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The Importance of the "Majority Meaning" in the Interpretation of Multilingual EU Law: Never? Well, Hardly Ever!

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Abstract

The existence of 24 official languages in the European Union creates unique challenges, not least in situations when a divergence of wording between the language versions is discovered. One way to resolve such a divergence is to give priority to the meaning indicated by the majority of language versions, the so-called "majority meaning". This approach is thoroughly rejected by leading scholars and Advocates General at the Court of Justice. However, other scholars demonstrate a clear tendency of the Court of Justice to favour the interpretation indicated by the majority of language versions. The author attempts to resolve this contradiction by advancing a new, pluralistic understanding of the "majority meaning", breaking it down into different forms with examples of their application by the Court of Justice. Furthermore, the fixed expressions used by the Court of Justice in the context of multilingual interpretation are analysed to understand the underlying values supporting the use of the "majority meaning". It is demonstrated that the need for a uniform interpretation and application of EU law, as well as the importance of legislative intent, support adopting the meaning indicated by the majority of language versions. Consequently, the "majority meaning" cannot be so easily rejected.

Keywords: EU multilingualism, multilingual interpretation, majority meaning, uniformity, legislative intent

1 Introduction – The Challenge of Reconciling Diverging Language Versions

The multilingual legal system of the European Union, working in 24 official languages, naturally carries with it a number of challenges. One of those is the limit to legal integration, given the difficulty – maybe even impossibility – of translating legal text so as to achieve the same meaning in different languages (Derlén, 2014a). Another obvious challenge is the issue of legal certainty, making sure that law is determinable and accessible for the citizens, despite its existence in several languages (Paunio, 2013). However, great as these challenges are, they

are overshadowed by an even more fundamental aspect of the multilingual character of EU law. I am referring here to the reconciliation of diverging language versions. It goes without saying that drafting law in 24 languages carries with it the danger of discrepancies, both due to human error and due to profound difficulties of rendering the same meaning in different languages and legal systems (Šarčević, 2013, 9-11).

Diverging language versions can be handled in a multitude of ways in a multilingual legal order. The issue is relatively straightforward in a system where one of the languages is designated as the original, and thereby authoritative in interpretation. However, multilingualism in the European Union is characterised by the equal authenticity of the various language versions. How are diverging language versions to be reconciled and the divergence in meaning removed, in the absence of an original meaning? This is a much-disputed issue in EU law, with a number of explanations being put forward (Derlén, 2009, pp. 36-50). This article will not take on the entirety of this complex question, but rather one specific issue thereof, namely the controversial so-called "majority meaning".

One obvious way of resolving diverging language versions is to follow the meaning indicated by the majority of the versions, henceforth the majority meaning. The underlying idea is not new, a classical (in the proper sense of the word) example of the majority technique is the Roman Law of Citations, AD 426. It stipulated that the majority of writers having expressed an opinion on the subject were to be followed, and, in the case of a tie, the opinion of Papinian was to be given preference (Austin, 2010). However, applied to a system of multilingualism the majority meaning approach becomes problematic. If all the language versions are equally authoritative how can they be overridden by other versions? A language version is – from a legal perspective – just as authentic, no matter if it represents a majority or a minority of the language versions. From a practical perspective it can obviously be argued that for example a single language version deviating from all other versions is indicative of a simple error in translation, and the term error (as in drafting or typing error) is sometimes used to describe the wording of a diverging language version (joined cases T-481/93 and T-484/93, *Vereniging van Exporteurs*: para. 93 & case T-157/01, *Danske Busvognmænd*: para. 77).[1]

[1] References to judgments from the EU courts are made using the short case name and the unique case number, indicating when the case was lodged at the court. The prefix C before the number indicates the Court of Justice, while T indicates the General Court. A reference list can be found at the end of the article, providing the full case name and publication details. The list is sorted by case number. When the General Court or other courts are discussed in the text this is specifically noted. The general reference "the Court" always refers to the Court of Justice.

However, the legal standing of that version is unaffected, until it is formally corrected by the Union legislator (Robinson, 2012, p. 21).

Consequently, it is hardly surprising that the use of the majority meaning approach has been firmly denounced in the literature. However, other prominent EU scholars confidently claim that the majority meaning is used frequently by the Court of Justice. The literature is further reviewed in section 2.1 below, but the fundamental contradiction is clear. How can leading scholars fundamentally disagree about the use of the majority meaning in interpretation? This article will examine the use of the majority meaning by the Court of Justice of the European Union (henceforth CJEU or the Court) in an attempt to understand the conflicting opinions. It aims to achieve two main goals. First, it will attempt to re-define the discussion. One of the issues of the current discussion is that the majority meaning is treated as a single approach, when in reality the label is applied to a wide range of interpretative operations. None of these approaches constitutes an interpretative rule, in the sense that the CJEU would be bound to follow the interpretation indicated by the majority of language versions (section 2.2). Equating the majority meaning to such a rule naturally makes it easy to refute. The article demonstrates that, in the absence of a rule, the majority meaning takes five main forms. The most well-known is arguably employing the majority meaning as part of a larger interpretative process, as an initial step or as confirmation (section 2.3). A variant of this is what is here referred to as the Wolf in Sheep's Clothing (section 2.4). Here the majority meaning is presented as only part of a larger interpretative process, but *de facto* appears to be decisive. The majority meaning can also overlap with other interpretative approaches, such as adopting the interpretation indicated by the clear wording (the "clear meaning", section 2.5) or, more controversially, the meaning indicated by the original version (the "original meaning", section 2.6). However, even after distinguishing these four varieties a majority meaning in the strict sense (section 2.7) remains, where the majority of language versions decide the meaning of the provision in question and override a minority of versions, with no other interpretative arguments beyond the text being consulted.

The second goal of the article (section 3) is to attempt to explain the underlying reasons for the use of the majority meaning. How does the CJEU justify the use of such a controversial approach to multilingual interpretation? The Court is traditionally tight-lipped about the underlying reasons for its interpretative choices, but by studying the fixed expressions used by the Court in the context of multilingual interpretation (including their development over time) it is demonstrated that the need for a uniform interpretation and application of EU law, as well

as the idea that legislative intent is indicated by the statutory text, support adopting the majority meaning.

