Feasibility of the Language Policy of the European Union

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"There has got to be some common sense somewhere. We are spending more on translation and producing paper that has languages that few people read with everyone's exciting speeches across Europe—we are just wasting money."[1] These words came from British Member of the European Parliament (MEP) Chris Heaton-Harris in support of European Commissioner Neil Kinnock's 2001 proposal to limit the European Union's drafting language to English.[2] Although an innocuous suggestion to promote efficiency— especially in the face of the then-impending enlargement of the European Union to its current size of twenty-five Member States—the European Commission's plan provoked a swift response from the French and German foreign ministers with accusations of tampering with the European Union's language policy.[3] The bilingual reply from European Commission President Romano Prodi assured that the plan would not become reality and that multilingualism would remain of the utmost importance to the European Union.[4] In an effort to better understand this touchy area which evokes such emotion and passion, this note examines what elements comprise the policy, how the policy serves the interests of the European Union, and what challenges face the policy.

I. What Is the Language Policy of the European Union?

From the beginnings of what is now known as the European Union, language policy has occupied a prominent position in the treaties governing the constitution of the European

1. *EU Translation Plan Provokes Protest*, BBC News Online, Aug. 14, 2001, http://news.bbc.co.uk/1/hi/uk_politics/1490243.stm.
2. *Id.*
3. *Id.*
4. ROBERT PHILLIPSON, ENGLISH-ONLY EUROPE? CHALLENGING LANGUAGE POLICY 20 (2003).

Union.[5] The founding treaties of 1957 brought together the original six Member States and established the four versions in their four languages as equally authentic.[6] As the European Union has expanded, the official languages of the acceding Member States have joined the list.[7] This principle of equality of treaty versions in the various languages has established the Union's approach to its language policy in general because, even though the Council of the European Union has always had the sole authority to determine the use of language in the EU institutions,[8] the official languages of the Member States currently constitute the "official" and "working" languages of the European Union.[9]

The European Union comprises twenty-five Member States and counts twenty-one languages as official and working languages: German, English, Danish, Spanish, Estonian, Finnish, French, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Dutch, Polish, Portuguese, Slovak, Slovenian, Swedish, and Czech.[10] This array of languages ensures recognition for any language that is "recognized by the Constitution of a Member State on all or part of its territory" or is "authorized by law" as a "national language."[11] As an example of the Council of the European Union's commitment to recognizing national languages, it added Irish as an "official and working language of the European Union"[12] in 2005, despite the overwhelming preference for English as a first language in Ireland and despite the fact that Ireland had already acceded to the European Union in 1973.[13]

The designation as "official and working" entitles these languages to a broad range of rights as presented in the 1958 Regulation No. 1 of the Council of the European Union: citizens may submit documents to the EU institutions in any of those languages, and the reply shall return in the same language;[14] EU institutions shall submit documents to citizens in the languages of their Member States;[15] EU-wide regulations shall be drafted in these languages;[16] and the Official Journal of the Community shall be published in these languages.[17] Because this document purports to establish such broad rules, the Directorate-General for Translation of the European Commission has referred to it as "[t]he European Union's language charter."[18] Indeed, this language policy has such potent implications that only the unanimous action of the Council of the European Union—comprising the ministers of

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5. Peter Ives, *Language, Representation, and Suprastate Democracy: Questions Facing the European Union*, *in* REPRESENTATION AND DEMOCRATIC THEORY 23, 31 (David Laycock ed., 2004).

6. Consolidated Version of the Treaty Establishing the European Community art. 314, Mar. 15, 1957, 2002 O.J. (C 325) 164 [hereinafter EC Treaty].

7. *Id.*

8. *Id.* art. 290.

9. Council Regulation 1/58, 1958 O.J. (017) 385 (EC).

10. Council Regulation 920/2005, art. 1, 2005 O.J. (L 156) 3, 3 (EC), *available at* http://eur-lex.europa .eu/LexUriServ/site/en/oj/2005/l_156/l_15620050618en00030004.pdf. *See also* Press Release, Council of the European Union, 2667th Council Meeting General Affairs 14 (June 13, 2005), *available at* http://www.consilium .europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/85437.pdf [hereinafter 2667th Council Meeting].

