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Linguistic Comparison within CJEU's Decision-Making: A Debunking Exercise

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Abstract
It has long been noticed that there is no predetermined meaning of legal terms. Rather, meaning depends on the context and the interpreter (Engberg in Brook J Int Law 29:1135, 2003. https://brooklynworks.brooklaw.edu/bjil/vol29/iss3/6). While this assertion holds true for both unilingual and multilingual legal environments, the Court of Justice of the European Union (hereinafter: CJEU) openly acknowledges it, by stating that no legal consequences can be based on the terminology used. Accordingly, by virtue of the principle of equal authenticity, when interpreting EU law courts cannot rely on a single language version. Adjudicating legal disputes involving linguistic matters in a multilingual environment-i.e. cases of discrepancies between different language versions of an EU legislative text-the CJEU has been given a fascinating role insofar as its interpretative moves include linguistic comparison, which in turn bears ramifications on uniformity and equal authenticity, as well as on effectiveness of EU law. With a view to unmasking the nature of the linguistic comparison carried out by the CJEU, this study examines settled case law, asking the following questions: What are the central moves of linguistic comparison? What role does it play in the process of CJEU's decision-making? Has it changed over time?

Keywords Linguistic comparison · CJEU · Multilingualism · Equal authenticity · Legal interpretation

1 Introduction

EU legislation is adopted in an imperfect synthesis of drafting and translation, rendering it a multilingual legislative instrument of equal authoritative status in all 24 official languages of the EU. The main task of the CJEU is to make explicit the meaning of these multilingual legislative instruments, that are equally authentic in

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all language versions. Observed in this light, it is unsurprising that the Court doesn't accord the same degree of primacy to literal interpretation as other higher courts [4], asserting that no legal consequences can be based on the terminology used (*Regina v. Pierce Bouchereau*),[1] but employs alternative methods, including comparison of different language versions of EU texts. CJEU has made clear early on that comparison of language versions is important. Despite the fact that from the vantage point of the *acte clair* doctrine, positing that when a legal text is immediately clear and unambiguous it does not require further interpretation in the strict sense [1], in its judgment in *Van der Vecht* case of 1967, the Court has for the first time stated that, in cases of doubt, a provision should be interpreted and applied in accordance with other versions.[2] Moreover, notwithstanding the *acte clair* doctrine, in other cases the Court held that even when a language version is clear and unambiguous, courts need to interpret and apply EU legislation in accordance with other versions.[3] Concurring with such findings, some scholars argue that linguistic comparison is widely used as a method to support interpretation by the court, even outside the context of instances of discrepancies between different languages, i.e. the so-called language cases (e.g. [21]). However, the present study demonstrates that the number of cases involving actual linguistic comparison is limited. Nevertheless, they merit special attention, because the Court's interpretative methods applied to these cases signal what it means for language versions to be uniform [1]. Indeed, uniformity and equal authenticity can be seen as two (different) aspects of the same unity. Shedding more light on uniformity is important because the concept of equally authentic languages for some scholars implies equal meaning, for others the same status of languages (see [1]). Leung [15] for instance, claims that it isn't reasonable to assume that the authentic texts are identical in all their language properties including informational, social, and affective content, style and collocation. Therefore, the kind of equivalence at stake is not textual but legal, which underlies the distinction between conceptual divergence (of EU law) and terminology. In other words, conceptual divergence doesn´t merely amount to linguistic variance [23]. Consequently, uniformity differs from unity in that the uniformity of EU law may be sacrificed in the interest of unity.[4] Similarly, Mikhailov et al. [18] assert that despite the fact that non-linguists believe that different language versions are identical, or have the 'same standing' (Advocate General Kokott, para. 39),[5] "from the linguistic point of view, nobody can guarantee that the meanings of all sentences in texts in different languages are identical." This distinction between the legal status of texts

[1] ECJ, Case 30/77, *Regina v Bouchereau* [1977] ECR 1999.

[2] Case 19-67, *Bestuur der Sociale Verzekeringsbank v J. H. van der Vecht* [1967] ECR 00345.

[3] Case C-219/95, *Ferriere Nord SpA v Commission of the European Communities* [1997] ECR I-04411.

[4] As convincingly argued by Brand [7], EU law is not enforced *coute que coute* and its uniformity may be sacrificed in the interests of divergence and ultimately unity.

[5] According to the Court's case-law, all language versions have the same standing in principle (para. 11), with the result that no inferences can be drawn from the fact that the majority of the language versions use a certain variant of the provision. Where there is divergence between the language versions of an EU legal text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (para. 12). ECLI:EU:C:2018:624.

as authoritative, equally valid language versions, and yet linguistically not identical, has been by default acknowledged by the CJEU when confronted with cases of discrepancies between the language versions, as noted above.

Yet, it is unclear what exactly is meant by this 'requirement of a comparative linguistic exercise in 24 languages' [5], i.e. 'injunction to compare all language versions' [27]. Although also dubbed as the 'comparison rule' [13], the duty to conduct linguistic comparison cannot be considered a rule in the hierarchy of legal rules that must always be respected, for, as will be observed, comparison is not conducted in all cases involving discrepancies between different language versions. In contrast to the multilingual context of the Vienna Convention on the Law of Treaties (hereinafter: VCLT), where comparison is part and parcel of applying the general rule of treaty interpretation [11], whereby, reconciliation of meaning must be based on a comparison, in the CJEU's context it is questionable if it can be regarded as an interpretative method [5] at all.

