

Post-Enlargement Dynamics of Law and Language in the Court of Justice

Abstract

The enlargement of the EU to 25 member states in May 2005, followed by the accession of two more states in January 2007, raised a number of questions concerning the organisational structure of that Union – the sheer scale of the largest EU expansion to date has highlighted the need to restructure the EU institutions. However, issues of an organisational nature are not the only challenges that must be faced: the effect of enlargement on the institutional dynamics of the European Court of Justice, Commission and Parliament will have implications for the development of EU law and European governance. The representatives of the 12 new member states who have taken their places and positions in the EU institutions bring to those multilingual, multicultural institutions the influence of their own languages, legal systems and cultures. This paper investigates to what extent the dynamics and organisational structure of the Court of Justice of the European Communities has been and will be affected by such influences and by the organisational problems of enlargement; all of which will consequently affect the future development of EU law. Based on qualitative data largely obtained from empirical fieldwork research, the paper focuses on the implications of enlargement within the Court of Justice and considers whether such enlargement requires the rethinking of existing problematics and the development of new ways of functioning for that institution.

Introduction: The role of language at the Court of Justice

This paper focuses specifically on the role of language at the Court of Justice. While the primary focus of most of the literature on the Court of Justice is on its jurisprudence, the fact that that jurisprudence is multilingual, consisting mainly of collegiate judgments drafted by jurists in a language that is generally not their mother tongue is frequently overlooked¹.

¹ That is not to say that no scholarship on language and EU law has focused on the Court of Justice. In fact, many such pieces of work are written by Members of that Court (see, for example, David A. O. Edward, "How the Court of Justice Works," *European Law Review* 6 (1995): 539-558). However, such scholarship tends mainly to involve questions of language policy and regime, interpretation of multilingual

Article 217 of the Treaty of Rome states:

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, be determined by the Council, acting unanimously.

The Council fulfilled its responsibility under that Article in the very first regulation that it issued². Article 2 of that regulation firmly establishes the right of citizens to communicate with the European institutions in the language of their own state and puts an obligation on the institutions to answer them in the same language. Article 3 states that:

Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be worded in the language of such State.

Article 6 of the Regulation stipulates that Community institutions may determine internal language regulations in respect of specific administrative practices. Doc A3-169/90³ provides that any such internal guidelines introduced by the institutions must comply with the doctrine of linguistic equality.

While the Court of Justice is subject to the general linguistic guidelines set out in that regulation, under Article 7 it may develop autonomous rules in respect of language use for proceedings. Chapter 6 (Articles 29-31) of the Rules of Procedure of the Court of Justice deals with language use at the Court and Chapter 5 (Articles 35-7) of the Rules of Procedure of the Court of First Instance covers language use at that Court⁴.

legislation and pragmatic or logistical translation concerns rather than focusing on the fact that the Court's judgments, as presented to the outside world, are, for the most part, translations.

² Council Regulation No 1158 determining the languages to be used by the European Economic Community (JO 34, 29/05/1959).

³ OJ C 19 28/01/1991, p. 42.

⁴ Any amendment to those Rules of Procedure requires the unanimous approval of the Council. See Articles 225a and 245 EC.

For every action before the Court of Justice and Court of First Instance there is a language of procedure (these are, at present, the 23 official languages of the European Union⁵ [including Irish – however, up until now Irish has never been used as the language of procedure in a case; judgments and references for a preliminary ruling are not translated into Irish and there is no Irish language division at the Court]), which must be used in the written pleadings or observations submitted and for all oral pleadings in the action. The language of procedure of the case must also be used by the Court in any correspondence, report or decision addressed to the parties in the case. Only the texts in the language of procedure are authentic.

In direct actions before both courts, the language of procedure is chosen by the applicant. However, where a defendant is a Member State or a natural or legal person holding the nationality of a Member State, the language of procedure is the official language of that state.

In references for a preliminary ruling the language of procedure is the language of the national court that has made the reference. In appeals, the language of the case is that which was used before the Court of First Instance⁶.

Member States are entitled to use their own language in their written statements and observations and oral pleadings when they intervene in a direct action or participate in preliminary reference procedures.

Unlike the other EU institutions the Court operates using a single internal working language – French⁷. The Rules of Procedure provide that a Judge or Advocate-

⁵ These are, in English alphabetical order: Bulgarian; Czech; Danish; Dutch; English; Estonian; Finnish; French; German; Greek; Hungarian; Italian; Irish; Latvian; Lithuanian; Maltese; Polish; Portuguese; Romanian; Slovakian; Slovenian; Spanish and Swedish. The official order of these languages is to list them according to the way they are spelled each in their own language. Until June 2005 Irish was regarded as an official language only where primary legislation (that is, the Treaties) were concerned, however, on 13 June 2005 Irish was granted full status of an official language of the European Union – this came into effect on 1 January 2007. However, because of the lack of qualified translators of Irish mother tongue, the Council has adopted a ‘partial derogation’ whereby only key legislation must be translated into Irish. After a transitional period of four years, this derogation, will be reviewed (Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community and introducing temporary derogation measures from those regulations).

