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# **Linguistic Autonomy of EU Institutions, Bodies and Agencies**

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## ABSTRACT ENGLISH

This article aims at shedding some light on both explicit and implicit internal language arrangements and practices which currently exist in the various EU institutions, bodies and agencies. It will be shown that they enjoy in effect a large “linguistic autonomy” to determine their own internal language arrangements. The legal basis of this linguistic autonomy will be discussed, as well as the ensuing internal language policies which have been explicitly or implicitly established.

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## ABSTRACT DEUTSCH

Mit diesem Artikel sollen sowohl explizite als auch implizite interne Sprachregelungen und -praktiken beleuchtet werden, die derzeit in den verschiedenen Organen, Einrichtungen und Agenturen der EU bestehen. Herausgearbeitet wird, dass sie in der Tat eine große "sprachliche Autonomie" genießen, um ihre eigenen internen Sprachregelungen zu bestimmen. Die rechtliche Grundlage dieser Sprachenautonomie wird ebenso erörtert wie die daraus resultierende interne Sprachenpolitik, die explizit oder implizit festgelegt wurde.

Der Autor ist Pressereferent am Gerichtshof der Europäischen Union und Gastprofessor für Europarecht an der *Vrije Universiteit Brussel* (Belgien). Sein Beitrag gibt ausschließlich persönliche Ansichten wieder.



## ABSTRACT FRANZÖSISCH

Cet article vise à clarifier les dispositions et pratiques linguistiques internes, explicites et implicites, qui existent actuellement dans les différentes institutions, organes et agences de l'UE. Ceux-ci jouissent d'une grande "autonomie linguistique" pour déterminer leur propre régime linguistique interne. La base juridique de cette autonomie linguistique sera examinée, ainsi que les politiques linguistiques internes qui en découlent et qui ont été établies explicitement ou implicitement.

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## Table of Contents

- 1 Introduction: the European Union and its Internal Language Regimes
- 2 Legal Status of Languages in the EU
- 3 Language Regimes and the Principle of Linguistic Autonomy
- 4 Current Language Arrangements and Practices
  - 4.1 Legal Basis for Working Languages: Explicit Provisions vs Implicit Arrangements
  - 4.2 Assessment of the Actual Working Languages of the EU Administration
- 5 Concluding remarks
- 6 Bibliography
- 7 Legal References
  - 7.1 Regulations
  - 7.2 Decisions/rules of procedure
  - 7.3 Case Law
  - 7.4 European Ombudsman: complaint procedure
  - 7.5 Varia

# 1 Introduction: the European Union and its Internal Language Regimes

<1>

In the *Star Trek* franchise, the *Starship Enterprise* merrily explores strange new worlds in galaxies where “Infinite Diversity in Infinite Combinations” exists.<sup>1</sup> Yet, linguistic hiccups almost never occur, as the *Universal Translator* discretely and efficiently transforms any idiom into English and vice versa. Among themselves, however, the diverse crew of the *Starship* overwhelmingly uses one lingua franca, namely English.

<2>

This article does of course not intend to discuss science fiction. On the contrary, it sets out to explore a down to earth topic, namely the internal language regimes and arrangements in the various institutions, bodies and agencies which form together the administration of the European Union (EU). This rather hidden universe is, however, not less wondrous, given its diverse cultural and linguistic setup, in which currently 27 Member States share 24 languages, resulting in a total of 552 linguistic combinations (since each language can be translated into the 23 others).<sup>2</sup>

<3>

Admittedly, it is not always easy to assess the actual internal language regimes and arrangements within the EU institutions, bodies and agencies, due to a divide between the *de iure* and the *de facto* situation as well as a general lack of transparency on internal language policy. By using a combination of elements, though, some light can be shed on this issue. First and foremost, a legal analysis may reveal which languages are used in specific (or all) internal situations. Unfortunately, it will be shown that only a small fraction of the EU institutions, bodies and agencies have laid down explicit rules in this regard. Second, a valuable source of information are the various websites of the EU institutions, bodies and agencies, more specifically on the basis of an assessment of the (limited) availability of certain languages. Third, linguistic recruitment requirements (and related litigation) inevitably give away information on internal language practices. Fourth, data on the translation flow (from the original language) allow for some quantitative assessment of internal language use. Lastly, reports by the European Court of Auditors or the European Ombudsman, as well as scholarly contributions give valuable insights.<sup>3</sup>

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1 The basis of Vulcan philosophy (Spock 2, 2269(3), The Infinite Vulcan).

2 Website European Parliament, 25.9.2019, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2019\)642207](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2019)642207) (retrieved: 2.1.2021).

3 This methodology was also applied in my Ph.D research on, *inter alia*, this aspect of EU language policy (VAN DER JEUGHT, 2015).

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In that regard, I will focus on assessing the actual situation as to internal working languages, without discussing as such the choice for or against English, or the need for a common language versus linguistic pluralism in internal communication. An abundant doctrine on this topic exists.<sup>4</sup>

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Before discussing the actual language regimes and arrangements (under 4), I will briefly sketch the legal status of languages (Treaty, official and working languages) in the EU (under 2) and explain the legal basis of the principle underpinning the linguistic autonomy the various EU institutions, bodies and agencies in practice enjoy. I will conclude under 5.

## 2 Legal Status of Languages in the EU

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A pivotal Treaty article regarding the language regime of the EU is article 342 TFEU, which reads as follows:

“The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.”

Accordingly, the Council has the competence to determine the language regimes of the EU *institutions*, which are at present, under article 13 TEU, the European Parliament, the European Council, the Council, the European Commission, the European Central Bank and the Court of Auditors, as well as the Court of Justice of the EU. The latter institution is, however, explicitly excluded from the scope of article 342 TFEU, as reference is made to the Statute of the Court.<sup>5</sup> Moreover, article 342 TFEU remains silent on the language regimes of the various bodies and agencies of the EU.

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Although article 342 TFEU thus establishes the procedure to follow, it does not give further directions as to the substance of such language regimes. No reference is, for instance, made to the Treaty languages. This raises an intriguing question: is it legally possible for the Council to

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4 As VAN PARIJS (2011) convincingly demonstrates in his seminal work, it is quite difficult to defend lingua franca pluralism, either on grounds of efficiency or fairness. Arguably, linguistic pluralism should imply equal treatment of all languages, and not privileged status for a selected few. See various points of view on this issue, *ex pluribus*, LOPEZ (2010: 16-17), DARRAS (2001: 49); THIESSE (2010: 241); ROCHE (1991: 139); AMMON (2006/3: 22); GAHLER (2007: 33); HERBILLON (2003: 9, 37); FIDRMUC/GINSBURGH/WEBER (2010: 268).

5 See *infra*, 21 pp.

pick other languages than the current 24 Treaty languages to be used in language regimes of the EU institutions? The question is not entirely hypothetical as it has been suggested in the past to use Esperanto<sup>6</sup> or even Latin<sup>7</sup> as a working language.