2 Data and Methodology

Our investigation proceeds from a quantitative empirical study of CJEU's case law relating to discrepancies between language versions of EU legislation using a dataset of judgments of the Court of Justice and the General Court in the period from 1.1.2018 until 31.12.2018 retrieved from the online multilingual database of EU legislation EUR-Lex.[6] Other cases, especially older landmark cases, have also been analysed to gain insight into the Court's interpretative methods in regard to linguistic comparison. The search was conducted by using the keyword "language version" in the indicated period. Subsequently, content analysis was used to make inferences about the quantitative data and filter out cases in which language versions were not actually compared, generating 14 judgments of the Court of Justice and the General Court.[7]

Though much has been written about CJEU's multilingual adjudication (e.g. [1, 9, 10, 17, 27, 28]), there are regrettably few actual, measurable analyses of linguistic comparison within CJEU's decision-making. However, such analysis is needed to shed light on the specificity of the linguistic comparison carried out by the CJEU. This is particularly important bearing in mind that for some judges and AGs linguistic comparison is equated with looking for literary meaning [9], which will be brought into question by the conducted analysis. On the other hand, there is no

[6] Available at: https://eur-lex.europa.eu/homepage.html?locale=en (Accessed: 7 November 2019).

[7] Interestingly, the search has identified 30 opinions of Advocates General (hereinafter: AGs) pertaining to linguistic comparison in the same period. Other research into language cases focused on identifying the languages consulted in these cases or, to elicited the best translation strategies from the Court's methods of resolving language discrepancies [1]. Most scholars agree that it is however, impossible to predict which interpretative methods and which languages the court uses. Baaij [1] points to the special role of English in interpretation and advocates institutionalizing English as the principal EU language. Van der Jeught [28] says French was used in all language cases (according to his investigation, in a total of 13 cases in 2017). Baaij [1] reports that the Court compared language versions in merely 4.2% of preliminary rulings between 1960 and 2010. Furthermore, in the same period the Court compared all language versions only in 1.4% of all judgments [1].

consensus as to whether language cases involve only those instances of divergences between the language versions which might lead to a different legal effect, or render a legal provision unenforceable. Van der Jeught [28] for instance, considers the latter instances to be the yardstick for divergences between language versions. As the present study puts the focus of attention on the nature of linguistic comparison conducted by the CJEU, it also includes instances of ambiguities or inconsistencies between language versions. Settled case law allows to conclude that an inconsistency also counts as divergence. Likewise, to determine an inconsistency, one has to compare other language versions.[8] To draw a parallel with translation errors [25], we could categorize the former type of divergences as material or serious errors such as mistranslations, omissions affecting the substance of the text, whereas the latter include less recognisable errors, such as inconsistencies, or, as will be illustrated in the following sections, even the usage of different punctuation marks or different tense.

3 Comparison of Language Versions

Although our initial concern lies with linguistic comparison, to understand its causes and implications, it is necessary to include some background information on the facts of the cases, respectively. By way of introduction, the *Stauder* case is briefly sketched as a signature case on matters of linguistic discrepancies.[9] The case concerned the Commission´s decision on the programme of subsidised butter addressed to Member States. Beneficiaries of the Commission measure were entitled to butter at reduced price in exchange for an individualised coupon, that is, a 'bon individualisé' and 'buono individualizzato' in the French and Italian version. However, the German version stated that beneficiaries were entitled to butter at reduced price only if they provided a coupon issued in their names: 'nur gegen einen auf ihren Namen ausgestellten Gutschein'. The Dutch version read 'op naam gestelde bon'. A German recipient believed that, pursuant to the German text of the Commission´s decision, the requirement to present a coupon with his name on it, violated his human rights, most notably his human dignity.

The Court of Justice concluded that

> When a single decision is addressed to all the MS the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim it seeks to achieve, in the light in particular of the versions in all four languages. (para. 3 of the Judgment)

[8] See para. 25 of case C-627/17 *ZSE Energia a.s. v RG*. ECLI:EU:C:2018:941.

[9] CJEU Case 29/69 *Stauder v City of Ulm* [1969] ECR 419, ECLI:EU:C:1969:57. Also see [2, 3].

The court's instructions can be interpreted in the following way: first, never rely on one language version but compare other language versions, second, interpret a legal norm teleologically and systematically.

These instructions were made even more explicit in another landmark case, *CILFIT*.[10] Most important instructions of the judgment (paras. 18–20) dovetail with the guidelines from *Stauder* in that, by virtue of equal authenticity, correct legal interpretation of EU legislation involves parallel reading of all versions; consequently, one should not rely on a single language version in isolation of other versions, but take into account other methods (system and telos) [2, 5, 13]. In *CILFIT* the Court suggested that the obligation to compare language versions in order to detect potential mistakes applies to national courts as well [6, 27]. Similarly, Derlén [10] states that national courts must ask if the wording of the national language version represents the true meaning of a given provision.

Summarizing, in these cases the Court has conducted actual linguistic analysis by consulting all (at the time four) equally authentic language versions. However, in light of the fact that after 50 years the number of official languages to be potentially compared grew to 24, in the following section the principal instructions from *Stauder* and *CILFIT* are revisited on example of judgments from 2018.

3.1 Analysis of Judgments from 2018

In the majority of language cases it is one of the parties or the referring court who invoke the issue of a divergent language version, as evident in the hereinafter discussed cases. Due to space limitations, only a few judgments are analyzed in detail.

In case C-239/17[11] the referring court pointed out that the wording of Article 66(1) of Regulation No 1782/2003 varies between different language versions (para. 32), so it stayed the proceedings and referred questions to the Court for a preliminary ruling. As a background note, a police investigation revealed that a large number of Danish farmers have not complied with the cross-compliance rules applicable to direct payments (paras. 20–21). On that grounds the Danish supervisory authority conducted an administrative inspection of the farmers' fertilizers accounts. The results of the inspection were reported to the Danish Nature Protection Agency as

[10] See *Cilfit and Others* (283/81, EU:C:1982:335), para. 18:

1. Community legislation is drafted in several languages and the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different versions.
2. Community law uses terminology which is peculiar to it.
3. Legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.
4. Every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.

