

# EU Language Law

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*Second Revised Edition*

## Preface

In his diaries, based on the satirical series “Yes, Prime Minister”, the legendary, albeit fictional, Prime Minister James Hacker recounts a discussion about the Chunnel with the Cabinet Secretary Sir Humphrey Appleby.<sup>1</sup> Language seems to be one of the problems. The conversation goes as follows, with Sir Humphrey starting:

“Do you want the signs to be in French first and English second?”

“No!” I was adamant.

“The French do”

“We don’t agree”

“You can’t have your ceremony until we do”

I suggested a compromise. “We could have English first on the signs at the British end. And French first at the French end.”

“What about the trains?”

I was becoming furious. “For God’s sake, Humphrey, what does it matter?”

He remained calm. “It matters to the French”, he explained. “What about the menus? French or English?”

I looked for a compromise. “Can’t they change the menus half-way?”

He shook his head sadly. (...)

Although obviously satirical, this fictional discussion bears some resemblance to the way in which language issues are dealt with in the EU.

Hacker sees language as an abstruse and trivial obstacle on the road to achieving a major political breakthrough. A similar dynamic is at work in the EU, where reaching political compromises is difficult enough as it is, and language issues only complicate matters. This is particularly true when it comes to regulations and directives in the internal market. To take a concrete example, the Professional Qualifications Directive aims to allow service providers to practise their profession in other EU Member States. The fact that it is essential for those concerned, such as medical doctors, nurses, etc., to be proficient in the local language(s) of the host Member State (and whether and to what extent such proficiency can be tested) has been largely ignored. Many other similar examples are discussed in this book.

Another part of the fictional discussion is also useful for clarifying language policy in general and in the EU. When the Prime Minister and the French Ambassador are discussing the Chunnel’s language regime, the Ambassador asks “which shall be the *langue de préférence*”. Hacker replies that it would be fair if half the signs put French first and half English. “Fair, yes, but not logical”, says the French ambassador, to which Hacker retorts sarcastically, “Does logic matter?”.

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<sup>1</sup> Lynn, J. and Jay, A., *Yes Prime Minister, The Diaries of the Right Hon. James Hacker*, Volume II, 82-83 (A Diplomatic Incident) (London, BBC Books: 1987).

This scene highlights another aspect of language: it is an expression of national sovereignty and identity, which can lead to language regimes that are far from logical or efficient. For instance, EU Language Regulation 1/1958 extends the status of working language to all EU Treaty and official languages, although the reality is often quite different and many restricted language regimes have been implicitly established.

It should also be mentioned that legal scholars are, generally speaking, rather ill at ease with language issues. They therefore leave this topic to political and socio-linguistic analysis. When Lawyers do discuss the language regimes of the EU institutions, they often tend to highlight the position of specific languages (such as the status of French, German, Italian and Spanish, in particular). There is also a wealth of literature on the protection of so-called minority languages, i.e. those which do not have official status at EU and/or national level.

This book takes a radically different approach and provides a comprehensive overview of language law in the EU, both in public and private law.

It begins by examining the public law aspect of the issue. The EU's public language policy, i.e. the restricted language regimes of the EU institutions, bodies and agencies, is largely unknown to the general public and even to legal practitioners. Some of these arrangements are quite detailed and laid down in various Rules of Procedure, while others are simply based on tradition. Moreover, the EU's public language policy is broader, and includes (soft law) language teaching guidelines for the EU Member States, or language arrangements in the area of freedom, justice and security.

Second, an aspect of the topic at hand that is almost never dealt with separately, concerns language requirements that are imposed on private operators. However, such linguistic obligations (which, incidentally, are remarkably heterogeneous, not to say contradictory), are contained in numerous regulations and directives relating to the internal market, particularly as regards to product labelling.

Incidentally, an important issue when discussing EU language law is its impact on national language policies. In fact, the EU and its Member States pursue essentially contradictory language policies.<sup>2</sup> In the language policies of the EU Member States the primary and historical emphasis is laid on national unity, identity, social and cultural cohesion, while the EU seeks to promote mobility and market integration. The process of European integration, particularly with regard to the internal market, has a clear impact on the language policies of the EU Member States. Indeed, national rules on language use always have to pass a test of justification and proportionality. The existence of several areas of tension, which have already been highlighted in a number of judgments of the European Court of Justice, is discussed in detail in this book.

