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The duty to compare language versions of EU law

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ABSTRACT: In this article, I examine case law from the European Court of Justice (ECJ) to determine the extent to which natural and legal persons must consult different linguistic versions of EU law in order to ascertain their rights and obligations. Although EU law has equal legal force in all its versions, there are instances in which a linguistic comparison seems necessary. This occurs when a given language version differs from the others. This implies that absolute trust in a single language version read in isolation is not possible, and that a *de facto* duty to compare linguistic versions exists. This follows implicitly from landmark ECJ judgements, such as *CILFIT* (1982) and *Consortio* (2021). However, in other scenarios relating to linguistic discrepancies, this duty does not seem to exist. When a specific language version is not officially published in the Official Journal of the EU, natural and legal persons are under no obligation to consult other language versions (*Skoma-Lux* judgment, 2007). Notably, in a recent judgment (*On Air Media*, 2025), the ECJ ruled on another such scenario. It confirmed that EU legal acts correcting a version of EU law in a specific language have retroactive effect; however, the principles of legal certainty and the protection of legitimate expectations must be respected. Regarding this, the ECJ explicitly ruled out a duty to compare language versions of EU law when the version in question appears clear. This article assesses the various scenarios. It argues that, for the sake of coherence and fairness, there should be no obligation for natural and legal persons to compare language versions. It also suggests that the role of national judges should be enhanced in this regard.

KEYWORDS: European Union; multilingualism; equal binding force; discrepancies; corrigenda; duty to compare.

SUMMARY: 1. Introduction; 2. The *On Air Media* judgment (2025) and its impact; 2.1. Facts and legal issue; 2.2. The ECJ judgment; 2.3. The impact of the judgment; 3. Standing case law as to linguistic discrepancies; 4. Standing case law as to the absence of an official language version; 5. Three scenarios: coherence and fairness?; 5.1. Three scenarios; 5.2. Incoherences; 5.3. The duty to compare; 6. Concluding remarks.

1. Introduction

The article's analysis is anchored in the recent Judgment of the European Court of Justice (ECJ) in Joined Cases C-416/24 and C-417/24 *On Air Media* (2025).¹ This Judgment calls for a reexamination of the theme of discrepancies between language versions of EU law, all of which are recognised as equally binding. The Judgment is particularly relevant with regard to the duty to compare one's own language version with other versions.

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¹ ECJ Judgment of 9 October 2025, *On Air Media Professionals* (C-416/24) v Agenția pentru Întreprinderi Mici și Mijlocii Iași, and *Different Media SRL* (C-417/24) v Ministerul Antreprenoriatului și Turismului – Agenția pentru Întreprinderi Mici și Mijlocii, Atragere de Investiții și Promovare a Exportului Iași, Joined Cases C-416/24 and C-417/24, ECLI:EU:C:2025:765.



This aspect has indeed always remained rather obscure in ECJ case law. In fact, the duty to compare is an implicit consequence of the seminal Judgment in CILFIT (1982), as confirmed later in Consorzio (2021).²

The recent ECJ's On Air Media Judgment (2025) offers a new perspective on the matter. It concerns an official act correcting a specific language version of EU law, and assesses the legal consequences that follow for legal persons who had trusted the incorrect language version and had obtained undue benefits.

This article begins with a comprehensive examination of that 2025 Judgment (section 2). The subsequent analysis will compare the solution established by the ECJ in that Judgment with its existing case law on linguistic discrepancies (section 3) as well as with the ECJ case law concerning the absence of a language version (Skoma Lux, 2005) (section 4). In Section 5, an analysis will be conducted of the various scenarios in order to ascertain their coherence and fairness in defining (or not) the duty that rests on natural and legal persons to compare language versions of EU law. The conclusions will be presented in Section 6.

2. The On Air Media judgment (2025) and its impact

2.1. Facts and legal issue

In this ruling, the ECJ has for the first time explicitly addressed the legal implications of correcting an inaccurate language version of an EU Regulation. The Court has determined that such a correction has retroactive effect *ab initio*, applicable as of the date of entry into force of the original Regulation. However, the ECJ has emphasised the importance of respecting the principles of legal certainty and legitimate expectations. In this particular case, the Court ruled that State aid granted on the basis of the incorrect Romanian version of the Regulation in question, which was subsequently corrected with retroactive effect, did not require repayment.