See also *EMU Tabac and Others* (C-296/95, EU:C:1998:152, para. 36); *Givane and Others* (C-257/00, EU:C:2003:8, para. 36); and *Kyocera* (C-152/01, EU:C:2003:623, para. 32).

[11] Case C-239/17 *Gert Teglgaard and Fløjstrupgård I/S v Fødevareministeriets Klagecenter*. ECLI:EU:C:2018:597.

the paying agency which instituted proceedings against those farmers for non-compliance with the cross-compliance rules (para. 22). The latter agency then turned to the European Commission to ask whether the reductions in aid were to be calculated on the basis of the calendar year in which the non-compliance with the cross-compliance rules had occurred or on the basis of the calendar year during which it was discovered (para. 23).[12] In its French-language version, Article 6(1) of Regulation No 1782/2003 states that 'le montant total des paiements directs à octroyer au titre de l'année civile au cours de laquelle le non-respect est constaté, est réduit ou supprimé' ('the total amount of direct payments to be granted in the calendar year in which the non-compliance is found, shall be reduced or cancelled'). In almost all other language versions available at the time of adoption of this Regulation, that article provides, that the total amount of direct payments to be granted in the calendar year in which the non-compliance occurs is to be reduced or cancelled (para. 36). However, all the other, namely ten of the eleven original language versions of Article 6(1) of Regulation No. 1782/2003 prior to amendment, allow to conclude that the reduction to be made in respect of any non-compliance should be applied to the year of the breach, as is the case in the English language version 'the total amount of direct payments to be granted in the calendar year in which the non-compliance occurs'. The amended version does not refer explicitly to the year of the finding (in any of the 11 original languages) and the linguistic discrepancies between the French text and the ten other languages of the text prior to amendment seem to have been resolved (para 66. Opinion).

By pointing to the language discrepancy, which has been eliminated by amending the Regulation in question, doubt is shed on the proper application of EU law, because it is possible to assume, that, based on the French text, the meaning of the provision might be interpreted differently than by relying on English or another language version. From *Stauder* we can also elicit that a German recipient couldn't rely on his German version respectively. As Advocate General Lagrange noticed, if all languages are authentic means that no single one of them is authentic, in that courts (or individuals) cannot rely on one language version in interpreting EU law,

[12] The Commission confirmed that the year during which the supervisory authority became aware of a breach must be regarded as the year of the finding of non-compliance with cross-compliance rules to which the penalty resulting therefrom must be applied (para. 25). Subsequently, the paying agency reduced the direct payments received by the appellants in the year during which the non-compliance with the cross-compliance rules was found by the supervisory authority (2011) (para. 26). The appellants then turned to the Eastern Regional Court alleging the invalidity of those decisions (para. 28).

Mr Teglgaard relied on the wording of Art. 6(1) of Regulation No. 1782/2003 to argue that the year of reduction of the direct payments is that of the non-compliance with the cross-compliance rules, whereas Regulation No. 73/2009 cannot serve as the basis for a request to reduce aid resulting from events occurring before its entry into force (para. 29). He further argues that there would be unpredictable consequences for him in that the penalty could be increased by a considerable sum due to the increase of the area eligible for direct payments between the year of that non-compliance and the year of the finding thereof (ibid.).

Fløjstrupgård submits that Art. 23 of Regulation No. 73/2009 does not indicate clearly whether the reduction in direct payments must relate to those received in the year during which the non-compliance with the cross-compliance rules occurred or to those received in the year in which the non-compliance was found (para. 30).

which is what they do in practice.[13] Generally, citizens in bilingual or multilingual jurisdictions rely on one language version, notably the one in their first language [15], which, as argued in the introduction, runs counter to the duty to compare (all) language versions. In effect, the CJEU seems to disparage the rights of citizens to understand legal proceedings before national bodies in their own language that should not be conditioned by having to take into account other languages.

But, as a matter of fact, in resolving this issue and answering the referred questions, the Court does not compare all language versions (as it did in *Stauder*), nor does it examine them in detail, as opposed to AG Sharpston in her opinion pertaining to this case. Indeed, from the Court's judgment it can be inferred that the comparison of languages is not germane to the case. As the Court asserts, having regard to the idiosyncrasies in different language versions of Article 6(1) of Regulation No 1782/2003, that provision must be interpreted and applied uniformly in the light of the versions existing in all the languages of the European Union and, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (paras. 38–39). Similarly, considering the principles of equal treatment, proportionality, and legal certainty is of paramount importance.[14]

In case C-462/17, Landgericht Hamburg (Regional Court) made a request for a preliminary ruling concerning the interpretation of category 41 of Annex II to the Regulation (EC) No. 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, as amended by Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008. Both parties to the main proceedings, Tänzer & Trasper and Altenweddinger Geflügelhof produce liqueurs which have eggs as one of their main components and which are sold under the sales denomination 'egg liqueur' (para 10). Tänzer & Trasper requested before the referring court that Altenweddinger Geflügelhof be ordered to desist from using the sale denomination 'egg liqueur' as it is a product which contains milk. Although in Spanish, English and French, the first sentence of category 41(a) of Annex II

[13] Case 13/61 *Kledingverkoopbedrijf de Geusen Uitdenbogerd v Robert Bosch GmbH and Maatschappij tot voortzetting van de zaken der Firma Willem van Rijn* [1962] ECR 47, 70.