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<sup>2</sup> This was the thesis I defended in the PhD research on which this book is originally (partly) based.

## Outline and approach

*Part I* sets out to define language law and policy in national and international law. It addresses important questions such as the extent to which immigrants may be required to learn the national language(s). With these guiding principles for language law in general in mind, *Part II* deals specifically with EU language law, in the public and private spheres. *Part III* is devoted to conclusions and a 10-point roadmap for a more coherent EU language policy.

It should also be noted that a “law in context” approach is adopted, which can be defined as research in which “law provides the starting point but is situated in a broader context, whether social, economic, political or cultural”.<sup>3</sup>

This is, of course, a legal handbook: it focuses on the legal regulation of language use, rather than on (socio)linguistic aspects. Nor are jurilinguistic topics such as differences in legal terminology discussed as such. On the other hand, issues arising from linguistic Discrepancies in equally authentic provisions of EU law are discussed in detail, as they affect Legal certainty.

Furthermore, the scope of this book is limited to the European Union and EU law. The legal instruments of the Council of Europe and the case law of the European Court of Human Rights are not the focus of this book as such, although they are mentioned where relevant, in particular when discussing the scope and limits of a language policy.

One issue that is not assessed in detail either concerns the past or existing EU programmes to promote language learning, such as Lingua, Socrates and Leonardo, which are currently integrated into the Life Long Learning Programme, or EU programmes concerning quality labels for language teaching in schools, support for language assessment systems or teaching materials.<sup>4</sup> Important and valuable as they may be, I believe that a legal assessment should not be distracted by such policy documents, which risk muddying the (legal) waters. Good intentions and solemn declarations are one thing, enforceable rights are another, and it is on the latter that this book focuses.

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<sup>3</sup> Snyder (1994: 198).

<sup>4</sup> See Commission White Paper on Education and Training, Teaching and Learning – Towards the Learning Society, COM/95/590 final, 29 November 1995, 47-48. See also the Commission Green Paper on Education – Training – Research: The obstacles to transnational mobility, COM (96) 462 final, 2 October 1996. See in this respect the different (and equally valid) approach taken by Krisztian (2024), who examines language policy in a broader sense, from a “governance” point of view, in her very interesting doctoral thesis defended at the European University Institute in Florence on 25 March 2024, *The Legal Regulation of Linguistic diversity in the European Union Between Rights and Governance* (examining board: De Witte, B. (supervisor), Kilpatrick, C., Vincze, L. and myself).

## Terminology.

It should be noted that the term “language policy” is used in this book in a broad sense: it covers the (implicit or explicit) language rules or arrangements in the EU Member States and the EU, both in the public and the private spheres.<sup>5</sup> In this context, public language rules are considered to include any regulation of language use between public authorities and natural or legal persons (thus covering language use in legislation, public administration, the judiciary and education). Private language rules concern the interaction between natural or legal persons (such as language rules in employment or food labelling). They also cover the issue of non-discrimination on linguistic grounds.

It should also be noted that there is considerable controversy in legal scholarship about the concept of “language rights” and, more specifically, whether or not they can be considered human rights.<sup>6</sup> Similarly, both the existence and the definition of so-called “Collective language rights”, which belong to groups rather than individuals, are highly controversial in scholarship.<sup>7</sup> These discussions concern legal theory and are largely outside the scope of this book. Suffice it to say that language regulation, language rights and language preference schemes, or in other words, approaches differentiated according to language groups, are clearly discernible in both national and international law. These rules will therefore be discussed in this book, without going into the theoretical controversy. The concept of “Collective language rights” is briefly discussed in Part I, but the term is not used as such.

Also, both EU and national law use different terms to refer to language rules. In EU law, terms such as *Treaty language*, *official language* and *working language* are used in the context of the EU language regime and terms such as *official language of a (Member) State*, *Administrative language*, or *national language* are used when discussing national law. In Spanish national law, the *Co-official languages* refer to the regional languages of Catalan, Galician and Basque. In France, a distinction is made between the *language of the Republic* and *regional languages*. In Italy, Italian is implicitly the national language, and only the concept of *minority languages* is defined. In Belgium, language use is based on the concepts of linguistic regions and communities. In Luxembourg, a distinction is made between the *national*, *legislative* and *Administrative languages*. In this book, the terms used correspond to the specific context and meaning.

