

## What Language for Europe?

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Immediately after the final results of the Brexit referendum in June had been announced, politicians, both at the European and national level, raised their voices against the dominance of the English language in EU institutions and have even questioned its legitimacy and maintainability as official language of the European Union. In the early hours of 24 June 2016, Jean-Luc Mélenchon, a left-wing MEP, tweeted that ‘English cannot be the third working language of the European parliament.’<sup>1</sup> Among the statements in the same line, the one that received the most attention was without any doubt that of the Polish MEP and chair of the European Parliament’s constitutional affairs committee, Danuta Hübner, who argued that English should be deleted from the official languages of the EU as by virtue of the relevant Regulation each Member State has the right to notify only one language to the EU to become at the same time an official language of the Union.<sup>2</sup>

As a succinct consequence of the Brexit referendum and in a symbolic way, the President of the European Commission, Jean-Claude Juncker, when assessing the outcome of the referendum at the plenary session of the European Parliament on 28 June, used exclusively German and French and avoided using English. Before then he had generally used all three languages in a balanced way when addressing this forum.<sup>3</sup>

The last news bringing the language issue to the fore again exploded in October 2016 when some anonymous sources from the EU administration reported that the chief negotiator of the Brexit process, Michel Barnier, wanted French to be the language of the divorce talks,<sup>4</sup> although this information was declared false by the chief negotiator himself after the British prime minister, Theresa May, made it clear that her government will not accept the use of French language. In his reaction, Barnier underlined that the language of the negotiations will be agreed upon by the parties concerned.<sup>5</sup>

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\* Réka Somssich (Phd, dr Habil) is Associate Professor at the Department of Private International Law and European Economic Law at the Faculty of Law and Political Sciences of ELTE University.

<sup>1</sup> <https://twitter.com/JLMelenchon/status/746300956577505280>

<sup>2</sup> <http://www.politico.eu/article/english-will-not-be-an-official-eu-language-after-brexit-senior-mep/>

<sup>3</sup> See: [http://europa.eu/rapid/press-release\\_SPEECH-16-2353\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-16-2353_en.htm) (the English version of the speech is only available in translation).

<sup>4</sup> <http://www.reuters.com/article/us-britain-eu-language-exclusive-idUSKCN12L1E0>

<sup>5</sup> <https://www.theguardian.com/politics/2016/oct/21/theresa-may-brexit-negotiations-language-french>

The aftermath of the Brexit referendum was not the first time that an attempt was made to appease the overwhelming influence of English in the EU administration. In mid-2004 a group of French legal and linguistic experts launched an initiative to establish French as the ‘legal language of the EU’.<sup>6</sup> Increasing the use of German in the European institutions was an important element of the campaign programme of the CDU in 2008,<sup>7</sup> while in 2012, the European Commission was sharply criticised by French journalists for having published the Eurozone recommendations only in English (while the United Kingdom was not member of the Eurozone).<sup>8</sup> What is interesting is that in the past it was mainly France and Germany who had raised their voices against the extended use of English in order to gain more room for their own languages; with Brexit it is interesting to see that Polish politicians have also felt motivated to enter this campaign.<sup>9</sup>

It is true that with Brexit the proportion of native speakers of English in the EU will drop from 14% to 1%. This must however not necessarily mean that the current *lingua franca* of the EU should and will disappear from the official or working languages.

## I The Language Regime of the EU and Its Eventual Amendment for Brexit

Under EU law, one distinguishes between ‘authentic languages’, ‘official languages’ and ‘working languages’. The term authentic language is used for the languages in which the founding Treaties (as international agreements) shall be authentic and as such have authoritative force. While the Treaty establishing the first Community, the European Coal and Steel Community was only authentic in French, the Treaty establishing the European Community and in 1992 the Treaty on the European Union were already based on the principle of equal authenticity of the official languages of the Member States. Although the first national language of Luxembourg, Luxembourgish has since the beginning not been an authentic language of the Treaties, the Irish language became one of the authentic Treaty languages in 1973, when Ireland acceded to the Communities (although not an official language of the Communities themselves at that time).