< 8 >

The question is also of relevance for the Spanish co-official languages (Basque, Catalan/Valencian, Galician, and Aranese), all languages without Treaty language status. Indeed, in 2004, when Ireland requested official and working language status for Irish (until then only a Treaty language), Spain requested limited recognition as EU languages of its co-official languages. Whereas the Irish request was granted, the Presidency of the Council argued, however, for the refusal of the Spanish request in the following terms:

“When the Council makes use of the competence conferred upon it by [article 342 TFEU], it must respect [article 358 TFEU]<sup>8</sup>, which lays down the list of languages in which the Treaty is drawn up and is authentic. Thus, in the exercise of the remit conferred on it by [article 342 TFEU], the Council may choose all or some of the languages mentioned in [article 358 TFEU], but may not depart from the list and choose languages which are not mentioned in it. To do so, an amendment of the Treaty would be necessary.”<sup>9</sup>

The accepted legal solution so far is therefore that the Council can only grant official or working language status to Treaty languages. It may be regretted, though, that such an issue of constitutional importance was not put before the Court of Justice.<sup>10</sup>

< 9 >

Presently, the EU has 24 Treaty languages, which are under article 55 TEU<sup>11</sup> the following: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek,

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6 UTRI (2018).

7 IEVA argues that the introduction of Latin as the EU language, together with English, would enable the EU to have a linguistic identity policy just as a national State, based on a shared tradition of the EU Member States, the ‘*latinitas*’ as a European matrix, common to the Germanic and Romance peoples in the EU (2009: 18). It is alleged that, at the Messina Conference in 1955, Alcide De Gasperi has informally hinted at the possibility of using Latin as a common language, an idea which was rejected as it was the language of the catholic church (PELLICCIARI 2013: 61).

8 Article 358 TFEU reads as follows: “The provisions of Article 55 of the Treaty on European Union shall apply to this Treaty.” Art. 55 TEU provides for a list of the Treaty languages (see *infra*, 9).

9 COUNCIL OF THE EU, Note 9506/2/05 from the Presidency of the Council to the Permanent Representatives Committee of 13 June 2005 on the Working Methods, Request by the Spanish government for official recognition to be given in the European Union to languages other than Castilian which have official status in Spain, EU Monitor, <http://www.eumonitor.nl/9353000/1/j9vvik7m1c3gyxp/vi7jgszhq9z2> (retrieved: 29.12.2020). See annexed to that document, the memorandum of the Spanish government.

10 Spain could have lodged an action for annulment of the Council decision on the basis of art. 263 TFEU.

11 See also art. 225 Euratom Treaty, providing for the same Treaty languages.

Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish. The Treaties are equally authentic in all these languages.<sup>12</sup>

< 10 >

How have the Treaty languages been picked? It is a constitutional practice that such an issue is dealt with in the accession Treaty between the EU Member States and acceding States. The latter declare which languages are to acquire Treaty (and official) language status.<sup>13</sup> Arguably, the discretionary power of the acceding EU Member States as to the choice of languages is not unlimited. All current Treaty languages are, in effect, languages that can be used in dealings with national public authorities, as well as in the legislative field, throughout the territory of an EU Member State. Thus, legal certainty is guaranteed throughout the EU territory, since at least one Treaty language always coincides with a national official language.<sup>14</sup> This would seem to exclude languages that only have official status on a regional or local level within a Member State.<sup>15</sup> It is also argued that each acceding Member State can only declare one language (as has always been the case in the past).

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Yet, this reasoning is not entirely convincing and raises in fact some quite intriguing questions. What if an acceding State has more than one official language which may be used throughout its territory? Would that State then have to choose between those languages? And what with States that are organized on a federal (linguistic) territorial basis, where certain languages have official status in a particular region only? There is in actual fact no legal basis to restrict the number of official languages a State may declare. The constitutional practice of language declaration is essentially based on international law. A sovereign State accedes to the EU by means of an international Treaty. Accordingly, article 55(1) TEU regarding the Treaty languages of the EU is amended.<sup>16</sup> There seems to be no reason why a multilingual State could not declare

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12 Under art. 55(2) TEU (combined with art. 342 TFEU) the Treaties may be translated into “any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory”. It follows, however, from the wording of this provision that such a translation does not have authentic value.

13 In 2001, the Commission stated, for instance, that it was up to the Maltese authorities to adopt a position regarding Maltese becoming an official EU language (question E-1610/01 of 1 June 2001 by Jonas Sjöstedt, *Maltese as an official EU language*, *OJ C 93E/14* of 18.4.2002). See also CURRALL (2011: 590).

14 MILIAN-MASSANA (2004/38: 216). The EU is indeed a supranational union of States (in the sense of the German ‘Staatenverbund’) with legislative competences to create a directly binding supranational legal order which is above and has prior-ranking to the legal systems of its Member States. This implies that all legal parties, among which the EU citizens must be able to participate directly in their national/official language(s) (BURR 2013: 1466).

15 BURR (2013: 1467).

16 See, for instance, art. 14 of the Accession Treaty regarding Croatia, *OJ L 112* of 24.4.2012.

more than one language, even if one or more of those languages have official standing on only a part of its national territory, provided such an amendment is agreed by all Parties concerned.

< 12 >

The question is not entirely hypothetical, bearing in mind future accessions to the EU.<sup>17</sup> The issue became also acutely relevant in the wake of Brexit, when some argued that English would no longer be a Treaty language as only the United Kingdom had declared it (Ireland has declared Irish, and Malta Maltese).<sup>18</sup> The issue resurfaced at the end of 2020 when rumours were spread that the EU was going to ditch English as a Treaty language.<sup>19</sup> At any rate, amending article 55 TEU can only be achieved through a revision of the Treaties.<sup>20</sup> It is difficult to imagine that removing English as one of the Treaty languages would raise unanimous consent. It would be advisable in the future, however, for each and every new accession to indicate the official languages of the newcomer State, regardless of whether a language has already acquired Treaty language status. Linguistic issues may always pop up, as the recent dispute between Bulgaria and North-Macedonia about the Macedonian language shows.<sup>21</sup>

### 3 Language Regimes and the Principle of Linguistic Autonomy

< 13 >

The Council has realised its mandate on the basis of the aforementioned article 342 TFEU (see *supra*, 6) to establish the language rules of the EU institutions in Council Regulation 1/1958.<sup>22</sup>

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17 Currently, Albania, North Macedonia, Montenegro, Serbia and Turkey are candidate countries, while Bosnia and Herzegovina as well as Kosovo are potential candidate countries (EUROPEAN COMMISSION, [https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en), retrieved: 30.1.2021).

18 In 2016, Danuta Hübner, Member of the European Parliament and chair of the constitutional affairs committee, was quoted as saying, "If we don't have the UK, we don't have English." (SETTER, 2019).

19 THE CUBE (2020). The official EU website states, however, that "[e]ven after the withdrawal of the United Kingdom from the EU, English remains one of the official languages of Ireland and Malta.", and thus implicitly supports the thesis that an EU Member State can declare more than one official language ([https://europa.eu/european-union/about-eu/eu-languages\\_en](https://europa.eu/european-union/about-eu/eu-languages_en), retrieved: 3.1.2021).

