

PLATA
FORMA
PER LA
LLENGUA

**REPORT ON LEGAL CONSIDERATIONS
REGARDING THE RECOGNITION OF**

**CATALAN AS AN EU OFFICIAL
AND WORKING LANGUAGE**



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The English version is the authentic version of this report. The Catalan version is provided as a translation. In the event of any differences, the English version shall be considered definitive.

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Executive Summary

This report aims to address questions raised concerning the legality of incorporating Catalan into Article 1 of Council Regulation No. 1 of 1958 determining the languages to be used by the European Economic Community, and to provide a brief legal review of the feasibility of recognizing Catalan as an official and working language of the EU.

Following the Spanish government's request in 2004 to recognize a semi-official status for "*languages which pursuant to the constitutional rules of a Member State have the status of an official language in its territory*", the Council of the European Union's refusal to articulate this semi-officiality through the reform of Regulation 1/1958 constituted the initial legal pronouncement on one of the key aspects of this request: whether a language must be recognized as a Treaty language under Article 55(1) TEU to be accepted as an EU official language under Article 342 TFEU. There is, however, no explicit basis in EU primary law that mandates such a stance. Article 55 TEU and Article 342 TFEU (and Regulation 1/1958) deal with distinct issues. Article 55 TEU determines the authenticity of Treaty texts. Article 342 TFEU regulates the use of languages by the EU institutions. The two provisions pursue different objectives. Article 55 TEU is testament to the formality of treaty making by sovereign states and serves legal certainty in treaty interpretation. Article 342 TFEU is concerned with the functioning of the Union institutions. In the absence of a legal foundation, it should be noted that, with the introduction of Article 55(2) following the Treaty of Lisbon, the EU's intention appears to be to gradually reduce the exclusion of languages that do not have the status of languages mentioned in Article 55(1) from those that do.

Furthermore, it is important to emphasize the flexibility demonstrated by the EU linguistic framework in adapting to the sociolinguistic, political, and technical circumstances of the various linguistic realities within the Union. Examples include the accession of English as an official and working language in 1973, even though it is not an official language *de jure* in the United Kingdom and is a 'second official language' in the Republic of Ireland. It also includes the non-questioning of the removal of this language as an official language after Brexit, the gradual incorporation of Irish as an official language based on the operational capacities of the EU, and the departure from the idea of "one State-one national language" in light of the diverse situations affecting some of the current EU languages.

As for the territoriality of the EU official and working languages, and whether they need to be officially recognized throughout the territory of a Member State or whether recognition in a part of it is sufficient. There is no explicit requirement in EU

law that would prevent a language that is official only in part of the territory of a Member State from being recognised as an EU official language. In fact, a textual reading of Regulation 1/1958, and in particular the preamble to that Regulation, which refers to “official languages *in* one or more Member States” rather than *of* one or more Member States, indicates the opposite conclusion. This preposition demonstrates an inclusive approach to the official languages of Member States, regardless of the territorial extent of that official status.

Also, Article 6.3 of the Statute of Autonomy of Catalonia of 2006 requires the Spanish State to take all necessary measures to obtain EU official language status for Catalan. This is a condition unique to the Catalan language. While the obligation for the Spanish government to take all necessary steps for Catalan to become an official language within the EU does not concern the other Member States in terms of acceptance of this condition, it is important to consider that European primary law takes into account the constitutional orders of Member States when addressing the treatment of the two categories of languages established by European legislation: Treaty languages and EU official and working languages.

Finally, the exclusion of Catalan as an EU official and working language has an impact in domestic legislation, which results in a *de facto* ‘de-officialisation’ of Catalan in spheres in which it is specifically protected in national law. Moreover, the exclusion of Catalan from the list of EU official languages does not allow for the full application, at national level, of the principle of good administration set out in Article 4(1) of the EU Charter of Fundamental Rights, i.e. that citizens have the right to communicate with administrative institutions in their own language.

The main conclusions from this analysis are the following:

1. Article 342 TFEU gives broad discretion to the Council to decide which languages are to be the official languages of the EU institutions;
2. For a language to be recognised as a language of the EU institutions under Article 342 TFEU, it is not necessary that
 - a. it must be an authentic language under Article 55 TEU and Article 358 TFEU;
 - b. it must be the only official language under the law of a Member State;
 - c. it must have official status under national law in the whole of the territory of a Member State.

1. Introduction

This report aims to address questions raised concerning the legality of incorporating Catalan into Article 1 of Council Regulation No. 1 of 1958 determining the languages to be used by the European Economic Community ('the Regulation')¹, and to provide a brief legal review of the feasibility of recognizing Catalan as an official and working language of the EU.

Background

On August 17, 2023, the Spanish Government requested the Presidency of the Council of the European Union to initiate the procedures for amending Council Regulation 1/58 ('the Regulation'), with a view to adding to Article 1 of the Regulation Spanish languages other than Castilian that enjoy official status in the Spanish state, namely Catalan, Basque, and Galician.² This would have the effect of adding Catalan, Basque, and Galician to the official and working languages of the European Union.

The Regulation was adopted on the basis of Article 342 of the Treaty on the Functioning of the European Union (TFEU) which states as follows:

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

The Regulation has been amended several times since 1958, primarily as a result of the accession of new Member States. Article 1, as last amended in 2013 upon the accession of Croatia, lists the 24 languages which are designated as official and working languages of the institutions of the Union.

The request made on August 17, 2023 by the Spanish Government represents the first formal request to the Council to include Catalan, Basque, and Galician in the European linguistic regime as fully official and working languages, despite having claimed on occasion that such a request had previously been made.³

¹ OJ 17, 6.10.1958, p. 385.

² See document 12602/23 of the Council of the European Union.

³ As confirmed by the Council of the European Union in its written response of 28.3.23 to Parliamentary question E-000322/2023. See: https://www.europarl.europa.eu/doceo/document/E-9-2023-000322-ASW_EN.html.