Similarly, for the sake of consistency, the terms *European Union* and *EU law* are used throughout this book. References to Community law, the European

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<sup>5</sup> This is in line with the broad definition that is usually given of the concept; see, for instance, Haarmann (1991:103) stating that language policy has to do with the regulation of languages and their status as well as social functions in society. In scholarly articles, other terms are used, such as “language planning” or “language politics” (see Gadelii, 1990: 5). See also Gazzola a.o. (2024: 1 *et seq.*) and Oakes (2024).

<sup>6</sup> See Arzoz (2007: 3); Toscano Méndez (2012: 110 and 117); Schilling (2008: 1219-1242); Paz (2014: 481).

<sup>7</sup> See Toscano Méndez (2012: 114); May (2011: 267).

## PREFACE

Community and EC law are made only in a historical context, in quotations and in the titles of legislation. As a general rule, references are to the numbering of the legislation currently in force. Exceptionally, where the historical context or case law is discussed on the basis of previous articles, reference is made to the previous numbering with the new numbering indicated, e.g: “Article 290 EC, now Article 342 TFEU”.<sup>8</sup>

On a more practical note, I have tried to make the 2025 version (even) easier for practitioners to consult. To this end, I have simplified the reference system used in the almost 1,300 footnotes: no more *l.c.* or *o.c.*, sending the user on a wild goose chase, but a simple reference to the author and the date of the publication, which can then be traced back in the bibliography and the table of (ECJ) cases at the end of the book.

The legislation and case law analysed in this book are those in force in December 2024.

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<sup>8</sup> As of 1 December 2009, date of entry into force of the Lisbon Treaty, the Treaty establishing the European Community (TEC) was replaced by the Treaty on the Functioning of the European Union (TFEU) (art. 2(1), Treaty of Lisbon and art. 1(3) TEU; see Treaty on the Functioning of the European Union, 13 December 2007, consolidated version of 2012, *OJ C* 326/1 of 26 October 2012). In addition, articles, sections, chapters, titles and parts of the Treaty on European Union (TEU) and of the TFEU were renumbered (art. 5, Treaty of Lisbon).

## Acknowledgements

### *As to the second edition (2025)*

It goes without saying that I remain indebted to all the people mentioned in the acknowledgements below, as I was for the first edition in 2015. In addition, over the past decade I have taught quite a number of courses on European (constitutional) law at the *Vrije Universiteit Brussel* and given guest lectures at various universities. This book therefore also benefits from many challenging exchanges with academics and students.

In any event, although this book is a continuation of the work published in 2015, ten years have passed and the revised version comes at an opportune time. On the one hand, linguistic issues have given rise to quite a number of relevant judgments of the European Court of Justice. I have added no less than 18 judgments and discussed them in detail in this book. In addition, a number of pieces of legislation have been amended or repealed, not least in relation to regulatory linguistic requirements for the Labelling of products in the EU internal market. Recent data on Europeans and their languages (Special Eurobarometer 2024) has also provided useful background information. More recent doctrine has been added, and the issue of linguistic Discrepancies between equally authentic versions of EU law is discussed much more thoroughly than in the 2015 version, as I have done quite some research in this area. Part III has also been extensively revised: a ten-point roadmap is presented highlighting inconsistencies in current EU language policy (and ways to move forward).

The result is a fully revised 2025 edition that is much more of a Handbook than the previous one. It is intended to be a useful companion for all those interested in the regulation of language use in EU law, be they academics, (legal) practitioners or policy-makers.

### *As to the first edition (2015)*

This book is largely based on research that led to a PhD at the *Vrije Universiteit Brussel* in 2015, with a dissertation entitled “Conflicting Language Policies in the European Union and its Member States”. I would like to express my deepest gratitude to my supervisor Prof. Dr. Tony Joris, director of the Centre for European Law at this University. Not only did he persuade me to undertake the project in the first place but he encouraged me throughout the whole process and was always available, despite his busy schedule, to discuss issues, to proofread and to raise important questions. I will be forever grateful for what he instilled in me: the true academic spirit of seeking answers to questions that have not yet been asked. In addition, I would like to thank the other members of the doctoral examination committee for their useful comments and appreciation which changed my view on things: Prof. Dr. K. Deschouwer (*Vrije Universiteit Brussel*, head of the Department of Political Science), Prof. Dr. E. Franckx (*Vrije Universiteit Brussel*, Director of the Department of International

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Further, I am greatly indebted to Mr. A. Magnus, former principal administrator at the European Commission, who kindly agreed to proofread this book.