2 A Rose by any Other Name – The Many Faces of the Majority Meaning

2.1 Re-Defining the Discussion

As mentioned above the majority meaning has been thoroughly denounced in the academic literature on multilingual interpretation of EU law. Three main points of criticism can be identified. The first is practical. It is pointed out that the technique would have absurd consequences, in that the addition of new languages to the system could alter the majority and thereby change the meaning of the provision (Jacobs, 2003, 304). The point is well taken, and we will return to this particular issue in section 2.6 below.

The second concerns the equal authenticity of the language versions, or differently put the equal standing of the official languages of the EU. The EU has opted for what is referred to as full (as compared to limited, Leung, 2012, 482) or strong (as compared to weak, Schilling, 2011, 1463) multilingualism, where all language versions have equal standing. To conclude that a language version is incorrect, or more properly that it does not reflect the intention of the legislator, simply because it belongs to the minority appears to contradict the equal standing of the official languages (Anweiler, 1997, pp. 153-156; Bobek, 2008, 3). As noted by Schübel-Pfister (2004, pp. 267-275), the minority meaning is not necessarily the wrong meaning. Bobek (2008, 5) puts it more bluntly, concluding that a divergence of meaning cannot be resolved "by some form of language 'voting'". The derision in the term "language voting" is reminiscent of the critique by Watson (1970, p. 91) of the above-mentioned Law of Citation, deeming it a low point of Roman jurisprudence because the correct interpretation was determined by "counting heads".

Finally, and closely connected to the previous discussion, the last criticism concerns legal certainty, in the sense that individuals relying on a minority language version might find that the meaning of a provision has unexpectedly changed (Anweiler, 1997, pp. 153-156). While certainly true, this is a more general problem of diverging language versions which will not be further addressed in this article (see further Derlén, 2009, pp. 50-58).

However, despite this strong condemnation other scholars have demonstrated that the majority meaning is actually used in the case law of the CJEU. For example, Schübel-Pfister finds numerous examples of the majority meaning, notwithstanding the fact that it is often regarded as prohibited. While many examples can be found in the rather particular area of the customs code Schübel-Pfister emphasises (2004, pp. 267-275) that the majority meaning is not

limited to this area, nor to older cases. Baaij (2012, see also Baaij 2018) makes two interesting observations, based on an examination of all CJEU cases. Firstly, when a minority of language versions deviate from the majority the eventual interpretation of the provision in question will normally, in no less than 83 percent of cases, be consistent with the meaning indicated by the majority (Baaij, 2012, pp. 227-228).[1] In other words, the majority meaning tends to be the correct meaning (Capeta, 2009, p. 13). Secondly, in these situations, when the meaning adopted by the CJEU corresponds with the majority meaning, the Court will tend to employ literal rather than teleological methods of interpretation, preferring literal interpretation in 75 percent of such situations (Baaij, 2012, pp. 227-228). Finally, Zedler (2015) demonstrates that the CJEU often refers to the existence of a majority, and that this is used as an indication of the correct interpretation of the provision in question. She adds that the Court normally confirms the majority meaning using other arguments, but that cases can be found where the majority meaning is sufficient to establish the correct interpretation (Zedler, 2015, pp. 251-255).

How can this contradiction be understood? In short, the two sides appear to be having somewhat different discussions, in two main ways. Firstly, normative and descriptive elements are mixed in an unfortunate and not immediately obvious way. The critique against the majority meaning would seem to imply that it is not used, but this is refuted by scholars such as Schübel-Pfister, Baaij and Zedler. Instead, the repudiation of the majority meaning should be understood as a normative critique, warning the Court of Justice of the potential consequences of the majority meaning.

Secondly, the idea of the majority meaning is too vague, confusing the debate. I will argue that what we generally refer to as the majority meaning have at least five different variations, outlined in the following sections. To have a meaningful discussion about the majority meaning we have to start by breaking it down to its component parts.

2.2 No Rule – Doing Away with the Straw Man

The most extreme understanding of the majority meaning is that it constitutes a binding rule of interpretation. This understanding is arguably underpinning claims such as this by Müller and Christensen (2003, p. 25): "*[d]ie Mehrheitsregel hat der EuGH für die Lösung von Bedeutungsdivergenzen nie übernommen*" [the CJEU has never adopted the majority rule to resolve diverging meanings]. Similarly, Bobek (2008, 4-5) states that allowing the majority of the language versions to prevail is absolutely prohibited, even in situations of obvious errors, as it would violate the equality of all language versions.

While these statements might appear dramatic (using language like never and absolutely prohibited) they must not be taken at face value. The authors mentioned above must be

understood to say that no *rule* of majority meaning exists, in the sense that the meaning represented by the majority of language versions will automatically overtake the minority. Phrased thus the statement becomes self-evident. The majority meaning is seen as a rule, where the meaning represented by a majority (apparently, however slight a majority) always and automatically prevails over the minority meaning. As noted by Bobek (2008, 5) this would amount to "some form of language 'voting'", and it is obviously ridiculous. Indeed, it is difficult to imagine any court laying down such a strict and random rule of interpretation, and even less likely that the cagey CJEU would commit itself to such a rule, given its long history of vague guidance on issues of multilingual interpretation (Derlén, 2011).

The idea of a rule, forcing the CJEU to always and under all circumstances adopt the interpretation indicated by the majority of language versions, can be refuted by examples of the minority meaning being adopted by the Court. The most well-known example is arguably *EMU Tabac* (case C-296/95). Here an interpretation of Directive 92/12 that was, on its face, possible according to almost all of the language versions was rejected, based on the Danish and Greek versions, despite heavy criticism from the applicants due to the limited diffusion of the languages in question (paras. 28-37). Similarly, in *TV2 Danmark* (case C-510/10) the interpretation of recital 41 of Directive 2001/29 indicated by the majority, using the conjunction "and" and thereby making two conditions cumulative, was not followed by the CJEU. Following an extensive discussion, the Court concluded that the minority meaning, using the conjunction "or" and thereby making the conditions alternative, was more in line with the purpose of the directive (paras. 38-58). For further examples see *W.N.* (case C-420/98) and *Miguel M.* (joined cases C-627/13 and C-2/14).