20 See art. 48 TEU.

21 It is alleged that Bulgaria has sent a memorandum to the other 26 EU Member States insisting that EU documents need to acknowledge that "the official language used in today's Republic of North Macedonia can be only considered as a written regional norm of the Bulgarian language." (HAJDARI, 2020).

22 Published in French, German, Italian and Dutch; see Règlement n° 1 portant fixation du régime linguistique de la Communauté Économique Européenne, *OJ* 17/385 of 6.10.1958 and Règlement n° 1, portant fixation du régime linguistique de la Communauté européenne de l'énergie atomique, *OJ* 17/401 of 6.10.1958. See for the English version: EEC Council Regulation No 1 determining the languages to be used by the European Economic Community, *OJ English special edition: Series I Volume 1952-1958*, 59. The Regulations were lastly amended (with regard to Croatian) by Council Regulation



Through this pivotal Regulation, the Council has, first of all, established the official and the working languages of the EU institutions, which presently correspond to the Treaty languages. Any amendment to this Regulation would have to be approved unanimously by the Council. Accordingly, removing a language (as was suggested by some in the wake of Brexit (see *supra*, 12), would have to take another hurdle on top of a Treaty amendment.<sup>23</sup>

< 14 >

Although Regulation 1/1958 distinguishes, in its article 1, between official and working languages, it gives no further details on the definition of either.<sup>24</sup> It is often held that official languages are used in external communication, whereas working languages are confined to a purely internal context, where language use rules are less strict.<sup>25</sup> A distinction along those lines does not, however, entirely correspond to the actual situation. To be sure, direct communication between EU institutions and an EU Member State or “a person subject to the jurisdiction” of that State (article 3), must take place in the language of that State.<sup>26</sup> Likewise, legislation (“regulations and other documents of general application” – article 4) must be drafted in all EU official languages.<sup>27</sup> Yet, other external communication, notably through internet sites, does in practice not always take place in all EU official languages.<sup>28</sup>

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In fact, the distinction between official and working languages is not very helpful. Although Regulation 1/1958 grants equal legal (official and working) status to all 24 languages, the devil is

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(EU) No 517/2013 of 13 May 2013, *OJ L* 158 of 10.6.2013, 1. For the Irish language, a derogation applies until 1 January 2022 (Council Regulation (EU, Euratom) 2015/2264 of 3 December 2015 extending and phasing out the temporary derogation measures [...] introduced by Regulation (EC) No 920/2005, *OJ L* 322 of 8.12.2015).

23 This was confirmed in an official statement made by the European Commission in 2016, which reads as follows; “We note the media reports stating that in the event of a UK withdrawal from the EU, English would cease to be an official language of the EU. This is incorrect. 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 EU Institutions' language regime is subject to a unanimous vote of the Council, including Ireland.” (EUROPEAN COMMISSION Representation in Ireland, 27.6.2016, [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) (retrieved: 3.1.2020)).

24 BURR (2013: 1472-1473). As CURRALL (2011: 4) aptly observes, nothing in the Treaties defines the official languages either.

25 See, in this sense, CURRALL (2011: 6) and Ó REGAN (2010: 117).

26 See, as to legal and natural persons, also art. 31(4), Charter of Fundamental Rights of the European Union.

27 Similarly, the *Official Journal* of the EU must also be published in all EU languages (article 5 of Regulation 1/1958).

28 VAN DER JEUGHT (2015: 146 pp).

in the detail, which appears here in the vitally important article 6 of the Regulation. This provision reads as follows:

“The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.”

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This provision has paved the way for the “specific cases” doctrine, which, in essence, allows every EU institution to lay down its own language regime, in particular but not exclusively with regard to purely internal matters.<sup>29</sup>

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The wording of article 6 of the Regulation seems to require explicitness in that regard: an EU institution should stipulate in its *Rules of Procedure* which of the languages are to be used in specific cases. The former EU Civil Service Tribunal took, however, a lenient view on this condition. It ruled that working language regimes may be implicit, provided that the choice of languages of internal communication is based on objective considerations relating to operational needs.<sup>30</sup> In the same vein, the European Ombudsman also took a pragmatic view. In a case involving the European Commission, the Ombudsman considered it reasonable that internal documents, given their nature (detailed, extended documents) should not necessarily be translated into all official EU languages, although the Commission Rules of Procedure do not establish any specific internal linguistic policy.<sup>31</sup>

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However, the lack of formal, explicit decisions concerning internal language arrangements has been criticized by the European Court of Justice in a landmark judgment regarding recruitment policy.<sup>32</sup> Obviously, specific language requirements for staff in the EU administration are necessary and are, according to a long-standing case law of the EU courts, compatible with EU law. As long as linguistic requirements for staff are objectively justified (in the interest of the service) and the required level of linguistic proficiency is proportionate to the genuine needs of the service, they pass the Court’s scrutiny.<sup>33</sup> At issue is, however, the lack of explicitness and

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<sup>29</sup>The scope of this provision is indeed not explicitly limited to “working languages” (see in this regard SHUIBHNE (2002: 126).

<sup>30</sup>CST judgment of 29 June 2011, Marie-Thérèse Angioi v Commission, case F-7/07, ECLI:EU:F:2011:97, pt. 91.

<sup>31</sup>Decision of 31 October 2007 of the European Ombudsman on complaint 3191/2006/(SAB)MHZ against the European Commission, <https://www.ombudsman.europa.eu/en/decision/en/3248> (retrieved: 3.12.2020), pt. 2.5.

<sup>32</sup>ECJ judgment of 27 November 2012, Italian Republic v Commission, C-566/10 P, ECLI:EU:C:2012:752.

<sup>33</sup>See, inter alia, ECJ judgment of 19 June 1975, Berthold Küster v European Parliament, 79-74, ECLI:EU:C:1975:85, pt. 16 and ECJ judgment of 29 October 1975, Berthold Küster v European Parliament, 22-75, ECLI:EU:C:1975:140, pt. 13. For a more recent application, see ECJ judgment

transparency regarding internal language regimes. In 2012, the Court imposed stricter respect for multilingualism in selection procedures and set limits to a recruitment policy in three languages only (English, French and German), stressing inter alia that the EU institutions concerned never adopted Rules of Procedure in accordance with article 6 of Regulation 1/1958 nor had taken other measures laying down criteria governing the choice of a language.<sup>34</sup> In an extensive, subsequent case law the Court has held true to this course.<sup>35</sup>

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Interestingly, it is mainly in the context of recruitment policy, more particularly as regards the choice of language(s) of the selection procedure and the linguistic proficiency required of candidates (mirroring obviously internal language arrangements) that legal problems have arisen. Consequently, the Court implicitly advises the EU institutions to take a formal decision on their internal working languages, which would accordingly provide for an acceptable legal basis for a restricted language recruitment policy.<sup>36</sup> The essential dilemma in these situations is, indeed, precisely that: how to find justification for the obvious necessity to require linguistic proficiency in a number of working languages, which have, however, never been explicitly designated as such (see *infra*, 31 et seq.).