Nor would this book have been possible in its present form without the many journalists, national judges, legal practitioners, civil servants and students with whom I have come into contact during my career, first in the Belgian House of Representatives and later in the Court of Justice of the EU. They have all contributed to giving me the insight that has led to this result.

I must also mention my father, Oswald van der Jeught, former head of unit at the European Commission. Many of the ideas developed in this book were discussed during long bike rides we used to take along the Scheldt, between Temse, Kruibeke, Bornem and Sint-Amands. I would like to thank him and of course also my mother, for their continuous support not only for this project but also during my regular studies, which started many years ago.

Last but not least, I would like to thank my wife Giovanna for her support, and my children Adrian and Livia. The latter must be credited for aptly summing up the central dilemma of EU language policy in one simple question: “Dad, wouldn’t it be much easier if everyone spoke the same language? Our language of course”.



## I Linguistic diversity throughout history

*Questi è Nembrotto per lo cui mal coto pur  
un linguaggio nel mondo non s'usa<sup>1</sup>*

The loss of humanity's Common language is attributed to the ill-conceived plan of Nimrod, the biblical king of Babylon, to build the Tower of Babel. In his portrayal of Hell, Dante gives Nimrod a particularly severe form of punishment, placing him among the most culpable sinners, just one circle away from Lucifer himself. His fate is one of isolation, characterised by a lack of comprehension of the language spoken to him and an inability to articulate any intelligible speech.

Indeed, throughout the centuries of European history, the multiplicity of languages has been regarded as one of the worst curses that ever befell the world. The powerful image of the Tower of Babel, as depicted by Bruegel and many other artists, immediately comes to mind. This image is an illustration of the story of the confusion of tongues as described in the Book of Genesis in the Bible.<sup>2</sup>

The theme of the *Confusio linguarum* has been a source of enduring interest for theologians, philosophers and artists alike. Umberto Eco provides a fascinating overview of the numerous writings on the subject by prominent scholars such as Augustine, Dante, Descartes, Rousseau and Bacon. In the 10<sup>th</sup> century, there was a surge in the number of towers depicted in various works of art. This indicates that the theme was a prominent feature of European thought at a time when numerous national languages were emerging and the status of Latin, which had previously been the universal language, was declining. Towards the end of the 16<sup>th</sup> century, the theme of Babel was taken up by painters in the Low Countries, including Bruegel.

The concept of the lost Garden of Eden, where humanity spoke one perfect language, which was lost as a consequence of human hubris at Babel, has had a

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1 This is Nimrod (Nembrotto) for whose bad doing it is that the world does not use one sole language (own translation), Dante Alighieri, *La Divina Commedia* (Milano, Oscar Mondadori: 2010), 926, Inferno XXXI, verses 77-78 (first published in 1321).

2 Genesis 11:1-9.

*"And all the earth had one language and one tongue.*

*(...).*

*And they said, Come, let us make a town, and a tower whose top will go up as high as heaven; (...).*

*And the Lord came down to see the town and the tower which the children of men were building.*

*And the Lord said, See, they are all one people and have all one language; and this is only the start of what they may do: and now it will not be possible to keep them from any purpose of theirs.*

*Come, let us go down and take away the sense of their language, so that they will not be able to make themselves clear to one another.*

*(...)*

*So it was named Babel, because there the Lord took away the sense of all languages and from there the Lord sent them away over all the face of the earth."*

significant impact on European thinking about linguistic diversity. This has led to the perception that linguistic diversity is a source of division and conflict.<sup>3</sup>

Additionally, Babel has shaped the conceptualisation of language policy in a less conspicuous manner. For a considerable period of time, Hebrew was regarded as the original language of humanity, given that it was assumed to be the language used by God to speak to Adam. Consequently, it was considered to have been spoken prior to the events of Babel.<sup>4</sup> During the Renaissance, however, scholars began to put a different, nationalistic spin on the Babel legend, claiming that their National language was the closest to the perfect language of Eden, saved from the curse of Babel, and therefore somehow superior to other languages. Such claims were made, for example, for Tuscan (via the Etruscan language), Castilian and Swedish, while German, according to Luther, was the language closest to God.<sup>5</sup> Similar cases were made for Hungarian, Polish and Breton, and in his *Origines Antwerpianae* of 1569, Jan van Gorp (Goropius Becanus) claimed that the perfect language was none other than Dutch, especially the Antwerp dialect...<sup>6</sup>

