHOULD ENGLISH STILL BE A LINGUA FRANCA IN EUROPE?**

## **INTRODUCTION**

"The language of Europe is translation"<sup>1</sup>

The English language has a notable place within Europe. Thus, this language is an official language in many international organisations such as the United Nations, the European Union, the court of Justice of the European Union and the European Court of Human Rights. Nonetheless, before we continue, we must clarify that in this dissertation, the word "Europe" shall mean a mix between the European continent and the European Union. The use of the name "Europe" would therefore determine not only the European continent but also the European Union as a single being since the expression "English is spoken in Europe" is sometimes used to indicate that this language is still spoken both within the European Union and on the European continent.

The use of English in Europe. Not only is this language used as a legal tool in some legal institutions within the European continent, such as the European Court of Human Rights<sup>2</sup> and the Unified Patent Court<sup>3</sup>, where the English language remains one of the official languages, and also one of the languages in which the parties of the lawsuit might address to the Courts; it is also one of the European Union's official languages<sup>4</sup>, i.e. any European citizen shall be allowed to address himself/herself to any organ of the European Union in a language that he/she understands.

All these mentioned institutions have in common the use of English as a tool of communication; some of them use it as a legal tool. At the same time, the Court progresses on a case of law, as a procedural language or as a translation tool to establish communication with the parties regarding their legal requirements. Others, as in the European Union, might use English as

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<sup>1</sup> Eco, Umberto (1993), "The language of Europe is translation". Lecture given at the conference of ATLAS Assises de la traduction littéraire in Arles, 14 November 1993.

<sup>2</sup> European Court of Human Rights, Rules of the Court, linguistic procedure, article 45

<sup>3</sup> Agreement of the Unified Patent Court, Languages of the Agreement, article 88

<sup>4</sup> Treaty

of the European Union (TEU: Art. 53), the Treaty on the Functioning of the European Union (TFEU: Art. 342) and in the EU Fundamental Rights Charter (CFR: Art. 22).

a means of translation since this language is considered, as well as German and French, to be one of the three Pivot languages.<sup>5</sup> However, we must keep in mind that within Europe, "Multilingualism can [...] be essential for democracy to work properly".<sup>6</sup>

This means that even if the European Union is well known for having 24 languages for 27 States, sometimes translation costs may reach 541 million EUR per year<sup>7</sup>, and it could also be too expensive to make all the possible required translations corresponding to all the official languages, that's how Pivot languages help in reducing those costs because it becomes easier to translate from a European language to a pivot language and vice versa, rather than translating from a European language to another European language.

If we take the European Union as an example, we can quickly realise that English is used because the United Kingdom used to be a member State of this organisation. Furthermore, according to some European Union' procedures, each country shall decide in which language each State wishes to address the European Union's entities. The United Kingdom has decided to use its own language, English. Since then,<sup>8</sup> English became one of the languages of the European Union. Ireland, which is a bilingual country at the European Union, remains as one of the States that, despite having another official language inside its territory, has decided to use English.

Trying to deny the enormous impact that the English language has all around the continents, being one of the most spoken languages in the world, would not be appropriate. This is also supported by checking any international organisation whose statutes establish English as one of their working or official languages. We can see that the United Nations (U.N.) has Spanish, French, English, Chinese and Arabic as official languages<sup>9</sup>, we can also take the Organization of American States (OAS)<sup>10</sup>, whose official languages are French, English, Spanish and Portuguese, and, finally, the European Union, which has English among other 23 official languages.

In the European Union's case, the English language is not only one of the three procedural languages<sup>11</sup>, but also one of its most spoken languages<sup>12</sup>, which clearly shows how relevant this

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<sup>5</sup> European Commission, Frequently asked question, 26 September 2016. Available on [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_13\\_825](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_13_825)

<sup>6</sup> <https://www.youtube.com/watch?v=RpQSvwwmIZo> Second 4 :19

<sup>7</sup> European Commission, Translation department, "How much of the acquis Communautaire remains to be translated and what is the State of play?" Available on [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_06\\_173](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_173),

<sup>8</sup> European Commission, Report, Date where UK decide to use English language

<sup>9</sup> United Nations, Official languages, <https://www.un.org/en/sections/about-un/official-languages/index.html>

<sup>10</sup> OAS, Charter of the Organization, Article 135

<sup>11</sup> European Commission, Frequently asked question, 26 septembre 2016. Available on [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_13\\_825](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_13_825)

<sup>12</sup> European Commission, Europeans and their Languages. "Special Eurobarometer 386" of the European Commission (2012)[1], p. 21

language is. That said, English is one of the European languages at the European Union because the United Kingdom has it as its official language, ever since when the United Kingdom joined the European Union in 1973. In this dissertation, we will attempt to address the scenario in which the English language would find itself within the European Union once the United Kingdom definitively abandons the European Union. It is true that there are other states with English as their official language, but would this be enough to keep the English language at a legal level within the European Union? We will try to give an answer to this statement throughout our writing.

The effects of Brexit<sup>13</sup>. It might affect English in two aspects. Firstly, in the European Union linguistic system, and secondly, in its current use as a communication tool outside the European Union once the United Kingdom leaves on 1 February 2020 due to Brexit. In a nutshell, "the English are out, but does it mean that the English language is out"?<sup>14</sup>

This would a priori mean that the English language might not remain an official language in the European Union; nonetheless, States like Malta and Ireland have decided to keep utilising it. This leaves a scenario where it is unclear if English would remain as a European language, or if it will stop being considered so since countries like Malta and Ireland also have other official languages.

One of the ideas that support this concern is the fact that the head of the European Parliament Committee on Constitutional Affairs, Mrs Danuta Hübner, has proclaimed that "English would no longer be an official E.U. language". Mrs Hübner stated that "we have a regulation where every E.U. country has the right to notify one official language. The Irish have notified Irish, and the Maltese have notified Maltese, so you have only the U.K. notifying English. If we don't have the U.K., we don't have English."<sup>15</sup>

It is possible to affirm that the English language is outside the European Union? The European Commission may not foresee a definitive exit of the English Language, given that in an official communication of 2007, Mr JUNKER, the President of the European Parliament had stated that:

According to article 342 of the Treaty on the Functioning of the European Union, it is for the Council, acting unanimously, to determine the rules governing the languages of the institutions of the Union. Today, English is one of the 24 official and working languages of the European Union institutions. The

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<sup>13</sup> European Commission, notification of the Date of Brexit.

<sup>14</sup> [https://www.youtube.com/watch?v=EMORRln\\_das](https://www.youtube.com/watch?v=EMORRln_das) Second 0 :08

<sup>15</sup> HORTENSE GOULARD 6/27/16, 5:47 PM CET Updated 10/23/16, 6:47 PM CET Available on <https://www.politico.eu/article/english-will-not-be-an-official-eu-language-after-brexite-senior-mep/>

Commission notes that, besides the United Kingdom, Ireland and Malta have English as an official language.<sup>16</sup>

If we follow the words of Mr Junker, we can see that Ireland and Malta do have English as a second language but not as their first official languages. Ireland has Irish while Malta has Maltese, then, perhaps having English as an official language at the European Union might not be the right call because "it could be perceived as strange for the European Union chooses as its main language, one that is no longer an official language".<sup>17</sup>

The existence of multilingualism in the European Union; it is worth noting that some Member States of the European Union like Spain, which has Spanish as its official and main language, may also possess more languages considered "official" within its territory. Thus, Article 3 of the 1986 Spanish Constitution states that Spanish is the official language of the State and that all Spaniards have the duty to know and use it. However, the other languages that would be official in certain autonomous communities as Catalunya<sup>18</sup> would directly be recognised in accordance to their own statutes:

English Version<sup>19</sup>

"Catalan is the official language of Catalonia. So is Spanish, which is the official language of the Spanish State. Everyone has the right to use the two official languages and the citizens of Catalonia have the right and the duty to know them."

All national languages have official status throughout a country (implied in the Constitution), "and national languages are always official languages. Official languages are used for legal and public administration purposes in a certain region of the country or in the whole country, such as Catalan in Spain"<sup>20</sup>. However, as seen above, Catalan is an official language for the Catalan administrations, this scenario can easily apply to other official languages in Spain, such as Galician or Euskera, but they must also draft their texts in Spanish since it is the language expressly recognised by the Spanish State. In the context of Ireland and Malta, English has been recognised as an official second language, so the administration will be able to use it in the drafting of its acts

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<sup>16</sup> European Parliament, parliamentary questions, question reference E-003658/2017. Available on [https://www.europarl.europa.eu/doceo/document/E-8-2017-003658-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-8-2017-003658-ASW_EN.html)

<sup>17</sup> FRANCE 24 English, (EU after Brexit: Will the French language make a comeback?), posted on 17 october 2019. Available on <https://www.youtube.com/watch?v=RpQSvwwmIZo> 5 :29

<sup>18</sup> Estatuto de Autonomía de Cataluña, artículo 6. Article 6(2): "El catalán es la lengua oficial de Cataluña. También lo es el castellano, que es la lengua oficial del Estado español. Todas las personas tienen derecho a utilizar las dos lenguas oficiales y los ciudadanos de Cataluña el derecho y el deber de conocerlas.

<sup>19</sup> Own translation by the author of this dissertation.

<sup>20</sup> European Commission, Eurobaromètre Spécial, Les européens et leurs langues, page 6, 2006, available on [https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs\\_243\\_fr.pdf](https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_243_fr.pdf)

together with the first official language. It is only natural to ask ourselves about the place that English has as an official or "main" language in those countries.

It is of the essence to keep in mind that on 2016 the European Commission<sup>21</sup> had stated that "in the event of a U.K. withdrawal from the E.U., English would cease to be an official language of the E.U.", this will not occur automatically because, taking article 342 of the Treaty of Functioning of the European Union "The Council of Ministers, acting unanimously, decide on the rules governing the use of languages by the European institutions. In other words, any change to the E.U. Institutions' language regime is subject to a unanimous vote of the Council, including Ireland.". This affirmation of the European Union might point that, legally speaking, only the Council of the European Union has the competency to declare which language, after unanimous voting, will remain or not as official within the European Union.

The golden age of the French language. Given the current circumstances, it is worth keeping in mind that "before England joined the European Union, French "speaking world was the origin of important philosophical work and the source of a great deal of the new political ideology of the Modern period. M French was used as the procedural language in any internal affairs of the European Union".<sup>22</sup> This is particularly evident in the European Court of Justice, where regardless of the language chosen by the parties at the lawsuit, French will remain the procedural language "because The Court needs a common language in which to conduct deliberations. That language is, by custom, French."<sup>23</sup> in which the judges will talk with each other and conclude on the affair that has been brought before them. In the words of Van ELS<sup>24</sup> "This duopoly of French and English has a rational justification. The latter is used mainly by northern member States, with southern member States mainly resorting to French."