It is Article 55 (1) of the Treaty on the European Union (TEU) which enumerates the languages in which the TEU is drawn up and shall be authentic. It currently contains 24 languages and was last amended by the Act of Accession of Croatia. Paragraph (2) of the same Article stipulates that the Treaty may also be translated into any other languages as determined by

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<sup>6</sup> <https://euobserver.com/political/17510>

<sup>7</sup> <https://www.euractiv.com/section/languages-culture/news/sprechen-sie-deutsch-merkel-wants-more-german-spoken-in-eu/>

<sup>8</sup> <http://www.euractiv.com/section/languages-culture/news/commission-denies-english-language-favouritism/>

<sup>9</sup> Which is not surprising, knowing that Polish is, with Spanish, the 4th mostly spoken mother tongue in the EU representing 8% of the population (*Europeans and their languages*, Report, Special Eurobarometer 386, 2012, 10).

Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. These translations will however not be authentic versions, meaning that their text cannot be considered as authoritative.<sup>10</sup> For the Treaty on the functioning of the European Union, Article 358 TFEU provides that the provisions of Article 55 of the TEU shall apply to that Treaty too. It means that the TFEU is authentic in the same languages as the TEU, with the same implications.

The official and working languages of the EU are listed in the very first Regulation adopted by the European Community in 1958, Regulation No 1 determining the languages to be used by the European Economic Community.<sup>11</sup> The Regulation is based on the current Article 342 TFEU, according to which the rules governing the languages of the Community institutions should be taken by the Council unanimously.

The Regulation does not provide a definition of what one should understand by official language and working language. One can presume that the former is used in the context of the external communication of the EU (publishing documents, legal acts, sending documents to Member States and citizens), while the latter in its internal communication (using languages within and among EU institutions)<sup>12</sup> but this differentiation is however not specified anywhere. The Regulation has three main principles on external communication. The first one is enshrined in Articles 2 and 3. The former specifies that any individual or Member States must be able to communicate with the EU institutions in any of the official languages, while Article 3 provides that communication initiated by EU institutions should be in the language of the Member State to which it is addressed or the jurisdiction of which the individual concerned is subject to. Availability of legal acts in the various official languages is laid down in Article 4, according to which 'Regulations and other documents of general application shall be drafted in the official languages.' Under 'other documents', one should understand directives and decisions of general application.<sup>13</sup> Finally, Article 5 expresses another aspect of legal certainty when it provides for the simultaneous publication of the Official Journal of the European Union in all the official languages. The obligation to publish in all of the official languages means that any language version is equally authentic. On the internal aspects of language use, the Regulation is less explicit. Article 6 authorises institutions to stipulate in their rules of procedure which of the languages are to be used in specific cases, while Article 7 confers upon the Court of Justice the right to define the language rules for its procedures.

<sup>10</sup> As Theodor Schilling points out, this Treaty provision was motivated by the same inspiration as the Council Conclusions of 2005 on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union facilitating upon agreement with Member States the adding of non-official translations of legislative measures into languages which are official in certain regions only to the Council archives [Theodor Schilling, 'Language Rights in the European Union' (2008) 10 German Law Journal, 1233].

<sup>11</sup> EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385–386).

<sup>12</sup> Alain Fenet, 'Diversité linguistique et construction européenne' (2001) 2 Revue trimestrielle du droit européen, 239.

<sup>13</sup> Phoebus Athanassiou, 'The Application of Multilingualism in the European Union Context' (2006) 2 Legal Working Paper Series (ECB), 9.

