EUROPEAN LEGAL LANGUAGE AND THE RULES OF PRIVATE INTERNATIONAL LAW: PRACTICAL LEGAL-LINGUISTIC PROBLEMS*

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Abstract

In the framework of the European Union's integral multilingualism, the proliferation of private international law regulations is having an impact on the construction of a European legal language in 24 languages. The objective is the standard application of the precepts contained in these regulations. Yet legal-linguistic problems arise. Translation of regulations into the various linguistic versions is a challenge for translators, who must neutralise their home countries' legal systems and their own internal languages in favour of their European counterparts. The translator needs to achieve horizontal consistency among the diverse linguistic versions, and vertical consistency with all other rules associated with the area. The Court of Justice of the European Union actively participates in the construction of European legal language, by providing autonomous interpretations applicable in all member states. Against this background, the same rules can be applied differently when national operators read and interpret the precepts of the regulations in an internal, not European, manner.

Keywords: European legal language; integral multilingualism; translation; European regulations of international private law.

LLENGUATGE JURÍDIC EUROPEU I ELS REGLAMENTS DE DRET INTERNACIONAL PRIVAT: PROBLEMES PRÀCTICS JURIDICOLINGÜÍSTICS

Resum

En el marc del multilingüisme integral de la Unió Europea, la proliferació de reglaments en matèria de dret internacional privat està incidint en la construcció d'un llenguatge jurídic europeu en vint-i-quatre llengües. L'objectiu és l'aplicació uniforme dels preceptes continguts en aquests reglaments però sorgeixen problemes juridicolingüístics. La traducció dels reglaments a les diferents versions lingüístiques resulta una tasca difícil per al traductor que ha de neutralitzar el seu dret i llenguatge intern, a favor del propi europeu; cal que cerqui la coherència horitzontal entre les diferents versions lingüístiques i la coherència vertical amb la resta de normes vinculades a l'àrea. En la construcció del llenguatge jurídic europeu hi participa activament el Tribunal de Justícia de la Unió Europea que proporciona interpretacions autònomes aplicables a tots els estats membres. En aquest context, en ocasions, s'apliquen de forma distinta les mateixes normes perquè els operadors nacionals llegeixen i interpreten els preceptes dels reglaments en un sentit intern i no europeu.

Paraules clau: Llenguatge jurídic europeu; multilingüisme integral; traducció; reglaments europeus de dret internacional privat.

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Summary

1 Introduction: integral multilingualism in the European Union

The linguistic regime of European institutions is known as integral multilingualism. This involves respect for all official languages of European Union member states (art. 55 of the Treaty on European Union (EUT) and art. 24 and 342 of the Treaty on the Functioning of the European Union (TFEU)). Its justification is grounded in citizens' access to the documents of European institutions (art. 15 TFEU) as a means to guarantee transparency. All citizens must be able to read the legislation relevant to them in their own language, and all members of parliament are entitled to express themselves in the European Parliament in the official language of their choice (Rule 158 of the Rules of Procedure of the European Parliament).[1] Citizen access to all documentation produced by European institutions entails its translation into the official languages. Therefore, the regulatory texts derived from the EU (regulations, directives, decisions and preparatory documents) are translated by the European Commission's translation department into the twenty-four official languages, even if they were initially drafted in one or two working languages. The Directorate-General for Translation of the European Commission[2] is the translation service whose basic purposes are to provide the European Commission with quality translation services, offer support and consolidate multilingualism in the EU, bring the Union's policies closer to citizens, and facilitate the reading and comprehension of EU law for national jurisdictional bodies.[3]

In its beginnings, as Goffin describes, integral multilingualism had its detractors, who criticised the language used in community texts, described as *le brouillard linguistique européen*, *Eurokauderwelsch* or Eurofog. Despite it all, jurists admitted (albeit unenthusiastically) that a new linguistic approach was necessary: '*les notions mises en jeu par la construction européenne devaient bien se tailler un nouvel habit linguistique*' (Goffin, 1994). As is obvious, the difficulties resulting from integral multilingualism of the European community, which had only four official languages in 1957, have multiplied as there are now twenty-eight member states[4] and twenty-four languages recognised as official, which are, therefore, used by European institutions. The official languages that are the working languages of EU institutions are, according to Article 1 of Regulation no. 1 of the Council of April 15, 1958, 'Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian Slovak, Slovenian, Spanish and Swedish.' It must be noted that integral multilingualism of the EU institutions does not include some organisations because they are not considered institutions, such as the consultative bodies (Economic and Social Committee and the Committee of the Regions), the European Ombudsman and the European Central Bank. It is important, for the purposes of this study, to highlight that the Court of Justice of the European Union (CJEU), despite being an institution, enjoys a specific linguistic regime.