In 2004, the Spanish Government had requested from the Council of the European Union a type of formal recognition that entailed limited use for languages that were not official and working in the EU but "*languages which pursuant to the constitutional rules of a Member State have the status of an official language in its territory*".⁴ In response, the Council decided, in 2005, to authorise limited use at EU level of "*languages other than the languages referred to in Council Regulation No. 1/1958 whose status is recognised by the Constitution of a Member State on all or part of its territory or the use of which as a national language is authorised by law*".⁵

Critique of the 2005 Conclusion

The effect of the 2005 Council Conclusion was to create a new category of languages within the EU language system - the so-called 'additional languages' (including Catalan), which may be used officially in some cases and to a limited extent within some EU institutions and bodies, but which are not considered EU official languages.⁶ The scope of use of these 'additional languages' is not fully developed, and the 2005 Conclusion does not allow for direct interaction between citizens and EU institutions. Instead, a translation system is established through the corresponding Member State. Under this system, communications in Catalan are translated into Spanish before being forwarded to the relevant EU institution and, vice versa, answers from an EU institution, delivered in Spanish are translated into Catalan before being sent to the citizen.

The protections provided by the 2005 Council Conclusion, and the subsequent Administrative Agreements between the Spanish government and certain EU institutions⁷, have been criticised by scholars as being limited in scope, and not fully developed or implemented. The technical complexity of the system for recognising uses for the additional languages makes it difficult for citizens to understand and

⁴ See: Document 16220/04 of the Council of the European Union.

⁵ Council conclusion of 13 June 2005 on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union. OJ C 148, 18.6.2005, p. 1-2.

⁶ See: Narcís Mir i Sala, (2006) "Els acords administratius signats pel govern espanyol sobre l'ús oficial de llengües espanyoles diferents del castellà en el si de les institucions i els organismes de la Unió Europea", *Revista de Llengua i Dret/Journal of Language and Law* No. 46, p. 317-358.

⁷ The following Administrative Agreements were negotiated and signed by Spain between 2005-2009: Council of the European Union, 7.11.2005; Committee of the Regions, 16.11.2005; European Commission, 21.12.2005; European Economic and Social Committee, 7.6.2006; European Parliament, 3.7.2006; European Ombudsman, 30.11.2006, Court of Justice of the European Union, 27.4.2009.

access⁸. Citizens who do know and want to use their additional language rights are faced with a complicated procedure involving the intervention of an unknown intermediary party to translate their original communication into Spanish. In addition to the inevitable delay in the process, loss of confidentiality in relation to citizens' communication is often criticised.⁹ Such complexity seems counterproductive to the express aim of the 2005 Conclusion, namely "*to bring the Union closer to all its citizens*".¹⁰

Mir i Sala claims that the 2005 Council Conclusion, and implementing Administrative Agreements have actually contributed to a situation of stagnation regarding the hypothetical official recognition of Catalan within EU institutions. His research highlights a growing perception within the institutional and political environment of the EU, that the actions required under the 2005 Conclusion and relevant Agreements are seen as a nuisance, or that they "*generate more problems than they solve*".¹¹ In that sense, the application of the 2005 Conclusion and Agreements has shown to be ineffective in practice.¹²

Moreover, dissemination of the 2005 Council Conclusion and implementing Administrative Agreements has not been adequately carried out. In their 2021 assessment of the EU Agreements on the use of regional and minority languages, Pons and Jiménez point out that it is extremely difficult to find any information on official EU websites about these agreements and their practical implementation.¹³ Thus "*concerned citizens do not even have the possibility of being informed about their rights. There is no information available on how to proceed if citizens wish to use a language other than Spanish*".¹⁴ Mir i Sala reinforces the point that without the incorporation by the Commission and Parliament of the additional languages into

⁸ See: Eva Pons and Katharina Jiménez (2021) "Anàlisi dels acords de la UE amb Espanya i el Regne Unit sobre l'ús del llengües regionals o minoritàries. Avaluació pràctica", Vicent Climent-Ferrando (Ed), European Network to Promote Linguistic Diversity (NPLD), p. 54-57.

⁹ See: Alejandro Del Valle-Gálvez and Michel Remi Njiki, (2009), "The Use of Spanish Regional Official Languages in the Court of Justice of the European Communities", *Bulletin of the Transilvania University of Braşov: Series VII: Social Sciences, Law*, Vol. 2(1), p. 180-187.

¹⁰ Article 2 of Council conclusion of 13 June 2005, OJ C 148, 18.6.2005, p. 1-2.

¹¹ See: Narcís Mir i Sala, (2017), "Algunes Consideracions actuals sobre la posició de la llengua catalana en relació amb el dret de la Unió Europea", *Revista de Llengua i Dret/Journal of Language and Law*, No. 67, p. 255-263, at p. 258 (our translation).

¹² See: Eva Pons and Katharina Jiménez (2021) Anàlisi dels acords de la UE amb Espanya i el Regne Unit sobre l'ús del llengües regionals o minoritàries. Avaluació pràctica, Vicent Climent-Ferrando (Ed), European Network to Promote Linguistic Diversity (NPLD), p. 54-57; Antoni Milián-Massana (2010), "2004-2009: L'evolució del règim lingüístic en el dret de la Unió Europea. Del l'ampliació del 2004 al Tratat de Lisboa", *Revista d'Estudis Autònoms i Federals* No. 10, p. 109-161; Stefaan Van der Jeught, (2015), *EU Language Law*, Europa Law Publishing, Groningen, p. 111; Mir i Sala (2017), *op cit.*

¹³ See: Pons and Jiménez (2021), *op cit.*

¹⁴ See: Pons and Jiménez (2021), *op cit.* p. 56.

their externally-facing policies of communication, the visibility of the 2005 Conclusion remains precarious, and the spirit of that Conclusion is not achieved.¹⁵

Legal Questions Raised

The 2004 request from the Spanish government raised a fundamental legal question regarding the linguistic regime outlined in the Regulation. The question revolved around the scope of powers granted to the Council by Article 342 TFEU to decide which languages could be recognized as EU official languages.