Despite the fact that French has a special place within the European Court of Justice, it would not be wise to affirm that the French language will return as Europe's main language considering that "French is going to rise but in proportion, English is going to remain"<sup>25</sup>. In this

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<sup>21</sup> European Commission, Representation of Ireland, EU languages: Statement on behalf of the European Commission Representation in Ireland, published on 27/06/2016, available on [https://ec.europa.eu/ireland/news/Statement-on-behalf-of-the-European-Commission-Representation\\_en](https://ec.europa.eu/ireland/news/Statement-on-behalf-of-the-European-Commission-Representation_en)

<sup>22</sup> S. WRIGHT, Annual Review of Applied Linguistics (2006) 26, 35–60, Cambridge University Press, page 38. Available on <https://core.ac.uk/download/pdf/52393545.pdf>

<sup>23</sup> Official webpage of the Cour of Justice of the European Union, Language arrangements, available on [https://curia.europa.eu/jcms/jcms/Jo2\\_10739/en/](https://curia.europa.eu/jcms/jcms/Jo2_10739/en/)

<sup>24</sup> Van Els T. (2005), Multilingualism in The European Union, "International Journal of Applied Linguistics", vol. 15 (3).

<sup>25</sup> [https://www.youtube.com/watch?v=EMORRln\\_das](https://www.youtube.com/watch?v=EMORRln_das) Second 6 :32



order of ideas, according to Mr Karen MASSIN "The idea that French actually could revive after Brexit is very much a sweet dream"<sup>26</sup>.

A linguistic problem outside the European Union. If we extrapolate our reasoning outside the European Union, more specifically, into the Unified Patent Court (UPC) which is a non-European Court created under European law but whose effects take place outside of the European Union according to the Agreement on a Unified Patent Court for "the settlement of disputes relating to European patents and European"<sup>27</sup>. This Court has a tripartite linguistic regime where German, English and French are the only official languages at the Court. Also, this Court required that Germany, the United Kingdom and France to ratify its Treaty, before Court was legally born and started to work. However, in the light of recent events, 'United Kingdom has made an announcement stating the non-application of the Agreement on the Unified Patent Court. This manifestation of not willing to continue with the UPC progress generates not only a setback concerning the entry into force of this Court but also in a possible future a profound modification of the tripartite linguistic system of the Court.

It is possible to consider English as a lingua franca within Europe because of its proactivity and convenience when used as a communication tool, but it is of great importance to assess the real effects that Brexit may produce on the English language and its use on Europe. Also, we must keep in mind the possibility for Malta and Ireland to declare English as their official language; this will keep alive the flame of the English's torch within the 24 European languages. Moreover, France and Germany, although placed on an equalitarian level with other member States, will, in the words of Professor KUŹELEWSKA,<sup>28</sup> "doubtlessly use Brexit to strengthen their own languages within the E.U."

All things considered, it becomes plausible to see how English would remain an official language in these various institutions, it is also a useful communication tool given that "If you put 28 eight people around a table, they must have a common language. We cannot be the Tower of Babel".<sup>29</sup> However, the doubt remains, should this language stay where it is because of its linguistic nature, its properties as a language "to flow where it wants"<sup>30</sup> or should its fade be sealed because of its lack of national speakers in the European Union? This statement should be understood in

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<sup>26</sup> [https://www.youtube.com/watch?v=EMORRln\\_das](https://www.youtube.com/watch?v=EMORRln_das) Second 1 :35

<sup>27</sup> Unified Patent Court Agreement, article 1.

<sup>28</sup> Elżbieta KUŹELEWSKA "Impact of Brexit on the status of the English language in the European Union" Page 223; Available aton [https://www.researchgate.net/publication/334104822\\_Impact\\_of\\_Brexit\\_on\\_the\\_status\\_of\\_the\\_English\\_language\\_in\\_the\\_European\\_Union](https://www.researchgate.net/publication/334104822_Impact_of_Brexit_on_the_status_of_the_English_language_in_the_European_Union)

<sup>29</sup> [https://www.youtube.com/watch?v=EMORRln\\_das](https://www.youtube.com/watch?v=EMORRln_das) Second 2 :08

<sup>30</sup> Deniau X. (1995), *La Francophonie* (Que sais-je? 2111), Paris.

the sense that, the absence of speakers is indicated because after leaving the United Kingdom, the only "English-speaking" countries will be Malta and Ireland, but these states have declared Maltese and Irish as official languages.

Throughout this dissertation, we will try to answer the following question: Will the English language remain the *lingua franca* of Europe after the United Kingdom's exit from the European Union?

Throughout this essay, we will try to explain the reasons behind the general belief that the English language could be eliminated as an official language within the European Union.

In the first part of the paper we will discuss the position of the English language within Europe; we will look at what the English language has done to become what it has become, a pivotal language within the European Union. Similarly, we will discuss the use of English in other non-European institutions in order to be able to determine the true use of English at the international level.

Nevertheless, before giving a definitive answer with regard to the English language and its position as the *lingua franca* spoken throughout Europe, we will study the position of the French language with regard to the possibility of going back and using the language of Molière as an international language, in other words, we will discuss the possibility of seeing or reviewing the French language as a *lingua franca* in Europe.

In relation to this possibility of using the French language as a *lingua franca*, we will adopt a point of view, *a priori* historical and then practical, in order to be able to compare the effectiveness of this language as a possible new international language.

In the second part of the dissertation, we will then proceed to indicate the effects of Brexit in the English language. We will then discuss the possibility of an effective exit of the English language from the official languages of the European Union and the possible legal means for a "linguistic divorce" between these two parties. On the other hand, we will also discuss the legal possibilities for the permanence of the English language as an official language of the European Union.

Several solutions and perspectives emerge when this subject is raised. It is believed that the English language should start in the same way as the English have done; other postulates argue that the English language should remain within the European Union since it is now the international language common to all Europeans.

An attempt will then be made to find a solution to this problem by developing arguments both in favour of its removal and its maintenance within the Union. We will not be content with simply evoking the ideas "for or against" but will try to give a response that is both legally satisfactory and meets the real linguistic needs of the European Union.

In order to do so, and in the light of these elements, we will discuss two important points in this dissertation. On the first hand, we discuss the politics regarding the use of English in Europe and, on the second hand we will talk about the Brexit and its effects on the English language.

# **FIRST ITEM: POLITICS REGARDING THE USE OF ENGLISH IN EUROPE**

In this first item of the dissertation, we will be discussing the evolution of the role of the English language in the E.U., from its entry into force as one of the official languages in the European Union, until dealing with what it has become, a pivotal language within the European Union. It might be an interesting asset to discover how the English language has attained its place as one of the pivot languages within the European Union.

## **Chapter I: The Pivot languages: three languages, one destiny**

As mentioned above, the Pivot languages, also known as "procedural languages"<sup>31</sup> are French, German and English. This means that these languages are the most used in order to facilitate translations and linguistics combinations in order to translate from a European language to another pivot language, hence reducing translation costs. However, even if the English language was last to become a pivot language after French and German, it would be inappropriate to deny the influence this language has in Europe.

The linguistic influence that English has around Europe has allowed it to attain a place not only as a procedural language but as one of the most spoken languages around the world; despite that, it remains necessary to retrace the steps of this language to determine its evolution as a European language.

## **Section I: The evolution of the English language in Europe**

Before the United Kingdom joined the European Union in 1973, French and German were the languages that dominated international affairs among the European countries. However, even if at first the addition of the U.K. to the European Union did not make much of a difference in a

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<sup>31</sup> European Commission, Frequently asked question, 26 September 2016. Available on [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_13\\_825](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_13_825)

linguistic perspective, history took another way once other European countries that utilised English as a second language came into the Union. In order to discuss this historical evolution, we must consider two points of view. Firstly, the history of this language **(A)** and, secondly, its conception as a pivot language **(B)**.

## **A) A path forged throughout history**

In this dissertation, we will not deal with the conception of the English language in an academic sense as a living language that can be learned by attending English language courses, but we will deal with the English language as an official language belonging to the European Union.

The consideration of English as an official language of the European Union had a place in 1972 with the Treaty of Accession where United-Kingdom, Denmark and Ireland received their membership to this institution. However, before the adhesion of the United Kingdom to the European Economic Organization created by the Treaty of Rome in 1957, the French and German languages were not only the main languages used at this organisation but also the "procedural" languages. The membership of the United-Kingdom was a little bit complicated. This country tried to be part of this organisation several times but, "membership applications by the U.K. to join the EEC were refused in 1963 and 1967 because the French President of the time Charles de Gaulle doubted the U.K.'s political willing"<sup>32</sup>.

On the one hand, it means that the English language was starting to take place not only as an official language but also to replace French and German as the primary languages used at official meetings in an international context, on the other hand, it seems that, with the adhesion of other countries that utilised English as a common language, English gained a special status at the European Union as a *lingua franca*.

Academic research has shown that seeing of the language of Shakespeare' as a *lingua franca* should be understood in two ways. In one way, the long story of colonisation of English in other countries like Malta and Ireland has made that these countries became bilinguals. This can be reformulated since:

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<sup>32</sup> BBC News, 1973: Britain joins the EEC, 1 January 1973, available on [http://news.bbc.co.uk/onthistday/hi/dates/stories/january/1/newsid\\_2459000/2459167.stm](http://news.bbc.co.uk/onthistday/hi/dates/stories/january/1/newsid_2459000/2459167.stm)

"Maltese would continue to unjustly free ride on the creation of English as an E.U. lingua franca after Brexit. Even if we grant that the British might not have been the only Anglophones to have contributed to the unjust rise of English as a global lingua franca, the British have certainly not been among the main victims of that process, whereas the Irish and the Maltese (alongside other nations) have."<sup>33</sup>

Like this, Malta and Ireland had acquired English as an official spoken language even if they already have Irish in Ireland and Maltese and Italian in Malta, however, the Italian language was abandoned as an official language.

On the other hand, we have countries that have adopted English as their second language rather than other foreign languages, this means:

"Attention has instead been drawn to the position and development of English as a national, rather than regional lingua franca in multilingual countries such as Switzerland and to its developing function as a second, rather than foreign language in countries such as Denmark, Norway, Sweden and the Netherlands ."<sup>34</sup>

Within these states, the English language has come to occupy a place that gives it the capacity to be used by many speakers of other mother tongues and thus has enabled it to be widely recognised as a second language within these states.

In light of these events, we can retake the conception of the European Commission where it affirms that:

"English is the most widely spoken foreign language in the European Union (E.U.). It, therefore, serves as the working language in the European Commission followed by French and German, albeit all the languages of the European Union are official. The English spoken in the E.U. institution is based on the British standard English, given that the U.K. has been the only country in the E.U. whose native language is English."<sup>35</sup>

It is true that the European Union needs to express itself, and it does so in its official languages. However, it is also true that it needs to communicate with the internal bodies of the Union itself, and for this, it sometimes requires a language familiar to the bodies. This language is often a pivot language, either French, English or German.