[14] See for a poignant argumentation (paras. 47–55 of the Judgment, and paras. 87-101 of the AG's Opinion). That said, AG's linguistic analysis additionally clarifies the rationale of the Court's decision. In her trenchant analysis of the words 'compute' and 'impute' (para. 60), that are central to the interpretation of the meaning of the word 'applied', AG Sharpston contests the Commission's interpretation of 'applied' as meaning both 'computed' and 'imputed'. Seeing no linguistic reason for such a reading, AG Sharpston puts forward that 'applied' as a general and abstract word can mean impute to, but also compute. However, it cannot be said to mean both compute and impute to (para 76). While AG used these words in answers to the questions of the referring court (see para. 109 of Opinion), the Court only mentions 'calculate'. We believe that the answers of the AG offer a more nuanced view and provide for more clarity and understanding, which is in line with the AG's duty under Article 252 TFEU—to make reasoned submissions. Unlike judgments that are written in a formal and terse language relying on standard phrases and borrowing wordings from earlier judgments [16], opinions read like academic documents citing sources of law and legal scholarship inter alia [17].

to Regulation No 110/2008 is drafted in such a way that it follows unequivocally that the list of ingredients mentioned therein is exhaustive, the German version of that sentence provides that egg liqueur is a spirit drink 'which contains' egg yolk, egg white and sugar or honey as ingredients (para. 17). As the European Commission has pointed out in its written observations, that wording does not preclude an interpretation under which the addition of ingredients other than those mentioned is permitted (para. 18). The discrepancy between the language versions has been referred to by the party Altenweddinger Geflügelhof in its observations submitted to the Court, claiming that the Italian version of that sentence describes the listed ingredients as 'characteristic' ('elementi caratteristici').

The Court replied that according to settled case law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override other language versions:

> Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part. (para. 20)

Yet, it does not consult all language versions. In para. 23, it elaborates that the definitions from the Annex must be interpreted restrictively, "lest the scheme be weakened", and the scheme being attainment of high level of consumer protection, the prevention of deceptive practices, the attainment of market transparency and fair competition and the protection of the reputation that spirit drinks have achieved in the EU (para. 28). The second part of this analysis briefly maps out the comparison of language versions in the remainder of the judgments, zooming in on the Court´s reasoning for resolving divergences between the various language versions.

In Case T-770/16,[15] the party, namely the Parliament, relied on the English wording of the Rules of Procedure, which allowed for a much wider interpretation than German, French or Italian. Unlike the latter versions, the English language version does not refer to the disruption 'of the business' ('des travaux') or 'of the activities' ('de l'activité') of the Parliament, but uses the expression 'disruption of Parliament' (para. 55). The Parliament thus argued that the expression related not only to parliamentary business within the Chamber, but covers a wider context, including also the impact on its reputation or dignity as an institution (para. 55). In para. 56 the General Court recalls that,

> according to settled case law, the need for a uniform interpretation of a provision means that, where there is divergence between the various language versions of the provision, the latter must be interpreted by reference to the context and purpose of the rules of which it forms part.

[15] Case T-770/16 *Janusz Korwin-Mikke v European Parliament*. ECLI:EU:T:2018:320.

In Case C-287/17, the French-language version of Article 6(3) of Directive 2011/7 using the wording the 'other' ('autres') recovery costs was at odds with in particular, the Greek-, English-, Italian- and Dutch-language versions of that provision which do not support that interpretation of recovery costs, as they employ the words 'opoiadipote schetika ypoloipomena', 'any', 'ogni' and 'alle' respectively, instead of the word 'autres' ('other') (para 23).[16]Again the Court asserts that it is settled case law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Although it states that the provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages (para. 24.), it only compared five language versions.

In case C-90/17,[17] at issue was the interpretation of the third subparagraph of Article 21(5) of Directive 2003/96 by virtue of which only entities producing electricity for their own use which are small producers are to be regarded as distributors of electricity. The referring court considered that the difficulty encountered in the interpretation of that article results from differences between the Portuguese language versions and the other language versions of that provisions (para. 21). Turbogás, as party to the proceedings, claims that since in the Portuguese language version of Directive 2003/96 the phrase 'estes pequenos produtores' which may be translated as 'these small producers' is used in the second sentence of the third subparagraph of Article 21(5), the entire provision applies exclusively to small producers of electricity, and not to large producers of electricity who consume part of the electricity they produce for the purposes of that production. However, that interpretation is not apparent from all the language versions of the directive, such as German, English or French language versions which refer to 'small producers', and not 'these small producers' (para. 28–29). Having stated that, the court doesn't actually examine all the language versions of the directive or spell out the ones it mentions. It simply goes on, stating that

> it must be borne in mind that it is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions established in all the languages of the European Union. Where there is a divergence between the various language

[16] As the Advocate General notes in point 40 of his Opinion, while the English- and French-language versions of recital 20 of Directive 2011/7 appear to reserve the right to a fixed sum to cover internal recovery costs ('remboursement forfaitaire pour les seuls frais internes de recouvrement') as opposed to reimbursement of 'other' recovery costs which they incur ('autres frais de recouvrement'), such a formal distinction between internal costs and 'other' recovery costs does not appear in the other language versions of that recital, such as the versions in Italian ('diritto al pagamento di un importo forfettario per coprire i costi interni … esigere anche il risarcimento delle restanti spese di recupero sostenute') or Dutch ('het recht op betaling van een vast bedrag ter dekking van interne invorderingskosten … recht hebben op terugbetaling van de overige invorderingskosten die ontstaan') (para. 35).

[17] Case C-90/17. *Turbogás Produtora Energética SA v Autoridade Tributária e Aduaneira*. Judgment of 7 March 2018 ECLI:EU:C:2018:498.