11. 2667th Council Meeting, *supra* note 10, at 14.

12. *Id.*

13. RAYMOND G. GORDON, JR., ETHNOLOGUE: LANGUAGES OF THE WORLD, LANGUAGES OF IRELAND (2005), *available at* http://www.ethnologue.com/show_country.asp?name=IE.

14. Council Regulation 1/58 art. 2, 1958 O.J. (017) 385 (EC).

15. *Id.* art. 3.

16. *Id.* art. 4.

17. *Id.* art. 5.

18. DIRECTORATE-GENERAL FOR TRANSLATION OF THE EUROPEAN COMMISSION, TRANSLATING FOR A MULTI-LINGUAL COMMUNITY 15 (2006), *available at* http://ec.europa.eu/dgs/translation/bookshelf/brochure_en.pdf.

each Member State's government—can alter it in any way,[19] completely excluding the other law-making body—the European Parliament—from any say in the matter.[20]

From another point of view, the European Union actually has "no 'active' language policy per se" for want of jurisdiction.[21] This perspective considers that the Maastricht Treaty places responsibility for education and culture with the Member States but without reserving an article for language.[22] The avoidance of a true language policy also has consequences for the EU institutions themselves: as the European Commission may do as it pleases on this issue,[23] its laissez-faire approach to language in its internal workings has resulted in a hierarchy of languages—in order of importance, English, French, German, and "the rest."[24] With this pecking order in mind, one should not have difficulty imagining the tense situation that Commissioner Kinnock's plan easily exacerbated. Part III discusses the apparent lack of direction evident in the European Union's language policy.

Accordingly, discussion of the European Union's language policy frequently focuses on the nature of its massive translation and interpretation service. First, the concept of translation (and interpretation) requires going from one language into another—a translation pair—and the exponential formula (n^2-n) equals the number of such translation pairs required by the n languages.[25] The founding Member States with Dutch, French, German, and Italian in 1957 therefore yielded twelve translation pairs.[26] Before the 2004 enlargement of the European Union, the fifteen Member States using eleven working languages required an unwieldy 110 translation pairs.[27] With the accession of the ten most recent Member States and a total of twenty-one languages, the formula shows a staggering need for 420 translation pairs.[28] Of course, these abstract translation pairs would mean nothing without actual translators and interpreters. In 1997, translators and interpreters constituted around fifteen percent of those employed by the European Commission and outnumbered the policy staff of the European Parliament by a ratio of 2:1.[29] In 2002, an employee of the European Union's Translation Service noted—without reference to the number of interpreters—that with "nearly every eighth official working in the EU institutions [as] a translator, [t]he EU translation service is by far the largest in the world."[30] Most recently, approximately one in three employed by the European Union's institutions in 2004 worked in translation or interpretation.[31] Finally, a brief survey of the language policy's financial statistics illustrates its elephantine scale. In 1991, the annual cost equaled €685.9 million, or sixteen percent of the administrative budget.[32] In 1997, that cost rose to more than one-third of the European

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19. EC Treaty, *supra* note 6, art. 290. *See also* PHILLIPSON, *supra* note 4, at 123.

20. PHILLIPSON, *supra* note 4, at 122.

21. Ives, *supra* note 5, at 31.

22. *See* Treaty on European Union arts. 126, 128, July 29, 1992, 1992 O.J. (C 191) 1.

23. PHILLIPSON, *supra* note 4, at 124.

24. *Id.* at 132.

25. Ives, *supra* note 5, at 31.

26. PHILLIPSON, *supra* note 4, at 115.

27. P.J.G. KAPTEYN & P. VERLOREN VAN THEMAAT, INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES 107 (Laurence W. Gormley ed., 3d ed. 1998).