The Council's response at the time was that it could not deviate from the boundaries set in Article 55(1) of the Treaty on European Union (TEU). Consequently, it could only recognize languages already listed in that article, i.e., those that were Treaty languages. As a result, since Catalan did not meet this condition, it could not be included as an EU official and working language.

Although this position lacked explicit basis in EU law and was thus legally debatable, it was not formally challenged by the applicant, the Kingdom of Spain. This response was sufficient for the Council to adopt the decision in the form of the 2005 Conclusion¹⁶, as discussed above.

However, this was not the only issue concerning the legality of incorporating Catalan into Article 1 of Council Regulation No. 1 of 1958 as an EU official and working language.

A further query that arose was whether, in order to become official in the EU, a language must be official throughout the entire territory of a Member State or whether it would be sufficient for such language to be official in a part of that territory. That query then gave rise to the question of whether the official status of a language in a Member State is a prerequisite for obtaining official status within the European Union.

The following sections address these questions and other legal aspects regarding the feasibility of recognising Catalan as an official and working language of the EU. Namely: the national official language requirement for EU official language status; the number of official languages per Member State; the relationship between EU Treaty languages and official and working languages; the territoriality of official

¹⁵ See: Mir i Sala (2006), *op cit.*

¹⁶ Council conclusion of 13 June 2005, OJ C 148, 18.6.2005, p. 1-2.

languages; the internal legal mandate for a language to become an EU official language.

2. National Official Language Requirement for EU Official Language Status

One of the fundamental principles arising from the Regulation is the precondition that, for a language to be recognized as an official and working language within the EU, it must have prior official status within a Member State.

Looking beyond the fact that no Member State has ever proposed a language to become official in the EU without it being previously officially recognized within its own territory, it appears inherently logical that establishing an official status for a language at the EU level should be preceded by this exercise of such institutional and formal recognition at the national level where the language is native.

While there are no explicit cases brought before the EU Council that confirm or refute this assertion, a general principle can be inferred from the first recital to the Regulation which states as follows:

"Whereas each of the four languages in which the Treaty is drafted is recognised as an official language in one or more of the Member States of the Community".

With this recital, which has remained in the Regulation since it was adopted in 1958¹⁷, the Council indicated that the status of the four languages that were initially established as official and working languages of the European Communities was based on their prior official status in at least one of the Member States. This reflects the Council's intent that this condition should be met prior to achieving official status within the EU.

It is important to note that this condition of official status at the national level, however, is not a requirement derived from EU primary law, and is not reflected in the text of the Regulation. Thus, one can conclude that such a condition would have been more of a political consideration that the Council autonomously decided upon at that time.

Nonetheless, regarding this issue, it is worth mentioning the case of the English language. English has been an official and working language of the EU since the accession of the United Kingdom and the Republic of Ireland to the European Economic Community in 1973. However, it presents a particularity. The Constitution of the Republic of Ireland recognizes the Irish language as the "national and first

¹⁷ See Official Journal of the European Communities N° 385/58.

official language," while English is considered a "second official language".¹⁸ This implies a subordination of English to Irish. It is worth noting that no such subordination exists in the recognition of Catalan in the Spanish Constitution, where it is recognized as an official language on a par with Spanish in the regions where it is native. The constitutional text does not establish any ordinal relationship between these languages ("first," "second"). While the Constitution refers to "official languages," it's often common to use the term "co-official languages," which does not imply subordination between them. This "co-official" status defines an equal footing for the languages that share it.

In parallel to the subordination within the Irish Constitution of English to Irish, it is important to highlight the legal status of English in the United Kingdom. The unique nature of the UK constitutional system, without a single written constitution, has led some to consider English as an "official language de facto" based on an analysis of the legislation and practice.¹⁹

This makes English a special case, as it attained the status of an EU official and working language (and Treaty language) without meeting the condition of official status in any of the Member States with the same clarity as the other official languages.

This is significant because it highlights the flexibility of the EU's linguistic regime when aligned with the political will of the Union. This flexibility can be quite surprising when contrasted with the rigidity shown on other occasions, such as the response from the EU Council in 2004 when the idea of granting Catalan a semi-official status through its inclusion in the Regulation was proposed. In other words, when political interests are in alignment, the EU's legal framework demonstrates the capacity to adapt.

The flexibility of the EU language regime is also highlighted in the margin of discretion offered by Article 6 of the Regulation, which provides:

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

i.e. each institution can adapt the language regime of the Union according to its day-to-day functioning. Scholarship and empirical research indicates that the institutions make use of the margin of discretion provided in Art 6 of the Regulation

¹⁸ See: Article 8 of the Constitution of the Republic of Ireland

¹⁹ See: Daithí Mac Síthigh, "Official status of languages in the UK and Ireland", (2008) *Common Law World Review*, Vol 47(1) p. 77-102.

to make practical decisions regarding internal language use, which results in a wide divergence in the circumstantial use of different EU official languages.²⁰

To further emphasize the uniqueness of English, it is worth noting that there has been no serious questioning of the EU's intention to maintain English as an EU official language after Brexit. This is especially interesting considering that Malta, the third Member State that has English as a national official language, designates English as an official language also in a subordinate manner to Maltese, which is the national language of the country.

Lastly, it must be noted that a number of scholars have argued for the need to amend the Regulation to ensure that the status of English as an official and working language remains unaffected.²¹ However, as time goes by, the opposite thesis seems to be confirmed.

Again, in this area what ultimately prevails is the absence of explicit regulation, customary practice, and established facts. Conversely, the Commission has reaffirmed on numerous occasions that English would continue to serve as the official and working language of the EU. On one occasion, it did so in response to a comment made by Polish MEP and then Chair of the European Parliament Constitutional Affairs Committee, Danuta Hübner, who cast doubt on the continuity of English as an official language post-Brexit.²² More recently, the Commission reiterated this position in a statement to *Euronews* in 2020²³, and on the Commission's own website there is a clear statement to the effect that English remains an official and working language of the EU institutions.²⁴ This once again, showcases the flexibility of the Union's linguistic framework and its ability to adapt to the circumstances and the political and practical needs of the EU.