> versions of EU legislative text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part. (para. 30.)[18]

In joined cases C-688/15 and C-109/16,[19] the Lithuanian version of Directive 97/9 was more restrictive than French or English, in that it states that claims are covered that arise out of an investment firm's inability to repay 'money belonging to investors and held in their name' (para 76). Without conducting actual language comparison, the Court reiterates that it is settled case law, that where there is a divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (para. 78).[20]

In Case C-561/16,[21] the Spanish language version of Article 7(4) of the Energy Efficiency Directive 2012/27/EU was referred to by the national court for it includes only the conjunction 'and' and not 'and/or' as other language versions. Albeit other versions are not explicitly stated, the Court puts forth that it follows from the broad logic of that provision, that Member States must choose the obligated companies from among energy distributors or retail energy sales companies (emphasis added). A more nuanced view of the language discrepancy is offered by AG Kokott in her opinion pertaining to this case.[22]

Asking whether Article 15 of Regulation No 1346/2000 applies only to lawsuits pending concerning a specific right held by the debtor or to a specific asset that he holds, in case C-250/17[23] (para. 19) the Court asserts that various language versions of that article are not unambiguous:

> The respective versions in English, French and Italian, in particular, use the expressions 'an asset or a right of which the debtor has been divested', 'un bien ou un droit dont le débiteur est dessaisi' and 'un bene o a un diritto del quale il debitore è spossessato'. However, the versions in Spanish, Czech, Danish and German, in particular, use the expressions 'un bien o un derecho de la masa', 'majetku nebo práva náležejícího do majetkové podstaty', 'et aktiv eller

[18] Conversely, the reference to the differences between the language versions is more nuanced in the AG's opinion as it compares the Spanish version of Directive 2003/96 with the French, English, German and Polish. Para. 17 of the Opinion of AG Szpunar reads as follows: "First, in my understanding, apart from the Portuguese language version of Directive 2003/96, the phrase 'these small producers' appears only in the Spanish version thereof. In particular, it certainly does not appear in the French, English, German or Polish versions. Thus, a literal interpretation of the provision in question, which takes into account not one, but all language versions, does not allow the argument put forward by Turbogás to be accepted.".

[19] Joined cases C-688/15 and C-109/16 *Agnieška Anisimovienė and Others v bankas "Snoras" AB, in liquidation and Others*. ECLI:EU:C:2018:209.

[20] Bearing in mind the objective of Directive 97/9, and the broad definition of the term 'investor' under Article 1(4) as any person who has entrusted money or instrument to such a firm in connection with investment business. (para. 79).

[21] Case C-561/16 *Saras Energía SA v Administración del Estado*. ECLI:EU:C:2018:633.

[22] See paras. 62–64 of Opinion of AG Kokott delivered on 12 April 2018, ECLI:EU:C:2018:236.

[23] Case C-250/17 *Virgílio Tarragó da Silveira v Massa Insolvente da Espírito Santo Financial Group, SA*. ECLI:EU:C:2018:398.

> en rettighed i massen' and 'einen Gegenstand oder ein Recht der Masse'. (para. 21).[24]

Importantly, it stresses that having regard to settled case law and the differences emerging from the various language versions of Article 15 of Regulation No 1346/2000, the interpretation of that article cannot be based only on its wording (para. 22).

In case C-554/16,[25] it was pointed out that the wording in the majority of the language versions of Article 2(4) of Decision 2001/672[26] states that the information is to be reported to the competent national authority no later than 15 days after the date when the animals were moved to the pasture (para. 33). The Portuguese language version of that Article provides that information must be notified within 15 days of the movement of the animals to pasture and not at the latest 15 days after their arrival (para. 35).[27] Here, also, the Court underlines that in light of divergences between the language versions of a text of EU law, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (para. 36.)

In case C-123/16,[28] the party to the proceedings, Orange Polska SA invoked the language issue in that a part of a sentence was written in the past tense, which, showed that the Commission was referring to the effects which were actually produced. The Court however argued that only the Polish language version of the decision at stake was authentic and that version is written in the present tense. In case C-5/16,[29] the party relied on a literal interpretation of the French language version of paragraph 2.3 of the 2014 European Council Conclusion, which had a semicolon, whereas the other language versions used a full stop (para. 80).

In case C-256/16,[30] the Court points to a mismatch between the language versions (para. 48). The German version states that Regulation No 384/96 is to continue to apply to proceedings initiated in accordance with that regulation, all others

[24] Having regard to the case-law cited at paragraph 20 of this judgment and the differences emerging from the various language versions of Article 15 of Regulation No 1346/2000, the interpretation of that article cannot be based only on its wording (para. 22). Although the wording of that article is not without ambiguity, the context and the objectives of the article require an interpretation to the effect that its scope of application cannot be limited to ongoing proceedings concerning a specific asset or right of which the debtor has been divested (para. 23).

[25] Case C-554/16 EP *Agrarhandel GmbH v Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft*. ECLI:EU:C:2018:406.

[26] See paras. 16–18: Article 2(4) of Decision 2001/672, in its initial version, provided: 'The information contained in the list mentioned in paragraph 2 is introduced in the national database for bovine animals at the latest seven days after the date when the animals are moved to the pasture. It was amended as follows: 'The information contained in the list mentioned in paragraph 2 shall be reported to the competent authority in accordance with Article 7(1) of Regulation (EC) No 1760/2000 at the latest 15 days after the date when the animals were moved to the pasture…'.

[27] It should be noted that the terms used here are rather general and open to interpretation.

[28] Case C-123/16 P *Orange Polska SA v European Commission*. ECLI:EU:C:2018:590.

[29] Case C-5/16 *Republic of Poland v European Parliament and Council of the European Union.* ECLI:EU:C:2018:483.

[30] Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*. ECLI:EU:C:2018:187.

merely state that the repeal of that regulation does not affect the validity of those proceedings. Without conducting linguistic comparison, the Court refers to settled case law, and the need to interpret a provision in light of all language versions, on the basis of the real intention of its author and the aim (para. 49).

Finally, inconsistency is discussed in case C-627/17.[31] The Court refers to a possible inconsistency in the Slovak-language version of Regulation No 861/2007 which led the referring court to express doubts as to the interpretation of the concept of 'parties' and whether it also includes the concept of 'intervenor' (paras. 24–25). The Court recalled that the provisions of EU law must be interpreted in the light of the versions established in all of the languages of the European Union and by reference to the purpose and general scheme of the rules of which it forms part (para. 25).