< 20 >

At any rate, the specific cases doctrine grants a high degree of linguistic autonomy to the EU institutions concerned.<sup>37</sup> Moreover, it may be recalled that the scope of Regulation 1/1958 is, on the basis of article 342 TFEU, limited to the linguistic regimes of the EU *institutions*. It does therefore not encompass the various bodies and agencies of the EU, which also enjoy a large linguistic autonomy. Exception is furthermore made for the Court of Justice.

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As to the Court of Justice, a distinction should be made between the institutional and the procedural language use. As an EU institution, the Court is subject to the general linguistic duties set out in Council Regulation 1/1958.<sup>38</sup> However, language use in legal proceedings is not covered by said Regulation. As stated before (*supra*, 6), article 342 TFEU refers that matter to the Statute of the Court of Justice.<sup>39</sup> However, article 64 of the Statute, in its turn, refers the issue to the Rules of Procedure of the Court of Justice. Ultimately, language arrangements are

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Commission v Italy of 26 March 2019, C-621/16 P, ECLI:EU:C:2019:251, pt. 124.

34 ECJ judgment C-566/10 P (see footnote 31), pt. 91.

35 See, for instance, ECJ judgment of 26 March 2019, Spain v European Parliament, C-377/16, ECLI:EU:C:2019:249, pt. 73.

36 See, in the same sense, WEERTS (2014: 239).

37 See also SHUIBHNE (2002: 124). AMMON (2006: 321) calls this the “legal basis for inequality”.

38 CALOT ESCOBAR (2015: 57).

39 Protocol (No 3) on the Statute of the Court of Justice of the European Union.

accordingly contained in articles 36-42 of the Rules of Procedure of the Court of Justice and articles 44-9 of the General Court. In contrast to other provisions in the Rules of Procedure, the language arrangements may be amended or repealed only with the unanimous consent of the Council. To make matters even more complicated, this is actually a provisional arrangement, as according to the Statute, the linguistic regime should be laid down in a Regulation of the Council, acting unanimously. Both the Court of Justice and the Commission are entitled to initiate such legislation, but neither institution has so far taken a step in that direction. As long as no such regulation is adopted, the language arrangements contained in the Rules of Procedure continue to apply.

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The procedural linguistic arrangements of the Court of Justice fall outside the ambit of this contribution. Suffice it to say here that they are multilingual and that cases may be lodged in all EU Treaty languages.<sup>40</sup> It should be noted that no explicit provision is made for internal language use.

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Arguably, the Court of Justice enjoys linguistic autonomy in that regard. As early as 1952, the Language Protocol of the European Coal and Steel Community (*Protocole sur le régime linguistique de la CECA*, 24 July 1952), in a way the predecessor of the current Regulation 1/1958, explicitly provided as one of the “considerations” to be taken into account, that the Court should determine the language in which the draft judgments are written. Accordingly, the first Rules of Procedure of the Court (1953) expressly empowered it to choose the language in which judgments were to be drafted, and subsequently translated into the language of the case (Art 27(2), fifth indent). Although the Rules of Procedure which are currently in force do not contain a provision to that effect, the fact that Judges or Advocates-General are not required to use the language of the case conveys the same idea of linguistic autonomy.<sup>41</sup>

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The choice of such a drafting language, French for that matter, entails that that language has become the deliberation language among the Members of the Court and, logically, also the language of internal communication in general.<sup>42</sup>

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40 Art. 36 of the ECJ Rules of Procedure (consolidated version of 25 September 2012, [https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp\\_en.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_en.pdf); retrieved: 31.1.2021) lists all languages. See for a detailed account, VAN DER JEUGHT (2019).

41 Art. 38(8), ECJ Rules of Procedure.

42 EUROPEAN COURT OF AUDITORS Special Report (14/2017: 41 pp) Performance review of case management at the Court of Justice of the European Union; MCAULIFFE (2012: 203); PINGEL (2019: 451).

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Likewise, the various bodies and agencies of the EU (currently more than forty which operate under various denominations, such as Centre, Foundation, Agency, Office, Observatory, etc.)<sup>43</sup> do, as such, not fall within the scope of Regulation 1/1958. In the main, they also enjoy linguistic autonomy, though their legal situation is quite intricate. The legal basis of the body or agency may be found in a Treaty provision and/or a Regulation/Decision. Therein various options may have been chosen.

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First of all, it may be stipulated that Regulation 1/1958 applies. In that case, the linguistic autonomy of the agencies concerned is quite similar to that which has been described above concerning the EU institutions. This is, for instance, the case with regard to the Community Plant Variety Office,<sup>44</sup> the European Agency for Safety and Health at Work,<sup>45</sup> Frontex,<sup>46</sup> as well as the European Asylum Support Office.<sup>47</sup>

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Moreover, those agencies which are governed explicitly by Regulation 1/1958, may nevertheless be explicitly empowered to establish their own (internal) language arrangements. Arguably, the practical use of such a provision is limited as without such an explicit empowerment, the agency could anyway have invoked article 6 of Regulation 1/1958. Yet, a specific procedure may be established for decisions on language arrangements. This is the case of the newly established European Public Prosecutor's Office (EPPO): its College is entitled on the basis of the Council Regulation which sets up the EPPO to decide by a two-thirds majority of its members on the internal language arrangements.<sup>48</sup> An identical authority has been granted to Europol<sup>49</sup> in 2016

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43 See, for an overview of EU agencies, [http://europa.eu/about-eu/agencies/index\\_en.htm](http://europa.eu/about-eu/agencies/index_en.htm) (retrieved: 29.12.2020).

44 Art. 34(1), Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, *OJ L* 227/1 of 1.9.1994.

45 Art. 23(1), Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94, *OJ L* 30 of 31.1.2019.

46 Art. 113(1), Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, *OJ L* 295 of 14.11.2019. Art. 55(2) stipulates that staff must possess "appropriate language skills", without further specification.

47 Art. 41, Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, *OJ L* 132/11 of 29.5.2010.

48 Art. 107, Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), *OJ L* 283 of 31.10.2017.

49 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, *OJ L*

and Eurojust<sup>50</sup> in 2018. This is a significant evolution with regard to linguistic autonomy, as unanimity is apparently no longer required to establish linguistic regimes.<sup>51</sup>

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By the same token, other agencies are authorised to establish internal language arrangements. Unanimity may be required (see e.g. the EU Agency for Fundamental Rights<sup>52</sup>) or a simple majority (see e.g. the European Banking authority,<sup>53</sup> the European Securities and Markets Authority,<sup>54</sup> as well as the Insurance and Occupational Pensions Authority<sup>55</sup>).

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Exceptionally, language regimes may be established in the founding act of the agency itself. A case in point is the European Intellectual Property Office, for which the Regulation specifies that the languages are English, French, German, Italian and Spanish.<sup>56</sup> Rather than internal working languages, however, the language regime in essence limits the use of languages with regard to external communication (i.e. a second language from among the languages of the Office may be used in the proceedings). Likewise, the language of the proceedings before the European

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135 of 24.5.2016. Art. 64(2) thereof stipulates that the “Management Board shall decide by a majority of two-thirds of its members on the internal language arrangements of Europol.”.