The facts of the case are as follows. On 20 August 2020, the Romanian authorities notified the European Commission of an aid scheme for SMEs and certain large companies. The aid was intended to mitigate the economic impact of the COVID-19 pandemic. The Commission approved the Romanian aid scheme on 27 August 2020.³

However, the Commission decision included a clear and explicit reservation: no State aid could be granted to companies that were already in difficulty on 31 December 2019, as defined in the General Block Exemption Regulation.⁴

Later in 2020, the Romanian authorities implemented the approved aid scheme and granted micro-subsidies of RON 9,679 (approximately EUR 1,945) to each of the companies at issue in this case (On Air Media and Different Media). However, in 2022, the Romanian authorities initiated a recovery of the aid granted. The reason for this was that it appeared that the companies concerned should never have received aid because, on 31 December 2019, they were 'undertakings in difficulty' within the meaning of the General Block Exemption Regulation. However, this had only become apparent in 2021 after the rectification of the Romanian language version of that General Block Exemption Regulation.⁵ Indeed, according to the original (incorrect) Romanian version, SMEs that had been in existence for at least

² ECJ Judgment of 6 October 1982, Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health, Case 283/81, ECLI:EU:C:1982:335; ECJ Judgment of 6 October 2021, Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA, Case C-561/19, ECLI:EU:C:2021:799.

³ Commission Decision C(2020) 5949 final of 27 August 2020 – State Aid SA.58166 (2020/N) – Romania – COVID-19: Support for SMEs and certain related large enterprises to overcome the economic crisis caused by the COVID-19 pandemic (OJ 2020 C 302, p. 1).

⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1).

⁵ Commission Regulation (EU) 2021/452 of 15 March 2021 correcting the Romanian language version of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2021 L 89, p. 1).



three years were not considered to be ‘in difficulty’, whereas the intention of the corrected version was precisely the opposite: the General Block Exemption Regulation was intended to exclude long-standing companies in difficulty, while being lenient towards recently established ones.

In fact, the issue was a single error with substantial implications in the Romanian version, where the word “at least” was used instead of “less.” The full text of the provision in question (Article 2(18)(b) of the General Block Exemption Regulation) read as follows in the original (incorrect) Romanian language version (emphasis added):

8. *“undertaking in difficulty” means an undertaking in respect of which at least one of the following circumstances occurs:*

(a) *In the case of a limited liability company (other than [a small or medium-sized enterprise (SME)] that has been in existence for **at least** three years or, (...).”*

Whereas the corrected text, aligned with the other language versions after Commission Regulation (EU) 2021/452 of 15 March 2021 correcting the Romanian language version of Regulation (EU) No 651/2014 reads as follows:

8. *“undertaking in difficulty” means an undertaking in respect of which at least one of the following circumstances occurs:*

(a) *In the case of a limited liability company (other than an SME that has been in existence for **less** than three years or, (...).”*

At the time of the financing, the companies concerned had been in existence for thirteen and eighteen years respectively. According to the incorrect version, they were therefore perfectly eligible for the aid in question. However, following the correcting act, which brought the Romanian version into line with the other language versions, it became clear that the exception applied only to SMEs that had been in existence for *less* than three years.

The Romanian authorities had therefore based their decision to grant aid to the two companies in difficulty on an inaccurate Romanian language version. Following the correction, the authorities demanded repayment of the aid that had been wrongly granted. The companies challenged the repayment order before the Romanian courts. They argued that they had met all the conditions for obtaining micro-subsidies on the basis of what was stipulated in the Romanian language version of the General Block Exemption Regulation at the time the subsidies were granted.

However, the Romanian court of first instance (Tribunalul Neamț - Regional Court, Neamț) ruled that the correcting Regulation had not amended the General Block Exemption Regulation, but had merely corrected the Romanian language version thereof. Interestingly, the Romanian judge referred to the original version, which was drafted in English and was correct in terms of content. He therefore applied the correcting act retroactively and found that the companies concerned did not meet all the criteria for the aid in question on the date of their subsidy applications. Hence, the order for repayment was valid.