28. Ives, *supra* note 5, at 31.

29. KAPTEYN & VERLOREN VAN THEMAAT, *supra* note 27, at 106-07.

30. Gerd Toscani, *Translation and the Law—the Multilingual Context of the European Union Institutions*, 30 INT'L J. LEGAL INFO. 288, 292 (2002).

31. Ives, *supra* note 5, at 31.

32. Toscani, *supra* note 30, at 294.

Commission's administrative budget and more than 60 percent of that of the European Parliament's budget.[33] In 2004, maintaining the policy exceeded €1 billion.[34]

II. How Does the Language Policy Serve the European Union?

When the Council of the European Union decided in 2005 that Irish should join the other twenty languages as an "official and working language of the European Union," it also resolved that, "in the framework of efforts being made to bring the Union closer to all its citizens, the richness of its linguistic diversity must be taken more into consideration."[35] Thus, the overt goals of the European Union's language policy seek to ensure democracy within the increasingly integrated supranational structure and to preserve the diversity of Europe's many languages.

To begin with, Gerd Toscani, an employee of the European Union's Translation Service, posits that "[i]t is clear that one of the founding father's [sic] first concern [sic] was that everyone in the Community should understand what was going on."[36] Because the vast majority of legislation produced by Member States relates to functions of the European Union,[37] "it is important that [Community acts] be available to Community citizens in their own languages."[38] Toscani further supposes that "since people cannot be expected to comply with laws if they cannot understand them, it is both a legal obligation and a practical necessity to make Community legislation available to Europe's citizens in their own languages."[39] Moreover, even when faced with the then-imminent 2004 enlargement of the European Union—adding ten Member States with their ten national languages—Toscani found it "unthinkable that the citizens of the new countries would not be able to read and understand the legislation that governs them, because it is not written in their mother tongue."[40] Consistent with such democratic goals, the European Parliament has dedicated itself to "complete multilingualism" so that its constituents might be able to present themselves in their own languages,[41] a "fundamental right."[42] On this issue, of course, the Directorate-General for Translation Service believes "that multilingualism is being served well in the EU."[43]

Continuing on to the European Union's approach to its many languages, the "Community method" espouses some important principles:

The Community method guarantees both the diversity and effectiveness of the Union. It ensures the fair treatment of all Member States from the largest to the smallest. It provides

33. KAPTEYN & VERLOREN VAN THEMAAT, *supra* note 27, at 107.
34. *See* Commission of the European Communities, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A New Framework Strategy for Multilingualism, at 13, COM (2005) 596 final (Nov. 22, 2005) (citing the cost as €2.28 per person per year, which one may multiply by the population of the European Union— 461,500,000), *available at* http://europa.eu/languages/servlets/Doc?id=913. *See also* EUROPA: Languages and Europe, FAQ, ¶ 8, http://europa.eu/languages/en/document/59 (last visited Feb. 7, 2007) (quoting the cost for 2005 as the latest figure at €1,123,000,000).
35. 2667th Council Meeting, *supra* note 10, at 14.
36. Toscani, *supra* note 30, at 290.
37. PHILLIPSON, *supra* note 4, at 118.
38. KAPTEYN & VERLOREN VAN THEMAAT, *supra* note 27, at 107.
39. Toscani, *supra* note 30, at 288.
40. *Id.* at 302.
41. Ives, *supra* note 5, at 32.
42. Toscani, *supra* note 30, at 301.
43. PHILLIPSON, *supra* note 4, at 107.

a means to arbitrate between different interests by passing them through two successive filters: the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament, together the Union's legislature.[44]

Also, the Charter of Fundamental Rights of the European Union contains two relevant Articles on the issue of language: Article 21 prohibits any discrimination based on language, and Article 22 mandates respect of linguistic diversity.[45] The European Union thus celebrates its current diversity of twenty-one languages as a matter of equality and intrinsic value.[46] Similarly, Jürgen Habermas finds multilingualism "necessary for the mutual recognition of equal worth and integrity of all national cultures."[47] Peter Ives has taken a different approach, however, assessing the European Union's current "more positive celebration of linguistic diversity" as a necessary position in furthering European integration[48] and definitely "not a curse to be minimized."[49] In the face of the English language rapidly gaining ground as a de facto lingua franca throughout Europe,[50] accepting such monolingualism would mean "reducing cultural ways of interpreting the world to one common denominator."[51] Therefore, the European Union's policy of multilingualism seeks to ensure equal status of its Member States within the EU institutions "regardless of their economic power and the extent to which their languages are spoken."[52]