The 18<sup>th</sup> century brought another important change. Linguistic fragmentation was no longer seen as an unfortunate accident, a wound to be healed, but rather as a natural, positive phenomenon, and last but not least, a sign of national identity.<sup>7</sup> It was argued that there was no other characteristic that distinguished one State (or nation) from another like language.<sup>8</sup> The culture of a nation or people was said to be expressed in its language, and in the unique genius it represents.<sup>9</sup>

The result was a policy of linguistic hegemony, imposing one official language on the whole of each national territory, according to the adage of *Cuius regio, eius lingua*. To give a clear example, it is well known that, from the 16<sup>th</sup> century onwards, the French kings have implemented a language policy to impose French, as an instrument of central power.<sup>10</sup>

Language, of course, is more than an expression of cultural identity, it is also a political tool for national unity and is often conveniently used as a pretext for expansive political aims. In this respect, the French King Henri IV's speech

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3 Language was considered to be a criterion of diversity since the early Middle Ages, as language conflicts seem to have occurred already in the 9<sup>th</sup> and 10<sup>th</sup> century between Germani or Teutoni, on the one hand, and Franci, on the other (Hroch, 1994: 6).

4 Eco (1995: 17 *et seq.* 74, 343).

5 Eco (1995: 95 and 99).

6 Eco (1995: 96 and 100).

7 Eco (1995: 338).

8 The use of concepts such as State or Nation can lead to confusion. Whereas in France the notions coincide, in Italy and Germany, to give but two examples, they do not, as the *Kulturnation* preceded the national State (see Jayme, 2006: 16).

9 Jayme (2006: 15).

10 See *infra*, IV, 2.

to the Savoyards, around 1600, clearly draws inspiration from the link between language and sovereignty:

*“Il étoit raisonnable que puisque vous parlez naturellement François, vous fussiez sujets à un roy de France. Je veux bien que la langue espagnole demeure à l’Espagnol, l’allemand à l’Allemand, mais toute la françoise doit estre à moy.”*<sup>11</sup>

The link between language, national identity and unity remained the dominant philosophy in the 18<sup>th</sup> and 19<sup>th</sup> centuries, not least as a result of the French Revolution, which streamlined linguistic and territorial borders, and served as a model for European nations.<sup>12</sup>

The same idea also prevailed in German Romanticism.<sup>13</sup> A prominent proponent of this philosophy during the Age of Enlightenment, Herder, emphasised the positive and important aspects of language.<sup>14</sup> Fichte defended the need to regroup the speakers of a given language into one and the same political entity.<sup>15</sup>

Darras aptly describes Fichte’s philosophy as a synthesis of the ideas of the French Revolution and German Romanticism, a kind of *jacobinisme romantique*.<sup>16</sup> To illustrate, in his famous speech (*Reden an die deutsche Nation*), in Berlin under

11 It would be reasonable that, since you naturally speak French, you would be subject to a King of France. I accept that the Spanish language is under Spanish rule and the German under German rule, but all French must belong to me (own translation) (De Varennes, 1996: 9, at footnote 19).

12 “(...) *la nation devient très vite concept plein par alliance du poétique et du politique, mariage de la terre et de la langue.*” (The nation quickly becomes a full concept as a result of an alliance between poetry and politics, a marriage of land and language – own translation) (Darras, 2001: 18).