⁶ Likewise, in appeals to the Court of First Instance from the new Civil Service Tribunal the language of procedure is that which was used before the Civil Service Tribunal.

General may request the translation of any document into the language of his choice⁸. However, the Members have been obliged to forgo that possibility in order not to increase the workload of the translation service⁹.

Clearly then, translation plays a significant role in the working of the Court of Justice and it is not difficult to imagine how the translation burden can affect the Court's output. It is equally easy to see just how important the questions of translation and the linguistic regime at the Court were in the preparation for enlargement.

Enlargement

The enlargements of 2004 and 2007 saw the greatest increase in membership of the European Union to date. Ten new member states joined the 'club' of fifteen in May 2004 and two further accessions in January 2007 brought the total number of member states to 27 and the population of the Union to about half a billion. One of the more practical consequences of those enlargements was that each institution of the European Union had to recruit a significant number of administrators, lawyers, interpreters, translators and other professional and general staff from the new member states. For the Court of Justice this meant a huge influx of people to staff new divisions in the research and documentation and press and information services, 22 new judges' *cabinets* (12 at the Court of Justice and 12 at the Court of First Instance) and 11 new language divisions in the translation service, as well as a number of administrators etc. working in various other parts of the Court.

Although what has been termed the 'mega-enlargement' itself took place in May 2004, preparations for that enlargement were underway from as early as the mid to late 1990s. Publicly, the Court approached its preparation for the May 2004 enlargement within the context of the discussion concerning the future of the EU judicial system,

⁷ Note: Article 9(5) of the Rules of Procedure of the Court of Justice and Article 35(5) of the Rules of Procedure of the Court of First Instance state that *The President of the Court and the Presidents of Chambers in conducting oral proceedings, the Judge Rapporteur both in his preliminary report and in his report for the Hearing, Judges and Advocates General in putting questions and Advocates General in delivering their opinions may use one of the [official] languages other than the language of the case* – in practice the language used is French.

⁸ See Article 30 of the Rules of Procedure of the Court of Justice and Article 36 of the Rules of Procedure of the Court of First Instance.

⁹ For a breakdown of the translation service see Figure X.

which took place between 1998 and 2004. During that time the Court put forward a number of proposals for reform of the EU judicial system, structure and procedure¹⁰. Although many of the proposals for reform submitted by the Court were not motivated by the prospect of an enlarged EU (for example those related to the anticipated increase in caseload as a result of the entry into force of the Treaty of Amsterdam), enlargement certainly was a catalyst for others. The Court's contribution to the 2003/2004 Intergovernmental Conference proposed a system of filtering of appeals to the Court of Justice; the possible conferment on the Court of First Instance of the jurisdiction to give preliminary rulings; changes to the handling of staff cases and the possible creation of other appellate bodies of a judicial nature¹¹. Future enlargement was not explicitly highlighted as the motivation for such proposals, the Court instead preferring to focus on the situation as it stood at that particular time to justify its submissions. One of the principal reforms sought by the Court in the context of the Intergovernmental Conference and the discussion on the future of the EU judicial system was the power to amend its own rules of procedure¹². Again, the future enlargement of the EU was not cited as a motivation for such a proposal. However, it is likely that the prospect of future EU enlargement was central to that proposal since the rules of procedure govern all of the processes and procedures at that Court, including the linguistic regime and the rules concerning publication of the Court's jurisprudence.

As regards translation, the Court submitted a number of reports and other documents to the Council and Parliament highlighting the difficulties of translation at that Court from the point of view of resources and logistics¹³. Those reports on translation at the Court of Justice tended to underline the importance of maintaining the EU linguistic regime as a whole, as well as the linguistic regime and translation policy within the Court itself. This point is particularly interesting as, in documents prepared in parallel to such reports on translation (in the course of the debate on the future of the EU judicial

¹⁰ Cf. The Future of the Judicial System of the European Union (May 1999); Report of the Study Group on the Future of the Judicial System of the European Communities (January 2000); The EC Court of Justice and the Institutional Reform of the European Union (April 2000); Contribution by the Court of Justice and the Court of First Instance to the Intergovernmental Conference (2003-2004).

¹¹ Contribution by the Court of Justice and the Court of First Instance to the Intergovernmental Conference (2003-2004)

¹² *Ibid.*

¹³ Cf. Report on Translation at the Court of Justice (May 1999); Report on Translation at the Court of Justice (December 2000); Rapport provisoire sur l'analyse réalisée dans les divisions linguistiques de la direction de la traduction de la Cour de Justice des Communautés européennes (June 2001); La traduction à la Cour de Justice des Communautés européennes: présentation du contexte (May 2002).

system), the Court gave serious consideration to proposals to change that linguistic regime and translation policy. In the end, as detailed below, the linguistic regime of the Court of Justice remained as it had always been (i.e. with French as the working language of that Court) but changes were made to the translation policy of that institution (pivot translation – see *infra*). In addition, the rules of procedure of the Court were amended in 2005, consequently not all judgments of the Court are now published¹⁴.