50 Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, *OJ L* 295 of 21.11.2018. Art. 71(2) thereof stipulates that the Eurojust College shall decide Eurojust’s internal language arrangements by a two-thirds majority of its members.

51 Until 2015, the Management Board of Europol had to take such a decision by unanimity (Art. 47, Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA), *OJ L* 121/37 of 15.5.2009).

52 Art. 25(2), Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, *OJ L* 53/1 of 22.2.2007. See also art. 12(8) as to the unanimity requirement for a decision on language arrangements.

53 Art. 73(1), Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, *OJ L* 331/12 of 15.12.2010. The Management Board decides with simple majority of the members (art. 44(1)).

54 Art. 73, Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, *OJ L* 331/84 of 15.12.2010. The Management Board decides with majority of the members present (art. 45(2)).

55 Art. 73, Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, *OJ L* 331/48 of 15.12.2010. The Management Board decides with a majority of the members present (art. 45(2)).

56 Art. 146(2), Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, *OJ L* 154 of 16.6.2017.

Ombudsman may be any of the EU official languages,<sup>57</sup> while the Ombudsman's internal complaint handling procedures appear to take place mainly in English.<sup>58</sup>

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Finally, in some cases, no provision at all is made for any language arrangements. It would seem that the body or agency concerned enjoys *de facto* linguistic autonomy. This is, for instance, the case of the consultative bodies of the EU, which are established directly by the Treaty.<sup>59</sup> Arguably, as they do not fall within the scope of Regulation 1/1958, the European Economic and Social Committee, as well as the Committee of the Regions are free to decide themselves on their language regimes. Likewise, as to some agencies, no reference is made to Regulation 1/1958 nor any other (internal) language arrangements (e.g. the European Environment Agency,<sup>60</sup> the European Food Safety Authority<sup>61</sup> or the European Medicines Agency<sup>62</sup>).

## 4 Current Language Arrangements and Practices

### 4.1 Legal Basis for Working Languages: Explicit Provisions vs Implicit Arrangements

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Summing up, within or without the framework of Regulation 1/1958, the various EU institutions, bodies and agencies enjoy a large discretionary (internal) linguistic autonomy. This

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57 Decision of the European Ombudsman adopting Implementing Provisions (2016), <https://www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en> (retrieved: 29.12.2020), art. 4.

58 This can be deduced from the fact that recommendations and decisions are available in the language of the complainant and English, as well as the fact that brief information about cases opened, is available in English only. See <https://www.ombudsman.europa.eu/en/languagepolicy/en> (retrieved: 29.12.2020). Equally, the language policy notice on her website states that the "internal working languages are mainly English and French". Information about job openings in the Ombudsman's office is available in all EU languages. Specific calls for applications are mostly published in English, "as a high level in English is a precondition for most Ombudsman posts", <https://www.ombudsman.europa.eu/en/languagepolicy/en> (retrieved: 29.12.2020)).

59 Art. 13(4) TEU

60 Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network, *OJ L* 126/13 of 21.5.2009.

61 Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, *OJ L* 31/1 of 1.2.2002.

62 Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, *OJ L* 136/1 of 30.4.2004.



raises the next question: how have they used this competence in practice? Have they, in other words, explicitly established an internal language regime?

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As to the EU institutions, they do not seem to have made use, in their Rules of Procedure, of the specific cases clause enshrined in article 6 of Regulation 1/1958, nor indicated which are their working languages.<sup>63</sup>

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A rather vague mention of (presumably) Regulation 1/1958 may, however, be found in the Rules of Procedure of the Council. Article 14 thereof provides for the following language arrangements:

“Deliberations and decisions on the basis of documents and drafts drawn up in the languages provided for by the language rules in force

1. Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.

2. Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify.”

The European Council Rules of procedure hold an identical article 9.<sup>64</sup> At any rate, this provision seemingly confirms the general application of Regulation 1/1958 (and equal status of official and working languages) and does, as such, not provide for “specific cases” under article 6 of the Regulation.

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Yet, even when no explicit legal basis is provided, sometimes the veil on linguistic arrangements is lifted in other decisions or code of conducts. The European Parliament, for instance, is a staunch defender of multilingualism and its Rules of Procedure express that principle with regard to written documents as well as speeches by Members.<sup>65</sup> The underlying reason for this multilingual regime is democratic legitimacy: it is considered undemocratic to

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63 As to the specific case of the Court of Justice, see *supra*, 21 pp.

64 See art. 9, European Council Decision of 1 December 2009 adopting its Rules of Procedure (2009/882/EU), *OJ L* 315 of 2.12.2009 and art. 14, Rules of procedure of the Council, *OJ L* 325 of 11.12.2009, p. 36. See also LÖLKE (2007: 68) and HERBILLON (2003: 6, 17).

65 The Rules of Procedure (June 2020 (9<sup>th</sup> Parliamentary term)) contain, in the chapter on the conduct of sittings, a Rule 167 on Languages, [https://www.europarl.europa.eu/doceo/document/RULES-9-2020-02-03-TOC\\_EN.html](https://www.europarl.europa.eu/doceo/document/RULES-9-2020-02-03-TOC_EN.html) (retrieved: 29.12.2020).



require of elected representatives the knowledge of other EU languages than their own.<sup>66</sup> Nevertheless, the language rights granted to MEPs in the Rules of Procedure must be considered against the backdrop of a somewhat vaguely “Newspeak” formula, namely “resource-efficient full multilingualism”, which is enshrined in a Code of Conduct. It actually implies (quite understandably) that full multilingualism depends on the “real needs” and is contingent on budgetary restraints. In practice, this means that a list of priorities is stipulated, according to which the plenary session comes first and “some administrative events for which authorisation to interpretation has been authorised by the Secretary-general” comes last.<sup>67</sup>

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Until 2005, the Rules of Procedure of the European Commission referred to the use of ‘working languages’, without naming them as such.<sup>68</sup> Interestingly, the current version of the Rules of Procedure does not contain any such references.<sup>69</sup> The (unpublished) implementing Rules, however, do refer to language rules.<sup>70</sup> Documents to be discussed at a Commission meeting are, for instance, to be distributed to Members of the Commission ‘in the languages stipulated by

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66 “It would be unreasonable to require MEPs to have a perfect command of one of the more frequently used languages, such as French or English.”, is stated on the EP website, <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/multilingualism> (retrieved: 29.12.2020).

67 Art. 2 under a) and g), Code of Conduct on Multilingualism, Decision of the Bureau of 1<sup>st</sup> July 2019 ([https://www.europarl.europa.eu/about-parliament/files/organisation-and-rules/multilingualism/code-of-conduct\\_en.pdf](https://www.europarl.europa.eu/about-parliament/files/organisation-and-rules/multilingualism/code-of-conduct_en.pdf), retrieved: 29.12.2020). This also implies that, in those cases where interpretation is available, it does not necessarily imply that all 24 languages will be available: MEPs must indicate “languages of alternate choice” if the language their first choice to receive interpretation is not available (art. 4). As to political groups, a maximum of 7 languages may be available (and that will be based on the group’s “standard interpretation language profile” (art. 5). Users of language services are also made “aware of their responsibilities”, i.e. the costs generated by their requests for “language facilities” (art. 16).