²⁰ See: Bruno De Witte (2008) "The protection of linguistic diversity through provisions of the EU Charter other than Article 22" in Xabier Arzoz (Ed) *Respecting linguistic diversity in the European Union*, p.175-190; Stefaan van der Jeught (2015) *EU language law*, Europa Law Publishing; Nils Ringe (2022), *The Language(s) of Politics: Multilingual Policy-Making in the European Union*, University of Michigan Press.

²¹ See: Manfred Herbert (2023) "On the Role of English in the post-Brexit European Union" *International Journal of Language & Law*, No. 12, p. 31-47 at p. 35; Aneta Skorupa-Wulczyńska (2022), *Language Rights of the Citizen of the European Union*. Frankfurt: Peter Lang, at p. 86; Victor Ginsburgh, Juan D Moreno-Tertero, & Shlomo Weber (2017) "Ranking languages in the European Union: Before and after Brexit", *European Economic Review*, Vol 93, p. 139–151., at p. 147-148; Neriman Hocioğlu Bahadır (2020) "The official language status of English within the EU institutions after Brexit" *Eastern Journal of European Studies* Vol. 11(1), 293–308, at p. 303-304.

²² See: Press Conference of 27.6.2016, 20160627-1500-SPECIAL, available at:

https://multimedia.europarl.europa.eu/en/webstreaming/danuta-maria-hubner-afco-chair_20160627-1500-SPECIAL.

²³ Euronews: *Will English Remain an Official EU Language After Brexit*, published on 31.12.2020, <https://www.euronews.com/my-europe/2020/12/31/will-english-remain-an-official-eu-language-after-brexit>

²⁴ https://commission.europa.eu/about-european-commission/service-standards-and-principles/commissions-use-languages_en (as at 5.12.2023)

3. Number of Official Languages per Member State

As mentioned in the introduction, one of the questions that arises is whether it is possible to recognize as an official and working language of the EU a language which is not the only official language in a Member State.

In particular, in the case of Catalan, the question arises whether its inclusion as an EU official language is permissible, given that it is not the sole official language in any of the territories where it holds official status at national level and typically coexists with another language that is already official in the EU, primarily Spanish.

The fact that Catalan is not the only official language is not a legal impediment to it being recognised as an official or working language of the EU institutions.

Maltese was included as an EU official and working language in 2004, and Irish was recognised the same status in 2007. Both Maltese and Irish are official languages in some Member States alongside English, which already enjoyed EU official and working language status. With these precedents, the EU effectively dispels an unspoken modulation that official languages in Member States do not acquire EU official status when they share that status at the national level with another language that is already official in the EU.²⁵

In terms of purpose, and since citizens and institutions were proficient in another language, in this case, English, which was already official in the EU, these two examples clarify that the attribution of EU official status may merely aim to reinforce the European principle of multilingualism and the protection of internal linguistic diversity.

As some authors like Eva Pons have highlighted, there are other cases within the EU that demonstrate the flexibility of the EU's language regime that do not strictly adhere to a "one state, one language" paradigm.

Some EU official languages are shared by more than one Member State. This includes, for example, French (France, Luxembourg, and Belgium) and German (Germany, Austria and Italy). There is also the unique case of Luxembourg renouncing the EU official recognition of Luxembourgish, despite being the official language of the entire Grand Duchy. Also, the accession of Member States, like

²⁵ See: Milián-Massana (2010) *op cit* p. 134.

Austria or Cyprus²⁶ that have not resulted in the addition of any new official language to the EU's language regime, are an example of this variety of cases. Furthermore, as previously stated, the fact that Brexit did not lead to any serious discussion by the Council (or the Commission) regarding whether English should continue to be an official working language or not, is also an example of this flexibility.²⁷

Article 342 TFEU appears to grant to the Council considerable discretion. It leaves to the Council to decide (subject to the Statute of the European Court of Justice) which languages are to be the “languages of the institutions”; whether certain languages may be designated as languages of the institutions for certain purposes; and the precise implications that will flow from designating languages as languages of the institutions. Notably, although Article 1 of the Regulation refers to the official and the working languages of the institutions, it allows for flexibility’. Thus, Article 6 of the Regulation states that the institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases.

Also, the designation under Article 342 TFEU of a language as a language of the institutions does not necessarily mean that the Union will need to meet the costs arising therefrom. This is a matter to be decided by the Council.

Furthermore, Article 342 TFEU also leaves it to the Council to decide whether to include among the languages designated as languages of the institutions more than one of the official languages of a Member State. There is no legal impediment to two or more languages of a Member State, which are recognized by its law as official languages, from being designated as official EU languages under Article 342 TFEU.

In exercising its discretion on the above matters, the Council will be guided by the political wishes of its members. It is however bound by the principle of equality of Member States and also the need to respect linguistic diversity.

Two aspects of the principle of non-discrimination may here be relevant.

First, Article 21(1) of the Charter prohibits discrimination, inter alia, on grounds of language.

²⁶ See: Eva Pons (2006) “El català a Europa”, p. 45.

²⁷ Following the inquiry of an MEP on the future status of English after the withdrawal of the United Kingdom from the European Union had taken effect, the representation of the European Commission in Ireland limited itself to making public a communication explaining that the official status of English would remain intact. See also the review of *Brexit, language policy and linguistic diversity* by Vicent Climent-Ferrando in the journal *Llengua i Dret* num. 71, 2019.

Secondly, under Article 4(2) TEU, *“the Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government...”*

According to the case law of the CJEU, respect for national identity includes protection of the official language of the Member State concerned.²⁸ Where a Member State recognises more than one official language, all its official languages should be protected by Article 4(2) TEU.

In relation to linguistic diversity, Article 3(3), sub paragraph 4, TEU states that the Union:

“shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.”