Similarly, preparations for the process of enlargement within the Court itself had already begun long before the May 2004 enlargement of the EU actually took place. From as early as 2000 classes covering the official languages of most of the candidate countries were offered to staff of the EU institutions, with special priority given to those who worked in the translation services of each institution. Assuming that the translation system at the Court of Justice would remain unchanged (i.e. that each language division would be required to provide translation into their relevant language from all official languages of the EU), a large number of lawyer-linguists began to learn various ‘new’ languages in which they were particularly interested. As one commented:

“...one of the most interesting and satisfying aspects of our job is that we are required to keep on learning new languages, to keep increasing the number of official languages from which we can translate. The prospect of enlargement was therefore exciting [for the lawyer-linguists] on a level of personal development.”

However, with ‘only’ eleven official languages, there were already 110 language combinations which had to be provided for by the translation service in order to be able to translate directly from each language into any of the other official languages. With twenty official languages the number of language combinations rises to 380 – with 22 languages that figure rises again to 462 (506 for 23 languages)! In addition, those combinations become increasingly obscure (for example: Greek-Latvian or Portuguese-Estonian). To continue to use the existing direct translation system to work with 22 official languages was simply not practical. However, it was not until a new director was appointed to the translation service at the Court of Justice in 2001 that changes began

¹⁴ Among other amendments.

to be made to the system of language-learning and to the plans for enlargement at the Court of Justice.

Alfredo Calot-Escobar took over the directorship of the translation service of the Court of Justice in June 2001, with the immediate and very specific agenda to prepare that service for the biggest enlargement of the EU to date¹⁵. Realising that, for the reasons mentioned above, it would no longer be feasible to continue to use the existing direct translation system alone, he decided to introduce a 'pivot translation' system alongside that direct translation system.

That pivot translation system has been in use at the Court since May 2004 and is actually a mixed translation system – where possible direct translation is used instead of translation through a 'pivot language'. There are five 'pivot languages': French, English, German, Spanish and Italian. Because French is the working language of the Court, the French translation division provides translation from all of the 'new' official languages while each of the other four pivot language divisions are 'partnered' with two 'new' official languages¹⁶ (Maltese has not been assigned to a pivot language division – since English is Malta's second official language, it is assumed that the Maltese lawyer-linguists are able to provide English translations of documents drafted in Maltese)¹⁷.

With such dramatic changes in the structure and sheer size of the Court of Justice, the question that immediately arose was whether the May 2004 enlargement would

¹⁵ Note: the appointment of Mr Calot-Escobar as director of the Court's translation service was seen by many as an acknowledgement by the Court of Justice that a change in the management system of that institution was necessary. Historically the Court has been staffed primarily by jurists and issues of management were considered less important than "*ensuring the integrity of the institution by appointing the most senior legal minds to the most senior management posts*" (lawyer-linguist). While that system may have worked very well in a small institution that was very gradually expanding in both jurisdiction and size, it is doubtful whether a similar system would continue to be effective in the much larger institution that is the Court today. Indeed, cracks in the managerial system at the Court of Justice were beginning to show even in the mid to late 1990s, and the section in which they were most apparent was in the translation directorate. The appointment of a director of the translation service who was only 40 years old (the youngest person ever to hold that position), i.e. not "*the most senior legal mind*", or even the most experienced linguist among the candidates for the position, but someone with extensive managerial experience (a move reflected in the subsequent appoint of other managers within the Court) was seen by some as "*highlighting the transition from chapter one in the history of the Court of Justice into chapter two and a new, improved Court*" (manager).

¹⁶ The German language division provides translation from Bulgarian, Polish and Estonian; the English language division from Czech and Lithuanian; the Spanish language division from Hungarian and Latvian and the Italian division from Romanian, Slovak and Slovenian.

¹⁷ For a detailed explanation of how the mixed-translation system at the Court of Justice works see Karen McAuliffe, *Law in Translation*, PhD Thesis (2006), The Queen's University of Belfast.

represent a qualitative or merely a quantitative change in the functioning of that institution: would the nine 'new' languages ultimately be absorbed into the existing multilingual working methods at the Court? Or would the introduction of those nine new official languages and ten new cultures mark a shift in the dynamics of the linguistic regime itself? Would it be a case of more meaning less, in the sense that the incapacity of the system to cope meaningfully with 22 languages would lead to a progressively greater *de facto* privileging of one, two or a few of those languages?

Enlargement: Expectation v. Reality

Before the accession to the EU of Austria, Finland and Sweden in 1995 a '*mild panic*' was felt throughout the Court of Justice and in particular within the translation directorate. That panic is reflected in a number of articles that appeared around that time, in which it was speculated that the translation directorate of the Court (or indeed those of the Commission and Parliament) would not be able to cope with the addition of a further two new official languages and that the language regime of the Court would have to be significantly changed¹⁸. In fact, as pointed out by almost all of those interviewed during the course of the fieldwork research upon which this paper is based, the translation directorate '*absorbed the new languages with minimal fuss or problems*' (no doubt aided by the fact that there was a 'gap' of approximately two years between those states joining the EU and actually bringing cases before the Court of Justice; as well as the fact that, with that accession, a *de facto* system of pivot translation began to be used at the Court since it was extremely difficult to find Finnish and Swedish lawyer-linguists capable of translating from all of the other official languages of the EU). However, that feeling of mild panic experienced within the Court of Justice before the 1995 enlargement of the EU seems to have been a mere drop in the ocean in

¹⁸ See, for example: René Barents, "Law and Language in the European Union," *EC Tax Review* 1 (1997): 49-55.