Article 1 of the Regulation – which was amended at the occasion of each accession<sup>14</sup> – enumerates the official and working languages of the EU institutions. The two categories overlap completely. That would mean in practice that any of these languages could be used in principle, both in internal and external communications. Currently the scope of the official languages and working languages coincide with the authentic languages of the Treaties as well. This was however not always the case. In 1973, by the time of the accession of Ireland, Irish became an authentic language of the Treaties but it was not admitted to the official and working languages, although Irish is the first official language of Ireland and English is only the second one.<sup>15</sup> However, as a matter of fact, legislation and administration in Ireland – especially in the 70's – was mostly dominated by English, therefore there could not have been any special interest fed by the need for legal certainty to include Irish among those languages into which all EU acts should be translated by virtue of Article 4 of the Regulation. All the more so because, until the very last phase of the accession negotiations with Malta, it was presumed that Maltese (being the first official language of Malta, alongside English)<sup>16</sup> would share the status of Irish. While all the candidate countries had already started the coordinated translation process of the *acquis* at the end of the nineties the Regular Report of 2000 on Malta's progress towards the accession still noted that no part of the *acquis* had yet been translated.<sup>17</sup> The next year's Report urged the Maltese administration to undertake additional efforts in the area of translating the *acquis* 'without prejudice to the outcome of the accession negotiations', which suggests that the issue of whether Maltese would in fact become an official language of the EU was still pending at that time.<sup>18</sup> Finally, the negotiations resulted in admitting Maltese not only to the authentic languages of the Treaties but to the official and working languages as well, by amending Regulation No 1 accordingly. This very fact gave Ireland an impetus to engage itself in a campaign to convince the Council to grant Irish the same status as other official languages and requested the amendment of Regulation No 1. The efforts of the Government proved to be successful and the Regulation was modified in 2005 in order to include Irish in Article 1.<sup>19</sup>

<sup>14</sup> Until the accession of Croatia in 2013, for every new acceding country, it was always the Act of Accession which amended Regulation No 1, while in the case of Croatia it was a Regulation adopted in order to adapt EU legislation to the accession of Croatia which adapted the Regulation [Council Regulation (EU) No 517/2013].

<sup>15</sup> Article 8 (1) of the Constitution of Ireland provides that 'The Irish language as the national language is the first official language' while Article 8 (2) states that 'the English language is recognised as a second official language.' A derogatory rule is foreseen by paragraph (3) according to which 'Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.'

<sup>16</sup> Article 5 (1) of the Constitution of Malta provides that 'the National language of Malta is the Maltese language.' Paragraph (2) of the same Article stipulates that 'the Maltese and the English languages and such other language as may be prescribed by Parliament (by a law passed by not less than two-thirds of all the members of the House of Representatives) shall be the official languages of Malta and the Administration may for all official purposes use any of such languages: Provided that any person may address the Administration in any of the official languages and the reply of the Administration thereto shall be in such language.'

<sup>17</sup> Regular Report of 8 November 2000 from the Commission on Malta's towards Accession, p. 63, available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/mt\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/mt_en.pdf), last visited: 27.12.2016.

<sup>18</sup> SEC (2001) 1751, p. 75.

<sup>19</sup> Council Regulation (EC) No. 920/2005.

However for both Irish and Maltese, severe temporal derogations were introduced concerning the publication of legal acts in these languages. For Maltese, it was on the eve of accession that it became clear that the practical implications of admitting Maltese to the official languages had not been properly considered. A Regulation, adopted the first day of Malta's EU membership,<sup>20</sup> therefore provided that the requirement of drafting in Maltese should – for a temporary period of three years – cover only regulations adopted jointly by the European Parliament and the Council. The preamble of the Regulation makes it clear that the derogation was necessary because of the lack of qualified translators. The derogation ended in 2007.

The temporary period foreseen for Irish was formulated in a more cautious way. The 2005 amendment of Regulation No 1 provides that – as with Maltese – with the exception of the same type of Regulations adopted under the ordinary legislative procedure, publication of EU acts in Irish was not compulsory for a period of five years counted from the 1 of January 2007 which could be lengthened by the Council unanimously for subsequent five-years intervals. Unlike the Regulation on the Maltese derogation, the 2005 amendment did not give details of why it was necessary to introduce the temporary measures: it only refers in its preamble to practical reasons. One can however easily assume that the reasons must have been the same, as it can already be read in the subsequent Regulations providing for further prolongations: an insufficient number of trained translators. Admitted to the official languages in 2005, Irish is still not a fully-fledged official language of the EU. The derogation was extended already twice, once in 2010<sup>21</sup> and for the second time in 2016<sup>22</sup> for a subsequent five years period ending in 2021. Although the 2016 Regulation urges institutions to continue their proactive approach to increasing the availability of information in Irish on the activities of the Union and expresses its wishes to end the interim period before the end of the most recently added five year term with a timetable annexed to the Regulation on the gradual reduction of the derogation, there is no legally binding ultimate deadline for putting an end to the derogations, and therefore further extensions are in principle possible.