13 Haarmann (1991: 105).

14 The following quote from Herder makes his views clear: “*Wer in derselben Sprache erzogen ward, wer sein Herz in sie schütten, seine Seele in ihr ausdrücken lernte, der gehört zum Volk dieser Sprache. (...) Mittelst der Sprache wird eine Nation erzogen und gebildet; mittelst der Sprache wird sie ordnung-und ehrliebend, folgsam, gesittet, umgänglich, berühmt, fleissig und mächtig. Wer die Sprache seiner Nation verachtet, entehrt ihr edelstes Publikum; er wird ihres Geistes, ihres inneren und äusseren Ruhms, ihrer Erfindungen, ihrer feineren Sittlichkeit und Betriebsamkeit gefährlichster Mörder. (...) Ohne eine gemeinschaftliche Landes- und Muttersprache, (...) gibt es kein wahres Verständnis der Gemüter, keine gemeinsame patriotische Bildung, keine innige Mit- und Zusammenempfindung, kein vaterländisches Publikum mehr.*” (Those who are educated in a Common language and learned to use it to shelter their heart and express their soul, belong to the people of this language. (...) Nations are raised and civilised by means of language; by means of language they become partisans of order and honour, docile, cultivated, sociable, famous, diligent and powerful. Who despises the language of his nation, dishonours the most precious of its common goods and is the most dangerous killer of its spirit, national and international renown, inventions, morals and activity. (...) Without a common national and mother tongue (...), there can be no true understanding of the minds, no common patriotic education, no intimate sense of joint companionship, no patriotic society – own translation) (Herder, J.G., *Briefe zur Beförderung der Humanität* (Berlin, 2013), Fünfte Sammlung, nb. 57, 207) (first published 1791-1793).

15 Ruiz Vieitez (2001: 9).

16 Darras (2001: 21).

French occupation, Fichte put forward the idea that the German nation, based on German language and culture, could only defend itself against foreign powers by uniting itself politically.<sup>17</sup> Fichte made the cultivation of language a patriotic duty, the cornerstone of self-determination, and became the source of inspiration for a wave of linguistic nationalism throughout Europe. All the modern States that emerged in the 19<sup>th</sup> century were based on a monolingual framework of communication between public authorities and citizens. Language, for example, was an essential instrument of unification for Italy and Germany.

This State model also provided a rationalisation for the oppression of linguistic minorities, which were seen as a threat to the integrity of the nation State.<sup>18</sup> A case in point is occupied Poland, where a policy of Germanisation was ordered by Bismarck in 1875, making German compulsory in schools, and where a similar policy of Russification was implemented in the parts of the country annexed by Russia.<sup>19</sup> There are many other, even earlier, precedents. In 1536, for instance, the Act of Union of England and Wales stripped Welsh of its official status in favour of English and the *Decreto de Nueva Planta* (New Plan) was issued by King Philip V of Spain in the early 18<sup>th</sup> century to promote Spanish over Catalan.<sup>20</sup>

In fact, until the 20<sup>th</sup> century, very few countries gave any legislative consideration to the protection of linguistic minorities on their territory.<sup>21</sup> One of the first systematic attempts to mitigate the consequences of the monolingual framework of States, without, however, questioning its essence, came from the League of Nations.<sup>22</sup> After the First World War, the redrawing of national borders

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17 See the following quote: “Gehet ihr ferner so hin in eurer Dumpfheit und Achtlosigkeit, so erwarten euch zunächst alle Uebel der Knechtschaft: Entbehrungen, Demüthigungen, der Hohn und Uebermuth des Ueberwinders; ihr werdet herumgestossen worden in allen Winkeln, weil ihr allenthalben nicht recht, und im Wege seyd, so lange, bis ihr, durch Aufopferung eurer **Nationalität und Sprache**, euch irgend ein untergeordnetes Plätzchen erkaufet, und bis auf diese Weise allmählig euer Volk auslöscht.” (added emphasis) (Should dullness and carelessness make you continue to travel this road, you will at first be confronted with all the evils of serfdom: hardships, humiliations, scorn and presumption inflicted by the conquerors; you will be pushed in all directions to such extent and as long as, by abandoning your **nationality and language**, you will trade for an inferior position and hence, little by little, annihilate your people. – own translation) (Fichte, J.G., *Reden an die deutsche Nation* (Berlin, 2013), first edition Berlin, 1808, 172).