2.3 The Majority Meaning as Indication or Confirmation

Concluding that the majority meaning does not constitute a binding rule is obviously correct, but the defeat of such a straw man does not take us far. What role, then, if any, does the majority meaning play in the interpretation of EU law? Here we can see several examples of scholars acknowledging the existence of the majority meaning, but downplaying its importance. Some do so generally, for example Anweiler (1997, pp. 153-156), who reduces the importance of the majority meaning to interpretation of more technical concepts. However, a popular opinion is to view the majority meaning as part of a larger interpretative process. This approach to the majority meaning comes in two varieties, using the majority meaning either as a first step (indication) or as second step (confirmation). In both situations the wording of the majority of language versions is regarded as added value, but the argument does not stand alone. For example, Capeta (2009, 7) states that "it will often be the case that the majority

meaning will be the one that the Court finds 'correct'", but the reason for this is, according to her, not that it constitutes the majority meaning but that the meaning conforms with the purpose of the rule or the intention of the legislator. Similarly, according to Jacobs (2003, p. 304), the CJEU takes the majority meaning into consideration if it supports what the Court considers to be the best interpretation of the provision in question. Buck (1998, 155-158) argues explicitly that the majority meaning only constitutes the first step in the interpretative process, to be confirmed or rejected by other interpretative arguments.

This view of the majority meaning as part of a larger process is articulated by Advocate General Kokott in her Opinion in *Commission v Council* (case C-370/07). As part of an interpretation of the term "decision" as used in Article 300(2) EC she argued, based on *Henke* (case C-298/94), that the fact that a majority of language versions used the same term was "at most some indication that the Commission's view is correct". A majority could not be decisive, Kokott concluded, as "all the language versions must, in principle, be of equal worth" (para. 44) and the CJEU makes use of the majority meaning only as confirmation of an interpretation. The need for a uniform interpretation, according to Kokott, necessitated that the meaning of the language versions be ascertained by way of systematic and teleological considerations.

Plenty of examples of the majority meaning as a first step, to be confirmed by other arguments, or as a second step, constituting said confirmation, can be found in the case law of the CJEU. An example (see also case 55/87, *Moksel*) of the former is *Denkavit* (joined cases C-283/94, C-291/94 and C-292/94), where the CJEU interpreted Directive 90/435 on taxation of parent companies and subsidiaries. One of the questions raised was whether a certain tax advantage was dependent on the holding of the parent company in the subsidiary having come to an end at the time when the tax advantage was granted. This was indicated in the Danish language version, which used the past tense. However, the CJEU emphasised that all other language versions used the present tense, for example "maintain" in the English version, indicating that it was not necessary for the holding to have come to an end. This interpretation was confirmed by the purpose of the directive, as expressed in the preamble (paras 25-26).

In other judgments the process is flipped, and the majority meaning is used to confirm the interpretation arrived at using other arguments. An example (see also case C-300/05, *ZVK Zuchtvieh-Kontor*) of this approach is *4finance* (case C-515/12), concerning the conditions under which a system of trade promotion was to be considered a "pyramid promotional scheme" according to Directive 2005/29, and therefore prohibited. One of the questions was whether financial consideration on the part of the consumer, i.e., the payment of a fee or similar, was necessary in order for the activity to qualify as a pyramid promotional scheme. The Court

pointed to the purpose, described in the preamble as protecting consumer economic interests. Thus, in the absence of financial consideration on the part of the consumer no activity in need of protection existed. This interpretation was confirmed by the majority of language versions, explicitly requiring financial consideration (paras 16-25).

2.4 The Majority Meaning Downplayed – The Wolf in Sheep's Clothing

The use of the majority meaning as part of larger interpretative process is hardly controversial. However, in some situations the true importance of the majority meaning is hidden, an approach here referred to as the Wolf in Sheep's Clothing. The importance of the majority meaning is hidden in the sense that it is apparently supplemented by other interpretative arguments, but these arguments are never actually elaborated. In other words, the majority meaning is *de facto* central to the interpretative process, but the Court downplays this importance. Naturally, even in situations where the Court supplements the majority meaning with a discussion of the purpose of the provision, and the case is classified as indication or confirmation, the addition might be little more than a fig leaf. Schübel-Pfister (2004, p. 274) criticises the CJEU for confirming the majority meaning with an "*apodiktischen, floskelhaften Hinweis auf Sinn und Zweck der Regelung*" [incontestable and clichéd reference to the aim and purpose of the provision]. However, this section includes only the more extreme examples, where the purpose is not actually further discussed.

An example of this approach is *Müller* (case C-451/08), where the Court discussed the German wording of Directive 2004/18 concerning public works contracts. The German version deviated in several aspects from all other language versions. For example, the German version alone required that a certain variant of public works contracts had to be realised by third parties. The Court cited its well-known statement that "[w]here there is divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part" (para. 38), but no discussion of the purpose of the directive was offered. The Court simply concluded that the "questions submitted by the referring court must be answered in the light of those considerations" (para. 39) and moved on to discuss the detailed questions. The Court did not return to the issue of third parties, and assumed the interpretation indicated by the non-German language versions. Thus, it appears that the majority meaning was given considerable weight in the interpretation.

Konservenfabrik Lubella (case C-64/95), something of a classic when it comes to multilingual interpretation (e.g., Solan, 2009, 297), offers a different example. The CJEU was requested by a German court to consider the validity of Commission Regulation 1932/93 establishing protective measures as regards the import of sour cherries. A company (Lubella)

had challenged the validity of the regulation before the German court, on a number of grounds. One of these grounds concerned the wording of the German language version of the regulation. Lubella observed that, before it was corrected, the German version referred to "Süßkirschen", not "Sauerkirschen", while at the same time mentioning CN codes applicable to sour cherries. However, this argument did not impress the Court of Justice. It employed its usual quote regarding the need for a uniform interpretation and the accompanying duty to interpret the provision in the light of all official language versions (para. 17, drawing on case 9/79 and C-372/88). It then concluded, in a single paragraph, that while the German version originally contained an error, that ambiguity could be resolved by reference to the other language versions (para. 18).

Here the CJEU downplayed the obvious error in the German version, classifying it as an ambiguity that could be resolved by turning to other language versions. However, despite this description it seems clear that the meaning was determined by the majority of language versions, turning the use of "Süßkirschen" in the German version into its opposite, "Sauerkirschen".

2.5 The Majority Meaning as the Clear Meaning – The Sheep in Wolf's Clothing

In a number of cases the majority meaning actually plays a more limited role than indicated, here referred to as the Sheep in Wolf's Clothing model. A minority of language versions are unclear or ambiguous and the interpretation of the provision is determined by the majority of language versions, which do not suffer from any such lack of clarity. No other interpretative arguments, beyond the text, are employed.