The obligation to respect the linguistic diversity of Member States and the peoples of Europe is also stated in Article 22 of the Charter.²⁹

The above provisions impose binding legal obligations and support the recognition as official and working languages of the institutions of languages which are recognised as official in a Member State even if they are not the sole official language.

²⁸ Cilevičs, C-391/20, ECLI:EU:C:2022:638, para 68; Runevič-Vardyn and Wardyn, C-391/09, EU:C:2011:291, para 86; Las, C-202/11, EU:C:2013:239, para 26.

²⁹ Article 22 states as follows: “The Union shall respect cultural, religious and linguistic diversity.”

4. The Relationship Between Treaty Languages and Official and Working Languages of the EU

EU law refers to two categories of languages, namely, the authentic languages of the Treaties and the official and working languages of the institutions.

Article 55(1) TEU lists the languages in which the text of the TEU is 'equally authentic'. Article 55(2) TEU provides for additional non authentic languages. By virtue of Article 358 TFEU, Article 55 TEU applies also to the TFEU.

The legal consequences of Article 55(1) are the following. First, only the language versions of the Treaty stated therein are authentic and legally binding. Secondly, all those versions rank equally. In principle, none of the languages in the list of Article 55(1) takes priority over another language in that list. The provisions of the TEU and the TFEU 'must be interpreted and applied uniformly in the light of the versions existing in the other Community languages'.³⁰ Nonetheless, where the version of an EU Treaty provision in a specific language is out of kilter with the other authentic versions, the CJEU will not rely on it.³¹

By contrast, non-authentic languages to which the TEU and the TFEU have been translated do not have legal force (although, conceivably, in cases of doubt as to the meaning of a provision in the authentic languages, they might be consulted to inform its interpretation). The non-authentic languages in which those treaties have been translated in accordance with Article 55(2) TEU are Catalan, Basque, Galician, Frisian, Welsh, Irish, and Luxembourgish.³²

Article 342 TFEU empowers the Council to lay down '[T]he rules governing the languages of the institutions of the Union'. Article 1 of the Regulation, which was adopted on the basis of Article 342 TFEU, lists the 'official and working' languages of the institutions.

Article 55 TEU and Article 342 TFEU (and the Regulation which was adopted to implement it) deal with distinct issues. The first determines the authenticity of Treaty texts. The second regulates the use of languages by the EU institutions. The two

³⁰ See e.g. Case 19/67 Van der Vecht [1967] ECR-345, at 354; C-219/95 P Ferriere Nord v Commission [1997] ECR I-4411, para 15; C-371/02 Bjornekulla Fruktindustrier AB v Procordia Food AB, ECLI:EU:C:2004:275, para 16.

³¹ Ferriere Nord v Commission, *op.cit.*, para 15.

³² see I. Burr, Article 55 TEU in H.J. Blanke and S. Mangiameli (eds), *The Treaty of European Union (TEU) - A Commentary* (Springer 2013), at 1461.

provisions pursue different objectives. Article 55 TEU is testament to the formality of treaty making by sovereign states and serves legal certainty in treaty interpretation. Article 342 TFEU is concerned with the functioning of the Union institutions.

Although Article 1 of the Regulation lists as official and working languages the same languages which are stated to be authentic in Article 55(1) TEU, it is not necessary as a matter of law that the two lists must coincide nor has this always been the case in practice. This issue is further discussed below.

Despite differentiating between them, the Regulation does not individually define what constitutes an official language and what a working language is. It has been generally understood that an official language is used in external communications of the institutions, while working languages are used in an internal context³³, both in inter-institutional and intra-institutional relationships. Since Regulation 1/1958 governs both official and working languages together, this analysis of the relationship between Treaty languages and languages under Regulation 1/1958 is also done without distinguishing between official and working languages.

As stated in the introduction, following Spain's 2004 request to grant semi-official status to constitutional languages other than Spanish, the Council established a connection between Treaty languages and official and working languages. In its response to the Spanish request³⁴, the Council stated that the competence conferred upon it by the current Article 342 TFEU (then Article 290 of the EC Treaty) is limited by Treaty languages, meaning that the Council can only choose to include in the Regulation those languages listed in the current Article 55(1) TEU (then Article 314 of the EC Treaty).

Some legal scholars have noted that this criterion finds no explicit basis in EU primary law³⁵ and was not formally objected to by the Spanish government, at least publicly. Some authors have also pointed out that the European Commission did not adopt this approach when considering the possibility of incorporating Turkish as an EU official and working language should a reunification process of Cyprus succeed.³⁶

In addition to the lack of any explicit legal reference supporting this connection, it is essential to highlight an aspect that did not exist before the reform of the Lisbon Treaty in 2007. This is Article 55(2) TEU. As stated above, Article 55(1) lists the legally authentic languages of the treaties (currently, 24 languages). Article 55(2) states as follows:

³³ See: Stefaan van der Jeught (2015) "EU Language Law", p. 113; also Antoni Milián-Massana (2010) "2004-2009: l'evolució del règim lingüístic en el dret de la UE", p. 132.

³⁴ See document 9506/2/05 of the Council of the European Union.

³⁵ See: Eva Pons (2006) "El català a Europa", p. 44.

³⁶ See: Stefaan van der Jeught (2015) "EU Language Law", p. 232.

"This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council."

Article 55(2) enables the Member States to request the translation of the Treaties into other languages recognized in their constitutional orders.

In other words, the legislator's intent from 2007 onward has been inclusive, aiming to accommodate languages that were not mentioned in Article 55(1) TEU but for which, at some point, the Member State of origin requests a translation. Therefore, while it is crucial to reiterate that there is no explicit link between the two legal language categories as a prerequisite for becoming an EU official and working language, it should be noted that the EU's intention has been to gradually reduce the exclusion of languages that do not have the status of languages mentioned in Article 55(1) from those that do.