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<sup>33</sup> BREXIT, LANGUAGE POLICY AND LINGUISTIC DIVERSITY Diarmait Mac Giolla Chríost and Matteo Bonotti, P 60, 2008.

<sup>34</sup> English in Europe : The Acquisition of a Third Language Bilingual Education and Bilingualism ; 19 author: Cenoz, Jasone. P 23.

<sup>35</sup> European Commission, Directorate-General for Translation, written by Edna Murilo, The Status of English in the EU, October 9, 2019, available on <https://termcoord.eu/2019/10/the-status-of-english-in-the-eu/>

Now, something may change "when Britain leaves the E.U., the sociolinguistic space for a European variety (or varieties) of English will become even more unambiguous, given the absence of Britain as an arbiter of correctness and standardisation"<sup>36</sup>. Even if the European Union continue to have Ireland and Malta, where the English language is spoken too, the United Kingdom has always been a historical reference for English standardisation.

If we consider these historical changes the English language has undergone during the past years, we shall concord that this language has conquered its place through a long path through European history, attaining such a status many years after its incorporation. As of today, this language has suffered a transformation, granting it the title of "procedural language" and a place in the podium of most spoken languages around the world.

However, the exit of the United-Kingdom from the European Union will signify not only a possible loss of one of the European languages, but also a complete transformation of what we call "the pivot languages". That is why, in the next part of this binomial reasoning, we will be discussing the pivot languages.

## **B) The pivot languages**

Before we start our discussion about pivot languages, it is necessary to establish the linguistic pillars that govern the European Union. These legal foundations should clarify the tangible existence of a European regulation treating the linguistic regime within the E.U.

The official languages of the European Union are founded on article 55 of the Treaty of the European Union. This article establishes:

**"Article 55:** This Treaty, drawn up in a single original in the 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 languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States."

This article represents not only the willingness to promote all these languages as official ones but also the inclination of the European Union to create a linguistic consolidation among its official languages. This consolidation should help any European citizen to feel free to address himself/herself to the European Union in any language of his/her choice.

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<sup>36</sup> World Englishes, 2017 0883-2919 doi: 10.1111/weng.12264 English in a post-Brexit European Union MARKO MODIANO, page 314.

According to Article 24 of the Treaty on the Functioning of the European Union "all E.U. citizens have the right to contact the E.U. institutions in one of the 24 languages mentioned in Art. 55 of the E.U. Treaty and to receive a response in the same language". In other words, if a petitioner makes a request in one of the 24 official languages of the European Union, the reply to such request shall be written in the same language of his/her writing. This linguistic capacity of the European Union represents the strength of its multilingual regime, to do so, the European Union possesses one of the biggest translation departments around the world which allows it to manage a multilingual administration.

This multilingual administration is the plurilingual ability of the European Union exists because of a mandatory reason coming from the treaties of the E.U. However, this ease of communication in such a variety of languages represent a cost for the institution. According to professor M Gilbert LAUTISSIER<sup>37</sup>, the cost of the translation at the European Union is unique, a real *sui generis* organisation, he says:

English Version <sup>38</sup>

"It generates considerable costs and requires the translation of very ugly texts and the use of some of the most extensive translation services in the world."

This multilingual administration should be, as said in its title, a means to allow anyone to feel free to communicate in one of the 24 official languages of the European Union, but, if this ought to be the normal and plurilingual way to act within any European institution, we must then realise plurilingualism is a way to comply with the obligation to draft in all different languages. The obligation to draft in all the official languages. According to article 4 of the Regulation (EEC) No 1/1958 of 15 April 1958<sup>39</sup>, which lays down the language regime in the E.U. the "Regulations and other texts of general application shall be drafted in the official languages". This obligation to draft in all the official languages means "that all public documents of general application shall be written and published in the 24 official languages of the European Union without considering the number of national speakers nor the number of countries whose languages are the most used."<sup>40</sup> In other

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<sup>37</sup> Gilbert LAUTISSIER "La législation de l'Union européenne : une règle unique en vingt-trois langues », in *Traduction du Droit et Droit de la Traduction*, sous la direction de Marie Cornu et Michel Moreau, pages 89. 2011. " "Elle engendre des coûts considérables et nécessite la traduction de très nombreux textes et le recours à des services de traduction qui comptent parmi les plus vastes au monde »

<sup>38</sup> Own translation by the author of this dissertation

<sup>39</sup> Journal No 017 of 6 October 1958. It has been amended by various Acts of Accession, Council Regulation (EC) No 920/2005 of 13 June 2005 and Council Regulation (EC) No 1791/2006 of 20 June 2006 on the establishment of a Community language policy for the European Union.

<sup>40</sup> *Europeans and their Languages*. "Special Eurobarometer 386" of the European Commission (2012), p. 21, available on [https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs\\_386\\_en.pdf](https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_386_en.pdf)



words, this drafting obligation goes further than a simple legal rule and had become into the application of the multilingualism system where, according to the Court of Justice of the European Union "Community legislation is drafted in several languages and that the different language versions are all equally authentic".<sup>41</sup> In this state of affairs, therefore, no official language within the European Union could be categorised as a superior to another official language since they all retain the same legal status and applicability. This is then made for creating a real integration among European citizens that enjoy of the European citizenship in where, each one of their languages has a place indoors the U.E.

The obligation to draft in all languages is submitted to the legal control of the Court of Justice of The European Union. Such control stems from Article 24 of the European Union's Treaty of Functioning, which states that:

"The European Union's Court of Justice shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties"<sup>42</sup>.

In addition to this article, the European Union's Court of Justice has also competency for "all acts of the Institutions, bodies, offices or agencies of the Union, including acts not formally provided for in the Treaty, such as resolutions or non-binding acts"<sup>43</sup> and for "the Court of Justice's own rulings on references for preliminary rulings"<sup>44</sup>. This obligation of drafting might be defined, in the words of the European Court of Justice stating: "community legislation is drafted in several languages, with all versions being equally authentic. An interpretation of a provision of community law thus involves a comparison of the different language versions."<sup>45</sup> We will furtherly discuss this in the second part of this dissertation.

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<sup>41</sup> Judgment of the Court of 6 October 1982. - Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. - Reference for a preliminary ruling: Corte suprema di Cassazione - Italy. - Obligation to request a preliminary ruling. - Case 283/81.

<sup>42</sup> The Court of Justice of the European Union - Article 263 (ex Article 230 TEC), Official Journal 115 , 09/05/2008 P. 0162 - 0162

<sup>43</sup> CJEU 15 June 1976 Frecassetti

<sup>44</sup> CJUE 16 March 1978 Bosh

<sup>45</sup> Judgment of the Court of 6 October 1982. - Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. - Reference for a preliminary ruling: Corte suprema di Cassazione - Italy. - Obligation to request a preliminary ruling. - Case 283/81.

After seeing the historical changes of the English language throughout the years until its conquest as a pivot language we can say that there was a mutation through the years, for this reason, we must indicate what has been achieved by the English language in order to be classified as a *lingua franca*.

In the lights of the precedent events, is the English language worthy of its appellation of *Lingua Franca*? Has English acquired fundamental rights that grant it the status of *lingua Franca*?

## Section II: Has English acquired rights as a *Lingua Franca*?

Before we continue, we do need a definition of *Lingua Franca*. Firstly, it is necessary to determine the real conception of *Lingua Franca* before we continue with our reasoning. The real meaning of *Lingua Franca* comes, according to some etymologists<sup>46</sup>, from the Arabic words "lisan-al-farang" <sup>47</sup> like a way to describe a common language between travellers.

It's meaning was later extended to describe a language of commerce, a rather stable variety with little room for individual variation, this meaning is clearly not applicable to today's global English, whose major characteristics are its functional flexibility and its spread across many different domains<sup>48</sup>.

This means the English language has become a tool of communication that transcends not only territories and national boundaries, but it is also a language that unites people all around the world in a variety of domains. However, we are not considering English at this point as a foreign language or a second spoken language in a specific territory, in the broader sense of the term, but only as a means to communicate between native English speakers and non-native speakers. In other words, we are at this point considering English as an international language which use is extended all around Europe, including native speakers and non-native speakers.

In the lights of these events, it is indispensable to argue about the real use of English. To do so, we will expose the extended use of English as a communication tool around Europe **(A)**, then we will expose the use of English as an answer to translation difficulties. **(B)**

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<sup>46</sup> Cf. J. HOUSE, "English as a *lingua franca* : a treath to multilinguslism?" *Journal of Sociologists* 0 7/4 2003, 555-578., D. GRUYER, *Kontaktlinguistik / Contact Linguistics / Linguistique De Contact*, 1996. P 906.

<sup>47</sup> This literally means, word by word, "lisan" as the "tongue" and "farang" means "French" in Egyptian Arabic.

<sup>48</sup> Cf. J. HOUSE, "English as a *lingua franca* : a treath to multilinguslism?" *Journal of Sociologists* 0 7/4 2003, 555-578, page 557.

## A) The extended use of English as a communication tool around Europe

The English language is, not only an official language of the European Union but also one of the most spoken languages around Europe. However, sometimes the use of the English language might be known as an international language or as a lingua franca itself, we consider at this state that:

"it should be noted, furthermore, that one must differentiate between the widespread use of the term 'lingua franca', which designates the general role English plays as a universal language, and the use of the term by English Lingua Franca specialists, primarily in Europe, where our understanding of how English functions as a lingua franca among non-native speakers is evolving as a result of novel theoretical thinking and analysis of the results of research into non-native speaker–non-native speaker cross-cultural communication."<sup>49</sup>

In other words, this language has acquired a certain degree of global and multicultural acceptance where its use may be taken for granted as "already acquired" or "known". Some authors may consider this "preconception" as a threat to multilingualism. Following Juliane House's research, she argues "against the widespread assumption that the English language in its role as lingua franca is a serious threat to national languages and to multilingualism".<sup>50</sup>

Other thinkers may affirm that "This dynamic polymodal also has relevance for how we conceptualise English as it is used as a second language in continental Europe, for this is exactly what English has now become, a second language used freely among the citizens of the E.U., within the E.U., in settings where interlocutors do not share a common L1"<sup>51</sup>.

In our humble conception, affirming that English as a lingua franca is automatically a threat to multilingualism shall not be considered as a universal affirmation, least of all in a globalised case like Europe where "the language of Europe is translation"<sup>52</sup>. In other words, when we consider the English language as a lingua franca, we are following the conception of "lingua franca" established by the European Commission where "It was conceived not as a common language but as the language of the other, which did not belong to the speaker and therefore naturally belonged to the

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<sup>49</sup> M. MODIANO, « Inclusive/exclusive? : English as a lingua franca in the European Union

<sup>50</sup> HOUSE, Juliane, "English as a lingua franca: A threat to multilingualism? *Journal of Sociolinguistics*, 7/4, 2003: 556-578., P. 556.