Likewise, case C-15/17[32] deals with inconsistent terminology in French language versions of two different legal instruments, namely 'littoral' and 'côtes'. The inconsistency is resolved by reasoning that both of the words designate, in accordance with their ordinary meaning in everyday language, the area where the sea meets the land and by referring to the English language version that uses 'coastline' in both instruments (para. 73).

4 Discussion of the Findings

In some cases, the Court doesn't even conduct actual linguistic comparison, but merely points to the necessity to interpret a provision in the light of the versions established in all the languages of the European Union (e.g. C-90/17, C-256/16). What's more, actual comparison of different language versions is carried out in only five of the analyzed cases: C-462/17, C-287/17, C-250/17, C-15/17, C-256/16 as illustrated in Fig. 1. Case C-250/17 is exceptional in that, the court compares language versions, namely English, French and Italian in juxtaposition to Spanish, Czech, Danish and German, however, it doesn't refer to the above mentioned duty to interpret a provision in the light of all language versions. Strikingly, in none of the cases does it compare all language versions. In that regard, it is impossible to predict which languages (if any) are used in linguistic comparison; is it only languages that are equally authentic *ex tunc* or *ex nunc*, or languages known to judges and AGs. It seems that the different versions which are spelled out serve the purpose of merely reaffirming the holding that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision. Rather, the provision must be interpreted and applied uniformly in the light of the versions existing in all EU languages and by reference to the context in which it

[31] Case C-627/17 *ZSE Energia a.s. v RG.* ECLI:EU:C:2018:941.

[32] Case C-15/17 *Bosphorus Queen Shipping Ltd Corp. v Rajavartiolaitos*. ECLI:EU:C:2018:557. At issue is the French version of Article 220(6) of the Montego Bay Convention which refers to 'littoral', whereas Article 1(1) of the Convention relating to Intervention on the High Seas 1969 uses the term 'côtes'.

occurs and the objectives pursued by the rules of which it is part. Resembling a hermeneutic circle, such a view is supported by the CJEU's reasoning in its judgment in C-462/17, where the previously cited paragraph 23 pertaining to the scheme is more insightful than the results of the undertaken language comparisons with a view to understanding the reasons for the Court's decision. Again, it states that it is necessary to interpret a provision by reference to the context in which it occurs and the objectives pursued by the rules of which it is part (para. 37). Nevertheless, the Court has upheld similar rhetoric on linguistic comparison to date.[33]

In other cases of discrepancies between language versions (C-561/16, C-688/15 and C-109/16, T-770/16, C-554/16, C-123/16, C-5/16, C-672/17), the Court posits that the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part, without conducting linguistic comparisons or even referring to the duty to compare other language versions established by the Court in *Stauder* and argued out in *CILFIT*.

Despite claims that linguistic comparison is widely used as a supportive interpretative tool, it is not a default interpretation method in CJEU's decision-making. Aside from practical difficulties of conducting comparisons of language versions (and especially the additional burden it imposes on national courts), from the perspective of the linguistic theories of meaning, there is no standard by which to compare [13], assuming there is no predetermined meaning in any of the language versions. In consequence, it is unclear how a comparison might render uniform interpretation [27], if an interpretation of an article cannot be based only on its wording. As a matter of fact, the Court itself has claimed elsewhere that the main issue of a case is not resolved by comparing language versions.[34] It seems that the Court's intention-disguised in the duty to compare-is to underscore that multilingual EU law can benefit from a comparison of all language versions seeking to persuade the highest courts of the Member States to refer to it, considering that the Court (unlike national courts) has sufficient resources to compare language versions [24]. From the perspective of national courts though, linguistic comparison only serves as a mistake verification exercise [5].

What has also proved a misconception is that linguistic comparison focuses on finding the (literary) meaning of a provision in question. As demonstrated, the procedure of linguistic comparison only occasionally includes genuine language

[33] See a recent case C-477/17 *Raad van bestuur van de Sociale verzekeringsbank v D. Balandin and Others* ECLI:EU:C:2019:60 Judgment of the Court (First Chamber) of 24 January 2019, para. 31.

[34] Judgment of the Court (First Chamber) of 10 July 2019. *Bundesverband der Verbraucherzentralen und Verbraucherverbände—Verbraucherzentrale Bundesverband e.V. v Amazon EU Sàrl.* Case C-649/17. ECLI:EU:C:2019:576. "That issue is not resolved by the analysis of different language versions of Article 6(1)(c) of Directive 2011/83. Although the majority of those versions, in particular the versions in English ('where available'), French ('lorsqu'ils sont disponibles'), Dutch ('indien beschikbaar'), Italian ('ove disponibili'), Polish ('o ile jest dostępny') and Finnish ('jos nämä ovat käytettävissä') suggest that, under that provision, the obligation imposed on traders to inform consumers of their telephone and fax numbers applies only where those traders have such means of communication, the fact remains that other versions of that provision, in particular those in Spanish ('cuando proceda') and German ('gegebenenfalls'), do not allow the circumstances to be determined in which that obligation does not apply." (para. 36).