Florian Coulmas, *A Language Policy for the European Community: Prospects and Quandaries*, ed. Joshua A. Fishman, vol. 61, Contributions to the Sociology of Language (Berlin; New York: Mouton de Gruyter, 1991).

Harald Haarmann, "Language Politics and the New European Identity," in *A Language Policy for the European Community: Prospects and Quandaries*, ed. Florian Coulmas (Berlin; New York: Mouton de Gruyter, 1991).

Harald Koch, "Legal Aspects of a Language Policy for the European Communities: Language Risks, Equal Opportunities, and Legislating a Language," in *A Language Policy for the European Community: Prospects and Quandaries*, ed. Florian Coulmas (Berlin; New York: Mouton de Gruyter, 1991).

John A Usher, "Languages and the European Union," in *The Frontiers of Europe*, ed. Malcolm Anderson and Eberhard Bort (London and Washington: Pinter, 1998), 222-234.

comparison with the general panic that was swelling within that court prior to the ‘mega-enlargement’ of 2004. The accession of ten new states to the EU would not only require skilled management from a logistical point of view, but would also introduce to the Court new cultures and legal traditions that would necessarily change the dynamics of that institution. Whether they felt that the only problems enlargement would bring would be logistical:

‘...it will be almost impossible to find enough people in the accession states qualified and with the linguistic abilities to come and work in the [EU] institutions... even if that isn’t a problem it will be extremely difficult to organize such a huge expansion from the point of view of management...’;

or that the main problems would be linguistic and would have consequences for the application of EU law:

‘the inherent problem with enlargement for the Court is a linguistic one... there is the danger that, as a result of the ‘Chinese whispers’ that will increase with pivot translation, there will be discrepancies and differences between language versions of judgments, which could then be applied differently in various Member States’;

all were agreed that ‘enlargement will change the way that the Court works’. One lawyer-linguist even described the forthcoming enlargement in terms of chaos theory:

‘...everything will become so awful that it will all explode and then, only in the aftermath, a solution will be found!’

The reality, however, was far from such predicted chaos. Recruiting lawyer-linguists and other staff from the new Member States was easier than had been anticipated¹⁹, judges appointed from the new Member States had, for the most part, a good working knowledge of the French language (and those who didn’t immediately began taking intensive language classes to improve their French), and so on. On top of such factors,

¹⁹ Although recruitment of staff from new Member States was not without some problems – see further: Karen McAuliffe *Law in Translation*, PhD Thesis (2006), The Queen’s University of Belfast.

as a result of the amendment of the Court's Rules of Procedure, significant changes have been made to the working methods of the Court²⁰ and there has been a considerable reduction in the amount of pages published (and translated) in the European Court Reports.

Pivot Translation

One of the most contentious issues of the May 2004 enlargement was the introduction of the pivot translation system at the Court of Justice. While most acknowledged that it was the only really practical solution to the translation problem, nobody considered it to be the *ideal* solution. Pivot translation would bring with it the risk of an increase in mistranslations, approximation and the 'Chinese whispers' phenomenon, and the majority of those working at the Court of Justice felt strongly that it should be introduced only as a temporary measure. Indeed, a large number of those interviewed following the May 2004 enlargement seemed to be under the impression that the pivot translation system was an interim solution and that the Court would ultimately return to its former, direct, translation system²¹.

By May 2005, one year following the 'mega-enlargement', there had only been six cases brought before the Court of Justice which involved 'pivot translation'²². As a result, relatively few people at the Court had actually experienced the pivot translation

²⁰ In order to 'counteract the expanding average length of proceedings' a series of measures were put into practice progressively from May 2004. Those measures included adopting a stricter approach to granting extensions of time-limits for submitting pleadings; decreasing the size and content of Reports for the Hearing and ceasing to produce a report of the Judge-Rapporteur in cases that do not require an oral hearing. The Court also reassessed its practice of publishing judgments in the European Court Reports and adopted a policy of selective publication (*Court of Justice of the European Communities Annual Report 2004, I-A(1.3)*).

²¹ In fact this is not the case – it would simply not be feasible to attempt to provide direct translation for 380 language combinations! That number would increase to 462 with the accession to the EU of Bulgaria and Romania in 2007 and to 506 if the Irish language was included!