On appeal, the companies contested the retroactive effect of the rectification Regulation. They also argued that the term ‘original version of the Regulation’ in English, which was used in the grounds for the judgment at first instance, had no legal basis, since Romanian is one of the 24 official languages of the EU.⁶ They also pointed out that, at the time of signing of the financing agreements in question, the Romanian language version of the General Block Exemption Regulation had been in force unchanged for more than six years. In those circumstances, they claimed that they had applied for and obtained the subsidies in good faith.

The Court of Appeal (Bacău) decided to refer the matter to the Court of Justice for a preliminary ruling. In short, it wanted to know whether the amending Regulation had retroactive effect from the date of entry into force of the original Regulation. If so, it asked whether the principles of legal certainty and

⁶ This is, of course, a correct assessment. As a general rule, the ECJ does not refer to the ‘original’ language version of an act of EU law (English or French). Furthermore, it would sometimes be rather complicated to do so, as the original legal act may have been in French and later amended in English. In any case, amendments in other languages may also be relevant, which would make things very complex. We may then have to contend with a ‘vanishing original’ (a term coined by Dollerup, C., ‘The Vanishing Original’, *Hermes, Journal of Linguistics*, no. 32, 2004, pp. 185-199).



legitimate expectations precluded the recovery of State aid granted in accordance with the conditions set out in the originally incorrect Romanian language version of the General Block Exemption Regulation.

2.2. The ECJ judgment

In its judgment, the Court of Justice first reiterates, *in abstracto*, its established case law on linguistic discrepancies in EU legislation. It recalls in that regard that “*the need for a uniform interpretation of provisions of EU law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation but requires that it be interpreted and applied in the light of the versions existing in the other official languages*”.⁷

It further states that “*all the language versions of a provision of EU law must, in principle, be recognised as having the same weight*”.⁸

Furthermore, where “*there is divergence between the various language versions of an EU text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part*”.⁹ Lastly, “*such an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness*”.¹⁰

The Court then assesses the situation *in concreto*. It first establishes that there was indeed a discrepancy between the Romanian language version and the other language versions. However, it also finds that the wording of the incorrect Romanian language version was “*clear and unambiguous*”.¹¹

Nonetheless, the Court holds that the rectification Regulation has retroactive effect. The Court’s reasoning is as follows: the purpose of the rectification is to restore uniformity of interpretation in all language versions of the provision concerned. This is achieved by correcting, *ab initio* and with retroactive effect, the translation error in the Romanian language version of the General Block Exemption Regulation.

The Court further reasons that if the correcting Regulation had only corrected the Romanian language version for the future, it would have allowed two incompatible versions of this Regulation to coexist in the period between the entry into force of the General Block Exemption Regulation and the entry into force of the correcting Regulation, both with clear and precise wording. According to the Court, such an interpretation would be contrary to the requirement of uniform interpretation and application of EU law.

What then of the legal consequences for the undertakings concerned? Do they have to repay the aid they had wrongfully obtained?

The Court answers this question in the negative. It points out that, when implementing EU law, national authorities must respect the fundamental principles of legal certainty and legitimate expectations. In the present case, these principles preclude the recovery of the State aid in question.

Regarding the principle of legal certainty, the Court refers to its previous case law. According to this case law, although the principle generally precludes the retroactive effect of a Union act,¹² a derogation is possible if it is necessary for a reason of public interest and if the legitimate expectations of those concerned are duly taken into account. Furthermore, the wording, objectives, or scheme of the rules in question must indicate that such consequences should be attributed to them.¹³ In this case, however, it was not possible to derogate from the principle of legal certainty.

⁷ Para. 37 of the Judgment.

⁸ Para. 38 of the Judgment.

⁹ Para. 39 of the Judgment.

¹⁰ Para. 40 of the Judgment.

¹¹ Para. 41 of the Judgment.

¹² The principle of legal certainty means that rules must enable those concerned to know precisely the extent of the obligations which they impose on them (ECJ Judgments of 1 October 1998, *United Kingdom v Commission*, C-209/96, EU:C:1998:448, para. 35, and of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, Case C-160/20, EU:C:2022:101, para. 41).