2 The linguistic versions of European regulations in international private law (IPL)

We conducted a prior study on linguistic legal problems in the European realm, although, on that occasion, the object of analysis was European directives, not regulations. Within the framework of a European project,[5] we studied problems encountered in the translation of directives into the official languages of the European communities, and their later transpositions into countries' internal legislation; in our case, the Spanish and Catalan legal frameworks (Font, 2006 and Font, 2007). The starting point for this study is European regulations which, as opposed to directives, are applied directly to all EU member states. As regulations do not require transposition, they avoid the problems inherent to the use of terms and drafting styles of domestic laws enacted within the states transposing the directives, given the range of freedom that national lawmakers have when they conduct the transpositions. This results in harmonised state laws that use the legal languages

1 The EU Charter of Fundamental Rights declares respect for linguistic diversity (art. 22) and prohibits discrimination for reasons of language (art. 21).

2 Web <http://ec.europa.eu/dgs/translation/index_en.htm>. The Directorate-General for Translation deals exclusively with written texts. Verbal language interpreting is the competency of the Directorate-General for Interpretation.

3 European Commission. 'Translation and multilingualism'. EU (2014), p.1.

4 Until the departure of the United Kingdom as a consequence of Brexit.

5Project of the European Commission 'Uniform Terminology for European Private Law' (TMR), IP: G. Ajani, ref.: CTR. HPRN-CT-2002-00229 (2002-2006).

of member states. *A contrario sensu*, regulations are uniform European laws with versions in the official languages chosen by member states.

Thus, this study is based on the different linguistic versions of European regulations pertaining to international private law (IPL), including European civil procedural law, and the practical problems that can arise when there are inconsistencies in the translations of the rules, both horizontally and vertically. Furthermore, the study seeks to analyse matters of interpretation by national legal actors, specifically those of Spain, when they use the Spanish version of the regulations, and interpret it according to their own legal framework, instead of the inherent concept of autonomy of the European IPL interpreted by the CJEU.

Therefore, the starting point is the existence of international private law of the European Union that, for the most part,[6] is directly applicable by member states since the source of the norm is a European regulation.[7]

These regulations are a means of resolving a number of private law legal situations with cross-border repercussions.[8] Their application, which, it bears repeating, is direct,[9] means that the judicial actors of the 28 member states—judges, notaries, registered conveyancers, lawyers, justice administrations—must use these European rules, and not their own internal IPL rules, which continue in force, and are still occasionally applied. All of this is done in the context of the European Judicial Area (art. 81(2), 4(2)(j) and 67 TFEU), which implies that, in order to guarantee the European freedoms of movement, persons and companies have access to the courts and authorities of other member states, as they would to the courts and authorities of their home country.[10] Such advancement in the creation of an international European private law is noteworthy and useful, but it has received certain criticism against the legislative activity in IPL in the European doctrine, which is also common. For example, Sánchez Lorenzo criticises the EU for enacting ambitious and extensive IPL that is regularly modified, which generates application and interpretation problems (Sánchez, 2012).[11]

For the purposes of our study, it is of primary importance to assume that a German, Spanish, Romanian or Scottish judge will apply the same article of the same European regulations when they are to determine the jurisdiction of their court in a case of real estate conveyancing in their country by non-residents; the same article of the same regulations to determine the law applicable to an international consumer affairs contract; or the same article of the same regulations when enforcing a maintenance obligations ruling handed down by courts of another member state. These are just a few examples. Therefore, they apply the same regulations and the same articles, but it is clear that they use the version of the regulations written in their own language: German, Spanish, Romanian or English. These versions may have been translated differently, which could lead to a situation in which, although these judges or legal actors are using the same regulations and articles, the legal terms or the drafting may be different, thus implying a different application. Often, when a European regulation is applied, it is not done in an isolated manner, making it necessary to apply other regulations (for example, one to determine judicial jurisdiction and another to determine the applicable law) or various regulations when the object of the litigation derives into different affairs to be resolved (for example, in an international divorce it could be necessary to also resolve the custody over children in common, maintenance obligations or settlement of the matrimonial regime). Furthermore, even if the translation is correct, how can

6 There are IPL rules distributed over a vast range of laws, directives and regulations that regulate specific matters, and that include some IPL rule in their articles. This study targets regulations that exclusively govern IPL rules. These documents can be consulted at <http://www.e-justice.eu>.

7 There are exceptions to the direct applicability of European regulations regarding the 'Area of Freedom, Security and Justice' (Title V. of the TFEU). For one, Denmark does not participate in Chapter three of Title V TFEU (judicial cooperation in civil affairs). Therefore, the rules that derive from it are not applicable to that country (Protocol 22 TFEU). On another note, the United Kingdom and Ireland, to which the rules derived from Chapter Three of Title V TFEU are not initially applicable, reserved the right to adopt the resulting legislation (opting in) (Protocol 21 TFEU). Last, it is worth nothing that the most recent European legislation passed to regulate matters of private international law (Chapter 3 of Title V) has been approved by enhanced cooperation (art. 326-334 TFEU), so that it is not applied to all Union member states, but only those states that have expressly participated in this enhanced cooperation, or when they decide to opt in later on.

8 All of the regulations are listed and ordered in the European e-justice Portal http://www.e-justice.eu

9 With the exceptions mentioned in footnote 7.

10 In order to guarantee the free movement of EU citizens and a European Judicial Area, the Treaty of Lisbon (2007) gives European institutions the competency to adopt IPL measures (art. 81 TFEU and art 3(2) TEU (Borrás: 2016).