<sup>51</sup> M. MODIANO, English in a post-Brexit European Union, available on <https://doi.org/10.1111/weng.12264>, P 314.

<sup>52</sup> Eco, Umberto (1993), "The language of Europe is translation". Lecture given at the conference of ATLAS Assises de la traduction littéraire in Arles, 14 November 1993.

interlocutor.”<sup>53</sup> Despite the willingness of the European Union to promote and use the multilingualism present on its legal statutes, this institution needs a common language that allows it communicate with its own organs because, if we see the possible linguistics translation, there are “552 different combinations of languages that need to be covered “<sup>54</sup> then, the existence of three pivot language or a common lingua franca, the multilingualism can be maintained.

We can consider English as a lingua Franca when noticing the "use of English among speakers of different first languages for whom English is the communicative medium of choice and often the only option"<sup>55</sup>, this should mean that, in a multilingual continent like Europe, English acts as a way to communicate, as a tool that allows different speakers to communicate with each other and to understand each other's discourse in a language that is common to both speakers.

Nonetheless, it is also true that English as a lingua franca might affect European multilingualism if, after Brexit, it "should not" be considered as an official language of the European Union because there would not be "any other" member State, until this moment, who has declared English as an official language.

Such affirmation is not simple to make, nor to accept. The English language has become something more than only a procedural language; it has become a European lingua franca that allows Europeans to communicate with each other, this can be confirmed because "at a national level English is the most widely spoken foreign language in 19 of the 25 Member States where it is not an official language (i.e. excluding the U.K. and Ireland)."<sup>56</sup> This means, even if this language is “an official language” inside UK, Ireland and Malta territories, we can appreciate that this language its also used in many other European countries.

On an international scale, within the European Union and the Unified Patent Jurisdiction, at the United Nations Organisation and at the International Courts the English language holds a place marked not only by its use as a pivot language, i.e. as one of the three languages common with French and German with which combinations in translation remain possible but also as one of the most widely used languages within the European institutions so that we can no longer speak

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<sup>53</sup> European Commission, *Lingua Franca : Chymera or reality?*”, page 20, 2011. Available on file:///C:/Users/JEEFD/Downloads/gp\_eudor\_WEB\_HC3111001ENC\_002.pdf.en.pdf

<sup>54</sup> European Parliament, Terminology Coordination, « EU languages: Maltese and Irish », 2016. Available on <https://termcoord.eu/2016/09/eu-languages-maltese-and-irish/>

<sup>55</sup> Barbara Seidlhofer, *Understanding English as a Lingua Franca* - Oxford Applied Linguistics, p 30, 2011.

<sup>56</sup> *Europeans and their Languages*. "Special Eurobarometer 386" of the European Commission (2012), p. 21, available on [https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs\\_386\\_en.pdf](https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_386_en.pdf)

of it as a pivot language but rather as a lingua franca in the sense that it remains a tool enabling the European institutions to stay in contact in a language common to all the institutions. To say goodbye to this language remains much more complicated than it appears. What should be the next procedural language? Would French and German govern one again? What would happen to the other European institutions? Should the Council of the European Union vote in unanimity to maintain a language that does not belong to any Member State has given the simple fact that almost 19 European member States recognise English as their second language?

Brexit is not just an "exit", it is a linguistic divorce as well that created more problems than initially believed. What might be the future of English within the European Union? The fate of the English within the European Union. The European Union used to have 24 official languages, including English. With the departure of the United-Kingdom, English *should not* be considered an official language any longer. This can be understood in many ways, first of all, the United-Kingdom was the country that declared the English language as an official language indoors the European Union, then with the departure of its father, the English language should disappear too; however, there exists a legal basis made by the Founding Treaties of the E.U. that has elevated English as an official language level then, there is a possibility which makes the English language remains at the European Union.

One must remember that English remains one of the most useful languages within European institutions, except for the European Court of Justice, where French is the procedural language, others European institutions usually use English in their daily's activities. "If Brexit has created a legal exit of United-Kingdom and English language as well, it would be morally more problematic than it is now for English to be the sole or main lingua franca of a post-Brexit E.U. after the departure of the largest English-speaking member State"<sup>57</sup>. The exit of the United-Kingdom shall distress the linguistic regime of the European Union, creating new conditions for an uncertain linguistic future.

The existence of new linguistic conditions. Brexit brings a never before seen issue within the European Union, "these new conditions, all that will remain at that conjecture is for the leaders of the E.U. to proclaim that because English has become established as Europe's premier universal language, the time has now come to define the language as a continental European enterprise, with

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<sup>57</sup> Mac Giolla Chríost, D., & Bonotti, M. (2018). *Brexit, Language Policy and Linguistic Diversity*, P 54.

its own unique characteristics."<sup>58</sup> This means, without English, the translation among official languages would now be made from an official language to French or German which are the remaining procedural languages. The loss of the English language might represent the loss of the answer to translation difficulties.

## **B) The English language as an answer to translation difficulties?**

When we talk about translations, we must take into account the fact that instead of making "a direct translation between two languages, where only a limited amount of bilingual resources is available, the pivot translation approach makes use of a third language that facilitates the use of larger amounts of bilingual data for training"<sup>59</sup>. In this case, English is usually and constantly that language who has the most ease of use and richness of knowledge "Due to the richness of available language resources, English is, in general, the pivot language of choice"<sup>60</sup>. However, as Professor LAMBERTERIE<sup>61</sup> put it:

English version:

"First of all, the difficulties of translation, even if they are not specific to the field of law, derive largely from the subject matter to be translated and the cultural context in which the translation is carried out"<sup>62</sup>

Considering English as a translation solution should be understood in a large way, not only for translation purposes but as a procedural and working language as well. This idea that considers English as a "linguistic solution" might find its fundamentals on the words of the Coudenhove-Kalergi Foundation<sup>63</sup> which has declared that "as a consequence, E.U. bodies are called upon to make a decision in support of English as a single official working language of the European Union."

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<sup>58</sup> M. MODIANO, English in a post-Brexit European Union, available on <https://doi.org/10.1111/weng.12264>, P 325

<sup>59</sup> MICHAEL PAUL, ANDREW FINCH, and EIICHRIO SUMITA, How to Choose the Best Pivot Language for Automatic Translation of Low-Resource Languages, page 14.

<sup>60</sup> ACM Transactions on Asian Language Information Processing, Vol. 12, No. 4, Article 14, Publication date: October 2013., p9.

<sup>61</sup> I. DE LAMBERTERIE, Des pratiques de la traduction, in Traduction du Droit et Droit de la Traduction, sous la direction de Marie Cornu et Michel Moreau, pages 124. 2011. "“Tout d’abord, les difficultés de la traduction même si elles ne sont pas propres au domaine du droit découlent en grande partie de la matière à traduire et du contexte culturel dans lequel s’effectue la traduction ”.

<sup>62</sup> Own translation by the author of this dissertation.

<sup>63</sup> EUROPEAN LETTER OF THE 14.10.2005 by Heinz Wimpissinger, Secretary General of the Coudenhove-Kalergi Foundation ONLY ONE WORKING LANGUAGE FOR THE EU, page 7.

This means, the European Union should maintain English as its procedural language within the administration, but it does not mean *per se* that multilingualism will be abandoned.

This will affect a budget economy and will provide funds for the promotion of European multilingualism on a regional level. Reducing costs for translation by letting only one procedural language, which would at the same time be a working language, should reduce costs and allow the European Union to invest those resources the multilingualism projects among Europe. Brexit might affect this, due to the loss of significance of English as a response to the departure of the United Kingdom.

A loss of significance might mean, a loss of relevance or importance that this language could have before Brexit. Some defenders of the European Union might argue that this language should go out as well as the United-Kingdom do, others have affirmed that this language should remain. In the eyes of the President of the European Parliament, Mr Junker, he considers that "Slowly but truly English is losing importance in Europe".<sup>64</sup> This affirmation, even if it does not represents the immediate conception of the European Union, displays the thinking of one of the most important representatives of the European Union itself. In other words, even if a representant made this manifestation of the European Union, his words should not represent the voice of the European Union itself.

If we examine the Brexit effects not only inside the European Union but inside Europe, we may find some points of view that concord with Mr Junker's opinion. Some Russian teachers like Mrs MIRETINA<sup>65</sup> have affirmed that, concerning Brexit, this is clearly a loss of importance for English within Europe.

English version:

"As a result of this phenomenon, which was called Brexit, there was a fear that the English language will slowly but gradually lose its significance in the countries of the European Union"<sup>66</sup>

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<sup>64</sup> RUPTLY, (I taly: 'English is losing importance in Europe' after Brexit – Juncker), Video ID: 20170505 015, posted the 5 may 2017. Available on <https://www.youtube.com/watch?v=XyPccgA402c>

<sup>65</sup> м. С. Миретина “языковые последствия брексита the language implications of brexit”, российский государственный педагогический университет им. А. И. Герцена Herzen State pedagogical university of russia, герценовские чтения иностранные языки Herzen's readings foreign languages, 2018. P. 179 “В результате этого явления, которое получило название Брексит, появилось опасение, что английский язык медленно, но постепенно, потеряет свою значимость в странах Евросоюза”

<sup>66</sup> Own translation by the author of this dissertation.

This loss of relevance of the English language might look paradox because in on hand, the English language is one of the most used language indoors the European Union, the Council of Europe and the Unified Patent Court but, at the same time with the exit of the country that had brought this language to an official level, considering to lost it is still complicated. but, considering that the European Commission<sup>67</sup> and the Court of Justice of the European Union<sup>68</sup> has always represented the interest of the European Union and its citizens, it might be interesting to assess if using a no-longer official language as a "working language" remains an available option in Europe or, on the contrary, turns into a linguistic discussion among the European State members.

English is, before anything else, a procedural language within the European Union, a procedural and working language at the European Court of Human Rights, a working language at the United Nations Organization and a working language at the Court of Justice of the European Union<sup>69</sup>. However, any real affectation coming from Brexit, linguistically speaking, will only be suffered inside the European Union because this language shall no longer be used for any procedural instruction.

We will continue our development based on the thought of Philippe Van PARIJS<sup>70</sup> who asserts that the lingua franca of Europe will be neither French nor Esperanto but English. This would "ought to be" the correct and right way to act inside the European Union but, if moving further with this line of argument, the possible quandary would not only be that French or German could reconquer their positions as "lingua franca", but the remaining of English as a translation language by default within the European institutions, where it is easier to translate from a European language to a procedural language instead of a European language to another European language.

Some of the defenders of the permanence of English inside the European Union are Mac Giolla Chríost, D., & Bonotti who support the idea that despite the arrival of Brexit, English should remain as the European Lingua Franca. According to them, it would be argued that should the U.K. eventually leave the E.U.:

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<sup>67</sup>Cf. Commission Européenne, « Fiches thématiques de l'Union Européenne, <https://www.europarl.europa.eu/factsheets/fr/sheet/25/la-commission-europeenne>; Article 245 of the Treaty of Functioning of the European Union.