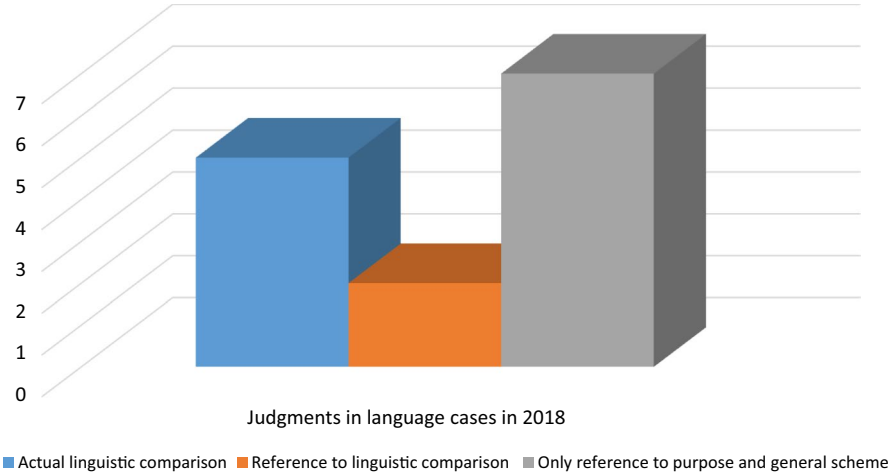

Fig. 1 Proportion of cases involving actual linguistic comparison

comparison [5], but rather refers to the duty to compare language versions. Mostly, however, when dealing with discrepancies between language versions the Court refers to the need to interpret a provision by reference to the purpose and general scheme of the rules of which it forms part. With this in mind, we can conclude that the persuasive value of linguistic comparison in CJEU's decision-making is questionable. What's more, in view of the fact that detailed reasoning is generally missing (see [27]),[35] there is not only arbitrariness as to the outcome of uniform interpretation, but also opportunity for legal uncertainty.

5 Conclusions: Risks and Remedies

By examining settled case law, we have tried to pinpoint the central moves of CJEU's comparing of different language versions, as well as the role it plays within its decision-making. Looking back on *Stauder*, actual linguistic comparison seems to be carried out less frequently today, for not only is it carried out occasionally only, but it does not encompass all language versions. Albeit these findings cast doubt on the purpose of conducting linguistic comparison, CJEU's rhetoric has hardly broken out of the *Stauder* pattern, manifesting its incapacity of fitting actions to words.

At the same time, the duty of conducting linguistic comparison poses many risks, most notably to legal certainty. Enabling the addressees of the law to ascertain their rights and duties in their own language, equal authenticity clashes with the need to compare language versions, affecting thereby legal certainty. Settled case law

[35] In particular, detailed reasoning as to whether and how the purpose and the general scheme can be deduced from all language versions, for the court sometimes refers to recitals and other times accepts the Commission's pleas [27].

demonstrates that this tension is resolved by choosing the respect for uniform interpretation over the right of the individual to trust the text in his own language [11]. In consequence, this undermines the principle of effectiveness of EU law which requires effective protection of EU rights and effective enforcement of EU law in national courts,[36] as national courts are required to ensure that full effect is given to EU law.[37] Given the fact that discrepancies between language versions will not go away as they are inherent to translation and multilingual nature of EU law, future research should explore alternatives to the duty of linguistic comparison, first and foremost with respect to national courts.

Notwithstanding the instrumental role of the CJEU in the development of EU law, it is national courts that transpose, apply, and enforce EU law on a daily basis. Bearing in mind the infeasibility of the duty to compare from the perspective of national courts in particular, the creation of specialized parallel corpora of EU legislation designated especially for national courts and judges warrants further investigation.[38] If we construe linguistic comparison as a supportive method of looking for law in 24 different places [27], parallel corpora would enable national judges to conduct keyword searches, thereby ensuring more clarity when faced with potential language discrepancies or ambiguities, and in turn, more uniform interpretation and application of EU law.[39] This seems particularly important bearing in mind the upward trend of the number of cases before the CJEU,[40] which will lead to an increase of language cases exponentially, but also in the context of the principle of consistent interpretation. Perceived as a wide-ranging obligation of the national court [26], the principle of consistent interpretation requires national courts to use a hybrid methodology, combining autonomous European methodological rules set up by the CJEU and national legal methods [8]. In a similar vein, the duty to compare language versions marks a departing from conventional interpretative methods of national courts and the traditional construal of EU legal rules in the national language (only). In our opinion, conducting linguistic comparison-operationalized by parallel corpora-can be regarded as an expression of the principle of consistent interpretation as another method of giving effect to EU law. In contrast, the duty to compare language versions as construed in the discussed cases, does not seem feasible for the foregoing reasons and most notably, from the perspective of the principle of full effect of EU law. That is, the duty to compare language versions by national courts undermines full effect of EU law in that national courts are warned that the *acte clair* doctrine

[36] As underscored by [22], protection of the individual rights and the full force and effect of EU law are two sides of the same coin.

[37] Case 106/77 *Simmenthal* [1978] ECR 629.

[38] Such as the multilingual corpus of EU case law: EUCLCORP. https://llecj.karenmcauliffe.com/euclcorp/ (accessed 4 December 2019).

[39] Albeit earlier research demonstrated a limited level of ambition on the part of the national courts in examining foreign languages in their interpretation (see [10], Chs 6–9). However, it is to be expected that things might have changed in the meantime owing to increased training activities of national judges aimed at EU law and language skills organized by the European Judicial Training Network, and pursued in the form of justice projects (e.g. Training Action for Legal Practitioners: Linguistic Skills and Translation in EU Competition Law, HT: 4983, co-financed by the European Commission).

[40] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-03/cp190039en.pdf.

is inapplicable in EU law, and accordingly, the correct interpretation of EU law is never obvious [13]. The CJEU on the contrary, guarantees the full effect of EU law in the scope of the references for preliminary rulings, by which it provides national courts with uniform interpretation of EU law, ensuring thereby its uniform application Union-wide [14]. On the other hand, the comparison injunction-understood in the broad and impractical sense of CJEU's instructions to national courts-may even lead to state liability for damages incurred to an individual because of the failure of national courts to compare different language versions.[41]