III. What Challenges Face the Policy?

The language policy of the European Union has a curious, paradoxical quality, which has most likely resulted from of its sheer ambition.[53] Besides those affiliated with the Directorate-General for Translation Service, virtually all commentators identify serious faults with the policy.[54] That these faults cannot form a cohesive critique of the policy yields yet another problem that stems from the policy's inherent ambiguity. Furthermore, in addition to those difficulties currently confronting the language policy, a number of problematic linguistic issues will complicate the future of the European Union.

As the policy now stands, the figures exhibited in Part I have predictably led to "delays in decision-making because of translation problems."[55] Although the efficiency of Community proceedings has suffered due to these problems, "there has been no attempt to rationalize the use of languages,"[56] and no EU institution has yet attempted to study these problems or recommended solutions.[57] Virginie Mamadouh concurs with this position, adding that "[t]he linguistic arrangement of the European Union is a highly political issue that has been

44. *Commission White Paper on European Governance*, at 8, COM (2001) 428 final (July 25, 2001).

45. Charter of Fundamental Rights of the European Union arts. 21, 22, 2000 O.J. (C 364) 1, 13, *available at* http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/c_364/c_36420001218en00010022.pdf.

46. PHILLIPSON, *supra* note 4, at 147.

47. Ives, *supra* note 5, at 25.

48. *Id.* at 30.

49. *Id.* at 32.

50. *See generally* PHILLIPSON, *supra* note 4.

51. Ives, *supra* note 5, at 27.

52. Toscani, *supra* note 30, at 301.

53. *See* Ives, *supra* note 5, at 32-33.

54. *See* PHILLIPSON, *supra* note 4, at 107.

55. KAPTEYN & VERLOREN VAN THEMAAT, *supra* note 27, at 107.

56. K.P.E. LASOK & D. LASOK, LAW & INSTITUTIONS OF THE EUROPEAN UNION 115 (7th ed., 1998).

57. PHILLIPSON, *supra* note 4, at 137.

carefully avoided by politicians both at the national and supranational level."[58] Even the European Commission itself surprisingly expresses considerable apprehension:

> The language question is extremely sensitive in most, if not all, of the current member and applicant states. There has, therefore, been hitherto a reluctance at the political level to discuss it except in the most general terms. One consequence of this has been that the task of providing multilingual backup for the Union's treaty obligations and other activities is often treated as a solely administrative function, rather than an element of the political process.[59]

Robert Phillipson has therefore described this language policy as "politically explosive,"[60] and he also cites a number of "symptoms of frustration": a deficiency of direction for situations without full-fledged multilingualism; ambiguity over the term "working language"; misinformation regarding the importance of language accessibility; and the insistence on adopting English as Europe's lingua franca.[61]

No question exists that the financial feasibility of the current policy creates concern, especially since the recent 2004 enlargement.[62] Yet Toscani in the Translation Service notes that "[a]s far as the politicians responsible are concerned, they do not want to change the current multilingual regime because it's a highly sensitive question" closely related to national pride,[63] and he later surprisingly mentions that the 2000 Treaty of Nice, preparing for the 2004 enlargement, did not consider the language question an issue of importance.[64] Behind all of the fanfare about the richness of linguistic diversity that Europe possesses, some, like Belgian MEP Valckeniers, are still waiting to see the fruits of the language policy:

> I certainly hope that the Minister will not respond with some vague statements of principle. . . . I hope that the Minister will take concrete initiatives, such as drawing up rules, sanctioning those who violate them, etc., so that the European Communities no longer remain a highly renumerative [sic] opportunity for those seeking political positions, but finally will start to mean something for its citizens who tend to see these communities certainly in these times as an expensive and unnecessary luxury.[65]