<sup>68</sup> Cour of Justice of the European Union, Costa versus Enel case of 15 July 1964 that created the Precedent of the European Law

<sup>69</sup> This might happen only if the request is introduced in English language.

<sup>70</sup> Phillipe VAN PARIJS, « L'anglais lingua franca de l'Union européenne : impératif de solidarité, source d'injustice, facteur de déclin ? » *Revue Economie Publique*, 2015, page 10, URL : <http://journals.openedition.org/economiepublique/1670>



"it would be legitimate for English to remain as one of the E.U.'s official languages, and that in fact there would be even stronger (rather than weaker) moral arguments than there are now for assigning it the role of E.U.'s sole or main lingua franca, and therefore for recognising it and promoting it as such across the E.U. "

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At this point, this reasoning might be the most rational available one but not the best juridical available one. The fact of having a country abandoning the European Union not might necessary means that with his departure, the language this country has declared should go away too because there are some legal regulation within the European Union than establish the standard procedure to include or banish a language, this means, even if the English are gone, the English language will not per se be gone too.

On the one hand, it seems rational to argue that removing English from the European Union languages list would create a bigger problem than what Brexit has done. Perhaps the European Union should maintain this language by any means and keep it as one of its procedural languages, in other words, to accept the proposition of the Coudenhove-Kalergi Foundation and let English be the only procedural language.

On a different point of view, it would be out of order for the European Union to go in defiance of the European Treaties. The European treaties have established not only the list of official languages but also the legal way in which to create or modify an official language within the European Union. In this order of ideas, the European Counsel might decide unanimously how to proceed with English. Moreover, it is also true that English is a procedural language of the European Union, and many European institutions work by utilising this language.

In conclusion, if we apply the European treaties as they are written, the withdrawal of the English language may cause a *Summa ius summa injuria*. In other words, a strict application of the law can become a huge injustice where the cost of removing English out of the European Union could be worse than letting it remain a European language.

After having seen the evolution of the English language as a communication tool and as a possible answer for translation problems, it is still necessary to discuss the English language at a multilingual level. That is why, we will discuss multilingualism in Europe in the second chapter of this dissertation, more specifically, legal multilingualism in Europe. This choice is founded on the legal impact that Brexit's accomplishment represents. Brexit is something more than a simple divorce between the European Union and the United-Kingdom.

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<sup>71</sup> Mac Giolla Chríost, D., & Bonotti, M. (2018). *Brexit, Language Policy and Linguistic Diversity*, P 54.

## Chapter II: The Juridical Multilingualism in Europe

Before we deal with legal multilingualism in Europe, we should define multilingualism. This word, originally from Latin, means *multus lingua*, which means "multiple languages". Some authors may describe it as "a social situation involving groups or communities who communicate, with varying proficiency, in more than one language in addition to a national or standard language".<sup>72</sup> However, we will be only discussing about legal multilingualism in Europe instead of a European multilingualism as a object of study.

Legal multilingualism in Europe is founded thanks to the European treaties that place it as one of the pillars of the European Union. It is customary to speak of the community by describing it as a "community based on the rule of law" (a doctrinal formula that appeared in the 1986 ruling, *Les Verts v. European Parliament*), which refers to the rule of law. But it could also be said that more than a community of law, there is also a union through law, for the Union was built with law as the one and only instrument.

It may not appear very clear at first glance what multilingualism has to do with a community based on the "rule of law". The rules of law shall be understandable and accessible to any European citizen with consistency between languages, in other words, the European Union is a machine for producing communitarian legislation that will be implemented by others in order to create integration among European State members and their citizens, but if we do integration by law there can only be one judge who will occupy a fundamental position, i.e., the law must be interpreted but still applied and sanctioned. Integration may happen not only inside the European Union but also at the European continental level.

At the lights of these events, it is necessary to address both the possible linguistic problems inside the legal institutions within the European Union (**Section I**) and, to analyse the legal institutions within the European continent (**Section II**).

### Section I: Linguistic problems of the jurisdictional organisms

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<sup>72</sup> J.C MAHER, *Multilingualism A very short introduction*, Oxford University Press, 2017, page 3.

Within the European Union, the concept of multilingualism goes beyond the simple vision of a given territory where several languages are spoken. This is particularly inherent to the European Union ever since the founding treaties of this organisation established multilingualism as one of their legal pillars, this has also a fundamental right of any European citizen. We will dive into the possible issues of legal multilingualism **(A)** and what could be the possible control of this legal multilingualism **(B)**

### **A) Is multilingualism a real solution?**

The existence of a plurality of languages is notable because of the simple fact that it has 24 official languages. It refers to the possibility of having the legal and linguistic capacity, within a single State, international organisation, or international Court, to offer litigants access to the judge in other languages that are deemed, official. As an example, one can have the Belgian State which has French-Flemish<sup>73</sup> bilingualism or Canada<sup>74</sup> with English and French, the Court of Justice of the European Union allows citizens to address the Court in one of the 24 official languages, or the Court or the Unified Patent Court<sup>75</sup> which offers a tripartite language system in French, German and English. This linguistic plurality can also be considered as a kind of multilingualism.

Then we do have the multilingualism indoors the European Union which is a *sui generis* multilingualism that has no equivalent anywhere in the legal or linguistic world, since we are not talking here about an institution of international nature with a certain number of working or official languages, such as the United Nations Organisation with its six official languages<sup>76</sup>, or the European Court of Human Rights and its bilingual condition<sup>77</sup>, but about an inter-State institution whose official languages are the same as the official languages of its member States.

This is a scenario of a supranational organisation with practically as many official languages as there are member States. As a result, the European Union currently has 24 official languages and 27 member States. This linguistic cohesion means that the European Union, as a standard-setting machine, can produce legislation equal in content and, despite linguistic differences, maintains an authoritative translation valid for all the official languages of this institution. To do

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<sup>73</sup> Constitution politique de la Belgique, article 4, « les régions linguistiques en Belgique ».

<sup>74</sup> Loi sur les langues officielles – Official Languages Act.

<sup>75</sup> Unified patent Court Agreement, article 49.

<sup>76</sup> Charte des Nations Unies, article 111

<sup>77</sup> Règlement de la Cour Européenne de Droits de l'homme, Article 34.

this, the European Union has a Court that ensures legal cohesion within the member States in relation to European law and language cohesion despite the linguistic plurality present within the Union itself.

## **B) The possible control of multilingualism**

Multilingualism within an international Court, country or international organisation must respect a simple rule of law. This means adequate access to justice in a language that is understandable for the parties.

In the words of Professor Sylvie MONJEAN-DECAUDIN<sup>78</sup>, this access to justice may be attached to a judicial control made by the judge:

English version :

"Linguistic assistance can be linked to the right to a fair trial; it is up to the national judge to assess, on a case-by-case basis, whether the fairness of the trial requires linguistic assistance".<sup>79</sup>

This legal control made by the judge means that to attain a fair and equitable treatment in a legal case, both parties must be able to understand each other and follow the procedure of the judgement. If we consider this rule of law at the European Union level, English "may" stay inside the European Union if any solicitor who does not speak the language from the case takes place, might have the right to ask for an interpreter. This case should allow English to remain within the European Union, however it is unclear how to proceed if a case like this occurs in Malta or Ireland, where English remains an official language. Would those countries still be in a condition to ask the European Union's Court of Justice to run a judicial remedy within the European Union and under the European law if English is no longer an official language? Would Malta proceed with any new judicial European action in Maltese instead of English? Should perhaps Ireland implement any new judicial European action in Irish instead of English? Some possible answers to these questions will

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<sup>78</sup> S. MONJEAN-DECAUDIN, *La traduction du droit dans la procédure judiciaire*, 2012, page 188. "L'assistance linguistique peut être rattachée au droit à un procès équitable, il appartient au juge national d'apprécier, au cas par cas, si l'équité du procès requiert une assistance linguistique ».

<sup>79</sup> Own translation by the author of this dissertation.

be given in the second part of this dissertation. For the moment, we should mention the linguistic problems of legal institutions in Europe.

## **Section II: Linguistic problems of jurisdictional organisms in Europe**

When we go outside the European Union legal sphere, we can find in Europe some different international Courts where different linguistic systems are applied. In this order of ideas, we will see the Court of Justice of the European Union **(A)** and the Unified Patent Court **(B)**.

### **A) The linguistics rules of the Court of Justice of the European Union**

The Law and the foreign languages. Article 6 of the European Convention on Human Rights and the Article 47 of the Charter of Fundamental Rights establishes the right of access to a judge as a guarantee that the individual has access to justice in a language that he or she understands. This possibility of addressing the judge in such a way goes beyond the simple observation of the need for a translator or interpreter who allows the litigant to see his legal case conducted in a language that he understands, since access to justice is placed above any legal or even linguistic barrier. There may be a linguistic variety in certain international courts that facilitates access to the judge in several languages that creates a legal protection in the affaires presented before the Courts. This means that litigants are therefore expected to be able to communicate with each other in their own language when they are in court proceedings at the Court<sup>80</sup>.

In possible legal actions, the Court of Justice, which acts as the guardian of the European Union, persists stating "the applicant shall choose the language of proceedings from among the 23 official languages of the Union, unless the defendant is a Member State, in which case the language of proceedings shall be the official language of that State, or the official language of that State chosen by the applicant if there are several official languages"<sup>81</sup>. In this, there is a wide range of possibilities as to the language regime<sup>82</sup> to be used when an action or application is brought before

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<sup>80</sup> Article 37 of the Reglement of the Cour of Justice of the European Union; article 35 of the Reglement of the Tribunal of the European Union.

<sup>81</sup> VON BARDELEBEN, Eléonore. La Cour de Justice de l'Union Européenne et le droit du contentieux européen, page 83 ; 2012, éditorial La Documentation française.

<sup>82</sup> Règlement de Procédure de la Cour art 37, Art 35 RP Tribunal et Art 29 RP TFPUE.

this Court. Other international institutions outside the European Union also retain an important place in the multilingual legal scale.

As we have mentioned above, there is an obligation to draft in all the official languages of the European Union. This obligation of drafting might be defined, in the words of the European Court of Justice stating: "community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of community law thus involves a comparison of the different language versions."<sup>83</sup>

This comparison between different language versions demonstrates the need of consistency regarding the interpretation not only of the treaties but also of their translation. Concerning this subject, the Court of Justice of the European Union has affirmed 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"<sup>84</sup>. However, it must be noted that, even if at first glance multilingualism remains the main object to protect within the Court of Justice of the European Union, its procedural language is neither English or German but French.