As can already be seen, whether an official language of a Member State becomes an official language of the EU is primary a matter for the accession negotiations. Contrary to what some contend<sup>23</sup> there is no written rule that a Member State could only 'register' one of its official languages as an official language of the EU. Although Article 8 of Regulation No 1 rules on the use of languages with regard to Member States with several official languages, it has quite a vague wording. According to this provision, if a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law. This provision does not therefore exclude that several national languages of a single Member State could be added to the list of EU official languages, even if it has so far never been the case. Article 8 of Regulation No 1 and the constitutional derogatory provisions

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<sup>20</sup> Council Regulation (EC) No 930/2004.

<sup>21</sup> Council Regulation (EU) No 1257/2010.

<sup>22</sup> Council Regulation (EU, Euratom) 2015/2264.

<sup>23</sup> See for instance the statement of Danuta Hübner cited above.

of the two Member States offer sufficient flexibility to define or redefine the status of English in these countries, with an overall impact at European level

As such, what is certain on the basis of the above provisions is that deleting English from the authentic languages of the Treaties and the official or working languages of the EU will in no way be an automatic consequence of Brexit. It cannot be either a matter for the divorce negotiations as is the language issue normally on the table in the case of accessions. By virtue of Article 8 of the Regulation, it could only be done at the request of a state where English is one of its several official languages and, as there are two Member States of this kind, it would most probably be at their joint request. In addition the Council Regulation can only be amended unanimously.

It is highly improbable that either of the two states concerned would propose the deletion of English from the official languages, taking especially into account that the derogation of Irish became the rule rather than the exception and that, on the eve of Brexit, Irish does not seem to be a language at European level that could be a realistic alternative to English for Irish citizens, despite a gradual reduction of the derogation until 2022.<sup>24</sup> This against the fact that the development of an Irish terminology is progressing very rapidly. Irish has the second largest number of entries in the European multilingual terminology database (IATE) among the official languages added in 2004 and in 2005, after Polish.<sup>25</sup> It should however also be taken into account that the development of not only EU but also general legal terminology started some decades ago and it was only in 2003, with the adoption of the Official Languages Act in 2003, that Acts of Oireachtas (Parliamentary Acts in Ireland) are to be published in both in Irish and English immediately after enactment.<sup>26</sup>

On the other hand, abandoning English would mean for both Maltese and Irish an opportunity to strengthen or even consolidate their status, not only at a European but also at a national level. The gradual reduction of the derogation until 2022 would in fact coincide with the decision of the eventual future of English due to Brexit.

At the same time leaving the current language system untouched – which is the most realistic scenario – would mean that Ireland and Malta would contribute to the official languages of the EU with two national languages each. This could give rise to campaigns in favour of recognising regional languages such as Catalan or Basque as official languages of the EU<sup>27</sup> as happened in the case of Irish after Maltese became an official language of the EU in 2004.

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<sup>24</sup> According to the data available only 2% of the Irish population is native speaker and an additional 9% speaks the language at a very high standard [*Terminology for the European Union. The Irish Experience: The GA IATE Project* (Fiontar 2013) p. 55.].

<sup>25</sup> *Ibid.*, 29.

<sup>26</sup> *Ibid.*, 54.

<sup>27</sup> Victor Ginsburgh, Juan D. Moreno-Ternero, Shlomo Weber, 'Ranking Languages in the European Union: Before and After Brexit' [2016] Ecares Working Paper, 15.

## II The Status of English as Natural Lingua Franca

It can be assumed that, regardless of whether English remains an official language of the EU and despite any effort to promote other EU languages, the preponderance of English will not be defeated in practice at European level at least. The extended use of English does not depend on UK being a Member State but rather on general trends in language learning and language skills, influenced by a number of phenomena at global scale.