Gilberte Lenaerts accordingly observes that, due to the reluctance of discussing this language problem, "the practical problems . . . have recurred so consistently over so many years," and "[n]o substantial improvements can be observed."[66] His empirical study of the effectiveness of the language policy demonstrates that the policy has been plagued with conceptual problems since its inception and that it has never actually functioned properly according to its principle of working languages.[67]

Before approaching the two challenges facing the future of the European Union regarding the issue of language, one should note the role that language has played in the formation

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58. Virginie Mamadouh, *Institutional Multilingualism in the European Institutions*, in FOUNDATION, WHICH LANGUAGES FOR EUROPE? REPORT OF THE CONFERENCE HELD IN OEGSTGEEST, THE NETHERLANDS 119 (1999).

59. PHILLIPSON, *supra* note 4, at 107-108.

60. *Id.* at 108.

61. *Id.* at 135.

62. Adeno Addis, *Cultural Integrity and Political Unity: The Politics of Language in Multilingual States*, 33 ARIZ. ST. L.J. 719, 753 (2001).

63. Toscani, *supra* note 30, at 304.

64. *Id.*

65. Gilberte Lenaerts, *A Failure to Comply with the EU Language Policy: A Study of the Council Archives*, 20 MULTILINGUA 221, 229 (2001).

66. *Id.* at 237.

67. *Id.* at 240.

of the Union's Member States themselves as "the accelerated process of unification has renewed and heightened the tension between national and supra-national interests."[68] Scholars often credit Johann Gottfried von Herder for first articulating the connection between nation (i.e., people) and language,[69] and from that idea and that of nationalism, the formation of the nation-state in nineteenth-century Europe heavily emphasized language "standardization."[70] Indeed, centralization creates a need for a national language, "both as a practical means of consolidating that centralization and as a visible symbol of centralization,"[71] and nation-states as well as developing countries undoubtedly rely on such a powerful unifying institution.[72] For example, since 1791 France has prohibited the use of languages other than the French language, which became a national symbol in itself.[73] And as standardization of language goes far beyond linguistics into education, media, economy, and tradition, it simultaneously stigmatizes those in the nation who do not speak the national language.[74] Although some scholars insist that such language policy constitutes more of an ideology than an institution—the Herderian homology cliché of nation, state, and language—these ideas "continue to dominate conceptions of language all over the continent."[75] Indeed, today France still denies the existence of languages other than French within its borders, which extend to its overseas territories.[76] Such policies have put at risk the vast majority of the world's languages despite the efforts of post-1945 international human rights instruments.[77]

Supporters of the current policy, therefore, believe that the European Union is doing much to protect multilingualism,[78] especially in the face of "the increasing pre-eminence of English."[79] But each of those languages that the Council of the European Union has elevated to official EU status already possessed official status in their Member States.[80] Therefore, the current policy does not serve the purposes of multilingualism because it is merely reinforcing the privileged position of particular languages. For example, while the official language Maltese can not even claim 400,000 speakers,[81] Catalan currently has no claim to official status despite having well over six million speakers.[82] When one views the language policy of the European Union in this light, its purported multilingualism

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68. Patrick Stevenson & Clare Mar-Molinero, *Language, the National and the Transnational in Contemporary Europe, in* LANGUAGE IDEOLOGIES, POLICIES AND PRACTICES: LANGUAGE AND THE FUTURE OF EUROPE 1, 1 (Clare Mar-Molinero & Patrick Stevenson eds., 2006).

69. KAREN RISAGER, LANGUAGE AND CULTURE: GLOBAL FLOWS AND LOCAL COMPLEXITY 56 (2006).

70. Ives, *supra* note 5, at 24.

71. Addis, *supra* note 62, at 752.

72. *Id.* at 750.