This linguistic choice has its legal fundamentals in what the Court of Justice of the European Union established:

"the Court needs a common language in which to conduct deliberations. That language is, by custom, French. Thus, all documents lodged by the parties in the language of the case are translated into French as part of the internal working file. However, documents exchanged between the registries and parties are in the language of the case. This assumes particular importance at the end of the proceedings, since the only authentic version of the judgment handed down by either the Court of Justice or the General Court is that which appears in the language of the case. The judgments of both the Court of Justice and the General Court are published in the European Court Reports, which appear in all the official languages."<sup>85</sup>

These linguistics issues are relevant at the European Union level, however, we find a different system at the European continent level where some international courts have completely different linguistic systems **(B)**.

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<sup>83</sup> Judgment of the Court of 6 October 1982. - Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. - Reference for a preliminary ruling: Corte suprema di Cassazione - Italy. - Obligation to request a preliminary ruling. - Case 283/81.

<sup>84</sup> Judgment of the Court (First Chamber) of 12 July 1979. - Marianne Wörldorfer, née Koschniske, v Raad van Arbeid. - Reference for a preliminary ruling: Raad van Beroep Zwolle - Netherlands. - Case 9/79. Paragraphe 6.

<sup>85</sup> The Court of Justice of the European Union official's web page, The Institution, Language arrangements, [https://curia.europa.eu/jcms/jcms/Jo2\\_10739/en/](https://curia.europa.eu/jcms/jcms/Jo2_10739/en/).

## **B) The Unified Patent Court: do the pivot languages govern once more?**

The issue of UPC's official languages. This jurisdiction was conceived in a tripartite language form with English, French and German as official languages.<sup>86</sup>

It is in this tripartite linguistic system where the Pivot Languages could recover once again and reclaim their place as procedural languages. This consideration was contested by Kingdom of Spain and the Republic of Italy, which ended up filing two complaints<sup>87</sup> with the Court of Justice of the European Union on the grounds of discrimination of language, since neither Spanish nor Italian were registered as official languages of this new institution. Portugal, for its part, when it delivered its advisory opinion to the Assembly of the Republic in 2011, not only raised concerns about the use of the enhanced cooperation mechanism for the creation of the JUB on the grounds that this mechanism was a "trap"<sup>88</sup> for not fulfilling the formalities required by European law, but also about the language regime in the sense that it infringes a common agreement on the European patent:

The language regime is an absolutely essential issue in order to achieve a fair and effective EU Patent regime which first respects the cultural and linguistic diversity of the European Union; second, provides appropriate legal certainty to protect innovation in Europe; third, contributes to developing and deepening the internal market; fourth, respects the principle of territorial cohesion laid down in the Treaty

Some Spanish and Italian law Professors like Mr. Angel Garcia VIDAL et Mr Massimo SCUFFI respectively, have declared in their legal publications that the use of this tripartite linguistic system remains a real discrimination on grounds of nationality and its aim fell completely from achieving European integration.

According to the Spanish Professor Mr. VIDAL, Spain has a critical point of view in what this concerns this subject:<sup>89</sup>

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<sup>86</sup> Unified Patent court agreement, article 49

<sup>87</sup> Cour de Justice de l'Union Européenne, C-272/11 et C-295/11

<sup>88</sup> Assembleia da Republica, Comissão de Assuntos Europeos, Parecer COM (2011) 215 e COM (2011) 216 du 11 mai 2016, page 2. "O regime linguístico é uma questão absolutamente incontornável para atingir um regime da Patente da EU justo e efetivo que respeite primeiro a diversidade cultural e linguística da União Europeia; segundo, proporcione apropriada segurança jurídica para proteger a inovação na Europa, terceiro, contribua para desenvolver e aprofundar o mercado interno, quarto; respeite o princípio da coesão territorial estipulado no tratado"

<sup>89</sup> G.V, Angel, El sistema de la patente europea con efecto unitario, 2014, página 51. : "los recurrentes argumentaban que el verdadero objetivo de la Decisión impugnada no era lograr una integración,

English version:

"the appellants argued that the real objective of the repugned decision was not to achieve integration, but to exclude Spain and Italy from the negotiations on the language issue and to deprive those States of the prerogative, granted by Article 118(2) TFEU, to oppose that language regime)."<sup>90</sup>

According to the Italian professor SCUFFI, Italy considers this regime as discriminatory:<sup>91</sup>

English version:

"The linguistic question - indeed - has constituted from the beginning - for its discriminatory implications - a moment of detain towards Italy and Spain, in favour of the monolingual solution of the English Only (opposed by France and Germany) and coherently already abstaining from the ratification of the so-called "London Protocol", which provides for the adherent States to renounce the translation into their own language (or limited only to the claims of the European patent as issued by the EPO, which does not need further validation to take effect in the individual country)".<sup>92</sup>

The statements from these two countries before the Court of Justice of the European Union to banish this linguistic tripartite system were not only not taken into account by the Court of Justice<sup>93</sup> itself and by the general conclusions of lawyer Yves BOT<sup>94</sup>, but they were dismissed voluntarily since, according to the Court of Justice of the European Union, the arguments raised by these two States were only aimed at avoiding the establishment of an accelerated procedure for the creation of the JUB and not a real argument against the linguistic unity of the State's parties to this jurisdiction.

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sino excluir a España e Italia de las negociaciones sobre la cuestión lingüística y privar a estos Estados de la prerrogativa, concedida por el artículo 118.2 TFUE, de oponerse a dicho régimen lingüístico

<sup>90</sup> Own translation by the author of this dissertation.

<sup>91</sup> M. SCUFFI, Il nuovo sistema europeo dei brevetti. Il tribunale unificato e il regolamento di procedura, 2017, p. 20. "La questione linguistica – invero – ha costituito fin dall’inizio- per le sue implicazioni discriminatorie – un momento di arresto per l’Italia et la Spagna, favorevoli alla soluzione monolingua dell’English Only (avversata da Francia e Germania) e coerentemente già astenutisi dalla ratifica del c.d. “Protocollo di Londra” contemplante per gli Stati aderenti la rinuncia alla traduzione nella propria lingua (o limitata alle sole rivendicazioni del brevetto europeo così come rilasciato dall’EPO, non necessitante di ulteriore validazione per aver effetto nel singolo paese”.

<sup>92</sup> Own translation by the author of this dissertation.

<sup>93</sup> CJUE affaires C-272/11 et C-295/11, paragraphe 86

<sup>94</sup> Conclusions de l’avocat général Yves BOT, affaires C-272/11 et C-295/11, paragraphe 140.



At the end of this case of the CJEU refusing the claims of Italy and Spain, the latter proceeded, via a new application to this same Court, where, by its request<sup>95</sup> "the Kingdom of Spain seeks the annulment of Regulation (E.U.) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection". Moreover, this request does not result in the form that Spain wanted.

Finally, it would be pertinent to discuss the possible effects Brexit may cause on this Unified Patent Court, since the United Kingdom has notified his will to exit this international Treaty, however we will discuss the linguistic effects of Brexit in the second part of this dissertation.

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<sup>95</sup> Affaire C-146/13, Royaume d'Espagne contre Parlement et Conseil.

## SECOND ITEM: THE EFFECTS OF BREXIT IN THE ENGLISH LANGUAGE

Brexit is now a reality in the European continent. It represents not only the exit of the United Kingdom from the European Union but also the possible loss of an Official European language. However, it remains uncertain if the European Union shall discard the English language as one of its official languages due to the long-time use of this language within this institution. Even if the French language had had an enormous influence as the primary spoken language before English, this is not insignificant compared to what the English language has conquered as an “international language” among European Union member’s States.

Thus the European integration among the European Union member’s States has always one of the main pillars of the European Union as an international organisation. The idea of to share a common nationality as a European citizen where nor the language of the country should be considered as the determinant factor for achieving the European integration, but the simple fact of being part of the European Union itself is what makes the European Union conquer the integration pillar. Even if this European integration has created the European Citizen, it is also true that the European Union has an enormous necessity of communication; this means that the European Union needs to be able to communicate among the different languages that exist indoors the European Union.

This need for communication was guaranteed by the Pivot languages, French and German, and then the English language took its place as the new Pivot language of the European Union. The English reign as a pivot language has even replaced its predecessors within the European Union linguistics policy. Now, if Brexit has become a European reality, the place of Shakespeare’s language might change inside the European Union. That is why we must argue about the effects of Brexits and its status of within the European Union (**Chapter I**) for then discussing the linguistic future of English language indoors the European Union (**Chapter II**).

## **Chapter I: Brexit's effect on the status of the English language in the European Union**

A language acquires the status of official language once one of the Member States of the European Union has decided to declare it as an official language, either because it is spoken in its territory or because it is one of the official languages of that territory. However, sometimes the existence of a plurality of languages might complicate the capacity of communication indoors the European Union, that is why sometimes Pivot languages are used to reduce the linguistics problems that may occur during translation. Now, if we consider that the English language will no longer be part of the European Union, shall this create the existence of a linguistic divorce **(Section II)** or it is maybe the opportunity to the French language to reconquer its role as lingua franca? **(Section I)**

### **Section I: Could English loss his role as a Lingua Franca?**

The use of the English language all over the world is not insignificant. Its presence is maintained in several international organisations and as an official language of several institutions, nevertheless other languages may occupy such an important place as that occupied by English.

The French language has longtime be considered as the primary language of communication in Europe, mainly since French was used as the language of diplomacy and foreign affairs. Nonetheless, it is also true that French, as a lingua franca, still has some particularities that deserve to be raised. Firstly, the French language is considered as the language of international organisations **(A)** and, secondly, it is collective thinking that the French language is the second most spoken language around Europe **(B)**

#### **A) The French language in international organisations**

Among different international organisation, the French language has always found its place. It begins with the Society of Nations where this language was considered as one of its official ones. Then, with the creation of the United Nations French language has saved a place as an official

language as well. Inside the American States Organisation, French language occupies a prominent position as one of the official languages within OAS Organisation, indoors Mercosur organisation. French holds as well a place as official language next to Spanish and Portuguese, the two main languages that are spoken among Latin America.

In the European continent, the language of Moliere is used not only as an official language within the European Union but as a Pivot language of this international organisation too. Inside the European Court of Human Rights, the French language shares the linguistic trone with the English language and the cases that are taken before this Court are treated in French or English. The Court of Justice of the European Union has a peculiarity where, despite the existence of multilingualism within the European Union, the language of proceedings within this Court is French.

It is true that the French language occupies a very important place within the European continent, not only from a legal point of view, since it remains an official language within several institutions of an international nature-based in Europe, but also at an administrative level since, despite the coexistence of other languages within international institutions, French is still often used as a pivot language facilitating communication between the various bodies and also as a language spoken in diplomatic affairs. But what happens when you step outside Europe's sphere of competence? Do we find this same use of French elsewhere? If we extrapolate our reasoning to the American continent, we will discover the existence of specific international organisations aiming not only at Latin American integration as the European Union does in Europe, but also having a language system. In MERCOSUR, according to article 17 of the Treaty of Asunción, Spanish and Portuguese are the official languages of the organisation. In UNASUR, Article 23 432 of the Treaty of Brasilia provides for Spanish, English, Portuguese and Dutch. However, there is only one integration international institution in the American continent, that uses English, French and Spanish as its official languages; this is the case of the American States Organisation OAS where those languages act as official languages.