According to a survey (*Europeans and their languages*) carried out in 2012 in 27 Member States by Eurobarometer, at a national level English is the most widely spoken foreign language in 19 of the 25 Member States where it is not an official language. Thirty-eight percent of the European population identified English as the first foreign language in which they are able to have a conversation, followed by French (12%) and German (11%). The fourth place is taken by Spanish (7%) and the fifth by Russian (5%). The proportions are even more striking in some Member States; 90% of respondents in the Netherlands and 86% in both Denmark and Sweden replied that they are able to communicate in English.<sup>28</sup> In addition, the survey reports that there has been a drop of 2-3% compared to 2005 in the proportions of those who are able to communicate in German or French.<sup>29</sup> Moreover 67% of the respondents thought that English is the most useful foreign language<sup>30</sup> and 79% named it as the most useful for their children to learn in the future, while German and French were indicated only by 20% each.<sup>31</sup> The survey's findings are in line with the data published by Eurostat in 2013, according to which 94 % of secondary school students learn English as a foreign language and the second most popular foreign language, French, represents only 19%.<sup>32</sup>

Another comprehensive study undertaken after the Brexit referendum and focusing on the potential linguistic implications of Brexit (*Ranking languages in the European Union after and before Brexit*) concludes that English would keep its status as lingua franca in the EU even if it drops out from the official languages. That conclusion is supported by their findings, according to which even if the number of English speakers will, after Brexit, equal the number of German speakers (approximately 121 million people), the large majority of German speakers (91 million) will live in German speaking countries, while only a small proportion (4,4 million) of the English speakers will live in countries where English is an official language.<sup>33</sup>

Despite Brexit, English seems to be undefeated. However France and Germany will most probably not miss the opportunity to make attempts to restore the status of their respective languages. As David Fernandez Vitores submits, the cooperation agreement of 2000 between the two countries will most probably be strengthened or even reformed. In this agreement France and Germany committed themselves to mutually support each other should the status

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<sup>28</sup> Eurobarometer, 21.

<sup>29</sup> Eurobarometer, 19.

<sup>30</sup> Eurobarometer, 69.

<sup>31</sup> Eurobarometer, 75.

<sup>32</sup> Eurostat press release 158/2013, 26 September 2013.

<sup>33</sup> Ginsburgh et al. (n 27) 16.

or function of their respective languages be threatened by the institutional and organisational dynamics of the EU.<sup>34</sup>

It is however less probable that coordinated actions and targeted initiatives will be able to dissuade Europeans to consider English as the most useful foreign language and orientate them towards major continental languages. The issue is rather whether the dominance of English as a *lingua franca* at the European institutions could be mitigated.

The current situation clearly shows the dominance of English, although only in practice and without a legal basis. As mentioned above, Article 6 of Regulation No 1 authorises EU institutions to stipulate, in their rules of procedure, which of the languages are to be used in a specific case. This authorisation seems to offer a high degree of flexibility for the institutions to regulate internal language use or procedural rules falling outside the scope of Articles 2 and 3. However, none of the institutions has stipulated the language in which internal communication should be managed as part of its Rules of Procedure. Likewise, the Court of Justice of the European Union authorised by Article 7 only regulated language use in the different Court procedures but remained silent on the language used during deliberations, even it is common knowledge that this language is French. However, the Court is the only institution where French was not defeated by English. Having a look at the numerous EU agencies, one can see that most of them indicate a knowledge of English as being indispensable for working there, and although application forms to the European Personal Selection Office can be filed in any of the three main languages, English, French or German, English is definitely the most dominant language from these three.

The increasing dominance of English over the last decades is quite evident. While in the 70's 60% of the draft legislation was prepared in French,<sup>35</sup> by 2008 72% of the first versions of administrative and legislative documents were written in English, and only 14% and 3% were written in French and German, respectively. The shift was quite significant and impressive compared to 1997, where the drafting language was 45% for English and 41% for French, an almost balanced situation.<sup>36</sup> Most probably the 1995 accession of two Scandinavian countries and Austria and the accession of 2004 with eight Central European countries and Malta and Cyprus, where French is definitely not among the most spoken foreign languages, contributed significantly to the fast emergence of English within the administration. In 2014 that proportion was already 82.5% for English and 2% for German.<sup>37</sup> In 2012 the spokesman of the European Commission, when reacting to the criticism of having made Eurozone recommendations available first only in English admitted that English is the most widely used language within the

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<sup>34</sup> David Fernández Vitores, 'Does Brexit spell the end of for English as lingua franca of the EU? EUROPP European Politics and Policy?' LSE, <http://blogs.lse.ac.uk/europpblog/2016/09/15/does-brexit-spell-the-end-for-english-as-the-lingua-franca-of-the-eu/>.