²² Case C-273/04 *Poland v Council* (direct action – language of the case: Polish; applications to intervene made by: Latvia, Hungary and Lithuania); Case C-302/04 *Ynos kft v János Varga* (Reference for a preliminary ruling under Article 234 EC from the Hungarian Szombathelyi Városi Bíróság – language of the case: Hungarian; observations submitted by Hungary, Latvia, Czech Republic and Poland); Case C-341/04 *Eurofood IFCS Ltd - Enrico Bondi v Bank of America e.a.* (Reference for a preliminary ruling under Article 234 EC from the Irish Supreme Court – language of the case: English; observations submitted by Hungary and Czech Republic); C-431/04 *Massachusetts Institute of Technology* (reference for a preliminary ruling under Article 234 EC from the German Bundesgerichtshof – language of the case: German; observations submitted by Poland and Lithuania); C-436/04 *Criminal proceedings against Léopold Henri van Esbroeck* (reference for a preliminary ruling under Article 234 EC from the Hof van Cassatie van België. Belgium – language of the case: Dutch; observations submitted by Slovakia, Czech Republic and Poland); C-438/04 *Mobistar SA v Institut belge des services postaux et des telecommunications* (reference for a preliminary ruling under Article 234 EC from the Cour d'Appel de Bruxelles, Belgium – language of the case: French; observations submitted by Lithuania and Cyprus).

system in use. None of the members or référendaires (with the exception of those advocate generals who now draft in pivot languages and their staff – see *infra.*) and very few of the lawyer-linguists interviewed had noticed any impact at all from the use of pivot translation:

“I haven’t noticed any problems as a result of pivot translation – but then again, I haven’t actually noticed pivot translation being used!” (lawyer-linguist);

“...I haven’t come across any cases in which pivot translation has been used...” (référéndaire);

“I was much readier to translate from Lithuanian about six months ago – so far I have had no opportunity to practice it and I feel that I am forgetting the language. I have all the theoretical knowledge in my head but need to be translating to keep all that knowledge. However, nothing has come in to be translated from Lithuanian yet, but obviously there is not a lot, or indeed anything, the Court can do about that” (lawyer-linguist).

However, the introduction of the new system of translation at the Court has had an impact on the work of some people at the Court. For example, a number of advocate generals now routinely draft their opinions in one of the pivot languages (see *infra.*). The pivot translation system has also affected the work of those in management positions at the Court, in particular those within the translation service – translation of documents through the pivot system is necessarily quite complicated from an organisational point of view. As a result of the introduction of pivot translation there is also more lateral contact between language divisions within the translation service: for example, when a document is being translated via a pivot language the head of a language division (language A) would hope to identify someone from the relevant source language division (language B) who has a good command of language A (i.e. working together with the head of division for language B) and the lawyer-linguist from the language A division who is translating the relevant document from the pivot language translation will then have a contact in the relevant original source language

division who will be able to assist him/her to ensure that the translation is correct²³. There is also much more contact between language divisions as regards timetabling of translations – as a result of the pivot system of translation language divisions are now dependent on each other to produce timely translations.

One particular effect of the pivot translation system commented upon by a number of lawyer-linguists interviewed is the fact that those lawyer-linguists in pivot language divisions now tend to use “*simple language*” in an effort to minimise the risk of mistranslation further down the line:

“...a more ‘watered down’ version of [the relevant pivot language] is being used in translations at the Court...”;

“The audience for our translations has changed – these days the audience consists of other lawyer-linguists and translators, who will be translating from our translations, and non-native speakers. As a result we have to use ‘easier’ or ‘simpler’ language in our own translations”.

Those lawyer-linguists find having to change their writing style in this manner unsatisfactory. As one (English language) lawyer-linguist stated:

“As an English lawyer-linguist, part of my job was to act as a guardian of the purity and the richness of the English language but this will become very difficult to do under the pivot translation system because we will have to use easy words – for example ‘arguably’ and ‘unarguably’: I would shy away from using ‘unarguably’ because it might be difficult for other, non-native-English speakers to understand ...I don’t feel that the richness of the English language should be sacrificed but unfortunately we don’t seem to have a choice...”.

The lawyer-linguists working in pivot language divisions have also noticed that their deadlines have been significantly shorter since enlargement. Since it would be

²³ However, the final translation (into language A) will be revised on the basis of the pivot-language translation, not on the original document (in language B).

extremely difficult and highly unlikely that lawyer-linguists recruited to the 'new' language divisions would be able to master all twenty of the EU official languages, they are permitted to only master the pivot languages – i.e. the pivot translation system works in both directions²⁴. Thus, for example, a reference for a preliminary ruling from a Swedish court (i.e. in Swedish) may be translated into Slovenian through English²⁵. As a result, lawyer-linguists in the pivot language divisions find themselves under increasing pressure to produce high quality translations in very short periods of time so that their colleagues in the 'new' language divisions may begin their own translations:

“...where [prior to the May 2004 enlargement] we may have had a four-week deadline for a particular piece of work, if the document in question is in [one of the languages allocated to that pivot language division] we now have a two-week deadline – at the same time we have to make sure that the work we produce is of an extremely high quality because other lawyer-linguists will be translating from it ...pivot translation has certainly led to an increase in pressure on lawyer-linguists”.

As mentioned above, by May 2005 few cases involving pivot translation has been brought before the Court. In spite of that fact however, all of the lawyer-linguists interviewed had very strong opinions on the introduction of the pivot translation system at the Court of Justice:

“...the translations of the few observations that there have already been took a very long time – the lawyer-linguists in the French language division checked their translations out very thoroughly with the help of their colleagues from the relevant 'new' language divisions – taking such a long time over such translations is probably not going to be feasible in the future because the workload will simply be too much...”;

“Translation through the pivot system is a very unnerving experience because if [the lawyer-linguists] are in any doubt about something in the

²⁴ For a detailed explanation of how the pivot translation system at the Court of Justice works see Figure X.
²⁵ This policy of allowing lawyer-linguists from the 'new' language divisions to master only the Court's pivot languages can be viewed as tacit acknowledgement of the *de facto* pivot translation that was already going on at the Court prior to the May 2004 enlargement.