Huber (case 291/87) is a typical example of this approach (see also the similar case 295/81, *IFF*). It concerned the common customs tariff, more specifically the question whether impressions obtained by means of a mechanical printing process could constitute "original lithographs". The French language version was ambiguous, as the exclusion of any mechanical or photomechanical process could be read as referring either to the making of the plate or the printing of the impressions. However, the interpretation was guided by the literal meaning of the majority of the language versions, making it clear that impressions produced directly from the plate with the help of a mechanical or photomechanical process could not be regarded as original lithographs (paras. 8-11).

The *Huber* case might be regarded as a straightforward use of the majority meaning, in particular as it belongs to one of those technical areas (customs classification) where the majority meaning is said to be relatively more common (Schübel-Pfister, 2004, pp. 269-270). It would definitely fall within the category identified by Baaij (2012, pp. 227-228): the final

interpretation is in line with the majority of language versions and no interpretative arguments beyond the text are employed. However, on closer inspection the issue is one of clarity. One of the language versions is ambiguous, but this ambiguity can be removed by having reference to the other versions, that do not suffer from any such ambiguity. In other words, it is not the number of versions that decide the interpretative question, it is the clear versions. The fact that the clear meaning is also the majority meaning is rather accidental. The *EMU Tabac* case, discussed above, makes it clear that in cases of conflict between the majority meaning and the clear meaning the latter will prevail. The underlying idea that the clear meaning is closer to the intention of the legislator is articulated by Advocate General Trstenjak in *Fazenda Pública* (case C-62/06: para. 40): "Having regard to the more precise formulation of those language versions, it must be concluded that such interpretation corresponds more closely to the intention of the Community legislature".

A more recent example of the same approach is *X* (case C-486/12). The Court was asked whether Article 12(a) of Directive 95/46 precluded the levying of fees in respect of the communication of personal data by a public authority (para. 16). The Dutch language version of Article 12(a) could be understood as not allowing fees for the communication of data. However, this interpretation was not supported by the other language versions. While a few of them were open to the interpretation indicated by Dutch version the majority clearly supported the use of fees. The Court therefore found it to be "clear from the wording" that fees could be used (para. 22).

Similar to *Huber*, the *X* case could be regarded as a deployment of the majority meaning. The final interpretation is in line with the majority of language versions and no interpretative arguments beyond the text are employed. However, the central issue is again one of clarity. The placement of the word "excessive" created uncertainty as to whether it referred to the delay in communication or the expense, while most language versions made it clear that only excessive costs were prohibited. The meaning of the majority versions was also the clear meaning, resolving the uncertainty introduced by the Dutch version.

2.6 The Majority Meaning as the Original Meaning

While the combination of the clear meaning and the majority meaning in the examples above might appear intuitive a combination between the majority meaning and the original meaning is decidedly unexpected. The idea of the original meaning, i.e., the language in which the provision was originally drafted, is established in the international literature and also in the case law of international courts (Dölle, 1961, 22-23; Hardy, 1961, 98-106; Hilf, 1973, pp. 88-90). The underlying idea, as described by Hardy (1961, 104-106), is that the primary purpose

of interpretation is to ascertain the common intention of the parties, at the time of the conclusion of the treaty. The text of the treaty is presumed to express the intention of the parties. In a multilingual context, with several language versions, the parties could not have intended different meanings to be attached to the language versions. In case of divergence of meaning preference for the original version is natural, since the latter reasonably best reflects the intentions of the parties. The same fundamental logic could be applied to the European Union. Legislation is initially (see regarding the rest of the legislative process Piris, 2005; Robinson, 2005; Doczekalska, 2009) drafted in a single language, previously French but now mostly English (European Commission, 2014: 7; Baaij, 2018, pp. 63-66; Šarčević, 2013, 8-9), providing us a *de facto* original. It would be reasonable to assume that this original better reflect the purpose of the provision (Schübel-Pfister, 2004, pp. 297-298), in particular as subsequent translations may suffer from errors or otherwise deviate from the original (Zedler, 2015, p. 251).

However, the idea of an original meaning does not sit well with the approach taken by the Court of Justice regarding multilingual interpretation, emphasising equal authenticity, uniformity and the need to find a single, joint meaning (e.g., *EMU Tabac*, and generally Derlén, 2015). Despite this it is possible to find examples of the CJEU, and even more the Advocates General, indicating that the drafting language may have special importance in multilingual interpretation (Schübel-Pfister, 2004, pp. 290-298), something that Baaij (2018) uses to argue for moving towards English as the authoritative language of the European Union.

In the context of the majority meaning a particular form of the original meaning is relevant; original is understood in the sense of the languages existing at the time of adoption of the provision in question. This is what Zedler (2015, pp. 248-251) refers to as *Ursprungsfassung* (all languages existing at the time of adoption), in contrast to *Urtext* (the language used in drafting the provision). In these situations, the CJEU will apparently redefine what "most" or "the majority" means, including only certain languages in the comparison. While the Court does not explain this selectivity, and is far from consistent, it seems reasonable to assume that the underlying idea is the same as for the traditional original meaning discussed above. Having been created after the fact the later language versions do not reflect the intention of the legislator in the same way as the original versions (Zedler, 2015, p. 249). Zedler (2015, p. 439) argues that this approach is acceptable as part of a subjective teleological interpretation, concentrating on the intention of the historical legislator. While her point that the original versions can tell us more about the historical intention is reasonable, and she does add that the use of originals is only acceptable as an argument amongst others, the approach is still

fundamentally problematic. It reduces the equal authenticity of the official languages to a formality, denying them equal authority in interpretation. Furthermore, it is problematic from a legal certainty perspective, in particular for citizens and companies in the newer Member States.

Despite its practice the CJEU emphasises that all language versions must be taken into account in interpretation (case C-16/16 P, *Belgium v Commission*: paras. 48-49). Furthermore, there is no lack of examples of cases where the Court includes language versions (but see Zedler, 2015: 205-211) not existing at the time of adoption of the provision (case C-72/95, *Kraaijeveld*: para. 29, case C-257/00, *Givane*: paras. 35-36), making the position of the CJEU difficult to determine (Schübel-Pfister, 2004, pp. 315-317). However, the idea of understanding the majority by reference to languages existing at the time of adoption is common enough to merit discussion.