Moreover, this approach is undoubtedly more respectful of the EU principle of multilingualism and Article 22 of the European Charter of Fundamental Rights. It aligns with the recent statement by the UN Special Rapporteur, Fernand de Varennnes, made in a public event at the European Parliament on September 26, 2023, where he asserted that rejecting official and working language status for Catalan [without justifiable reasons] constitutes a form of discrimination under international law.

Some authors have pointed out other novel aspects of the Lisbon Treaty in which the Union has also shown its willingness to gradually bring languages not mentioned in Article 55(1) at the time of Treaty adoption closer to the other official languages of Member States that were included.³⁷

The conclusion in this regard is that there is no explicit legal obligation requiring a language to be mentioned in Article 55(1) of the TEU to be an official and working EU language.

Currently, the list of official and working languages stated in Article 1 of the Regulation coincides with the list of authentic languages stated in Article 55(1) TEU. However, this has not always been the case. While the trend between these two groups of languages has been one of convergence, this parallelism was not exact

³⁷ See: Antoni Milián-Massana (2010) "2004-2009: l'evolució del règim lingüístic en el dret de la UE", p. 132, p. 145-154.

until Irish became an EU official and working language in 2007 (even though it was a Treaty language from Ireland's accession to the European Community in 1973).

The Irish situation not gaining EU official and working language status until that year was primarily due to operational reasons and in line with the Republic of Ireland's wishes (which had declined to request this status from the outset of its EU membership³⁸). When Irish was recognized as a Treaty language, it had a precarious sociolinguistic status. It only had around 20,000 regular speakers and its official use internally was minimal.

Making Irish official would have necessitated a substantial investment in translation and interpretation resources that were nonexistent at the time. Thus, the Republic of Ireland formally requested its recognition as an official language in 2005, and it was granted in 2007 with a derogation setting out that the effects of this status would be reviewed and applied gradually. The continuity or discontinuation of this derogation would be subject to review by the Republic of Ireland and the EU Council, approximately every five years.

The Republic of Ireland and the Council decided to end the effects of the derogation as of 1 January 2022. From this date, the official status of Irish in the EU has taken full effect.

In this context, the Irish case demonstrates the European Union's capacity to be flexible when designing the linguistic regime of the Union. It adapted to the needs and sociolinguistic reality that the Irish language faced at the time. The Irish case shows that the EU's linguistic regime does not require a strict parallelism between the Treaty languages and the EU official and working languages.³⁹

Given that this flexibility was a political solution to address strict operational necessity at that time, this same flexibility should be applied in the opposite direction, allowing languages to attain EU official and working language status without the requirement of being a Treaty language beforehand, as it is based on an unwritten principle that the EU Council adopted in 2004 without any explicit legal basis to support it.

³⁸ See the report of the European Commission of 21 June 2021 on whether the EU institutions have capacity enough to end derogation for Irish as of 1 January 2022.

³⁹ See: Eva Pons (2006) "El català a Europa", p. 36.

5. The Territoriality of Official Languages

One of the most frequently raised questions is whether the fact that Catalan is an official language only in part of the territory of a Member State prevents it from being recognised as an official language of the EU.

Some authors point to a general principle under which only languages that enjoy official language status throughout the entire territory of a Member State acquire the status of Treaty languages.⁴⁰ It is essential to emphasize that this principle reflects practice up to the present day. It is not based on any explicit requirement in EU law.

By extension, owing to the imprecise parallelism between Treaty languages and EU official and working languages –which, as mentioned, only fully occurred when Irish acquired official language status– the question arises as to whether such a principle might also apply to this latter group of languages.

The answer is the same as above. There is no such requirement under EU law in relation to official and working languages of the institutions.

No principle or provision of EU law establishes that for a language to be included in the Regulation as an official and working language, it must be official throughout the entire territory of a Member State and cannot be if it is only so in part of that territory⁴¹ –typically referred to in European legislation as "regional or minority languages."

In fact, the text of the Regulation leads to the opposite conclusion, i.e., that languages that are official only in part of a Member State's territory can also be included as official EU languages. The preamble to the Regulation, which has remained unchanged since 1958, refers to "official languages *in* one or more Member States", not "*of* one or more Member States".⁴²

For example, when the law uses this latter reference –official language *of* the Member State– Spanish legislation interprets it, in its domestic law, as the language that has official status throughout the entire territory, i.e., Castilian, since, according to Article 3 of the Spanish constitution, the official language *of* the Spanish state is Castilian, while the other languages are also official *in* the regions.⁴³ In contrast,

⁴⁰ See *Le catalan, langue officielle sur une partie du territoire d'un État membre de l'Union européenne* by Antoni Milián i Massana (Identifier et catégoriser les langues minoritaires en Europe p. 208).

⁴¹ See *El català a Europa* by Eva Pons, p. 45.

⁴² This is the case in all four original language versions of the Regulation (French, German, Dutch, and Italian), as well as in subsequent language versions.

⁴³ See, for example paragraph 14(b) of Constitutional Court Judgment No. 31/2010 of 28 June 2010 on the Statute of Autonomy of Catalonia in Case *Ninety-nine members of the People's Party*

when the law refers to an official language *in* one or several Member State(s), this prepositional change favors the inclusion of languages that are official throughout part of the national territory, thus including Catalan.⁴⁴ In this case, the preposition makes a significant difference, and the conclusion is that a language official in part of a Member State can also become official within the EU.⁴⁵

Furthermore, if for a language to be included in the official and working languages of the institutions, it were necessary that it is designated as official throughout the territory of a Member State, that would run counter to the requirement to respect national identity under Article 4(2) TEU and the obligation to respect linguistic diversity and equality.

Parliamentary Group in the Congress v Parliament of Spain, and also the dissenting opinion of Judge Javier Delgado in the same case.

⁴⁴ See, for example, Article 12.2 of Real Decreto 1619/2012, which states: “*Las facturas podrán expedirse en cualquier lengua. No obstante, la Administración tributaria...podrá exigir una traducción al castellano, o a otra lengua oficial en España...*” (Translation: “*Invoices may be issued in any language. However, the Tax Administration (...), may require a translation into Spanish, or into another official language in Spain (...)*”).