French [or, where relevant, other pivot language] translation of the original how are they to know whether that is a reflection of an ambiguity in the original or not? For now they can take the time to consult with the new language translators but in the future that will not be possible...”

It seems that the majority of lawyer-linguists are unhappy about the pivot translation system simply because they trust other lawyer-linguists less than they trust themselves, and fear that their final product will not be as good as it would have been if they had had complete control over the entire translation process:

“...with the pivot translation system there is much more scope for ‘Chinese whispers’ that [lawyer-linguists] may not even notice – we don’t have full control over our own product...”;

“It is part of the lawyer-linguists’ role to act as a filter for mistakes or distortions through the translation process... however you cannot do that if you are working through a pivot language: you feel like you don’t have control over what you are doing”.

The pivot translation system has not, as yet, caused particular problems – although it remains a little early to tell just how successful that system will be.

Other Changes in the Working of the Court

One change that has been noticeable at the Court of Justice since enlargement has been the changes in advocate generals’ working methods. Until 2004 advocate generals’ opinions were drafted in the mother tongue of the advocate general in question and, as such, were not subject to the same linguistic constraints as judgments and orders etc. However, since 2004, a number of advocate generals have been drafting their opinions, not in their own mother tongue, but in one of the Court’s pivot language. Changes in the language and style of certain advocate generals’ opinions were apparent even 18 months following the introduction of the new working methods. It is likely, therefore, that the opinions of advocate generals will become more synthetic in construction and their arguments more constrained by language as a result of the

fact that they no longer draft in their mother tongues. Since advocate generals' opinions exercise a formative influence on the direction taken by the case law of the Court of Justice, such constraints may very well affect the development of that case law.

Other notable changes since enlargement have been the changes in the use of language at the lower levels within the Court (in staff training seminars; on the Court's intranet site; for communications from the administration; in corridors and canteens etc.) where recourse to English is becoming increasingly common. Even more interesting is the occasional unofficial use of English by the Court of First Instance, whether in the preparation of reports, drafting of judgments or even intermittently slipping into English in deliberations. However, in other instances French remains strong and there has been no change in the use of language at the level of the Court itself. In fact, the effort made by the accession states to ensure that the judges from those states were competent in the French language would point to a reinforcement of the special position of French at the Court of Justice. Thus, the current picture in this regard remains a mixed one. The 'threat to French' that can be perceived throughout the EU institutions is significant however. There is, of course, an awareness among those working at the Court of the way that French has been and is challenged in other EU institutions (gradually being replaced by English). Therefore it is only natural to assume that there must be an outside awareness of the challenge to French within the Court itself, even though French is not challenged there in the same way. The vast majority of those working at the Court prior to the May 2004 enlargement were opposed to any attempt to change the working language of that institution²⁶ – yet are we now seeing the beginnings of a *de facto* privileging of the English language at the Court? And if so, is that a step towards a more significant change in the use of language within that institution?

²⁶ A number of those interviewed were in favour of changing the working language of the Court to English, even going so far, in one case to describe the use of French as the single working language as "*ridiculous – particularly in the light of enlargement since the vast majority of new members will speak English, but will probably not have an equally good knowledge of French!*" (judge). The vast majority, however, were wary of changing the working language, pointing out that the vocabulary and style of the Court's judgments has developed over more than fifty years of working in French – to change the working language to English would require not only an immense amount of organisation within the Court but also the development of a vocabulary and style in English which could be used by the judges during their deliberations.

However, the most interesting changes at the Court as a result of enlargement are the shifts in working practices at that Court in relation to the lawyer-linguists. The lawyer-linguists from 'new' member states appear to have carved out a new and unique role for themselves within the Court. They appear to view their role as creating law and are largely concerned with mapping concepts and developing terminology for a new EU legal language in their own respective languages. Such role perceptions are very different from those of the lawyer-linguists from 'old' member states who are concerned with laying down and expressing EU legal concepts in a legal language already in existence²⁷. That said, the role of lawyer-linguists from the 'old' member states is also beginning to change – at least in relation to those lawyer-linguists now working closely with advocate generals who are drafting opinions in the Court's pivot languages.

Conclusion

Even at the early stage of one year following the May 2004 enlargement (when the fieldwork research upon which this paper is based was carried out) a number of changes in the language regime of the Court of Justice were evident. As well as the introduction of an official pivot translation system, there has been a noticeable shift in language use at the lower levels of the Court. In addition, for the first time, lawyer-linguists did not have to have a perfect command of French to be eligible for recruitment to the Court. There has also been an increase in the use of English at the Court of First Instance, or at least more of willingness on the part of members and their staff to admit to such language use. At the same time, however, there is a reinforcement of the special position of the French language at the higher levels of the Court. It seems that as well as having a mixed translation system at the Court (i.e. both direct and pivot translation) the actual language regime itself is increasingly 'mixed'.