Examples include (see also case C-66/09, *Kirin Amgen*) *Daimler* (case C-19/11), which concerned the interpretation of Directive 2003/124 regarding the definition and disclosure of inside information. The Court observed a divergence of wording when it came to the definition of inside information. It noted that the German version deviated from "all the other language versions… existing at the time it was adopted", and that the wording in the non-German versions indicated the intention of the legislator (para. 44). By reducing the language versions examined to those existing at the time of adoption the Court excluded the new languages added in the 2004 expansion. This is particularly noteworthy as the directive was only adopted the year before the expansion and the case was decided eight years after the expansion. Thus, the versions in the new languages should have been available to the Court (see however Šarčević, 2013, 5-6, regarding some delays in publication in the new official languages following the 2004 expansion, and Pommer, 2012, 1249-1250 regarding the reliability of these new versions).

In *Gassmayr* (case C-194/08) the Court discussed, inter alia, the concept of "pay" and more specifically whether workers granted leave during pregnancy due to risks to their safety or health had a right to on-call duty allowance according to Directive 92/85. Article 11.1 of the directive stated that the worker on such leave had a right to pay, but the CJEU found that this pay did not include on-call duty allowance. As part of an extensive discussion the Court emphasised that "most of the language versions existing at the time of adoption" used the expression "a payment", and not "the pay", implying a limitation (para. 61). This would indicate that the languages added in 1995 and later were excluded from the definition of the majority meaning.

However, the fact that the Court at times connect the majority meaning to the original meaning does not translate into this always being a successful argument for parties to a case to make. This was demonstrated in *Commission v Spain* (case C-189/11), where the Commission relied extensively (but not exclusively) on multilingual interpretation as part of its argumentation concerning the special VAT regime for travel agents, and whether it applied to sales to any customer or only for sales directly to travellers. The Commission argued that the intention of the Union legislator was demonstrated by the use of the term "traveller" in five of the six language versions existing at the time of adoption of the Sixth VAT Directive. The use of the term "customer" in the English language version was, according to the Commission, a mistake, that was reproduced in later "translations" (para. 22) of the directive. The Commission also claimed that the French wording, using traveller, was the one agreed upon by the Member States (paras 20-23). Here the Commission adopts both versions of the original meaning, pointing both to the language versions existing at the time of adoption of the underlying Sixth VAT Directive and to the drafting language of the same directive. According to the Commission, the correct meaning of the provision is demonstrated by the drafting language, French, and the English wording is due to a mistake. However, later language versions, identified as translations by the Commission in a manner that is factually correct but legally problematic given the equal authenticity of EU languages, were created based on the English version, thus carrying this mistake on to a large number of languages. Spain indirectly acknowledges this, by pointing to the Bulgarian, Polish, Portuguese, Romanian, Slovak, Finnish and Swedish language versions supporting their argument, in addition to the English version (para. 35). The situation in *Commission v Spain* is illustrative of a more general trend. The number of official languages has increased significantly, especially with the 2004 expansion, and English has been heavily relied upon as a source language when translating existing EU law to the new languages (Pommer, 2012, 1249-1250). However, for older texts English is itself a translation (Šarčević, 2001, 41-43; Felici, 2010, 159-160), creating the possibility of a new majority, based on the English version and deviating from the French *Urtext*.

The CJEU did not accept the reasoning of the Commission in *Commission v Spain*. The argument that the wording of the English version was a mistake was problematic, as the Commission had several opportunities to correct it. The Court also observed that the term customer was used in "numerous other language versions" (para. 53). Consequently, an interpretation could not be reached based on the wording and the Court moved on to discuss the aim and purpose of the directive, concluding that the customer-based interpretation was

correct (paras. 57-70). By referencing the "numerous other language versions" with the same wording as the English version, without discussing the point made by the Commission that this was simply due to English being used in the translation process, the Court did not give special weight to the languages existing at the time of adoption.

2.7 The Majority Meaning *Sensu Stricto*

Finally, even disregarding all variants above cases remain, constituting the majority meaning in the narrow sense. Here the majority of language versions decide the meaning of the provision and override a minority of language versions, despite the fact that the minority is not obviously vague or ambiguous *per se*. Naturally, you could argue that some openness exists in any interpretative situation, but to distinguish this from the clear meaning variant of the majority meaning, discussed above, this section only includes examples where the issue has at least not expressly been regarded as clarifying a vague wording by having recourse to other language versions. No other interpretative arguments, beyond the text, are employed in these cases. Rather, as we will discuss further in section 3 below, the majority meaning is regarded as reflecting the intention of the legislator. For further examples see *D. v W.* (case C-384/98), *Clark International* (joined cases C-659/13 and C-34/14) and *Casa Fleischhandels* (case 215/88), as well as cases discussed in section 3.3 below.

Ferriere (case T-143/89) is a typical example of the majority meaning in the strict sense. The proceedings, starting before the Tribunal, concerned inter alia Article 85 EC (now Article 101 TFEU). An agreement had been found to have as its object the prevention, restriction or distortion of competition, as prohibited by Article 101. However, the applicant argued that no violation has taken place, as an anti-competitive effect had not been demonstrated. The applicant emphasised that the Italian language version of Article 85 required an agreement to have both an anti-competitive object and an anti-competitive effect for it to be prohibited. However, the Tribunal concluded that the effect of the agreement did not have to be considered, given the anti-competitive object. The Italian version stood alone in requiring both criteria to be fulfilled, while all other language versions required only one of them to be fulfilled in order for the agreement to violate Article 85. According to the Tribunal the Italian version could not "prevail by itself against all the other language versions" (para. 31). The Court of Justice upheld this conclusion on appeal (case C-219/95). The Court admitted that the Italian version was clear and unambiguous on its own, but that this could not cast doubt on the correct interpretation of Article 85, since all the other language versions expressly indicated a different interpretation (paras. 10-16).

Another example of the majority meaning in the strict sense is *Eulitz* (case C-473/08), concerning value added tax and exemption for higher education. The German language version of Article 13A(1)(j) of the Sixth VAT Directive diverged from "all other language versions in which the Sixth Directive was initially adopted" (para. 21, see section 2.6 regarding the original meaning), by not including the word tuition or similar. The Court recited its usual warning against considering a single language version in isolation and concluded – rather abruptly – that the Directive had to be understood according to the majority meaning (paras. 20-23).