11 From among the professor's conclusions, especially significant is the plea to not continue enacting community texts whose practical sense is doubtful, whose complexity intimidates judges and attorneys, and whose short-term expiration period offers little incentive to study them.

one guarantee that the legal term has the same meaning and is applied equally in twenty-eight member states, some of which have, furthermore, more than one legal system?

2.1 Creation and drafting of EU regulations

EU regulations and other general texts are drafted in the official languages, according to Article 4 of EEC Council Regulation No. 1 of 15 April, 1958. Nonetheless, the working language for the creation of European rules has now, for the most part, been reduced to English. This was not the case years ago. The first real working language of the ECSC Treaty was French. The incorporation of member states' official languages (Fernández, 2010: 182-188), converging toward integral multilingualism, displaced French as the predominant working language, as happened with German (despite its persistence, as it is one of the three working languages), in favour of English as the usual language for discussions and drafting preliminary documents for the preparation of rules.

Therefore, initial legislative drafts are written by Commission work groups whose mother tongue is not English. In the European Parliament study *Drafting European Union Legislation* (Robinson, 2012) reference is made to a 2009 report that showed that 95% of those who drafted legislation did so in English although only 13% had English as their mother tongue. This is confirmed by the fact that the linguistic results of these preliminary drafts are poor. The Directorate-General for Translation has been aware of this problem for some time, and for that reason offers its consultancy services. Before drafts can be passed on to the European Parliament, they must be translated into all official languages.[12] It is worth noting that the translators, all of whom are professional, though only a minority are jurists, do not always have a chance to consult those who drafted the texts on their meaning or spirit (Robinson, 2012: 9-10).

English's pre-eminence as a working language justifies a debate on the possibility of designating it as the EU's single language. The arguments in favour are the high costs entailed by integral multilingualism and the wave of plurilingual documents whose objective is to produce a single law. Furthermore, it is argued that in other large supranational institutions, that have a higher number of party states than the EU, few official languages are used (i.e. the UN, with 193 Party States and six official languages, or the Council of Europe, with 43 party states and two official languages). Gréciano rules out the possibility of English being the only working language, on the grounds of the principles of the EU itself, such as the legitimacy of foreign languages, cultures and systems for European construction. Additionally, he presents arguments that we share, and that lead to the idea of there existing a European legal language, of multilingualism adjusting to multilegalism, and that the latter cannot be dominated by a legal language that is, in itself, common law. This notwithstanding, English can be used to facilitate and expedite formalities in the political and legal realms of the EU (Gréciano, 2015; Ordoñez, 2016). In this area, it is inevitable to consider the consequences Brexit will have on the role of English as an official language and, correlatively, as a working language. In a recent study, Gazzola (2016) suggested that English will cease to be an official language and become the mother tongue of a minority.[13] That is why some pundits state that there is now an ideal scenario for English to become the sole official language of the EU, thus reducing translation costs and placing everyone on equal footing as regards communication with European institutions. On the contrary, others believe that Brexit can enhance the importance of multilingualism. This statement is based on statistics comparing citizens' level of language knowledge following Brexit, first with regard to monolingualism (in English) and then, regarding the three most-used languages in institutions (English, French and German). In the first scenario, only 10% of the European population would have access to EU documents. In the second context, a third of the citizens would be excluded from communication with the EU and over half would have difficult access to it. These rates of linguistic exclusion underscore the importance of adopting a multilingual approach to the EU's external communication (Gazzola, 2016). This study refers to citizens in general, and their access to the documentation of European institutions. Personally, from the practical standpoint of the legal actors

12 Irish, though it had been an official language in primary legislation since 1971, was not considered an official language by the EU to all effects until January 1, 2007. Although it was also stipulated that it was not mandatory to draft all acts in this language, except for regulations jointly adopted by the European Parliament and Council of Europe. There are plans for all documents to also be drafted in Irish by December 2021 (Council Regulation 2015/2264 (OJEU L 332 de 8.12.2015).

13 'After the exit of the UK from the EU, English will be the mother tongue of only a tiny minority of the population in the new EU with 27 Member States (essentially the Irish and Britons living on the Continent)'. (Gazzola, 2016: 35). Other countries, such as Ireland (see note 12) and Malta, chose as official languages in the EU Gaelic and Maltese, respectively.

who intervene in any case affecting the private and/or property affairs of EU citizens, I believe it would be a serious mistake for judges, lawyers, notaries, registered conveyancers, and public administration and judiciary system staff members to not have access to the rules, documentation and case law of EU institutions in their own language with a view to correctly applying them.

2.2 Aims: horizontal and vertical consistency

Experts taking part in the discussion, drafting and proposal of European Union legislative texts have the *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of Legislation within the Community Institutions* (2nd edition, 2015). With a view to facilitating the understanding and interpretation of the legal document, the *Guide* highlights, on one hand, formal consistency, which means using the same terms to express the same concepts in a single document, thus eliminating all ambiguity, contradiction or doubt regarding the meaning of the concept. Furthermore, the consistency of the document with respect to the legislation in force must be ensured. On another note, consistency with respect to acts already in force must also be guaranteed, as consistency with the terminology of the content of the act must be verified. Contradictions must be avoided, and defined terms must be used in a standardised way (principle 6 of the *Guide*).