¹³ ECJ Judgments of 25 January 1979, *Racke*, Case 98/78, EU:C:1979:14, para. 20, and of 12 November 1981, *Meridionale Industria Salumi and Others*, Cases 212/80 to 217/80, EU:C:1981:270, para. 10; Judgments of 24



The Court then examines the legitimate expectations of the undertakings, which were based on three elements.

First, the conduct of the Romanian authorities is taken into account, particularly the national aid scheme and the decisions to grant aid adopted under that scheme.

Second, the text of the Romanian version of the General Block Exemption Regulation, published in the Official Journal of the EU, was incorrect yet clear. The aid scheme referred to this text. In a crucial recital (65), the Court also states that the undertakings concerned could

“not be criticised, in the circumstances of the cases in the main proceedings, for failing to check the other language versions (...), since nothing in the wording of the initial Romanian language version (...) gave rise to any difficulty of interpretation.”¹⁴

Third, the Court states that the national aid scheme in question, which had been duly notified to the Commission, was approved by the latter by decision of 27 August 2020. This approval could also give rise to a legitimate expectation that the aid had been lawfully granted.

2.3. The impact of the judgment

It may be argued that with this ruling, the Court of Justice has set an important precedent. First, it has made it explicitly clear that rectifications of EU law have retroactive effect. This is a significant development as rectifications are a necessary evil and a common phenomenon in EU law.¹⁵ It is often posited that the multilingual nature of EU law is the reason for this.¹⁶ As is widely known, EU Regulations and Directives are in most cases drafted in English and only translated, under considerable time pressure, with a view to their publication in all 24 official EU languages. In the event that errors are identified in one or more language versions subsequent to publication, these will be rectified in accordance with a rectification. The present case demonstrates that it can easily take years before an error is discovered and corrected. The situation may actually be worse for Regulations than for Directives, as the latter have to be transposed into national law. In doing so, national legislators may spot translation errors.

A formal rectification procedure is established for substantive changes.¹⁷ This is a new legal act that rectifies the old one. However, until this judgment, it was unclear whether a rectification procedure

September 2002, *Falek and Acciaierie di Bolzano v Commission*, Case C-74/00 P and C-75/00 P, EU:C:2002:524, para. 119, and of 30 April 2019, *Italy v Council* (Fishing quota for Mediterranean swordfish), Case C-611/17, EU:C:2019:332, para. 106 and the case-law cited.

¹⁴ Par 65 of the Judgment. The ECJ explicitly refers in that regard to para. 73 of the Opinion of the Advocate general, who had come to the same conclusion.

¹⁵ I am not aware of any scientific research providing general statistical data on the number of cases in which Regulations or Directives have been rectified. Research into consolidated versions (which include both regulatory correcting acts and non-substantive corrigenda) is relevant in this context. It shows that 40% of consolidated versions of Directives concern corrections (for Regulations and Decisions, the figures are 36% and 24% respectively). In almost all cases, one or more specific language versions are corrected (between 94% and 97% of cases) (T. PALOTAI-TORSZAS, R. PALOTAI, *Studying the Need to Optimise Search for Corrigenda and Amendments in EU Institutional Translation*, 2023; see <https://asling.org/tc45/wp-content/uploads/2023/02/TC45-luxembourg2023.pdf>).

¹⁶ M. BARYN, P. KOWALSKI, *Correction of errors in legal acts of the European Union*, in *Studia Juridica* 103, 2024 (<https://studiaiuridica.pl/article/547982/en>), 46. However, Ellen Heinemann doubts whether this is actually true (*Corrigenda of EU legislative acts: a necessary evil? A look at procedures, facts and figures* (draft working paper, University of Cologne, 2026).