In *Länsstyrelsen Norrbotten* (case C-289/05) the CJEU was even more brief, downplaying the importance of the diverging language versions. The case concerned the calculation of expenditure of operations co-financed by the Structural Funds. The Finnish language version of Regulation 1685/2000 contained no reference to a pro rata or proportional allocation of overhead costs, but according to the CJEU this was "of no consequence", as the other language versions expressly included this requirement (para. 20). Thus, the meaning of the majority was adopted without further discussion. The Court gives the impression that the divergence of wording was not of any importance. However, in his Opinion the Advocate General described the difference between on the one hand the Finnish version and on the other hand the other versions as "significant", with the former lacking any reference to concepts such as pro rata or proportional, included in the latter (Opinion: para. 32).

The examples above concern situations where a single language version has diverged from the other versions, without being obviously unclear or ambiguous in itself. *Giloy* (case C-130/95) is an example of two language versions differing from the majority. One of the issues was whether serious economic or social difficulties on behalf of a debtor prevented customs authorities from demanding security for custom duties, or only enabled them to refrain from asking for such security. The underlying dispute concerned customs authorities in Germany and the German language version at the time of the dispute supported the former interpretation ("*darf…nicht*" [may not]), but it was later amended and at the time of the proceedings before the CJEU supported the latter interpretation ("*braucht…nicht*" [need not]). The Italian language version had been amended in the same manner (paras. 1-5). However, even though the non-amended German version was applicable to the case at hand the CJEU concluded that Article 244 did not prevent the customs authorities from requiring security. The reason given was that it was "clear from the wording of all the other language versions of the provision then in force - with the exception of the Italian" (para. 48). No other interpretative argument was used.

The cases discussed above demonstrate that the majority meaning, even in the strict sense, is employed by the Court of Justice, at least in what could be referred to as super-majority situations. In these situations, the interpretation indicated by the minority language versions can be rejected by the Court, without recourse to any interpretative arguments beyond the text. However, it should be emphasised that it is possible to find examples of super-majority situations where the CJEU also references the purpose, at least briefly. In *Profisa* (case C-63/06: paras. 12-19) the Court concluded that the answer followed from the majority meaning, but it added a sentence about the objective of the provision in support of this conclusion. The fact that the CJEU does not feel bound to follow the majority meaning has been discussed in section 2.2 above.

3 Understanding the Use of the Majority Meaning

3.1 The First Step is Talking About It

In this section we will seek to understand the idea behind the majority meaning approach, as employed by the CJEU. The first step is to acknowledge the use and importance of the majority meaning approach. It has been given remarkably limited attention in the scholarly discussion, as mentioned in section 2.1 above. This might be due to the inherently problematic nature of the majority meaning approach, at least from the perspective of equal authenticity of the official languages. However, critiquing the use of the majority meaning is one thing, denying its existence is another. As demonstrated in the section above the majority meaning approach is used by the CJEU, in a number of ways. This section aims to understand why the Court finds the majority meaning to be reasonable, at least as a part of an interpretative argument.

The CJEU has not expounded in any detail on the use of the majority meaning. It certainly refers to a number of language versions (be it described as a majority, most or similar) that are similar in wording, but it does normally not expound on what importance to attach to that fact. This is not particularly surprising in itself, but rather follows the general approach of the CJEU in matters of multilingualism. The Court tends to cut-and-paste general statements on the importance of multilingualism and how to resolve a divergence of wording, where only the case references vary. The general tendency of the CJEU to cut-and-paste phrases from previous cases is well established (McAuliffe, 2013), but such common statements do not offer much information or guidance to other actors. The reluctance of the Court to explain its reasoning regarding multilingual interpretation is particularly clear in sensitive situations. One example of this is multilingual interpretation of CJEU judgments (Derlén, 2014b). However, the Court

has been somewhat more forthcoming in extreme cases, i.e., situations when only one or two versions deviate from the meaning expressed by the rest of the language versions. Consequently, we will focus our attention on the wording used by the CJEU in these cases, in an attempt to capture the value of the majority meaning as perceived by the Court. More specifically, we will identify a development in the standard, cut-and-paste, phrases (henceforth referred to as formulas) employed by the Court, which helps to understand the interpretative approach of the CJEU.

3.2 The Starting Point: The *Stauder* Formula

The oldest standard phrase connected with multilingual interpretation is what I will refer to as the *Stauder* formula, named after its first occurrence in *Stauder* (case 29/69: para. 3), which typically reads as follows (case C-256/16: para. 49, references omitted):

> It is settled case-law that the need for a uniform interpretation of EU law prevents, in the case of doubt, the text of a provision of EU law from being considered in isolation and requires, on the contrary, that it be interpreted on the basis of the real intention of its author and the aim which the latter seeks to achieve in the light of, in particular, all language versions.

A similar, but shorter version, was used by the Court earlier in *van der Vecht* (case 19/67: 353). The exact wording varies somewhat. For example, sometimes the Court drops the "real intention of its author…", only stating that the provision "should be interpreted and applied in the light of the versions existing in the other official languages" (case C-559/15: para. 39).

The *Stauder* formula establishes the single meaning idea (Derlén, 2015). Instead of placing reliance on a single text the CJEU emphasises that all the language versions read together forms the correct meaning of an EU provision. The formula, in its original wording, concerns the issue of consultation, i.e., how one should proceed when interpreting an EU law provision. It establishes that such an interpretation cannot limit itself to a single language version of the provision in question but must take all other language versions into account as well. The need for the formula is clear, as the equal authenticity of all official language versions might generally be understood as a right to rely on a single version (Tabory, 1980, pp. 198-199). Already early in its existence the CJEU made it clear that such an approach would not be acceptable in the EU context. Instead, the Court insisted on, and has continued to insist on, full multilingualism. The prohibition of monolingualism and the insistence on full multilingualism should be treated separately. It is arguable that monolingualism, while convenient, could be deeply problematic and increase the risk for mistakes and thus endanger the uniform interpretation and application of EU law. Indeed, examples abound of national courts finding

assistance in other language versions when interpreting EU law (Derlén, 2009). However, the requirement of full multilingualism, reading the provision in all the official language versions, is clearly problematic. It is practically impossible to uphold for national courts and authorities, not to mention citizens of the Union (Derlén, 2011), and not even followed by the CJEU itself (Baaij, 2018, pp. 70-78 and Zedler, 2015, pp. 168-184).