In light of this directive, the aim of the Parliament and Council's jurists is to achieve consistency in content, and linguistic concordance of the different versions (horizontal consistency) with the version in which the rule has been drafted (this is also called *multilingual concordance*). Furthermore, the terminology used must be consistent throughout all legislative texts, their annexes and the rules in force for a single area (vertical consistency) (Pacho, 2016).

In fact, although European translators and legislation writers seek the same goals of linguistic consistency in their legal texts, in both directions (vertical and horizontal), there are multiple examples in which this has not been the outcome. Pacho Aljanati analyses a scenario of terminological inconsistency that was included in the EC Treaty (ECT) and reached the CJEU.[14] The linguistic problem had its origin in the use of different terms for the concept 'decision' in the Danish, Dutch, German and Slovenian versions, in articles 249 and 253 ECT with respect to the term taken up in article 300(2) ECT. This made it possible to deduce different types of 'decisions' in the German version, in the first articles it was *Entscheidungen* and in latter sections, *Beschluss.* This difference would depend on whether or not the 'decisions' that were at the root of the matter (recitals 23, 29, 41), had to be grounded. The Court of Justice of the European Union ruled that it was not a problem of linguistic consistency (recital 42), contrary to the opinion of the author after analysing the Ruling: 'I consider that the case did revolve around a translation problem that could have been avoided with better mechanisms to guarantee terminological consistency.' Despite the CJEU's considerations, the consequence was the modification of the 'decision' words in the German version of the TFEU (current articles 288 and 296 TFEU). These changes could be due to the correction of terminological inconsistency (Pacho, 2016).

2.3 Translation process: an uphill road

The first difficulty that arises in the drafting of the linguistic versions of regulations is the starting point, in other words, the first linguistic version—to avoid expressions such as the 'original'—in which the rule is drafted. This 'first' version has to be translated into the other languages to ensure integral multilingualism, which could be considered fallacious from the beginning because, despite the validity attributed to all official languages and versions, in truth, they are actually translations that are not considered as such.[15] What is more, in the best case scenario, they are adapted, without losing the 'European' meaning, to the internal legal language of the member states. But clearly, for the creation and drafting of the first versions of the rules, one or two working languages must be used.

In the inevitable translation process, linguistic problems arise that have to do with terminology, phraseology, usage of verbs, semantic relationships and textual aspects which are especially complex and intrinsic to the translation of technical language. Specifically, legal language is especially complex due to the fact that it is not standardised throughout the world, and not only in terms of language but also the very subject matter:

14 Ruling of the Court (Second Chamber), of 1 October 2009, C-370/07, Commission v Council (EU:C:2009:590).

15 Principle 5.4 of the *Guide*.

law (Macias, 2015). Linguists and translators are well aware of the translation problems that arise when it comes to solving a complex problem, such as when they find themselves between two legal systems with differing vantage points on the world and social relationships. According to Macias Otón, a solution to this situation can be achieved by carrying out a comparative exercise between the source text and the target text (Macias, 2015).

For example, first regarding the source text (not so much the linguistic version), it will be of vital importance before carrying out the translation (and afterward, the application) to analyse the legal context that serves as grounds for the creation and approval of the Regulation, the aim of the rule, and its purpose. Second, as for the target text, the translator must be well-versed in the legal framework for which their linguistic version is intended. This does not mean it has to be adapted to the legal framework, as that would imply changing a rule, and this would be legislating, as occurs with directives. This makes necessary the difficult task of introducing the language and style of an independent supranational law into one's own language, and the law belonging to a certain legal family within an internal framework, that could at once be adapted to a legal framework's internal language to facilitate understanding and application in the internal area, but without losing the independent, autonomous meaning of European law.

The first person to have doubts on the right term for a given linguistic version is the translator of the version of the Regulation in each of the languages. The general theory, as we have understood it, states that any legal translator should do the necessary research with the 'purpose of understanding the text, locating the terms in parallel texts to understand their use in the source language and determining the possible equivalents in the target language, and consequently search for translational equivalents.' (Macias, 2015: author's translation). The translator is, then, the first actor who must neutralise their own internal legal culture when translating, when the main translation method consists of comparison of legal systems. This would be the 'bridging stage', to draw a parallel with the process of translating common law to civil law**,** as explained by Ferran Larraz. In other words, at this stage, the translator must comprehend and reformulate, comparing the legal systems to detect similarities and differences, discerning between 'what is common (universal, and therefore, translatable) and what is different (cultural), which at times is also untranslatable' (Ferran, 2013: 3: author's translation). Sociocultural problems of legal translation come to light in this phase, in which the translator activates the search for equivalents in the language they are translating to for the target text, often in an unconscious way. At this stage, the translator should distinguish between 'universal legal-linguistic schemes or purposes of a cultural nature'. This is no easy task, as each of their 'terms, collocations, syntagma, sentences, etc. has cultural features which depend on a mindest that also permeates the entire legal framework'. For this reason, it is recognised that legal translation is necessarily imperfect or, as Ferran Larraz states, 'a sufficiently equivalent translation' must be sought (Ferran, 2013: 4: author's translation).