73. BERNARD SPOLSKY, LANGUAGE POLICY 65 (2004).

74. Susan Gal, *Migration, Minorities and Multilingualism: Language Ideologies in Europe, in* LANGUAGE IDEOLOGIES, POLICIES AND PRACTICES: LANGUAGE AND THE FUTURE OF EUROPE 13, 15 (Clare Mar-Molinero & Patrick Stevenson eds., 2006).

75. *Id.*

76. Addis, *supra* note 62, at 730-31.

77. PHILLIPSON, *supra* note 4, at 152-53.

78. Toscani, *supra* note 30, at 290.

79. PHILLIPSON, *supra* note 4, at 132.

80. *Id.* at 111.

81. RAYMOND G. GORDON, JR., ETHNOLOGUE: LANGUAGES OF THE WORLD, MALTESE (2005), *available at* http://www.ethnologue.com/show_language.asp?code=mlt.

82. RAYMOND G. GORDON, JR., ETHNOLOGUE: LANGUAGES OF THE WORLD, CATALAN-VALENCIAN-BALEAR (2005), *available at* http://www.ethnologue.com/show_language.asp?code=cat.

supported by a virtual army of translators and interpreters ensures that Member States may continue to function monolingually.[83] Indeed, while the first goal of the current policy cited above seeks to deconstruct obstacles to the understanding of EU publications, it actually enforces those Member States' current policies regarding their official languages. In sum, despite the apparently good-faith efforts by the EU institutions to promote a well-principled, reasonable language policy, the European Union faces a conflict of interests: linguistic diversity at the supranational level can hardly be "consonant with the robustly centripetal pressures of standardization and homogenization at the national level."[84]

Notwithstanding the shortcomings of the current policy, the first of two future challenges stems from attempts to remedy today's situation. The recent decision to add Irish as an official and working language of the European Union, along with increasing recognition of Basque, Galician, and Catalan[85]—all co-official languages within their respective regions along with Castilian Spanish—demonstrates that the mantra of multilingualism in the European Union is advancing the cause of equality of all languages, not just the national languages. But with the immense cost of the current language policy already a cause for strong concern, in addition to the foreboding figures presented in Part I, granting official status to *all* languages within the territory of the European Union in the spirit of cultural diversity can only lead to more problems.

The second challenge presents a diametrically opposed situation when considering the role of language standardization with the formation of the nation-state and the proposed path of the European Union. In fact, the European linguistic market is currently unifying,[86] and this trend goes against everything the language policy stands for. As the European Union begins to behave more like a traditional nation-state—with a single customs union, currency, market, agriculture policy, foreign policy, and defense policy—maintaining its present language policy will only impede the unification of Europe.[87] Indeed, the U.S. ambassador to Denmark believes that "[t]he most serious problem for the European Union is that it has so many languages, this preventing real integration and development of the Union."[88]

Although observers today often view the European Union as a work in progress and can thus perhaps rationalize the inordinate cost of the current language policy, the further development of the European Union—in both breadth and depth—poses contradictory challenges and suggests the policy's manifest unfeasibility. On one hand, the policy can remain true to its diversity principle, and the already vociferous criticisms about its cost and effectiveness will certainly amplify exponentially with the addition of new languages. On the other hand, maintaining the policy's diversity principle will refuse to support further integration and will stall any hopes for a more unified Europe. But while one may view this dilemma as an obstacle to the success of the European Union, it may just as well be a symptom of the *sui generis* geopolitical status of the European Union—something between a confederation and a federation. As such, it cannot be rationalized in conventional terms of national interests, and the unconventional European Union may very well find its current policy quite feasible.

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    83. PHILLIPSON, *supra* note 4, at 110.
    84. Stevenson & Mar-Molinero, *supra* note 68, at 2-3.
    85. Press Release, Committee of the Regions, Spanish Regional Languages Are Used for the First Time in EU Institutions (Nov. 16, 2005), *available at* http://www.cor.europa.eu/en/press/press_05_11125.html.
    86. PHILLIPSON, *supra* note 4, at 108.
    87. Addis, *supra* note 62, at 753.
    88. PHILLIPSON, *supra* note 4, at 1.