This reasoning shows that despite the extended use of French or English as “official” or “pivot” languages, the Spanish language detains a dominant place within Latin America. Thus, Spanish is not only the most spoken language in this continent but also as the communication tool used by a different international organisation based on this continent.

Furthermore, the extended use of the Spanish language among Latin American countries allows those territories to be able to communicate each other because “The understanding of the

foreign language is favoured when there are similarities with the mother tongue.”<sup>96</sup> This means the similarities existing between Spanish and Portuguese languages are not that different that would create a dichotomy between the Spanish speakers and the Portuguese speakers. In other words, despite the existence of two “different languages” the possible translations or understandings resulting from using one or other language should remain understandable. In this State of affairs, the problems of interpretation of legal instruments are neither free of linguistic interpretation problems, where despite the proximity of language existing in Latin America where only two languages act as a common language this makes that there could be a most significant control in the linguistics affairs.

## **Section II: Is Brexit a linguistic divorce?**

Brexit has represented for the European Union a significant loss. This is not only the first time where a member State abandons this organisation but also the first time that the continuity of an official language is being questioned about the possible exit of the English language of its position of official language indoors the European Union. In this order of ideas, we must discuss in one hand the possibility of having one official language per State member **(A)** and in the other hand the case of considering the English language like an orphan language. **(B)**

### **A) An official language per member State?**

According to the European Union linguistic policy, once a candidate State of the European Union is accepted as a Member State, this country is allowed to determine which country he wants to be included inside the European Union. In other words, as one of the fundamental pillars of integration<sup>97</sup> is to make not only an international integration organisation but an integration organisation where each Member State remains and retains the same rights and obligations of any other Member State.

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<sup>96</sup> Tania Beatriz Trindade Natel La proximidad entre el portugués y el español, ¿facilita o dificulta el aprendizaje?, page 825

<sup>97</sup> DAILLIER P., Droit de l'économie Internationale, Editions A. PEDONE , about the intégration organisations ; they are « constituées pour l'essentiel des organisations économiques régionales, plus particulièrement des organisations chargées de gérer des unions douanières même des unions économiques et monétaires. » p.60 chap 5 2004,.

Thus if the European Union accepts a new country as its new Member State, this new country shall have the right to declare which language he wants the European Union adopts as its new official language. The Charter of Fundamental Rights of the EU, adopted in 2000 and made legally binding by the Treaty of Lisbon, prohibits discrimination on the grounds of language (Article 21) and places an obligation on the Union to respect linguistic diversity (Article 22)

According to the legislative organ of the European Union, which is the Parliament<sup>98</sup>, the linguistic policy that is applicable within the European Union is the “Respect for linguistic diversity is a fundamental value of the EU, as is a consideration for the person and openness towards other cultures. This is incorporated into the preamble to the Treaty on European Union, which refers to ‘drawing inspiration from the cultural, religious and humanist inheritance of Europe’ and ‘confirming [the] attachment to the principles of liberty, democracy and respect for human rights’. In Article 2 of the Treaty on European Union (TEU), great importance is given to respect for human rights and non-discrimination, while Article 3 states that the EU ‘shall respect its rich cultural and linguistic diversity’. Article 165(2) of the Treaty on the Functioning of the European Union (TFEU) emphasises that ‘Union action shall be aimed at developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States’, while fully respecting cultural and linguistic diversity (Article 165(1) TFEU).” This legal argumentation shows the envy of the European Union to establish a legal basis where languages and multilingualism are protected and considered more than a pillar of the European Union, and it can easily be named as a fundamental right of any European citizen.

Besides, there is a peculiarity when placing the English language under the scope of application because even though since 1973 the English language has been an official language within the European Union CITA, this attribution as an official language took place when the United Kingdom ratified the Treaty of 1972 and that country subsequently declared the English language as well as the official language within the territory of the United Kingdom, it would then become an official language within the organisation of the European Union too. However, if Brexit has made the United Kingdom to abandon the European Union organisation, this means that the English language, as an official language, become a sort of orphan child **(B)** without a territory where the English remain spoken?

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<sup>98</sup> European Parliament, “Linguistic Policy”, in Facts Sheets of the European Union, Available on <https://www.europarl.europa.eu/factsheets/en/sheet/142/language-policy>

## **B) The English language has become an orphan?**

The English language is mainly spoken in the United Kingdom as an official local language. According to the Constitution of this country, the official language of this territory is English. However, there are another bunch of States inside the European Union that not only consider it as their official language (Malta and Ireland), but also others consider it as their second language. Those last have English as a communication tool, as a second language used by the population, but they do not believe the English language as their official one. Notwithstanding, the willing of these States to consider English as a communication language, for the purposes of this dissertation, we can not take into consideration the English language “as a second language” but only the English language “as an official language” inside a territory. This division is made because of the legal fact that a second language possesses an internal connotation of “spoken language” but not a context of “official spoken language”.

Furthermore, if we put under the scope the case of Malta and Ireland, we will notice some interesting facts in what concerns the linguistics policy indoors these two Member States of the European Union. Firstly, if we take a fast look at the Constitutions of those countries, we will notice that the official language indoors Malta are English and Maltese and indoors Ireland the official languages are English and Irish. Thus, the existence of the English language as an official language of these territories would then automatically means that the same legal fundamentals as Irish and Maltese.

In other words, within these two territories, their citizens are allowed to communicate with the government in any of the official languages they want, and the government must reply to them in that language. Now, what would be the difference with the other European countries that use English as well but as a second language? Are not the citizens of those European countries allowed to communicate with the government either in the official local language or English? The main difference between an official language and a second language that does not have the status of an “official language” is that in the first case, the official language is the language used in all government procedures, i.e. in all acts emanating from the State, which is then the prerogative of the public authorities. However, in the second case, the existence of a second language which is not an official language declared by a legal source will mean that this language, despite its local use in the daily life of citizens, may not be used in any act emanating from the State.

So, at the lights of the present events, considering the English language as a Child orphan because of the Exit of the United Kingdom of the European Union shall not be possible. However, we are considering the characterisation of an orphan as a language that has not speakers in a

determined country, but, this consideration must be different inside the European Union? Does the European Union need a Member State that has declared English as an official language to have English as an official language, or is it sufficient for one of its Member States to have English as an internal official language in order to then consider it as an official language at EU level? For answering these questions, we must then see in **Chapter II** Brexit and the future of English inside the European Union.

## **Chapter II: Brexit and the future of English in the European Union**

The future of the European Union in a Brexit context remains uncertain because of the fact of the absence of similar cases. Then being this opportunity the first time a Member State decides to abandon this organisation, this means, the future relations between the United Kingdom and the UE remains unclear. But what about the linguistic aspects of this separation; do we need to discuss the possibility that English is still an official language of the European Union because Malta and Ireland have English as their official language within their territories, or is it doomed to disappear very soon due to the absence of a state that has declared English as an official language within the European Union?

The departure of England could represent a new opportunity for Malta and Ireland, since these two states, which no longer have any competition in linguistic terms, a battle fought at the time by the United Kingdom itself, could now become the two great linguistic powers within the European Union. Malta and Ireland will therefore be able to act as the only purely English-speaking countries in the sense that they have declared, apart from their official languages spoken within these two states, English as their official language.

However, the question arises as to whether the mere fact of having English within a given state would be sufficient to meet the linguistic needs of the European Union or whether another source of power would have to be found in order to be able to keep English as an official language within the European Union. In the light of the events of the precedents, we need to discuss the possibility of considering Malta and Ireland linguistically as the new English-speaking world powers (**Section I**), or whether there is a further legal requirement for English to be an official language within the European Union (**Section II**).



## **Section I: Would Ireland and Malta become the next English language world powers in the European Union?**

The States of Malta and Ireland have now a new responsibility on their shoulders. They will remain the only two English-speaking states inside the European Union. Even if other Member States do recognise English as their second language, the only two who has declared English as their official territorial language are Malta and Ireland. This means that these states have become the only ones able to determine the linguistic future of the English language, its evolution, use and modification since, being English their official language, it is up to them to determine the linguistic accommodations necessary to be able to continue using the English language.

Apart from this, it could be stated that being a Member State with English as its mother tongue allows a kind of balance of power between the other Member States which also have languages which are both official languages within their territories and the European Union. Then, despite the exit of England of the European Union, this might not represent, a priori, in the complete output of the English language of the EU. Nonetheless, it is a truth that Brexit has created a challenging situation for the English language inside the EU. Firstly this is a linguistic divorce **(B)** and secondly, will maybe be any affection of the four freedoms liberties of the EU? **(A)**.

### **A) The continuity of enjoyment of the benefits of the four freedoms of the single European market**

The four freedoms of the single European market should not suffer any affection arising from Brexit. Brexit is the retirement of England of the European Union; then the European Union benefits will no longer be applied on the British territory. However, Malta and Ireland remain at as the Member States then anything should arrive at them in reason of Brexit's consequences. Despite the fact that, these states remain within the European Union as member states, different language rules could now apply since "the English are gone".

In other words, despite their willingness to have declared the English language as an official language within their territory, this "declaration" can only have in-house effects since, at the European level, they have had to declare Maltese and Irish. So the only State to have declared English was England! In this sense, even if the English language remains official within the Maltese

and Irish states, in the eyes of the European Union, the languages declared by these states were Maltese and Irish.

On the one hand, it is also true that these states have widely accepted the use of English as the language of communication between them and the organs of the European Union, but this has not been an acceptance from the outset of the English language as an official language declared by the Maltese and Irish states, as their official languages declared within the Union have been different.

On the other hand, if we consider that with the departure of the English there would no longer be any possibility of using English within the Union because, as this language does not have the State has declared it as an official language, the English language would no longer have any place within the EU. If we follow this reasoning, there would therefore be a slight affectation to the four freedoms of movement of the European Union because the English language would no longer be required to be used by the European institutions, i.e. the Maltese and Irish could therefore use English within their states or to communicate with other European citizens, but they would no longer have the right to address to the European institutions in English.

Let's take as an example of what just happened with the Commission for Accounting Standards that seats in Belgium. Indoors this Belgium Commission, even if we are talking about domestic law, this Commission do have "a lot of branches and subsidiaries of companies based in another member state of the European Union. It is therefore important that from now on it is possible – to submit a translation of the annual accounts in another official language of the European Union, along with the annual accounts still in one of the Official Belgian languages."<sup>99</sup> Now, all those Belgium enterprises seats all around Europe will have the opportunity to create annuals accounts on different languages.