3 Practical legal-linguistic problems

European regulations are directly applied by EU member states. Specifically, the linguistic versions in the official language or languages are applied. This results in a number of problems deriving from the differences existing among versions, and from their interpretation.

To offer an analysis of these practical problems, we will use cases related to the Spanish language version of the regulations. When a rule's application seems 'strange', the English version is checked (although it is not the officially valid version), as are other versions to see if an error was made. Later, we will introduce an example of a mistake in the application of a term (maintenance obligations) that must be interpreted within the meaning and content of European Union law. In other words, following what is autonomously indicated in the CJEU, not the internal laws of a member state, such as Spain. Due to space limitations, this study has omitted certain other interesting matters, such as the inclusion of foreign terms into European regulations (i.e. trust, domicile); the reference that European rules make to the inherent meaning found in every legal framework for certain legal figures (i.e. public order) due to the impossibility of standardising or defining them in an autonomous European manner; the analysis and consequences of the inclusion of definitions of the

most relevant terms repeated throughout a regulatory text (i.e. resolution, public document, etc.) that are used in a plurality of regulations, and that must have vertical and horizontal consistency within the EU.[16]

3.1 Literal translation and general problems

As already stated, working documents and the initial versions of European regulations are currently drafted in English. Translators of other linguistic versions must bear in mind the typical characteristics of legal English when they translate it, extracting it from the law of a specific member (i.e. the United Kingdom) and considering that the legal English used is autonomous and European. The process is primed by producing a literal translation, which must address certain particularities.[17]

3.1.1 The case of 'Declinación'

Article 31(1) of the Brussels Regulations I bis (BRI bis)[18] on *lis pendens* in cases of exclusive jurisdiction,[19] reads in its Spanish version as follows:

> 'Cuando en demandas sobre un mismo asunto los órganos jurisdiccionales de varios Estados miembros se declaren exclusivamente competentes, la *declinación* de competencia será en favor del órgano jurisdiccional ante el que se presentó la primera demanda.' (Text of the Original BRI bis Article 31.1: 'Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.')

From the reading of the precept, Calvo and Carrascosa (2016) note that the expression '*declinación de competencia*' stands out as irregular. At first reading, it might seem like a simple drafting error, when what is meant to be said was '*declinatoria*' (plea). Nonetheless, following the regulatory analysis of the article, they state that, in such case, it is not necessary for either of the parties to lodge a plea, though they are entitled to do so. The precept orders the court in which the second complaint is lodged to compulsorily declare itself incompetent *ex officio* to hear the case, in favour of the courts to which the parties went first *(prior tempore, potior iure)*. This observation is concordant with the previous drafting of the same precept in the previous Regulation 44/2001 (BRI), which did not use '*declinatoria*' (or much less '*declinación*') but rather '*desistimiento*' (withdrawal of a claim).

Now, a closer look at the draft in English:

> 'Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall *decline* jurisdiction in favour of that court.'

The literal Spanish translation of 'decline' is '*declinar*', but in the legal realm and in this regulatory context, this literal translation is not correct, as has been shown.

Along the same lines, we consult the French and Italian versions of the same article:

> 'Lorsque les demandes relèvent de la compétence exclusive de plusieurs juridictions, le *dessaisissement* a lieu en faveur de la juridiction première saisie.'

> 'Qualora la competenza esclusiva a conoscere delle domande spetti a più autorità giurisdizionali, quella successivamente adita *rimette* la causa all'autorità giurisdizionale adita in precedenza.'

16 These matters will be addressed in another study being prepared by the same author in the applied area of international European private law.

17 For example, the verb tenses used, as these vary depending on the language in which they are written and the legislation to which they belong. In Spanish, indirect and passive verbal tenses are generally used in legal texts, as occurs in legal English, and for binding acts, Spanish uses the future indicative (i.e. *shall be null*). Other more modern legal languages use, on the other hand, direct or active verbal tenses, and the present tense, such as in Catalan legislation (i.e. *are null*). Within the EU, lawmakers take diversity into account. That is why the *Guide* specifies for the drafting of EU legislative texts, that 'the choice of verb and tense varies between different types of act and the different languages and also between the recitals and the enacting terms' (Principle 2.3.1 of the *Guide*).

18 Regulation (EU) no. 15/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEU 351 of 20.12.2012).

19 In the European realm, *lis pendens* for exclusive competence is the situation in which two courts from two member states are competent to hear a matter exclusively by virtue of the same regulation. It could happen thusly with respect to article 24.1II and 24.2 BRI bis.

We therefore consider that the use of the term '*declinación*' is incorrect, and is present due to a translation error that did not take into account the meaning of the rule.

3.1.2 The case of 'Recurrible'

Another translation error, already corrected, was found in Annexes III and IV of the Brussels Regulations II bis (RBII bis)[20] which referred, first, to the certificate concerning judgments on rights of access (art. 41(1)) and second, to the certificate concerning the return of the child (art. 42(1)).