⁴⁵ Furthermore, EU law itself makes use of different prepositions in order to clarify the inclusion of various Member States’ official languages. For example, Article 8(2) of Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (OJ L 405, 2.12.2020, p. 40–78), states “*The form should be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it will accept*”.

6. The Internal Legal Mandate for a Language to Become an EU Official Language

A factor that affects the recognition of Catalan as an official and working language within the EU is the obligation provided in Article 6.3 of the Statute of Autonomy of Catalonia of 2006, which states as follows:

The Generalitat [Catalan government] and the State shall undertake the necessary measures to obtain official status for Catalan within the European Union and its presence and use in international organizations and in international treaties of cultural or linguistic content.

This circumstance, where a Member State is legally required by its internal legislation to take all necessary steps for one of its official languages to become official within the EU, is a condition not met by any other European language not currently recognised as an EU official and working language –including Basque or Galician. This is an obligation which is imposed by national law and does not bind the Union or the other Member States. It is also correct to say that the obligation to 'undertake the necessary measures' is a legally indeterminate concept that does not precisely define the scope of this obligation, even though it is an obligation clearly aimed at achieving a specific objective.

Nonetheless, it is relevant for a number of reasons.

Article 55(2) TEU allows for translations of that Treaty into languages which enjoy official status in all or part of a Member State's territory, 'in accordance with [the] constitutional order' of the relevant Member State. In the Spanish context, this implies that the perimeter of this denomination includes autonomous statutes or constitutional jurisprudence regarding linguistic matters. Once again, the novelty brought by Article 55(2) since 2007 aims to broaden and make more inclusive the scope in which these languages should be considered.

Also, it is worth emphasizing the interaction between the obligation in Article 6.3 of the Statute of Autonomy of Catalonia and Article 4(2) TEU. In other words, to what extent a denial of the recognition of the official status of Catalan conflicts with Article 4(2), which states: "The Union shall respect the equality of Member States before the Treaties as well as their **national identities**, inherent in their fundamental structures, political and constitutional, inclusive of **regional and local self-government** (...)".

Language is recognised as an essential element of many national groups.⁴⁶ In line with this, Article 6(3) of the Statute of Autonomy of Catalonia seeks to promote language as a fundamental element of Catalan identity [by recognizing it as an official and working language of the EU] and, thus, falls within the concept of national identity under Article 4(2) TEU which includes respect for regional self-government and structures.

The requirement in the Union for this respect: 1) is explicitly towards the national identity of Member States; 2) recognizes that this national identity is inherent in the political and constitutional structures of these states – with the Statutes of Autonomy being one of these political and constitutional structures; and 3) explicitly mentions regional and local frameworks to leave no doubt that the term 'national' [national identity] includes elements that do not necessarily cover the entire territory of a Member State but may be specific to a part of it. This not only raises the issue whether the acceptance of the official status of Catalan represents the most consistent and respectful stance with Article 4(2) TEU but also whether vetoing its official status might run counter to that Article.

⁴⁶ Such recognition is acknowledged, for instance, in Article 5.1 of the Framework Convention for the Protection of National Minorities of the Council of Europe.

7. Additional remarks

This final section reflects on the impact in domestic legislation of the exclusion of Catalan as an EU official and working language.

‘De-officialization’ of Catalan in Catalonia

While the EU does not have competence to adopt measures to modulate language policy at domestic level, the Union has taken measures, based on conferred competences (e.g. culture, education, the internal market)⁴⁷ that have had a direct impact on linguistic practices of Member State institutions and citizens.

For example, the regulation of food product labeling provided by Regulation 1169/2011⁴⁸, directly affects clauses regarding language in domestic legislation, which, in the case of Catalonia and in accordance with the distribution of powers within the Spanish state, falls under the Consumer Code of Catalonia.⁴⁹ Thus EU legislation in this area directly limits the linguistic policies established by national law by and precluding the use of the Catalan language. As a result, there is a de facto ‘de-officialization’ of Catalan in certain areas where the language cannot be used simply because it’s not recognized as an official language of the EU.

It is surprising to note such limitation, by EU legislation, of regional language protections afforded at Member State level, in spite of frequent statements from EU institutions advocating for greater protection of regional and minority languages.⁵⁰

Beyond any discussion the extent to which Regulation 1169/2011 may present a competence issue⁵¹, this clash between EU and domestic regulation is further evidence of the anomaly that Catalan, with its demographic weight and legal and institutional recognition, is denied the status of EU official language. Such

⁴⁷ See: Milián-Massana (2010) *op cit* p. 122-125.

⁴⁸ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 18–63

⁴⁹ Providers of goods and services have an obligation under Article 128-1.2 of the Consumer Code of Catalonia offers information in Catalan for consumer purposes. However, that obligation is constrained by Article 15.2 of EU Regulation 1169/2011, which stipulates that, in the case of food products: “*within their own territory, the Member States in which a food is marketed may stipulate that the particulars shall be given in one or more languages from among the official languages of the Union.*”

⁵⁰ See the proposal 48.2 of the Report on the Final Outcome of the Conference for the Future of Europe of 2022, which states that «minority and regional languages require additional protection».

⁵¹ See: Narcís Mir i Sala (2017) “Algunes consideracions actuals sobre la posició de la llengua catalana en relació amb el dret de la Unió Europea” published in *Revista Llengua i Dret*, p. 260.

recognition would make the implementation of EU regulations in territories where Catalan is already an official language at the domestic level more harmonious and consistent.

Undermining the principle of good administration

The principle of good administration is also relevant to consider in the case of Catalan. Specifically, Article 41(4) of the EU Charter of Fundamental Rights acknowledges that the principle of good administration includes, at the EU level, the right to write to the EU institutions in one of the languages of the Treaties and receive an answer in the same language. Paradoxically that element of the principle of good administration is undermined at national level by the fact that Catalan is not an EU official language.