<sup>35</sup> Robert Philipson, *English-Only Europe – Challenging Language Policy* (Routledge 2003, London) 130.

<sup>36</sup> Réka Somssich et al., *Lawmaking in the EU multilingual environment* (European Commission, DGT 2010), 89.

<sup>37</sup> Ginsburgh et al. (n 27) 15.

EU institutions, which justifies that documents are first drafted and sometimes published in that language.<sup>38</sup>

It can be seen that the dominance of English does not have much to do with the UK being a Member State of the Union. It is rather a consequence of the language skills of those who are working at the EU institutions, and that, at present, is a consequence of preference for languages at the whole European level, which is not so much influenced by EU trends but rather by the position of English on a global scale. There is however a very important point to be made here: English can only remain the de facto working language of the institutions if it is safeguarded among the official and working languages of Article 1 of the Regulation.

If English is deleted from the official and working languages, the question that must be raised is which of the existing languages could take its place. Can French gain back its status lost decades ago? Could the position of German be redefined? What happens if English is no longer a language to which EU legislation would be officially translated but remains the language of business talks and international negotiations and, what is more, will most probably stay the language of academic writings and conferences on the EU? That would mean that all these talks, negotiations and discussions might be held without an adequate English vocabulary as new acts and terms would not have English equivalents from their inception. It is almost impossible to imagine the EU, major player of the world market of 500 million inhabitants, not to have its legislation, 'economic statutes' available in the language of world trade. In the case of such a scenario, the EU would become the symbol of an isolating integration.

If English remains an official language, the issue is whether language use within the EU institutions could be changed artificially in favour of French or/and German in order to mitigate the dominance of English by requiring the knowledge of these languages by employees.

Moreover, one should not disregard the fact that language remains always a question of self-identity or self-determination, even within large international organisations and supranational bodies. Continuing to use English as the main communication tool in the institutions without the UK being part of this system could have two distinct consequences. On the one hand, it could be considered as an identity crisis, where the European mechanisms would function in a language that is not the first official language of any of its Member States. At the same time it could also have a positive reading: the EU would be using a neutral language in its communications without preferring any of the official languages of its states. It should however be added that the English used as drafting language and language of communication at the institutions is already a 'contaminated' form of English, bearing the traces of foreign influence apparent in constructions and phrases which are often incomprehensible to English natives themselves.<sup>39</sup> It cannot be ruled out that 'Euro-English', even if maintaining its position in the daily functioning of the institutions, will even more Europeanised and lose its close connections with British English.

<sup>38</sup> EurActive.com, <http://www.euractiv.com/section/languages-culture/news/commission-denies-english-language-favouritism/>.

<sup>39</sup> Manuela Guggeis, 'Multilingual legislation and the legal linguistic revision at the Council of the European Union' in Pozzo–Jacometti, *Multilingualism and the Harmonisation of European Law* (Kluwer Law International, 2006) 115.

### III The Potential Impact of Brexit on Special, Restricted Language Regimes

The generous approach of Regulation No 1 on the ability to communicate with the EU administration in one's own language does not apply to all EU bodies and procedures. It was in its judgment in the *Kik* case<sup>40</sup> in 2003 when the Court of Justice of the European Union underlined that even if the Treaty contains 'several references to the use of languages in the European Union. None the less, those references cannot be regarded as evidencing a general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances.'<sup>41</sup> This judgment was taken in relation to the language regime of the OHIM responsible for registering Community trademarks, where applicants can choose the language of the procedure only from five given languages (English, French, German, Italian and Spanish).<sup>42</sup> Christina Kik, the applicant in that case, chose Dutch as the procedural language, claiming that the exclusion of all official languages other than those determined by the Regulation establishing the OHIM runs against the principle of non-discrimination and linguistic equality. The Court upheld the restricted language regime with regard to trademarks, arguing that the language regime of a body such as the Office is the result of a difficult process which seeks to achieve the necessary balance between the interests of economic operators and the public interest in terms of the cost of proceedings.<sup>43</sup> It did not however enter into the reasons of the choice of the specific languages.