The consequences of the May 2004 and January 2007 enlargements, and the resultant changes within the Court of Justice on the jurisprudence of that Court remain to be seen. However, it would be surprising if there were no consequences, even if only as a result of the introduction of the pivot translation system at the Court, since it is generally accepted that pivot translation increases the amount of approximation and the risk of discrepancies between texts. By May 2005 only six cases that involved pivot

²⁷ See further: Karen McAuliffe *Law in Translation*, Ph.D Thesis (2006), The Queen's University of Belfast.

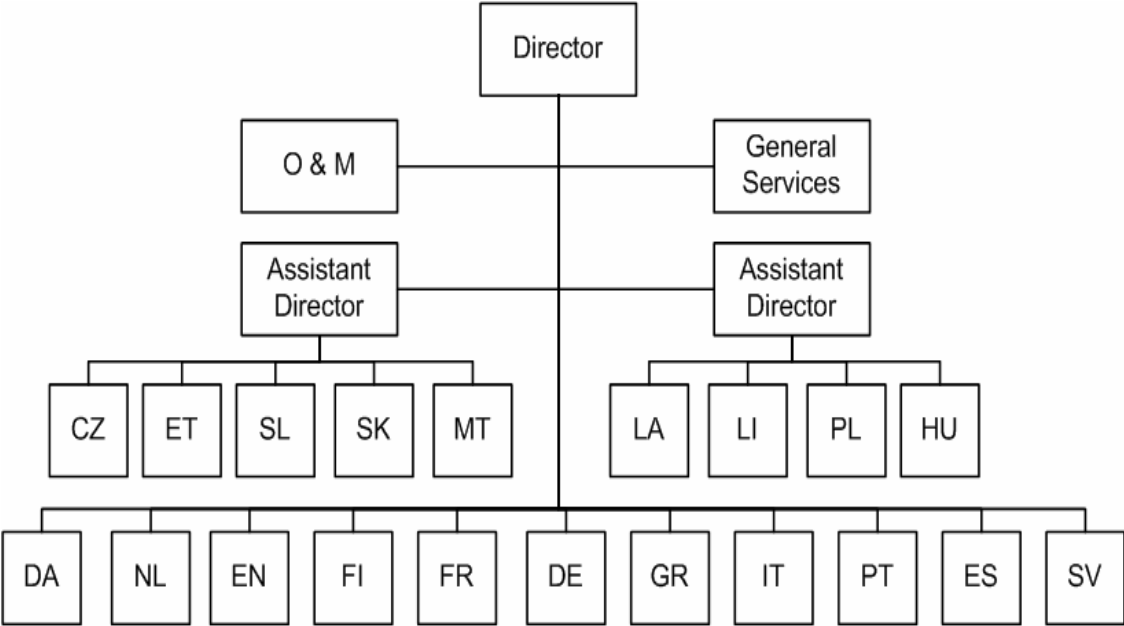
translation had been brought before the Court²⁸. Those translating documents into pivot languages were able to take time over their translations and check them thoroughly with the help of colleagues from the relevant 'new' language divisions. However, given the ever-increasing workloads of the Court, and of the lawyer-linguists in particular, it is unlikely that those lawyer-linguists will be able to take similarly large amounts of time over such translations in the future. The jurisprudence of the Court of Justice is thus likely to be more prone to approximation and discrepancies between language versions as a result of pivot translation.

Prior to the May 2004 enlargement many people (both within and outside the Court) believed that that enlargement would be a disaster for the Court in organizational terms and that the translation directorate, in particular, would not be able to cope²⁹. In reality, the enlargement process, while certainly complicated to manage, was not the debacle that had been envisaged. During an interview carried out in 2003, the director of the translation directorate of the Court of Justice predicted that that Court was "*moving into a new phase of existence*". Certainly there have been a number of interesting changes since then, in both the linguistic regime and the working methods of that institution. Whether the new lawyer-linguists will consequently be able to reshape the Court's institutional norms and embed a new role for lawyer-linguists at that Court remains to be seen. However, the Court now has the opportunity to evolve and become better attuned to the diversity of its socio-cultural environment. Thus, such a prediction may very well be realised.

²⁸ Case C-273/04 *Poland v Council* (direct action – language of the case: Polish; applications to intervene made by: Latvia, Hungary and Lithuania); Case C-302/04 *Ynos kft v János Varga* (Reference for a preliminary ruling under Article 234 EC from the Hungarian Szombathelyi Városi Bíróság – language of the case: Hungarian; observations submitted by Hungary, Latvia, Czech Republic and Poland); Case C-341/04 *Eurofood IFCS Ltd - Enrico Bondi v Bank of America e.a.* (Reference for a preliminary ruling under Article 234 EC from the Irish Supreme Court – language of the case: English; observations submitted by Hungary and Czech Republic); C-431/04 *Massachusetts Institute of Technology* (reference for a preliminary ruling under Article 234 EC from the German Bundesgerichtshof – language of the case: German; observations submitted by Poland and Lithuania); C-436/04 *Criminal proceedings against Léopold Henri van Esbroeck* (reference for a preliminary ruling under Article 234 EC from the Hof van Cassatie van België. Belgium – language of the case: Dutch; observations submitted by Slovakia, Czech Republic and Poland); C-438/04 *Mobistar SA v Institut belge des services postaux et des telecommunications* (reference for a preliminary ruling under Article 234 EC from the Cour d'Appel de Bruxelles, Belgium – language of the case: French; observations submitted by Lithuania and Cyprus).