Illustrative in this regard is the example of Directive 2009/34/EC on metrology⁵². Article 1.1 of the Annex to that Directive states that when making an application for EC pattern approval under the Directive,

“The application and the correspondence relating to it shall be drawn up in an official language in accordance with the laws of the Member State to which the application is made.”

The Spanish Constitutional Court has interpreted Annex 1.1 to Directive 2009/34/EC as follows:

“In this sense, the expression 'official language in accordance with the legislation of the State in which the application is made,' used by the aforementioned art. 1.1 of Annex I of the Directive, must be understood to refer to the languages that EU law declares official in the European Community, among which Catalan is not included.”⁵³

The Court does not specify how the use of other official languages besides Spanish would be facilitated, although it could be through a translation system or by submitting two applications in both languages. However, what is beyond doubt is

⁵² Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological control. OJ L 106, 28.4.2009.

⁵³ Unofficial translation. Constitutional Court ruling 236/1991. The Constitutional Court continued: “although we must warn that the mandatory use of the Spanish language does not prevent the regional Administration from adopting the necessary measures for the citizen to be able to address and use both languages interchangeably in their relations with it. However, this right of the citizen and the corresponding duty of the regional Administration cannot lead us to think that the contested provisions are tainted by incompetence”

that the incentive to citizens created by EU law in this regard, for pragmatic reasons, is to use a single language, in this case, Spanish⁵⁴.

Thus, the de facto implication of the exclusion of Catalan from the list of EU official languages, is an undermining in the national context, in certain cases, of the principle of good administration, as set out in Article 41.4 of the Charter.

⁵⁴ This issue is discussed in some detail in: Antoni Milian-Massana (2004) "Droit linguistique comparé: Le régime juridique du multilinguisme dans l'Union européenne. Le mythe ou la réalité du principe d'égalité des langues", *Revue juridique Thémis* Vol. 38(1), p.211-260, at p. 237-238.

8. Conclusions

The Spanish government's request on August 17, 2023, to include Catalan, Basque, and Galician in Regulation Number 1 of 1958 for the purpose of recognizing these languages as official and working languages of the European Union has sparked several debates regarding the legal perspective of this request.

Following the Spanish government's request in 2004 to recognize a semi-official status for these languages, the Council of the European Union's refusal to articulate this semi-officiality through the reform of Regulation 1/1958 constituted the initial legal pronouncement on one of the key aspects of this request: whether a language must be recognized as a Treaty language to be accepted as an EU official language or not.

Regarding this issue, it should be noted that there is no explicit basis in European primary law that mandates this, and thus, it is a primarily political stance. This is evident even in the actions of the institutions themselves, which contradict this doctrine, such as the efforts by the European Commission to consider the inclusion of Turkish as an official and working language.

Additionally, in the absence of a legal foundation, it's important to highlight that, since the 2004 pronouncement, the novelty introduced with Article 55(2) following the Treaty of Lisbon reflects the inclusive spirit of that reform regarding languages not yet recognized as Treaty languages. This should strengthen the conviction that excluding Catalan as an official language is a rigid and restrictive approach contrary to the European principle of multilingualism and, as recently noted by the UN Special Rapporteur Fernand de Varennes, constitutes a form of discrimination in international law.

Furthermore, it is important to emphasize the flexibility demonstrated by the EU linguistic framework in adapting to the sociolinguistic, political, and technical circumstances of the various linguistic realities within the Union. Examples include the accession of English as an official and working language in 1973, even though it is not an official language *de jure* in the United Kingdom and is a 'second official language' in the Republic of Ireland. It also includes the non-questioning of the removal of this language as an official language after Brexit, the gradual incorporation of Irish as an official language based on the operational capacities of the EU, and the departure from the idea of "one State-one national language" in light of the diverse situations affecting some of the current community languages.

As for the territoriality of the EU official and working languages, and whether they need to be officially recognized throughout the territory of a Member State or whether recognition in a part of it is sufficient, it is important to note that Regulation 1/1958 refers to languages that are official in some Member States and not that they are official of a Member State. This preposition demonstrates an inclusive approach to the official languages of Member States, regardless of the territorial extent of that official status.

Additionally, the unique condition affecting the case of Catalan is the domestic mandate, according to the Spanish constitutional framework, for this language to become an official and working language of the EU (Article 6.3 of the Statute of Autonomy of Catalonia). While the obligation for the Spanish government to take all necessary steps for Catalan to become an official language within the EU does not concern the other Member States in terms of acceptance of this condition, it is important to consider that European primary law takes into account the constitutional orders of Member States when addressing the treatment of the two categories of languages established by European legislation: Treaty languages and EU official and working languages.

Considering all these questions related to the legal perspective on the inclusion of Catalan as an official and working language in Regulation 1/1958, it is evident that this incorporation does not present any legal impediments. The decision to include Catalan in Article 1 of Regulation 1/1958 will be a primarily political decision by the Council of the EU.

The effects of denying EU official status to the Catalan language should also be highlighted. Not only does it harm its active promotion in the international sphere, and more specifically in the EU, but it also makes it difficult, if not impossible, to use Catalan in some spheres in which it is fully official in its own territory, causing an effect of 'de-officialization' in such cases. At the same time, the principle of good administration as set out in the EU Charter of Fundamental Rights is undermined when these criteria are applied internally.

This decision should take into account the specific characteristics of Catalan –its demographic significance, social usage, internal institutional recognition, and its configuration in the constitutional framework of a Member State. This decision should also take into account the conclusions of the Conference on the Future of Europe in 2022, which should ultimately result in a favorable decision for this recognition.

In summary, the main conclusions from this analysis are the following:

1. Article 342 TFEU gives broad discretion to the Council to decide which languages are to be the official languages of the EU institutions;
2. For a language to be recognised as a language of the EU institutions under Article 342 TFEU, it is not necessary that
 - a. it must be an authentic language under Article 55 TEU and Article 358 TFEU;
 - b. it must be the only official language under the law of a Member State;
 - c. it must have official status under national law in the whole of the territory of a Member State.

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December 2023
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