18 Coulmas (1991: 19).

19 Ostrower (1965: 591).

20 Ruiz Vieytez (2001: 9).

21 Shuibhne (2002: 190); Capotorti (1991: 3, pt. 18).

22 Capotorti gives earlier examples of linguistic rights provided for under international treaties, such as the Final Act of the Congress of Vienna, in which the participating Powers granted to Poles in Poznan the right to use Polish for official business, jointly with German (Capotorti (1991: 3, pt. 15). Already in the 19<sup>th</sup> century, some national Constitutions made provision for the protection of linguistic minorities: the Austrian constitutional law, for instance, granted ethnic minorities the right to maintain and develop their own language, and accorded equal rights with regard to education, administration and public life (Capotorti, 1991: 3-4, pts. 18-19).

had resulted in many linguistic groups finding themselves on the “wrong” side of the border and thus becoming minorities: the territorial changes that resulted from the creation of the States of Poland and Czechoslovakia, and the expansion of the Serbian, Romanian and Greek kingdoms, created many ethnic or linguistic minorities.<sup>23</sup> Another example is the transfer of South Tyrol to Italy.<sup>24</sup>

The 1919 Peace Conference discussed the protection of minorities and their right to use their own language.<sup>25</sup> The proposal to include general clauses on the protection of minorities in the Covenant was rejected.<sup>26</sup> Instead, the pragmatic need to establish and maintain political stability, led to the development of an elaborate inter-State Treaty system under the supervision of the League of Nations, whereby States undertook to ensure that members of ethnic, religious or linguistic minorities enjoyed civil and political rights on an equal footing with the rest of the population.<sup>27</sup> These special Treaties between the Allied and Associated Powers, on the one hand, and the newly created and enlarged States, on the other, were called “Minority Treaties”.<sup>28</sup>

At the same time, in the years leading up to the Second World War, intellectuals revived the dream of peaceful coexistence on the European continent (or even in the whole world). The cosmopolitan Austrian writer Stefan Zweig revived the powerful legend of Babel and the lost dream of a universal language needed to unite humanity.<sup>29</sup> Interestingly, where Zweig cites the Roman Empire as the most perfect form of world unity, where Latin served as the Common language, he carefully avoids any hint as to how to overcome, on a practical level, the linguistic barriers that are real obstacles to European (and world) integration.<sup>30</sup>

The philosophy of achieving political stability by granting rights to displaced minority groups shifted after the Second World War, when minority rights themselves were again seen as a threat to national unity and therefore to economic and social stability, especially when these minorities had linguistic links with neighbouring countries.<sup>31</sup> Significantly, the Universal Declaration of Human Rights, adopted in 1948, makes no mention of the question of the treatment of persons belonging to ethnic, religious or linguistic minorities.<sup>32</sup>

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23 Shuibhne (2002: 190).

24 Capotorti (1991: 92).

25 Capotorti (1991: 83).

26 Capotorti (1991: 92).

27 Shuibhne (2002: 190-191).

28 Capotorti (1991: 93 *et seq.*, pt. 99(d)(e)).

29 Zweig, S., *Der Turm zu Babel* (1916), see Zard. Ph., *Le gâchis de Babel* (Kafka, Zweig, la Bible et l'Europe), *Revue Droit & Littérature*, 2020, 4/1.

30 In a speech held in Rio de Janeiro (Brazil) in 1936 Zweig most clearly expresses his ideas (*Die geistige Einheit Europas*).

31 Shuibhne (2002: 191); Capotorti (1991: Preface, under iv, and 136).

32 Universal Declaration of Human Rights, 10 December 1948, 183<sup>th</sup> Plenary meeting of the UN General Assembly, *General Assembly Resolutions*, 3<sup>rd</sup> Session (1948-1949), A/RES/217(III), 71.

It was only towards the end of the last century, with the dissolution of the Soviet Union (USSR) and the emergence of new independent States in Central and Eastern Europe, that the protection of (linguistic) minority rights received renewed attention. In 1992, the Committee of Ministers of the Council of Europe adopted the European Charter for Regional or Minority languages.<sup>33</sup> It is the only international instrument devoted exclusively to regional and minority language issues. However, its lack of effectiveness has been criticised.<sup>34</sup>

In fact, the deeply rooted idea of “one State, one language” still prevails, even though the issue of (linguistic) minority protection has become more important in the last decades. The crucial role played by the EU in this context, mainly by imposing respect for (linguistic) minorities as a condition for EU membership, and by adopting an unreservedly positive view of (linguistic) diversity, enshrined as a legal principle, will be explored in Part II of this book.