Finally, the *Stauder* formula is interesting as the CJEU connects multilingualism and the single meaning approach to two key values: uniformity and legislative intent. The need for a uniform interpretation and application of EU law is a central issue for the CJEU and particularly emphasised regarding EU multilingualism (case 283/81: para. 16 and Derlén, 2014a, p. 21). To accept monolingualism would, according to the Court, jeopardize this uniformity. Furthermore, the Court emphasises that EU provisions must be interpreted "on the basis of the real intention of its author and the aim which the latter seeks to achieve" (case C-256/16: para. 49), a statement that may seem somewhat surprising to those accustomed to the free-wheeling interpretative style of the CJEU (Lasser, 2009). Furthermore, the language versions, read together, are regarded as the primary indication of that intention. The CJEU repeats this point also outside of the formula. For example, in *Giloy* (case C-130/95: paras. 30-31) the Court observed that all language versions of the provision in question used the same conjunction and concluded that "[i]t therefore follows from the wording of the provision that the Community legislature intended that…". This follows the old truism that the best indication of what the legislator meant is what the legislator said. It might seem surprising that the CJEU would pay this amount of attention to the wording, but the connection between wording and intention is repeatedly emphasised by the Court. For example, in *easyCar* (case C-336/03: para. 24) the CJEU stated that the "wording of Article 3(2) of the directive thus demonstrates that the legislature intended to define the exemption…". However, the idea that the best indicator of what the legislator meant is what the legislator said is somewhat more complicated in a multilingual context. Article 4 of Regulation 1 indicates that EU legislation is "drafted" in all the official languages, but the initial drafting process is *de facto* monolingual. Typically, legislation is drafted in English and then translated into the other official languages (Zedler, 2015, pp. 354-355). Thus, the connection between the legislator and most of the language versions is less obvious (but see Piris, 2005, 23-24, regarding how the source text can be modified as part of the process of finalizing all language versions of an act).

3.3 Developing the Formula: Moving from Consultation to Determination

The CJEU has, in a step-by-step process, changed the meaning of the *Stauder* formula, from concerning only the issue of consultation to playing a central part in the determination of meaning in case of conflict between language versions. The first step is the phrasing used in *Ferriere* (case C-219/95 P), already discussed in section 2.7 above. After repeating a variant of the *Stauder* formula, the Court observed that the obligation to consult all language versions in interpretation was "unaffected by the fact that, as it happens, the Italian version of Article 85, considered on its own, is clear and unambiguous" (para. 15). The Court concluded that the interpretation suggested by the Italian version was incorrect, as all other versions suggested a different interpretation, but the phrase is in fact rather careful, indicating only that multilingual interpretation is not excluded by the unambiguous nature of the Italian language version. The CJEU thus rejected the position of the appellant, who argued that other language versions should only be used in interpretation where one version (here the Italian) was unclear, i.e., a criterion of doubt (para. 13 and generally Derlén, 2009, pp. 32-36).

In a number of cases the CJEU has developed the formula further, emphasising the connection between consultation and determination. In cases such as *Institute of the Motor Industry* (case C-149/97: para. 16), *Endendijk* (case C-187/07: para. 23) and *Sabatauskas* (case C-239/07: para. 38) the CJEU uses another formula, stating that "[i]t is settled case-law that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard". In this formula it is clear both that monolingual interpretation is prohibited, and that a single language version, standing alone,[2] cannot prevail in interpretation. However, in these cases this is not the end of the interpretative process. The Court moves on to another standard phrase, the *Regina v Bouchereau* (case 30/77: para. 14) formula, stating that "[w]here there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part" (*Sabatauskas*: para. 39 and *Endendijk*: para. 24, similar words used in *Institute of the Motor Industry*: para. 16). Consequently, the CJEU moves on to discuss the purpose of the rules, based – at least partly – on external factors such as the preamble or general interpretative principles.[3] In all three cases the interpretation suggested by the minority of language versions turned out to be incorrect (*Institute of the Motor Industry*: para. 21, *Endendijk*: para. 26 and *Sabatauskas*: para. 49), but the existence of a clear majority position was not in itself sufficient to end the interpretative process, despite the wording of the formula.

Consequently, the cases belong in the category majority meaning as part of a larger interpretative process, as discussed in section 2.3 above.

The next step is illustrated by *Refood* (case C-634/17). As part of a rather technical discussion concerning the relationship between a number of provisions regarding animal by-products the CJEU discussed the interpretation of Article 48.2 of Regulation 1069/2009, more specifically whether it introduced an approval requirement. It noted that the German version of the provision referred to applications for approval, but other versions did not. After referring to the same version of the *Stauder* formula as in the three cases discussed above the Court simply moved on, implicitly concluding that the meaning of the majority of language versions must be correct without citing the *Regina v Bouchereau* formula and discussing the purpose of the provision (paras. 38-43).

In the final group of cases the importance of a clear majority of language versions is taken one step further. *García and Cabrera* (joined cases C-261/08 and C-348/08) is an illustrative example. Here the CJEU concluded as follows (para. 56):

> In the present cases, as the Spanish-language version of Article 11(3) of Regulation No 562/2006 is the only one which diverges from the wording of the other language versions, it must be concluded that the real intention of the legislature was not to impose an obligation on the Member States concerned to expel, from their territory, third-country nationals in the event that they have not succeeded in rebutting the presumption referred to in Article 11(1), but to grant those Member States the option of so doing.

Here the wording of cases such as *Institute of the Motor Industry*, *Endendijk*, *Sabatauskas* and *Refood* – one version cannot override the other language versions – has been taken to its logical conclusion: one language version standing alone must be overruled. Or, more succinctly, since one version standing alone cannot win, it must lose. The wording here is striking. The Spanish version of the regulation does not express "the real intention of the legislature", "as…[it] is the only one which diverges from the wording of the other language versions". This is sufficient to end the interpretative discussion, without recourse to an examination of the purpose as demonstrated by external factors.

The Court has taken the same stance on two versions deviating from the majority. This is illustrated by *Jany* (case C-268/99), where the Spanish and French language versions of the Association Agreement with Poland and the Czech Republic deviated from the other versions, in that they lacked an expression like "in particular" or "especially" before a list of activities. The CJEU used a formula similar to the one employed in *Institute of the Motor Industry* and

other cases, stating that "one language version of a multilingual text of Community law cannot alone take precedence over all other versions, since the uniform application of Community rules requires that they be interpreted in accordance with the actual intention of the person who drafted them and the objective pursued by that person, in particular in the light of the versions drawn up in all languages" (para. 47). It then held that the same conclusion must be reached where two versions diverged from the majority. This was sufficient to settle the interpretative issue (paras. 47-48). The Court had already noted that the use of "in particular" or similar expression in all but two of the language versions expressed the "unequivocal intention" of the legislator not to limit the concept of economic activity to those activities listed (para. 46). Consequently, we have taken a further step towards a majority perspective, where the existence of a large majority may be sufficient to settle an interpretative question.