The context of these certificates is provided by situations in which there is litigation over guardianship and custody of children (parental responsibility) at the intra-European level. In other words, the child is a resident in a member state of the EU, and one parent has residency in that same member state and the other in another member state. The certificates accompany judgments that are enforceable in all other member states, with no other statement being necessary, and with no possibility to challenge their recognition.

These certificates contain different questions, including:[21]

> '¿Es *recurrible* la resolución conforme al Derecho del Estado miembro de origen?' (Can the decision be challenged in the Member State of origin?)

While the English version asks:[22]

> 'Is the judgment *enforceable* in the Member State of origin?'

'Recurrible' ('open to challenge') and 'enforceable' do not have the same meaning. Therefore, what the certificates are meant to ask is if the judgement is enforceable in the Member State of origin.

Currently, the corrected Spanish version is:[23]

> '¿Es *ejecutoria* la resolución en el Estado miembro de origen?'

The annex with the incorrect draft of the questions on the two mentioned certificates was used for years (2004-2013) until it was changed, and the correct translations introduced into the Spanish, Danish, Greek, French, Maltese, Romanian and Finnish versions.[24]

Nonetheless, there is another translation error in 41(1)(II) and 42(1)(II), those that regulate the executive force of the judgments on rights of access and the return of the child, which refer to the Annexes, specifically article 41(1)(II) (the same draft in article 42(1)(II)):

> 'Aunque el Derecho nacional no estipule la fuerza ejecutiva por ministerio de la ley, *sin perjuicio* de eventuales recursos, de las resoluciones judiciales que reconocen un derecho de visita, el órgano jurisdiccional de origen podrá declarar ejecutiva la resolución.'

This rule, as indicated (Garau, 2004), calls for the courts in the home country to be able to deem enforceable a judgement in which access rights (or the child's return) are recognised, even though the country's legislation does not establish its enforceability in the case it has been challenged. The draft of the rule with the term *'sin perjuicio'* (literally without prejudice) has led Garau to describe it as a 'cryptically-drafted precept.' Looking at other linguistic versions:

> 'Even if national law does not provide for enforceability by operation of law of a judgment granting access

20 Council Regulation (EC) No 2201/2003, of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. (OJEU L 338 of 23.12.2003).

21 Question 8 of Annex III and question 10 of Annex IV. In the French version: 'La décision est-elle susceptible de *recours* selon la loi de l'État membre d'origine?'.

22 The Italian version: 'La decisione è *esecutiva* nello Stato membro di origine?'

23 In the French version: 'La décision est-elle *exécutoire* dans l'État membre d'origine?'

24 Correction of errors of Council Regulation (EC) No 2201/2003, of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJEU L 338 of 23.12.2003) OJEU L 82 of 22.3.2013.

> rights, the court of origin may declare that the judgment shall be enforceable, *notwithstanding* any appeal.'
>
> 'Même si le droit national ne prévoit pas la force exécutoire de plein droit, *nonobstant* un éventuel recours, d'une décision accordant un droit de visite, la juridiction d'origine peut déclarer la décision exécutoire.'
>
> 'Anche se il diritto interno non prevede l'esecutività di diritto, *nonostante* un eventuale ricorso, di una decisione che accorda un diritto di visita, l'autorità giurisdizionale può dichiarare la decisione esecutiva.'

We confirm that '*sin perjuicio*' is not a correct translation of *notwithstanding*, *nonobstant* or *nonostante*. It should have been translated, as Garau Sobrino proposes, as '*a pesar de*'.

3.1.3 Drafting mistakes that impact the temporal application of a regulation

The next example was not a translation, but a drafting mistake that was detected after the Regulations came into force, but prior to the date of application. We refer to article 28 of the Rome I Regulations (RRI)[25] on the application of the rule over time:

> 'This Regulation shall apply to contracts concluded *after* 17 December 2009.'[26]

This article was modified[27] in all linguistic versions to:

> 'This Regulation shall apply to contracts concluded *as from* 17 December 2009.'[28]

The meaning of the article depends on the drafting, and changes depending on the terms used, specifically, the use of the adverb 'after' or the prepositional phrase 'as from'. These terms have transcendence in determining the applicability of the Regulation. For a clearer view, we are fortunate enough to have a ruling of the CJEU, which has taken a position on this article, *inter alia.* The Grand Chamber of the CJEU handed down its ruling on 18 October 2016 (Nikiforidis)[29] following the allegations of damages made by the Federal Labour Court of Germany (*Bundesarbeitsgericht*). We are specifically interested in the following:

> Is the Rome I Regulation applicable under Article 28 of that regulation to employment relationships exclusively in the case where the legal relationship was formed by a contract of employment entered into after 16 December 2009, or does every subsequent agreement by the contracting parties to continue their employment relationship, whether with or without variation, render that regulation applicable?