## II Traditional aims of the regulation of language use

### 1 National unity and social cohesion

“*L’État, c’est la langue*”, an expression attributed to the French King Louis XIV, succinctly conveys the idea that language is one of the most important features of national identity.<sup>35</sup> As mentioned above, in Europe, and not only there, this belief has led to the concept of linguistic hegemony (*Cuius regio, eius lingua*), namely that a State should have only one national language.<sup>36</sup>

The tendency to create a monolingual State has a long tradition. As early as 1380, Geoffrey Chaucer wrote: “*God save the king, that is lord of this language*”, thus identifying the king’s language with that of the nation.<sup>37</sup>

It is well known that in the nineteenth century language was instrumental in the dynamics of political modernisation and in the formation of nations in Europe. For example, in 1860, when Cavour tried to justify the transfer of Nice (Nizza) to France, he used a (controversial) linguistic argument: “*Mais quelle est la preuve plus forte de la nationalité d’un peuple. C’est le langage. Or l’idiome parlé à Nice n’a qu’une analogie très éloignée avec l’Italien (...)*”.<sup>38</sup>

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<sup>33</sup> European Charter for Regional or Minority languages, 5 November 1992, *European Treaty Series* No. 148.

<sup>34</sup> See *infra*, III, 2.

<sup>35</sup> See Eco (1995: 339); Ostrower (1965: 589).

<sup>36</sup> See Kraus (2024: 104); Thiesse (2010: 237); Koenig and De Varennes (2001: 1-4 (editorial)).

<sup>37</sup> The English language, see Ostrower (1965: 590).

<sup>38</sup> But what is the strongest proof of the nationality of a people. That’s the language. And the language spoken in Nice bears only a slight resemblance to Italian – own translation (Jayme, 2006: 17). History has it that Cavour’s command of French was better than his command of Italian.

Consequently, looking at the current map of Europe, one cannot help but notice that the name of a country usually stands for a language.<sup>39</sup>

Current national language policies still have a strong focus on national unity.<sup>40</sup> As United Nations special rapporteur Capotorti points out, the symbolic value of an idiom as a means of group identification makes language politically and socially very strategic.<sup>41</sup> Therefore, language naturally becomes, and remains, a key element in the struggle for national unity and identity.

This is especially true when a language has been suppressed. A good example of the tenacity of languages is the former Soviet Union. For more than six decades, social planners and educators tried to eliminate local languages and replace them with Russian as part of a programme to replace national identities with a supranational socialist identity. As soon as the Soviet Union collapsed, however, the new rulers built nations based on their own language.<sup>42</sup>

Indeed, all societies have always felt a strong need to preserve their linguistic heritage at all costs, out of what might be called an existential fear. When Alexis de Tocqueville visited America, for example, he was horrified to see that the native languages of the Indians had completely disappeared, and he exclaimed: “*How strange does it appear that nations have existed, and afterwards so completely disappeared from the earth that the remembrance of their very names is effaced; their languages are lost; their glory is vanished like a sound without an echo (...)*”.<sup>43</sup> A frightening scenario that prompted Chateaubriand to remark that European languages would eventually suffer the same fate.<sup>44</sup>

Conversely, postmodern societies, reminiscent of the excesses of nationalism, seek to limit or even ignore the relevance of national (or regional) identities.<sup>45</sup>

The identity argument has recently taken a modern form, namely that a Common language is necessary for social cohesion, which is particularly relevant in contemporary multicultural societies in the EU. To illustrate this, the 2024 Eurobarometer shows that, on average, 11.5% of students in the EU speak a

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39 Kraus (2008: 86-87). Two exceptions exist, namely Austria and Belgium. For both countries, historical reasons can be given to explain this (atypical) situation (Kraus, 2008: 100, footnote 1).

40 Tabouret-Keller (1991: 50).

41 Capotorti (1991: 232).

42 Haarmann (1991: 108-109).

43 Tocqueville, A., *Democracy in America*, Volumes I and II (New York, Bantam Classic: 2000), 26 (first edition 1835).

44 Chateaubriand quotes Tocqueville and comments: “*tel sera tôt ou tard le sort de nos jargons modernes, débris du grec et du latin*” (Chateaubriand, F., *Mémoires d'outre-tombe*, tome I (Paris, Garnier, 1989: 498) (first edition: 1849)).

45 Heumakers, A., Europa – In een gordiaanse knoop van onzekerheid, *NRC Handelsblad*, 21 September 2012, 7.