68 See art. 6(4), 12 and 25, Rules of Procedure of the Commission of 29 November 2000, *OJ L* 308/26 of 8.12.2000.

69 Indeed, in 2005 all the references to “working languages” were removed from the said articles (see Commission Decision 2005/960/EC, Euratom of 15 November 2005 amending its Rules of Procedure, *OJ L* 347, 30.12.2005). In its current version, the Rules of Procedure (lastly amended by Commission Decision (EU, Euratom) 2020/555 of 22 April 2020 amending its Rules of Procedure, *OJ L* 1271 of 22.4.2020), no reference is made to working languages.

70 Commission decision C(2010) 1200 of 24.2.2010, Annex to the Commission decision amending its Rules of Procedure: Rules giving effect to the Rules of Procedure. The author wants to thank Ms. Ellen Heinemann, former Head of Unit at the European Parliament, for obtaining this document (and drawing his attention to the existence of it in the first place, as it is not published in the *Official Journal* and is, as far as could be ascertained, not available on the Commission’s website either. The document is available on the internet as well: [https://www.europarl.europa.eu/cmsdata/140678/C\\_2010\\_1200\\_F1\\_COMMISSION\\_DECISION\\_EN\\_V5\\_P1\\_609236.PDF](https://www.europarl.europa.eu/cmsdata/140678/C_2010_1200_F1_COMMISSION_DECISION_EN_V5_P1_609236.PDF) (retrieved: 31.1.2021).

the President, taking account of Members' minimum requirements'.<sup>71</sup> These provisions in the (unpublished) implementing rules seem to form the legal basis for a restricted internal language regime under article 6 of Regulation 1/1958. However, the general reference does not indicate which languages are concerned. Allegedly, in 1993, the Commission has made an (unpublished) decision that establishes English, French and German as its working languages.<sup>72</sup>

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The situation is largely similar with regard to the other EU institutions falling within the scope of Regulation 1/1958, such as the European Central Bank<sup>73</sup> and the Court of Auditors<sup>74</sup>. As to the latter institution, however, the implementing Rules of Procedure mention so-called "drafting languages decided by the Court", without naming them.<sup>75</sup>

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The same situation prevails with regard to the various bodies and agencies of the EU (which fall outside the ambit of Regulation 1/1958, unless otherwise specified, see *supra* 25 pp). Only exceptionally, a formal decision on internal language arrangements may be discerned.

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71 Implementing Rules, 6-4.3. See, in the same sense, as to requirements in the written and delegation procedures, 12-13, 13/14-4.

72 WICHARD (2016: nb. 15), refers to a „nicht veröffentlichte Protokollerklärung“ of 1.9.1993. There is, however, no source for this statement. The minutes of the Commission meeting of that date (1165<sup>th</sup> Commission meeting) do not contain any reference to such a decision (cf. request of access to documents made by Ms. Heinemann (2019/3285); reply Commission on 13.6.2019). Instead in pt. 19.1 of the Minutes, it is simply stated that “En référence à l’alinéa 3 des modalités d’application de l’article 4, le Président de la Commission confirme que le régime linguistique pour les documents de la Commission actuellement en vigueur reste inchangé”. In a case before the European Ombudsman, in 2010, the Commission referred to a ‘practice’, on the basis of which English, French and German were used (see *infra*, 47).

73 See Decision of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (ECB/2004/2), *OJ L* 80/33 of 18.3.2004, lastly amended on 24.9.2016). See also art. 17(8), ECB Rules of Procedure, which reads as follows: “The principles of Council Regulation (EC) No 1 determining the language to be used by the European Economic Community of 15 April 1958 shall apply to the legal acts specified in Article 34 of the Statute”. The term “principles” is odd, as the ECB is an EU institution and falls as such within the ambit of Regulation 1/1958.

74 See art. 28(1), Rules of Procedure of the Court of Auditors of the European Union, *OJ L* 103/1 of 23.4.2010.

75 Art. 29, Decision no 38-2016 laying down the rules for implementing the rules of procedure of the Court of auditors, [https://www.eca.europa.eu/Lists/ECADocuments/IMPLEMENTING\\_RULES\\_2016/IMPLEMENTING\\_RULES\\_2016\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/IMPLEMENTING_RULES_2016/IMPLEMENTING_RULES_2016_EN.pdf) (retrieved: 29.12.2020).

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In that regard, the Rules of Procedure of one of the consultative bodies of the EU, namely the European Economic and Social Committee, provide for a case-by-case decision by the Bureau, on the “working languages” in connection with the drafting proceedings of opinions.<sup>76</sup> Conversely, the Rules of Procedure of the other consultative body, the Committee of the Regions provide for a full language regime with regard to information provided to Members and in the plenary sessions, yet remain silent on the internal language regime.<sup>77</sup>

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As to the agencies, a slight but significant increase in transparency may be noted. Up until recently, the European Insurance and Occupational Pensions Authority provided the exception to the rule, as it had published on its website a decision to use English as its working language.<sup>78</sup> More recently, however, in 2020, the College of the European Public Prosecutor’s Office (EPPO) has also made a decision on its internal language arrangements. For the operational and administrative activities it will have one working language, namely English. French will be used alongside English in the relations with the Court of Justice.<sup>79</sup> In the same vein, also in 2020, Eurojust explicitly decided that its working language is English.<sup>80</sup>

## 4.2 Assessment of the Actual Working Languages of the EU Administration

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Turning finally our focus from the *de iure* to the *de facto* situation, the question raised here is as follows: is it possible to shed some light on the actual working languages in the EU administration, in particular where no explicit language regime has been established (which is by far and large the default situation)?

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76 See Rule 33(3), EECS Rules of Procedure (March 2019); <https://www.eesc.europa.eu/en/about/rules/rules-procedure-and-code-conduct-members-eesc-march-2019> (retrieved: 29.12.2020). Moreover, the Implementing Provisions of the Rules of Procedure of September 2010 contain additional linguistic arrangements, see in particular, rules 35, 36 and 43 thereof (see <http://www.eesc.europa.eu/?i=portal.en.rules.8054>, retrieved: 29.12.2020).

77 Rules of Procedure of the Committee of the Regions of 31 January 2014, *OJ L* 65/41 of 5.3.2014.

78 Decision of 10 January 2011, <https://www.eiopa.europa.eu/sites/default/files/publications/administrative/management-board-decision-internal-language.pdf> (retrieved: 9.1.2021).

79 College decision 2/2020 of 30 September 2020, [https://ec.europa.eu/info/sites/info/files/2020.002\\_eppo\\_language\\_decision\\_signed.pdf](https://ec.europa.eu/info/sites/info/files/2020.002_eppo_language_decision_signed.pdf) (retrieved: 29.12.2020).