The scenario stems from the complaint filed by Mr Nikiforidis with the German Court, in which he claimed payment of a salary supplement from the Greek Republic. He was a teacher, employed by the Greek administration. He had been working since 1996 at a Greek school in Germany, and suffered a pay cut as a consequence of the budget cutbacks applied by the Greek government to comply with EU directives in 2010. The law applicable to the contract was that of Germany, as his usual workplace. Doubts arose as to whether the German court could consider the Greek laws that established the urgent austerity measures to fight the 2010 financial crisis, as overriding mandatory provisions pursuant to Article 9 RRI. Therefore, it was necessary to determine whether the Regulations were applicable to that contract, and thereby determine the Regulation's temporal scope. Depending on whether they were applicable, the Greek overriding mandatory provisions would or would not be applicable, and therefore, the German court would or would not use these provisions as judicial grounds in its ruling, and reach the consequent decision.

As for the applicability of the RRI to contracts, the CJEU's response determines that the original draft of Article 28 indicated that the Regulations were applied to contracts concluded 'after' the date, and that would include the future effects of the contracts previously concluded—all contracts concluded prior to the date have effects after said date. On the other hand, the new draft indicates that they are only applied to

25 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008, on the law applicable to contractual obligations (Rome I) (OJEU L 177 of 4.7.2008).

26 After/*après/dopo*.

27 Correction of errors in Regulation (EC) No 593/2008 of the European Parliament and of the Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I) (OJEU L 177 of 4.7.2008) OJEU L 309 of 24.11.2009.

28 As from/*à compter du/a decorrere dal*.

29 Judgment of the Court (Grand Chamber) of 18 October 2016, *Republik Griechenland* v *Grigorios Nikiforidis*, Case number = C-135/15, ECLI:EU:C:2016:774.

contracts concluded exclusively 'as from' the date (recital 34). This date coincides with the date as of which the Regulations 'are applied', although the Spanish version of the Ruling erroneously indicates that it is the date they come into force. This notwithstanding, the French version is written correctly.[30] The Court of Justice of the European Union states that 'any agreement by the contracting parties, after 16 December 2009, to continue performance of a contract concluded previously cannot have the effect of making the Rome I Regulation applicable to that contractual relationship without thwarting the clearly expressed intention of the EU legislature.' (recital 34). It does admit, however, that the Regulations could be applied to those contracts concluded prior to the date, but that have undergone, as a result of mutual agreement of the contracting parties a later variation of such magnitude that a new employment contract must be regarded as having been concluded on or after that date (recital 39).

The modification of the draft of Article 28 is not due to a translation error, but rather a drafting error in the draft version of the Regulations that was approved.[31] It was amended after its entry into force but before its application. The purpose of the modification was to properly delimit the meaning of the rule, specifically to determine what contracts it applied to from the temporal standpoint. The new draft has not averted doubts around the interpretation, as shown by the Nikiforidis case and the CJEU's interpretative intervention.

3.2 Autonomous European interpretation: maintenance obligations law

Once possible translation problems have been overcome, and given a definition of the term (legal form) in a European context, any plurality of meanings should be avoided within the precepts of the Regulation itself. This notwithstanding, problems can arise when applying the precepts that include the defined terms, triggering a non-uniformed application in the European judicial area. This would be a case of the problem defined at the beginning of this article. In other words, despite reaching the accomplishment of having a European regulation with definitions, that is horizontally consistent with other linguistic versions, consistent with all other European regulations (vertical), and having interpretations of the CJEU,[32] regulations, their articles and legal terms may be incorrectly applied. They could be applied in a different manner in each member state where they are applicable (that means 28 different applications, or more, considering that there are compound member states with more than one legal system). The cause of the incorrect application is rooted in the fact that the precept, and the legal term included within it, are interpreted according to the national legislation of a member state, the one applying the rule, and they are not applied taking into account the legal system to which the rule belongs, that is, European law.

We present this with an example in the subject matter of maintenance obligations, for which the maintenance creditor has the obligation to pay maintenance obligations to another person. Regulation 4/2009 on maintenance obligations,[33] though it does not feature an explicit definition, does determine its material scope of application in its Article 1: 'This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.'

Over a number of rulings, the CJEU has taken a position on maintenance obligations, indicating that they include not only the legal benefits whose purpose is to meet the socio-economic needs of the person with whom there is a family relationship, but also any other benefits, however they are termed: maintenance,

30 The Spanish version of the Ruling indicates that this is the date of entry into force, but it is the entry into application: 'fecha de entrada *en vigor* del referido Reglamento en virtud de su artículo 29'. This is a mistake, as the Regulations came into force on the 20th day following their publication in the OJEU (art. 29 RRI). In the French version of the Ruling, it is correctly written: 'date de l'entrée en *application* de ce règlement en vertu de l'article 29 de celui-ci.' We mention the French version because it is the CJEU's working language, although the language of the proceedings and authentic language of the judgments is the official language of the country of origin of the preliminary ruling, in this case, German.

31 Initially, article 28 did not exist, and it was included in what was foreseen to be applied to contracts signed 'following (*tras*, in Spanish) its application date'. This *tras* was understood as *después* (after). The justification, 'contracts are entered into deliberately and voluntarily. It is essential for the parties to know that the provisions on applicable law contained in this Regulation will apply only to contracts concluded after its date of application. Therefore proceedings brought after the date of application concerning contracts concluded before that date will apply the Rome Convention.' PE 374.427v02-00, p. 42-43; and also in the later document PE-CONS 3691/5/07 REV 5, p. 38.