As the Court connects the majority meaning discussion back to the *Stauder* formula the same values – uniformity and legislative intent – are emphasised. This indicates that the need for a uniform interpretation of EU law and the intention of the legislator are arguments in favour of following the majority meaning. Arguably, they get stronger with a larger majority, especially in situations of a super majority, with only one or a few deviating language versions. From a uniformity perspective it might then be problematic to follow the minority versions, and it appears more likely that the intention of the legislator is illustrated by the majority rather than the minority versions.

Codan (case C-236/97) illustrates the connection between uniformity and the majority meaning. On its surface it is a traditional example of the majority meaning as part of a larger interpretative process, with CJEU employing a variety of the *Stauder* formula (in para. 25) as well as the *Regina v Bouchereau* formula (in para. 26) in response to an argument that the Danish version of Directive 69/335/EEC deviated from other language versions. However, the Court emphasised the importance of a uniform interpretation, both in general and regarding the directive in question in particular and concluded as follows (para. 29):

> To disregard the clear wording of the great majority of the language versions of Article 12(1)(a) of the Directive, and so distinguish between those companies which are listed on the Stock Exchange and those which are not, would not only run counter to the requirement that the Directive be interpreted uniformly but could result in competition being distorted and dissuade certain companies from becoming listed on the Stock Exchange.

The CJEU stressing the importance of uniformity is hardly surprising, but to reference the existence of a "great majority" as part of this discussion clearly ties the two phenomena together. To follow the minority position would jeopardize the need for a uniform interpretation, thus granting significant interpretative weight to the majority position. Advocate General Mengozzi (Opinion in case C-569/07: footnote 5) has described it in the following terms: "the Court has held that it is necessary to adopt a uniform interpretation of Article 12, which reflects the majority of the language versions…".

4 Conclusion – The Uncomfortable Truth About the Majority Meaning

This article has set out to achieve two main goals. Firstly, it has demonstrated that, while profoundly controversial, the majority meaning is employed by the Court of Justice, both in a narrow sense and as part of a larger interpretative approach. The debate, if an all-out rejection of its existence can indeed be termed a debate, would benefit from a more nuanced approach. The majority meaning can be legitimately criticised from the perspective of equal authenticity of EU languages. To conclude that one or two languages deviating from the majority must give way comes dangerously close to undermining the equal authenticity, or at least making it a "fair-weather principle" where the value of the language version is dependent on it following the majority. Furthermore, the majority meaning is fundamentally problematic given the expansion of the Union and thereby the Union languages. As was demonstrated in the *Commission v Spain* case the expansion of EU languages, coupled with a tendency to translate from English, can create a new majority, at odds with the original drafting language. However, criticizing the majority meaning is not the same as denying its existence. Part of the problem is that the majority meaning is discussed as a single entity, while in reality it takes many forms. The one form it does not take is that of a rule, a binding requirement on the CJEU to follow the interpretation indicated by a majority of language versions. Having defeated this obvious straw man is however no great achievement and does not negate the importance of the majority meaning. Furthermore, the influence of the majority meaning is not limited to the role of indication/confirmation, but takes a number of forms, including being sufficient to resolve interpretative issues in super-majority situations.

Secondly, the article has demonstrated that the value of the majority meaning, from the perspective of the CJEU, is connected to overarching principles of uniformity and legislative intent. While the Court is traditionally tight-lipped about its approach to multilingual interpretation the use and development of the *Stauder* formula ties the majority meaning to these values. The connection to the need for uniformity in the interpretation of EU law is

straightforward, at least from a pragmatic perspective. One could view the wording of the majority as an entrenched position, an established interpretation that the CJEU will only deviate from should it be necessary. This is expressed more clearly by the EFTA Court. Given the nature of the EEA agreement the EFTA Court will often have to make a prognosis as to how the CJEU would resolve a particular issue (Fredriksen, 2010, 733). In *Sveinbjörnsdóttir* (case E-9/97) the EFTA Court interpreted Directive 80/987 and stated (para. 28):

> In the case of differing authentic language versions, a preferred starting point for the interpretation will be to choose one that has the broadest basis in the various language versions. This would imply that the provision, to the largest possible extent, acquires the same content in all Member States.

The connection between the majority meaning and legislative intent is less intuitive. The continued emphasis by the CJEU on the combined wording as the intention of the legislator is interesting as it challenges the traditional view (Bengoetxea, 1993, pp. 234-235) of the majority meaning as a literal interpretation technique. With somewhat limited preparatory works (Lenaerts & Gutiérrez-Fons, 2013-2014, 19-24) the CJEU emphasises the wording, or the majority of wordings, as primary evidence of the legislator's intention. The Advocates General, more outspoken than the CJEU, have emphasised this point. For example, in *ERGO* (Opinion in case C-48/16: para. 28) Advocate General Spzunar stated that the existence of a "vast majority" made it seem "fairly clear to me that this is how the EU legislature intended the provision to be understood". One might question how later language versions, *de facto* translations, demonstrate the intention of the legislator. However, as argued by Schilling (2011, 1464) new translations can take implicit assumptions and make them explicit, thereby contributing to our understanding of legislative intent.

In conclusion, the majority meaning might be controversial, but it appears to be here to stay. To properly understand and criticise it we need to understand both the different varieties of the majority meaning and the underlying values, as perceived by the Court of Justice.

Endnotes

1. This tendency is confirmed by my own examination of all judgments involving an explicit discussion of language versions in the 1995-2018 time period. It identified 165 cases where some form of majority/minority position was discussed. Out of these the final interpretation of the CJEU followed the majority position in 87 percent of the cases.

2. In *Institute of the Motor Industry* the CJEU uses the formula concerning a single language version, para. 16, but the minority position appears to include more than one language version. The Court speaks of "other versions, including the French", para. 15.

3. In *Endendijk* the phrasing of the other language versions, more specifically their use of general terms as compared to the specific wording of the Dutch version, was used as part of the discussion of context and purpose (*Endendijk*: para. 25). In *Institute of the Motor Industry* (para. 17), the Court notes that exceptions to the main rule should be given a strict interpretation.

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