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References

1. Baaij, C.J.W. 2018. *Legal Integration and Language Diversity. Rethinking Translation in EU Lawmaking*. New York: Oxford University Press.
2. Bajčić, Martina. 2017. *New Insights into the Semantics of Legal Concepts and the Legal Dictionary*. Amsterdam: John Benjamins.
3. Bajčić, Martina, and Adrijana Martinović. 2018. A Mutual Learning Exercise in Terminology and Multilingual Law. In *Language and Law. The Role of Language and Translation in EU Competition Law*, ed. Silvia Marino, Lucja Biel, Martina Bajčić and Vilelmini Sosoni, 207–223. Switzerland: Springer.
4. Beck, Gunnar. 2013. *The Legal Reasoning of the Court of Justice of the EU*. Oxford: Hart Publishing.
5. Bobek, Michal. 2007–2008. On the Application of European Law in (Not-Only) the Courts of the New Member States: 'Don't Do as I Say?' In *Cambridge Yearbook of European Legal Studies*, ed. Catherine Barnard, 1–35. Oxford: Hart Publishing.
6. Bobek, Michal. 2011. The Multilingualism of the European Union Law in the National Courts: Beyond the Textbooks. In *Linguistic Diversity and European Democracy*, ed. Anne-Lise Kjaer and Silvia Adamo, 123–142. Farnham: Ashgate.
7. Brand, Michiel. 2008. Discretion, Divergence, and Unity. In *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, ed. Sacha Prechal and Bert van Roermund, 217–231. Oxford: Oxford University Press.
8. Brenncke, Martin. 2018. Hybrid Methodology for the EU Principle of Consistent Interpretation. *Statute Law Review* 39(2): 134–154.
9. Ćapeta, Tamara. 2009. Multilingual Law and Judicial Interpretation in the EU. *Croatian Yearbook of European Law and Policy*, Vol. 5 No. 5 November 2009. 1–17.
10. Dérlen, Mattias. 2009. *Multilingual Interpretation of European Union Law*. Alphen aan den Rijn: Wolters Kluwer.
11. Dörr, Oliver. 2017. Consequences and Limitations on Interpretation. In *Vienna Convention on the Law of Treaties*, ed. Oliver Dörr and Kirsten Schmalenbach, 635–651. Berlin: Springer.
12. Engberg, Jan. 2004. Statutory Texts as Instances of Language(s): Consequences and Limitations on Interpretation. *Brook. J. Int'l L.* 29: 1135. https://brooklynworks.brooklaw.edu/bjil/vol29/iss3/6. Accessed 5 Aug 2019.
13. Kjær, Anne-Liese. 2010. Nonsense: The CILFIT Criteria Revisited: From the Perspective of Legal Linguistics. In *Europe: The New Legal Realism: Essays in Honor of Hjalte Rasmussen*, ed. H. Koch, K. Hagel-Sørenson, U. Haltern and J. Weiler, 297–319. København: Djøf Forlag.

[41] [Cf. 19, 20].

14. Lenaerts, Koen. 2005. The Unity of European Law and the Overload of the ECJ: The System of Preliminary Rulings Revisited. In *The Future of the European Judicial System in a Comparative Perspective*, ed. Ingolf Pernice, Juliane Kokott, and Cheryl Saunders. Baden-Baden: Nomos.
15. Leung, Janny, 2014. The Object of Fidelity in Translating Multilingual Legislation . *Semiotica* 201: 223–238. https://ssrn.com/abstract=2864262. Accessed 15 July 2019.
16. Mańko, Rafał. 2019. The Role of Advocates General at the CJEU. http://www.statewatch.org/news/2019/oct/ep-briuefing-a-g-cjeu.pdf.
17. McAuliffe, Karen. 2016. Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ. In *The Oxford Handbook of Language and Law*, ed. Peter M. Tiersma and Lawrence M. Solan, 200–217. Oxford: Oxford University Press.
18. Mikhailov, Mikhail, Santalahti Miia, and Souma Julia. 2019. PEST: A parallel electronic corpus of state treaties. In *Parallel Corpora for Contrastive and Translation Studies. New resources and applications*, ed. Irene Doval and M. Teresa Sánchez Nieto, 183–195. Amsterdam: John Benjamins.
19. Mišćenić, Emilia. 2016. Legal Translation vs. Legal Certainty in EU Law. In *Legal Risks in EU Law*, ed. Emilia Miscenic and Aurélien Raccah, 87–111. Switzerland: Springer.
20. Mišćenić, Emilia. 2019. *Europsko privatno pravo. Opći dio*. Zagreb: Školska knjiga.
21. Pacho Aljanati, Lucie. 2015. The Court of Justice of the European Union's Case Law on Linguistic Divergences (2007–2013): Interpretation Criteria and Implications for the Translation of EU Legislation (Ph.D. Thesis), Université de Genève, 2015. https://archive-ouverte.unige.ch/unige:76529. Accessed 9 Aug 2019.
22. Prechal, Sacha. 2008. Protection of Rights: How Far? In *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, ed. Sacha Prechal and Bert van Roermund, 155–182. Oxford: Oxford University Press.
23. Prechal, Sacha, and Bert van Roermund. 2008. Binding Unity in EU Legal Order: An Introduction. In *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, ed. Sacha Prechal and Bert van Roermund, 1–20. Oxford: Oxford University Press.
24. Prechal, Sacha, Linda Senden, Bert van Roermund, and Thomas Vandamme. 2008. Experiences from Professional Practice: Some Steps Towards Empirical Research. In *The Coherence of EU Law. The Search for Unity in Divergent Concepts*, ed. Sacha Prechal and Bert van Roermund, 23–43. Oxford: Oxford University Press.
25. Prieto Ramos, Fernando. 2020. Facing Translation Errors at International Organizations: What Corrigenda Reveal about Correction Processes and their Implications for Translation Quality. *Comparative Legilinguistics* vol. 41/2020.
26. Sawyer, Katrine. 2007. The Principle of 'interprétation conforme': How Far Can or Should National Courts Go when Interpreting National Legislation Consistently with European Community Law? *Statute Law Review* 28(3): 165–181.
27. Schilling, Theodor. 2010. Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of a Community Law. *European Law Journal* 16(1): 47–66.
28. Van der Jeught, S. 2018. Current Practices with Regard to the Interpretation of Multilingual EU Law: How to deal with Diverging Language Versions? *European Journal of Legal Studies* 11(1): 2018.