²⁹ See, for example: Paul Fabian Mullen "Do You Hear What I Hear? Translation, Expansion, and Crisis in the European Court of Justice", in *The State of the European Union: Risks, Reform, Resistance, and Revival*, ed. Maria Green Cowles and Michael Smith (Oxford: Oxford University Press, 2000), 246-265.

Figure X: Structure of the Translation Directorate



CZ = Czech	ET = Estonian	SL = Slovakian	SK = Slovakian	MT = Maltese
LA = Latvian	LI = Lithuanian	PL = Polish	HU = Hungarian	DA = Danish
NL = Dutch	EN = English	FI = Finnish	FR = French	DE = German
GR = Greek	IT = Italian	PT = Portuguese	ES = Spanish	SV = Swedish

O & M = Organisation and Methods department

Figure X: Pivot Translation

(i) Documents drafted in 'new' languages

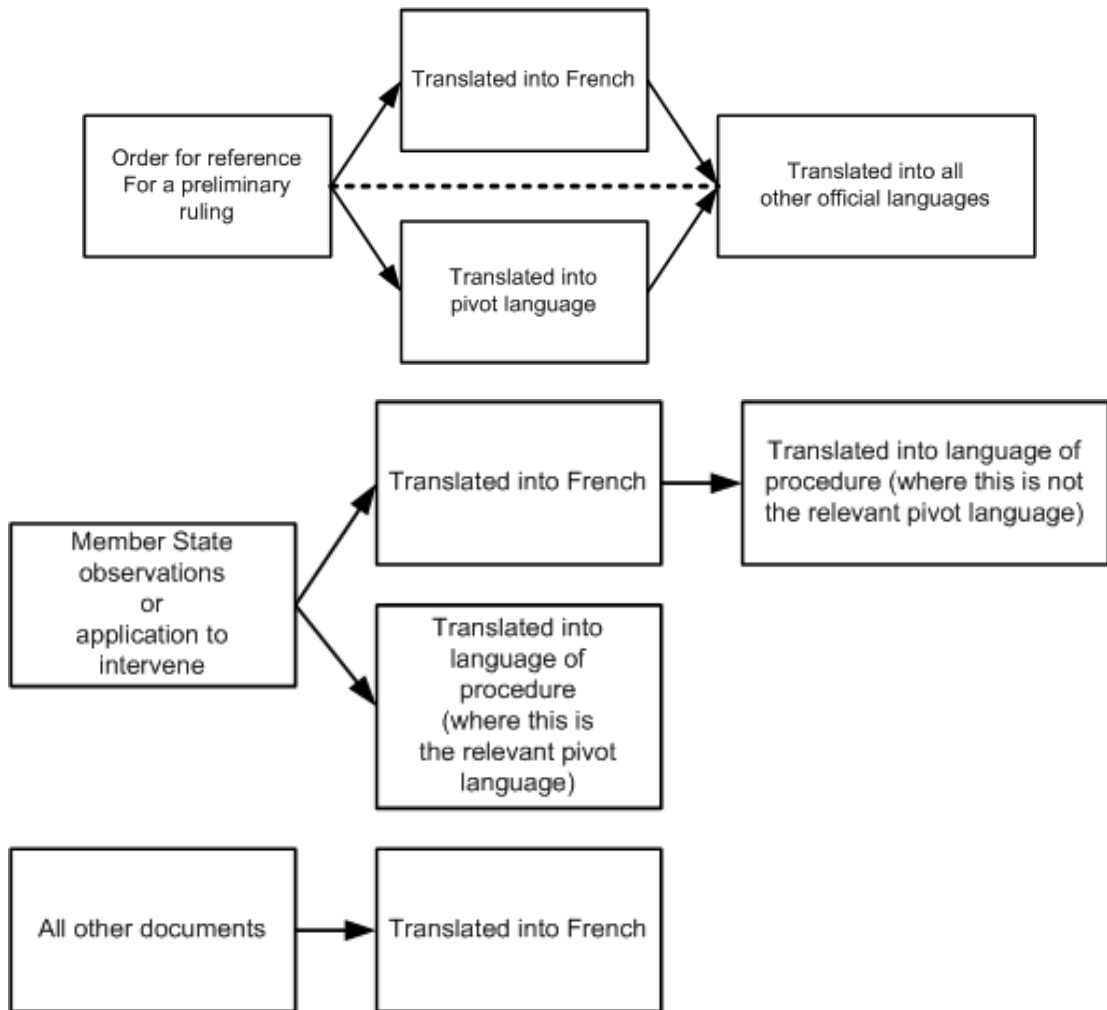


Figure X: Pivot Translation

(ii) Documents drafted in 'old' languages