This Commission has had a lot of demand for letting the English language being part of the languages allowed for producing annuals reports and "Because there was so much demand for it, the Commission for Accounting Standards ensured an unofficial translation in English of the various models. Following the Brexit, it is not yet clear whether an English translation will be

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<sup>99</sup> **A. VANKREN** « ANNUAL ACCOUNTS ALSO POSSIBLE IN ANOTHER OFFICIAL EU-LANGUAGE », SEED OF LEGAL CONSULTANCY AND ADVOCACY, PUBLISH ON LEXOLOGY, MARCH 1 2020, AVAILABLE ON [HTTPS://WWW.LEXOLOGY.COM/LIBRARY/DETAIL.ASPX?G=B6D53A7B-0EB8-4B10-AB4E-C69A8B3AA979&FILTERID=A6280EFC-B373-4574-ADEF-BF4142102E17](https://www.lexology.com/library/detail.aspx?g=B6D53A7B-0EB8-4B10-AB4E-C69A8B3AA979&FILTERID=A6280EFC-B373-4574-ADEF-BF4142102E17)

accepted in the future since English is not one of the languages of a member state anymore.”<sup>100</sup> In other words, we can easily consider that even if “the English are gone”, the English language is still usable on those countries where it is regarded as an official language of the second language, but, it remains under the discussion what would happen to this language indoors the European Union.

After having seen the possibility of use of the English language after Brexit inside the European Union, it remains, however, necessary to talk about the consequences of the linguistic and political separation of English and the European Union **(B)**

## **B) The linguistic and political separation of England and the European Union**

Considering Brexit as merely political will cause that many other aspects as the linguistic and legal context remains orphan. The effects Brexit ought to have under these two subjects areas extended and completed as Brexit itself. Notwithstanding these problems, the legal context might have found a solution in what the Private law (in a civil law legal system view) because when an international contract is signed between the parties, one of the sine quanon requirements is to declare the governing law.

The French law has long-time created a legal basis that remains applied at the international level where according to Professor Sandrina CLAVEL<sup>101</sup>:

English version :

“An international legal situation has links with several legal orders. However, the legal systems involved may have different views on the nature of the issue in question.”

This reasoning must be understood in the way that, depending on what the signed contract has established, the parties must want to decide which govern law they should choose and, according to witch governing law they choose, the legal system might change. Now, does Brexit has something to do with the fact that a European Union party has signed a contract with a British party? Does Brexit affect this choose of governing law if for any reasoning the governing law is the

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<sup>100</sup> Idem, A. VANKREN.

<sup>101</sup> S. CLAVEL, *Droit International Privé*, Editions Dalloz, page 35, 2016. « French original version: “Une situation juridique internationale entretient des liens avec plusieurs ordres juridiques. Or les ordres juridiques impliqués peuvent porter, sur la nature de la question considérée, des appréciations différentes. »

English law? According to Bird and Bird lawyers<sup>102</sup> “Parties negotiating and re-negotiating international contracts should continue to use English governing law and exclusive English jurisdiction clauses in those contracts after Brexit if suitable for their circumstances. Brexit does not mean a loss of ability to choose English law as the governing law of an agreement, or to ensure that English courts will have jurisdiction, or to enforce English court judgments (on such agreements) in the EU Member States.” This means Brexit shall not affect the legal relationships and possible future contracts between a European party and an English party because the deal remains binding for the contracting parties independently of the language of the contract or the applicable law. This permission should indicate as well that if anything prohibits English law the governing law in domestic arrangements between civil parties, then anything should ban either that the contractual language could be the English language as well. However, is this reasoning applied to the European Union as well? In other words, is the English language required to have any kind of native speaker within the European Union? **(B)** Should the continuity of the English language within the European Union be questioned in the sense that it could remain there as an official language since the founding treaties so declared? **(A)** In any event, a legal examination must be carried out to determine the answers to these issues relating to the English language. **(Section II).**

## Section II: The English language in the Eyes of the Law

The continuity of the English language indoors the European Union as an official language is in the eye of the hurricane. On one hand, the continuity of the English language as an official language within the European Union may be considered to depend on the legal basis created by the founding treaties **(A)**, on the other hand, even though the European Union still has Malta and Ireland as “English-speaking countries”, these countries have declared another language as their official language and not English as such. One could also wonder, would it be possible to ask does it suffice for the English language to have native speakers, or perhaps it needs something more in order to remain as an official language within the European Union? **(B)**

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<sup>102</sup> RICHARD ECCLES AND LOUISE LANZKRON, ENGLISH LAW AND ENGLISH COURTS CAN CONTINUE TO BE USED IN INTERNATIONAL CONTRACTS AFTER BREXIT, **OCTOBER 15 2009, LEXICOLOGY, AVAILABLE ON**  
[HTTPS://WWW.LEXOLOGY.COM/LIBRARY/DETAIL.ASPX?G=5AF0F663-93DA-4E76-B071-106CC9375FC0&FILTERID=00145FEC-79ED-490E-997F-FF89E96E1FE3](https://www.lexology.com/library/detail.aspx?g=5AF0F663-93DA-4E76-B071-106CC9375FC0&FILTERID=00145FEC-79ED-490E-997F-FF89E96E1FE3)

## **A) The legal basis of the continuity of the English language at the European Union**

Since the Treaty of Accession of Denmark, Ireland and the United Kingdom in 1972<sup>103</sup>, the Founding Treaties of the European Union has acquired new languages and new Member States, and each of them has had the right to indicate which language they wished to declared as the official language of the European Union. Following this, English, Irish and Danish languages have conquered a place in the podium of the official language of the European Union. In other words, these three languages have become part of the selected group of official languages within this international institution.

In this order of ideas, would Brexit be the breaking point of the Treaty of Accession of 1972? Would the exit of the United Kingdom from the European Union might only represent a legal separation where this country shall no longer be considered anymore as a Member State? Or would this also mean that, with its departure, the English language must go away too? This solution must seem the most adequate if one considers that “if it is this country that has declared English as an official language, it would be logical to state that with its departure the English language will no longer be an official language”, but in law, things do not work this way.

Firstly, the existence of the Treaty of Accession of 1972 shows not only the willing of some states to become a member of the European Union, but also an international legal treaty that is regulated by the Vienna Convention of Treaties and by the Latin principle of law *Pacta Sunt Servanda* which means “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”<sup>104</sup>

This principle of law determines that the Treaty must be completed, followed and applied by every contracting party. Then, should this mean that if the “English are gone”, this will signify that the “English language is gone too”? We are talking about two different things, being one the exit of a country and the other one the departure of a language. Brexit is under scope by a specific regulation where the United Kingdom and the European Union must find an agreement<sup>105</sup> in order to conclude a pacific and legal outcome. However, the linguistic part of this divorce is regulated by the “EEC Council: Regulation No 1 determining the languages to be used by the European

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<sup>103</sup> European Union Official Journal, OJ L 73, 27.3.1972, published in 1972.

<sup>104</sup> Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969, Article 26.

<sup>105</sup> The European Union – United Kingdom withdrawal agreement, 12 November 2019.

Economic Community” and its modifications of 2013<sup>106</sup> and the article 217 of the Treaty establishing a European Economic community which determines that “Article 217. The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the rules of procedure of the Court of Justice, be determined by the Council, acting unanimously.”

All these legal bases are aimed to indicate that, the English language is not only an official language because of its appurtenance of the Regulation No 1<sup>107</sup> (that shows the official languages of the European Union) and that the only institution who is habilitated and which argumentation remains binding in order to know if “a language” is an “official language” is the Council acting unanimously. Then, the Treaty Accession of 1972 and the Withdrawal EU – UK agreement is aimed to guide the legal exit of England of the European Union, but the English language is not a point of discussion of these treaties.

After seeing the legal basis of the English language and the possibility of its continuity within the European Union, we must discuss the option to have an official language without national speakers. **(B)** In other words, is it possible to have English as an official language without having any<sup>108</sup> State Member that has English as its official language?

## **B) Does the English language need national speakers to remain in the European Union?**

According to the Treaty of Amsterdam “Article 314: Every citizen of the Union may write to any of the EU institutions or bodies in one of these languages and receive an answer in the same language.” This article means that if any European citizen addresses himself to any institution of the European Union, he will receive an answer on the chosen language. After Brexit, many European institutions have affirmed that “Translation and interpretation services in the English

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<sup>106</sup> COUNCIL REGULATION (EU) No 517/2013 of 13 May 2013

<sup>107</sup> Council Regulation No 517/2013, *Article 1* The official languages and the working languages of the institutions of the Union shall be 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.

<sup>108</sup> Considering that Malta has declared Maltese and Ireland the Irish language.

language will also remain unaffected.”<sup>109</sup> And even the President of the European Parliament<sup>110</sup> has himself confirmed that “English will continue to be a European language after Brexit”.

If we take the case of Ireland, where English and Irish remain the official languages, we will notice that “ **it is the only EU language that is not spoken by a majority of the population in any Member State**; in fact, only 17.09% of the population of Ireland speak Irish, and only 2.52% consider it a native language.”<sup>111</sup> So, even if Irish is an official language on the European Union and Ireland territory, it looks evident that the most significant part of the population speaks English and not Irish.

In this state of thing, if we deprive the use of the English language indoors the European Union, we will have the case that the population of a Member State such as Ireland, whose “declared language” is Irish, has a population that speaks majoritarian English.

In this state of affairs, we could then indicate that a total deprivation of speakers in a broad sense could therefore not be asserted since the English language would nevertheless retain native speakers since in Malta and Ireland the English language remains an official language within these states, yet nothing would prevent us from asserting that the English language would then be devoid of native speakers in the sense that there would therefore be no state having declared the English language as an official language despite the fact that it remains an official language within the European Union.

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<sup>109</sup> communication from the commission to the european parliament, the european council, the council, the european economic and social committee and the committee of the regions a modern budget for a union that protects, empowers and defends the multiannual financial framework for 2021-2027, page 20, 2018.

<sup>110</sup> european parliament, parliamentary question, question reference: e-003658/2017, available on [https://www.europarl.europa.eu/doceo/document/e-8-2017-003658-asw\\_en.html](https://www.europarl.europa.eu/doceo/document/e-8-2017-003658-asw_en.html)

<sup>111</sup> european parliament, terminology coordination, « eu languages: maltese and irish », 2016. Available on <https://termcoord.eu/2016/09/eu-languages-maltese-and-irish/>

## CONCLUSIONS

- 1) The legal basis of the European Union in what concerns the linguistic regime is the principal argument to indicate that the English language, as an official language will remain until the Council, acting unanimously, decides otherwise.
- 2) The States of Malta and Ireland now have the responsibility to guide the future of the English language indoors the European Union.
- 3) Considering the English language no longer an official European language could be an enormous mistake because of the extended use of this language has inside Europe.
- 4) The existence of an official language without speakers is possible because the Founding Treaty has declared the English as an official one. The presence or not of any State Member that has declared English is now irrelevant.



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