This problem came up some years later when discussions on the proposal for the Unitary Patent Regulation started. As the shortcomings of the existing system, based on a classical international agreement (European Patent Convention), were mainly due to the high translation costs patenting entails in those countries where protection is sought<sup>44</sup> one of the cornerstones of the proposed EU legislation was to reduce the number of languages into which patent claims and descriptions should be translated. The language regime proposed by the Regulation<sup>45</sup> was even more restricted than that applied to trademarks, as it proposed to use the same official

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<sup>40</sup> Case C-361/01 P, *Christina Kik v OHIM*.

<sup>41</sup> Paragraph 82 of the Judgment.

<sup>42</sup> Under Regulation (EC) 40/94 on Community trademarks, the application for a Community trademark shall be filed in one of the official languages of the European Community while the applicant must indicate a second language which shall be a language of the Office the use of which he/she accepts as a possible language of proceedings for opposition, revocation or invalidity proceedings.

<sup>43</sup> Paragraph 92 of the judgment.

<sup>44</sup> The European Commission considered in its Impact Assessment accompanying the proposal on a unitary patent that even if the London Agreement reduced the costs of validation requirements in some Member States, the overall cost of validation in the three Member States with the EPO official languages (GER, FR, UK) equals EUR 680. These costs reach EUR 12,500 in 13 Member States and over EUR 32,000 if a patent is validated in the whole EU. It is estimated that the actual validation costs are around EUR 193 million per year in the EU (SEC (2011) 483 final, para. 3.1.)

<sup>45</sup> Proposal for a Council Regulation implementing the enhanced cooperation in the area of the creation of a unitary patent. Brussels, 13.4.2011, COM (2011) 216 final, 2011/0094 (CNS).

languages as European Patent Office (English, French and German) in charge of granting current European (but not EU) patents accepts.

Spain and Italy had raised their voice against the proposed language system since the beginning, mainly because of dropping their languages from the procedural languages as compared to the trademark regime. This systematic resistance led to the rejection of the proposal by these two countries and as the adoption of the language regime required unanimity by virtue of the Treaty, both Regulations (the one on the unitary patent and the other on the language rules)<sup>46</sup> could only be adopted under enhanced cooperation, with Italy and Spain keeping out of the cooperation. What is more, the two countries lodged actions for annulment against the decision on the enhanced cooperation and Spain alone against the Regulation on the language regime. As the Court of Justice rejected both claims,<sup>47</sup> the entry into force of the acts remains dependent solely on the ratification of the Convention on a European Patent Court establishing the judicial framework for the implementation of the Regulations.

Although the two Member States whose languages were left outside did not question English being among these procedural languages, Brexit could trigger a revival of the language issue for unitary patents. Even if English is at the same time an official language of the European Patent Office (a non-EU organisation) and the language of the majority of European patents, similar objections can be raised at EU level against English under both of the restricted regimes as in the case of certain aspects of Eurozone processes or documents. When the Council in 2012 empowered the European Central Bank to serve from 2014 on as the Eurozone's central supervisor, the ECB in its first draft Regulation proposed English to be the language of communication with the national competent authorities (NCA).<sup>48</sup> Under the public consultation, the draft provision was sharply criticised for favouring the working language of the ECB and shifting translation costs onto the national authorities,<sup>49</sup> therefore the proposed article was replaced by a provision according to which the ECB and NCAs shall adopt arrangements for their communications within the Single Supervisory Mechanism (SSM), including the language(s) to be used.<sup>50</sup>

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<sup>46</sup> Regulation (EU) No. 1257/2012 of the European Parliament and the Council of 17 December 2012 implementing the enhanced cooperation in the area of the creation of unitary patent protection, Council Regulation (EU) No. 1260/2012 of 17 December 2012 implementing the enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

<sup>47</sup> Joined Cases C-274/11 and C-295/11, *Kingdom of Spain and Italian Republic v Council of the European Union*, Case C-147/13, *Spain v Council*.

<sup>48</sup> Article 23 of the Draft SSM Framework Regulation of February 2014 proposed that unless otherwise provided communication between the ECB and NCAs shall be carried out in the English language only and that ECB legal acts addressed to one or more NCAs shall be adopted in the English language only.