32 In reiterated case law, the CJEU insists on the uniform application of Union legislation ECR (Grand Chamber) of 18 October 2016, *Republik Griechenland v Grigorios Nikiforidis*, case C-135/15, ECLI:EU:C:2016:774.

33 Council Regulation (EC) No 4/2009, of 18 December 2008, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJEU L 7 of 10.1.2009).

alimony, duty to support, support obligation, or costs of married life. Therefore, in the European concept of maintenance obligations, the compensation benefits derived from a marital dissolution are included.[34]

In Spanish and Catalan law,[35] the spousal support or compensatory benefits for spousal relations that are awarded in a divorce are not considered alimony. That is why it is common that courts of first instance and Spanish lawyers, when in international divorce proceedings, in which the relevant European regulations apply depending on the case, do not use the Maintenance Obligation Regulation to determine whether the Spanish court has jurisdiction, nor the 2007 Hague Protocol (referred to by the Regulation) to determine the law applicable to the compensatory benefit. This is so despite the existence of a ruling from the Spanish Supreme Court, dated 2000,[36] that specifically clarifies the inclusion of the spousal compensatory benefits in the concept of maintenance obligations when European Regulations are applied. Today, the courts of second instance are still responsible for resolving this. For example, the Ruling of the Provincial Court of Barcelona of 12 May 2015: 'From this very broad concept, regardless of the denomination it receives in the legislation of the diverse member states, it has been derived that it could even be applicable to certain spousal benefits between ex-spouses.'[37]

4 Final considerations: are we advancing toward a European legal language?

The idea that there is such a thing as a European legal language has been repeated throughout the history of the EU (Goffin, 1994). This study confirms once again its existence, and shows that it is in constant growth and evolution, in step with the incessant growth of European law. It has been made clear that the legal area analysed, international private law, has a significant Community *corpus juris*. However, it is as yet an incomplete *corpus juris*. Not only because there are still areas to regulate, but because there are matters that cannot be uniformed, and that is why European rules contain referrals to internal legal frameworks (i.e. the exception of public order). It is also because political positions of member states are still far apart on certain legal forms (i.e. same-sex marriage).

These difficulties caused by the diversity of legal systems and cultures that co-exist in the EU find their way into European legal language. First, when rules are drafted in which the predominance of English, for the time being, hinders legislative staff's creation of draft versions of the rules. Afterwards, the translators of the various versions face an extremely difficult task, as they have to create a translation that does not appear to be a translation, using the legal language of the target member state so that it is understood by its citizens and legal actors, but without having legal meaning excessively based on the national context; it must retain the European meaning, something still under construction. All of this must be done while guaranteeing horizontal consistency (between all versions) and vertical consistency (with all other related legislation). Later, there may be a need for autonomous interpretation (systematic and teleological) by the CJEU, taking distance from the literal version we are accustomed to, but that has effects for all member states. At this point, all rules arrive at the same destination; their application.

The EU has no jurisdiction. That is why the state judges and authorities act as European judges and authorities. These judges or authorities are (or they should be) aware that they are applying EU law (which is also the law of their state), and that they cannot apply internal law because it is displaced by European law (unless there is a particular reference to a state's own domestic laws). When these national judges and authorities apply EU law, which they read in their own language, they must understand the language of Europe, and give the legal terms of the precepts they apply an autonomous European interpretation. They cannot read and apply European law with the language and interpretation of their own internal legislative system. In our view, and as regards our area of specialism, integral multilingualism, rooted in citizens' access to European legislation and policies, manifests its reason for existing in the need for legal actors to be able to apply the rules to citizens and their activities, in the same way and with the same meaning, from any member state. Nonetheless, we

34 ECR of 6 March 1980, C-120/79, *de Cavel*, ECLI:EU:C:1980:70; ECR of 27 February, 1997, C-220/95, Laumen, ECLI:EU:C:1997:91.

35 Spain is a country with multiple legal systems, and a single jurisdiction, where various territorially-based private laws co-exist. For example, spousal benefits are regulated in Article 97 of the Spanish Civil Code, and also Article 233-14 (1) of the Civil Code of Catalonia.

36 Supreme Court Ruling (Civil Chamber) 6152/2000, of 21 July, 2002. ID CENDOJ: 28079110012000102199.

37 Barcelona Provincial Court Ruling (Section 12) 5640/2015, of 12 May 2015. ID CENDOJ: 08019370122015100356.

have found that this is not always the case, when the person applying the law from a member state uses national interpretative criteria for European rules, although there are autonomous European definitions and interpretations. We cannot imagine what would happen if this legislation were not available in the language of the legal actors, properly translated and coordinated with all of the versions and the rest of the European legislation associated with the rule. Without a doubt, errors can be found in the translations, in the draft versions of the rules and in vertical consistency. What's more, it is never easy to predict the interpretative method the CJEU will employ; sometimes this also creates law. But given the size of the Community *corpus juris*, which is still being built, the intervention of twenty-four languages and twenty-eight states, the final assessment regarding European legal language in the context of integral multilingualism is positive.

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