80 See the language policy notice on Eurojust’s website, which refers to “College Decision 2020-08 of 27 November 2020 concerning Eurojust’s internal language arrangements”, <https://www.eurojust.europa.eu/about-us/good-administrative-behaviour/language-policy> (retrieved: 9.1.2021).

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To that end, a first helpful tool is offered by information notices regarding language policy on institutional websites. Such linguistic disclaimers explain which documents are available in which language(s). Obviously, documents in working languages are the original version and therefore always available. In 2018, the European Ombudsman quite rightly recommended the use of such disclaimers.<sup>81</sup>

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A linguistic policy notice on the Council website reads as follows:

“The General Secretariat of the Council of the EU (GSC) aims to make its website as accessible as possible to its users. For this reason, all of our web content is published in a minimum of English and French, and most of our web content is available in all EU languages.”<sup>82</sup>

The situation is explained as a consequence of “limited translation budget and resources available”. Therefore, resources are concentrated on “ensuring that key content is available in all languages, while limiting the language choices for the content aimed at specialised audiences, such as the press”.

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On its website, the Commission explains that content may “be available in 1 language only or in a combination of languages that user research tells us will enable us to reach the largest audience in the most efficient manner. All content is published in at least English, because research has shown that with English we can reach around 90% of visitors to our sites in either their preferred foreign language or their native language.”<sup>83</sup>

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The Committee of the Regions has published a very comprehensive language policy disclaimer on its website.<sup>84</sup> It starts promising, yet too high expectations are tempered: “Our aim is to

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81 Decision of 26 March 2020, The use of official EU languages when communicating with the public - Practical recommendations for the EU administration, correspondence date 2 July 2020, SI/98/2018/DDJ, <https://www.ombudsman.europa.eu/en/correspondence/en/129519> and <https://www.ombudsman.europa.eu/en/case/en/51626> (retrieved: 29.12.2020). Unfortunately, however, it would seem that not all EU institutions, bodies and agencies have followed this recommendation.

82 COUNCIL OF THE EU, <https://www.consilium.europa.eu/en/about-site/language-policy> (retrieved: 29.12.2020). The claim that “most” web content is available in all EU languages seems, however, disputable, as admittedly the general navigation menus and info seem to be in all languages, but relevant and changing policy information only in English and French, or even English only.

83 EUROPEAN COMMISSION, [https://ec.europa.eu/info/language-policy\\_en](https://ec.europa.eu/info/language-policy_en) (retrieved: 29.12.2020).

84 COMMITTEE OF THE REGIONS, <https://cor.europa.eu/en/Pages/language-policy.aspx> (retrieved: 29.12.2020).

provide you with information in your own language - or one you can understand (...)"<sup>85</sup> The disclaimer goes on explaining that information which is urgent or has a short lifespan (news, events, ...) is not published in all languages. The choice of the language(s) depends on the target audience of the information. Specialised information (technical information, work in progress, calls for tender) is mainly published in English only.

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The findings that appear from these disclaimers (the primary status of English) are corroborated by a general survey of EU websites. Since many documents are only available in a working language of the EU institution, body or agency concerned, they are often published or made available in those languages only. Research shows that in many instances already the homepage is available in some languages only and that, furthermore, the deeper one digs for information and documents, the more only an English language version is available.<sup>86</sup>

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Another useful tool to assess the use of working languages is information provided in legal disputes, mainly concerning recruitment issues. In the aforementioned case before the Court of Justice, regarding linguistic requirements in selection procedures for staff, the European Parliament gave a rare insight in the linguistic proficiency of its staff.<sup>87</sup> It stated that:

"It has long been the practice to use mainly English, French, and German for internal communication in the European Parliament, and these are also the languages most often needed when communicating with the outside world and in performing day-to-day work. Furthermore, in staff reports for 2013, 92%, 84% and 56% of all staff stated that they had a satisfactory knowledge of English, French and German respectively. For no other official language did that figure exceed 50%. (...)"<sup>88</sup>

Arguably, the European Parliament uses three working languages, of which English, however, clearly seems to be the predominant one. It should be noted also that staff reports are based on a self-assessment as to linguistic proficiency, and that a 'satisfactory' level may not always be sufficient to actually work in. In a recent recruitment notice, the European Parliament states that

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85 See a similar notice on the European Investment Bank website: <https://www.eib.org/en/languages.htm> (retrieved: 29.12.2020).

86 For older research, see WU (2005: 157 pp). Although the tremendous effort to translate a very considerable amount of information in all EU official languages must be appreciated, it would appear virtually impossible for the EU institutions, bodies and agencies to translate every single document. Notable exceptions are the extensively multilingual websites of the European Parliament and the Court of Justice. Yet, even there, some information may not be available in all languages though always in the working languages (English for the European Parliament and French for the Court (as well as in the language of the case).

87 See *supra*, 18, ECJ judgment of 26 March 2019, C-377/16 Spain v European Parliament.

88 Id. pt. 22.

English is the most frequently used language in exchanges between the administration and the political bodies.<sup>89</sup>

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Likewise, in proceedings before the European Ombudsman, the Commission clarified its internal language regime. It stated that:

“(t)he rules implementing the Commission’s Rules of Procedure provide that the documents to be discussed at the Commission’s meetings shall be distributed to the Commissioners in the languages stipulated by the President of the Commission, taking into account their minimum requirements. The Commission’s rules do not specify which languages are to be used. In practice however the so-called ‘procedural languages’ are used, namely, English, French and German. Other language versions may be required mainly for the entry into force of an act or its communication to its addressees.”<sup>90</sup>

Incidentally, the self-assessment questionnaire for potential trainees still mentions the procedural languages. Question 2 of 12 reads as follows: “Do you have a C level or mother-tongue level in at least one of the three working/procedural languages of the European Commission (English, French or German)?”<sup>91</sup>

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In a case before the (then) Court of First Instance, the European Central Bank (ECB) confirmed English was its working language, and asserted it had “shown itself to be more accommodating than it was legally obliged to be” by accepting a letter drafted in German, by the lawyer of an employee.<sup>92</sup>

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In sum, all data seems to point towards a largely predominant role of English as an internal working language in the EU administration. The data is insufficient to establish a quantitative assessment of the relative shares of the working languages, yet a broad idea may be given by looking at the translation flows.

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89 [https://apply4ep.gestmax.eu/28/1/pe-244-s-h-f/fr\\_FR?backlink=search](https://apply4ep.gestmax.eu/28/1/pe-244-s-h-f/fr_FR?backlink=search) (retrieved: 29.12.2020). See also *infra*, 51.

90 European Ombudsman, decision of 31 October 2007 on complaint 3191/2006/(SAB)MHZ against the European Commission, <http://www.ombudsman.europa.eu/cases/decision.faces/en/3248/html.bookmark> (retrieved: 29.12.2020).

91 [https://ec.europa.eu/stages/self-assessment\\_en](https://ec.europa.eu/stages/self-assessment_en) (retrieved: 29.12.2020).