<sup>49</sup> See for instance comments by the German Banking Industry available at <https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/framework.en.html>

<sup>50</sup> See Article 23 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17)

So, even if Brexit will not necessarily reopen Pandora's Box as far the languages included in the existing new restricted language regimes are concerned, it will certainly call the status of English into question with regard to any future restricted regime.

#### **IV The Reverse Effect of Brexit on English used in the UK and the Remaining Member States**

In an absurd way, it seems that Brexit could have a kind of standard raising effect on English language tests for workers (mainly for doctors) in the UK. In a position statement, the Royal College of Surgeons has called on the government to ensure that Brexit discussions permit the UK to strengthen language tests for doctors from the European Union. It claims it should be able to use the same tests in the future as for non-EEA citizens. Currently, while non-EEA citizens must undergo the Professional and Linguistic Assessment Board (PLAB) test, only general language skills can be tested for EEA citizens, as EU law does not allow them to demonstrate their English skills in clinical settings. Experience showed that significantly more doctors from EEA countries had to be suspended for inappropriate communication skills than doctors from non-EEA countries who had been selected on the basis of special language tests.<sup>51</sup>

On the other hand, while trying to relativize the future role of English within the EU institutions, in some of the Member States a liberal approach can be witnessed towards the use of English in administrative procedures in order to attract firms from the UK. In September 2016 France's financial regulator, the *Autorité de contrôle prudentiel et de résolution* (ACPR) and financial markets authority, the *Autorité des Marchés Financiers* (AMF), announced that they intend to simplify the process for registering companies and will make it possible for UK financial companies wishing to establish themselves in France by virtue of the so-called passport mechanism to supply documents and forms to be submitted to the supervisory authority in English instead of French. In addition, an English-speaking contact point was appointed by the two authorities to guide applicant firms through the procedure.<sup>52</sup>

#### **V Conclusions**

Although the speech of the President of the European Commission of 28 June suggested that the Brexit vote would be followed by a considered and conscious approach disadvantaging and eventually abandoning English on such occasions, reality shows that it is not exactly the case. In his speech given in Peking at the EU-China Business Summit on 13 July, Jean-Claude Juncker

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<sup>51</sup> The British Medical Association, [http://careers.bmj.com/careers/advice/Use\\_Brexit\\_to\\_strengthen\\_language\\_tests\\_for\\_EU\\_doctors,\\_royal\\_college\\_says](http://careers.bmj.com/careers/advice/Use_Brexit_to_strengthen_language_tests_for_EU_doctors,_royal_college_says).

<sup>52</sup> Press release of 26 September 2016 available at: [https://acpr.banque-france.fr/fileadmin/user\\_upload/acp/Communication/Communiqués%20de%20presse/280916\\_PR\\_EN\\_ACPR\\_AMF\\_licencing\\_procedures\\_Brexit.pdf](https://acpr.banque-france.fr/fileadmin/user_upload/acp/Communication/Communiqués%20de%20presse/280916_PR_EN_ACPR_AMF_licencing_procedures_Brexit.pdf).

still decided to follow this line when he said that ‘In Europe, we are used to 24 official languages. That is the reason why I am not expressing myself in English but in French, because French is an as important language as English.’<sup>53</sup> However his State of the Union Address of 14 of September was delivered exclusively in English<sup>54</sup> and in his next speech before the plenary of the European Parliament of 5 October he again used the three de facto working languages of the Commission, even if the English proportion represented a weaker part against the two other languages.<sup>55</sup>

That shows that, even at the institutional level, there is still a rather hesitant attitude towards the future of English. At this moment it is quite unpredictable to see whether Brexit will really rearrange the current language use or English will remain the European *lingua franca*, with or without the UK.

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<sup>53</sup> [http://europa.eu/rapid/press-release\\_SPEECH-16-2522\\_fr.htm](http://europa.eu/rapid/press-release_SPEECH-16-2522_fr.htm)

<sup>54</sup> [http://europa.eu/rapid/press-release\\_SPEECH-16-3043\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm)

<sup>55</sup> [http://europa.eu/rapid/press-release\\_SPEECH-16-3322\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-16-3322_en.htm)