92 Court of First Instance, judgment of 18 October 2001, X v European Central Bank, T-333/99, ECLI:EU:T:2001:251, pt. 186.

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As to the European Council and the Council, data<sup>93</sup> shows the following breakdown (in %) by source language of the pages and documents coming into translation (January 2017 to June 2020):

	<b>English</b>	<b>French</b>	<b>German</b>
2019	90,5	4,4	0,6
2018	89,2	6,3	0,8
2017	86,4	6,1	1

Even though these figures only concern written communication, the predominance of English as a working language seems overwhelming and still increasing. Older data which is reported in doctrine already pointed in the same direction, yet not quite so extremely: in 2001, HERBILLON assessed the proportions as follows: English (59%) and French (28%).<sup>94</sup>

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As to the European Parliament, the following data was obtained (source language of documents in translation between 2015 and 2019):<sup>95</sup>

	<b>English</b>	<b>French</b>	<b>Italian</b>	<b>German</b>	<b>Spanish</b>	<b>All other</b>
2019	72	13	4	3	3	6

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With regard to the European Economic and Social Committee (EESC), the following data is available (without specification of the years):<sup>96</sup>

- Source languages: the vast majority of EESC documents are drafted in English (75%), followed by French (10%) and other languages, such as German, Italian, and Spanish (2%);
- Internal language policy: EESC members have access in their own language (with some exceptions) to all political documents for discussion in statutory meetings. The final opinions of the EESC are published in the Official Journal of the European Union in all EU official languages. As a rule, internal documents are translated only into English and/or French.

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93 Mail received on 17/12/2020 (Council General Secretariat).

94 HERBILLON (2001: 31).

95 Mail received on 11.12.2020 (DG Trad European Parliament).

96 Mail received on 16.12.2020 (EESC Translation Management Unit).



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No data could be retrieved from the European Commission, yet older doctrine (2010) estimates that 80% of documents have as source language English.<sup>97</sup> Another indication of the pivotal role of English appears from the Annual Activity Report (2018) of DG Translation which refers to the use of a new machine translation system that translates to and from English.<sup>98</sup>

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Incidentally, the use of machine translation on institutional websites seems increasing. Various information may be translated this way, alongside the official version (in the working language). The Committee of the Regions uses machine translation on its website, in order to give “a basic idea of the content in a language you understand”.<sup>99</sup> The Europol website (which uses Google Translate) indicates in that regard that “translations are provided as a service to users of Europol website, and are provided ‘as is’. No warranty of any kind, either expressed or implied, is made as to the accuracy, reliability, or correctness of any translations made from the source language into any other language. The official text displayed on the website and in all materials is the English version of the Europol website. (...). If any questions arise concerning the accuracy of the information presented by the translated version of the website or any material, please refer to the English version, which is leading. (...) Using a translation machine, or a material in a language other than English is therefore at your own risk.”<sup>100</sup>

## 5 Concluding remarks

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We started out this voyage into the universe of internal language regimes of the EU institutions, bodies and agencies on a lighter note, namely with a reference to the *Star Trek* franchise. Some of the recent developments, notably with regard to the development of machine translation, bring reality and fiction closer and give new meaning to the EU motto “translation is our language”.

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97 KRÄMER (2010: 101).

98 EUROPEAN COMMISSION, DG Translation, Annual Activity Report (2018: 4), [https://ec.europa.eu/info/sites/info/files/dgt\\_aar\\_2018\\_final.pdf](https://ec.europa.eu/info/sites/info/files/dgt_aar_2018_final.pdf) (retrieved: 9.1.2021). BURR (2013: 1476, footnote 74) refers to a Report of the Translation Directorate of the Commission (La traduction à la Commission: 1958–2010), from which it appears that English is the predominant source text language for translations: 1997 compared to 2008: Source texts in English (1997: 45 %) vs. (2008: 72 %), in French (1997: 41 %) vs. (2008: 12 %), in German (1997: 5 %) vs. (2008: 3 %).

99 COMMITTEE OF THE REGIONS, Language Policy, <https://cor.europa.eu/en/Pages/language-policy.aspx> (retrieved: 9.1.2021).

100 Europol Legal Notice, <https://www.europol.europa.eu/legal-notice> (retrieved: 9.1.2021).



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Yet, it is undeniably the use of working languages that enables the EU administrative apparatus to run smoothly as it makes internal communication and jointly produced output possible.

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In practice, decisions on internal language regimes are almost entirely left to the discretion of each and every EU institution, body or agency. In practice, the primary competence of the Council in this field, in particular with regard to EU institutions, has been delegated through a cascade of legal provisions. Alternatively, as to a significant number of EU bodies and agencies, simply no formal rules on language regimes may be discerned. The upshot is that EU institutions, bodies and agencies enjoy, in actual fact, linguistic autonomy. Although it may be regretted that such important decisions have not been taken at a higher political level, it must be conceded that this example of *Realpolitik* has paved the way for practical solutions regarding this highly sensitive issue on which formal agreement has been impossible since the outset of European integration.

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The principle of this institutional linguistic autonomy is vaguely reminiscent of the ancient linguistic territoriality adage: “*cuius regio, eius lingua*”, whereby sovereigns had the right to determine the language of their lands.<sup>101</sup> However, regardless of the possibility of different linguistic choices, it would seem that the EU’s institutional linguistic autonomy is gravitating towards a generalised and overwhelming use of one and the same lingua franca, namely English. It has indeed been shown in this contribution that, regardless of Brexit, all data indicate that English plays a pivotal role as lingua franca of the EU administration. It may be safely assumed that, with the notable exception of the Court of Justice, no EU institution, body or agency may be discerned that does not use exclusively or predominantly English as an internal working language. Moreover, while there is still a significant role for French, German seems to have faded away, at least as a written working language.

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There is, however, still an important gap between the *de iure* and the *de facto* status of languages, since formal decisions on internal language regimes are, unfortunately, still largely lacking. This is quite problematic from a constitutional point of view, as issues of non-discrimination on linguistic grounds, not least with regard to recruitment and access to documents, as well as general democratic accountability are concerned. Recent case law of the Court of Justice with regard to linguistic requirements in connection with recruitment policy has underscored this dilemma, in actual fact a real dilemma. At the end of 2020, Eurojust and the European Public

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101 The linguistic territoriality principle stated that each territory can have only one language (STOJANOVIC 2010).

Prosecutor Office have, however, made an explicit decision on their internal language arrangements.<sup>102</sup> This positive step may be the beginning of a new era of openness in this field. Incidentally, public acceptance of internal linguistic arrangements in the EU administration may be far greater than believed.

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Likewise, a greater general linguistic awareness and transparency regarding language regimes, albeit not yet enshrined in formal decisions, may also be noted. In that regard, the publication of notices explaining to some extent language policies on institutional websites is very helpful. The European Ombudsman, who has recommended this practice, has undoubtedly played an important role on this path towards greater transparency, though her work may not yet be finished, as this does not seem to be a general implemented practice in all EU institutions, bodies and agencies.

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102 The European Insurance and Occupational Pensions Authority has also made a decision to that effect (see *supra*, 39).

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