¹⁷ A rectification can be done in two ways: informally or formally. For purely typographical (non-substantive) corrections, the technique of informal corrigenda is generally used (M. BARYN, P. KOWALSKI, *op. cit.*, pp. 26-27). These corrigenda are not based on an explicit procedure or legal basis in primary or secondary EU law but have rather developed from practice. Bobek refers to corrigenda as a ‘grey area of EC institutional practice’ (M. BOBEK, *Corrigenda in the Official Journal of the European Union: Community law at quicksand*, in *European Law Review*, 2009, p. 950). The retroactive effect of such non-substantive corrigenda has been assumed in practice to date (M. BARYN, P. KOWALSKI, *op. cit.*, p. 46). The reasoning is as follows: these are not new Regulations; the original Regulations are simply corrected *ex tunc* and the corrigendum derives its force and effect in time from the original

had retroactive effect. According to certain legal scholarship, substantive rectifications through new Regulations should only apply prospectively.¹⁸

The absence of clarity with regard to the temporal aspect of correcting acts was also highlighted by the observation made by the referring Romanian court in the present case, which noted that national case law in this area is “not uniform” (para. 33). Moreover, the wording of the rectification Regulation certainly did not help. After all, it stipulates that the Regulation enters into force “on the twentieth day following that of its publication in the Official Journal of the European Union.” The Regulation therefore does not make explicit mention of any retroactive effect. On the contrary, the wording suggests the opposite. Besides, why wait 20 days if the provisions of a rectification Regulation ultimately have retroactive effect to the date of entry into force of the original act (in this case more than six years earlier)? It is understood, of course, that this is a new Regulation to which the general rules of law apply: Article 297(2) of the Treaty on the Functioning of the EU (TFEU) indeed stipulates that

“Regulations and Directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication”

Yet, does this provision, combined with the interpretation of the Court of Justice in the present case, not allow for a retroactive date of entry into force, so as to make its consequences clear to all concerned?

In any event, this point has now at least been clarified by the Court: a corrective Regulation has retroactive effect *ab initio*. This is certainly a pragmatic and clear solution, especially since it concerns a single language version that was corrected. The arguments put forward by the Court in this regard are fully in line with the views expressed by Advocate General Szpunar in his Opinion. The retroactive effect of the correcting act “clearly follows from its objective”, according to the Court (para. 47), as it aims to correct errors in the Romanian version (para. 48). Otherwise, there would be no uniformity between the language versions in the period prior to the correction (paras. 49-51). Nonetheless, it can be argued that there was no uniformity in this case, and that this had been going on for a period of more than six years. The solution therefore remains suboptimal, yet there does not appear to be a viable alternative approach.

The second issue of relevance concerns the duty (or not) to compare language versions of EU law. This will be explored in Section 3.

3. *Standing case law as to linguistic discrepancies*

The solution reached by the Court in the *On Air Media* case, as explained in section 2, does seem to show a certain degree of inconsistency with other established case law of the Court regarding linguistic discrepancies in EU law. This concerns the prevailing doctrine that private individuals may not rely solely on their own language version and have a certain obligation to compare different language versions of EU law. It is noteworthy that the *On Air Media* Judgment does not refer to the traditional landmark Judgments in this regard, namely *CILFIT* and *Consortio*, in which that language comparison obligation was implicitly established.¹⁹

In contrast, it is useful to recall the explicit statement made by the Court in the *On Air Media* Judgment, which asserts that the undertakings in question could

“not be criticised, in the circumstances of the cases in the main proceedings, for failing to check the other language versions (...), since nothing in the wording of the initial Romanian language version (...) gave rise to any difficulty of interpretation.” (para. 65)

Regulations. However, the boundary between a substantive and a non-substantive correction is not always entirely clear. For this reason, legal scholarship advocates treating substantive corrigenda as genuine new amending acts and limiting their effect in time to the future (M. BOBEK, *op. cit.*, p. 962).

¹⁸ M. BARYN, P. KOWALSKI, *op. cit.*, p. 46; M. BOBEK, *op. cit.*, p. 962.

¹⁹ Nor does Advocate General Szpunar in his Opinion. While he does refer to the *Skoma-Lux* Judgment, that case concerned a less relevant scenario: a complete absence of a certain language version (Czech; see section 4 below).



The rationale behind this different approach appears to be that the original Romanian language version of the provision in question did not give rise to any issues of interpretation. However, this prompts the question of whether this constitutes a clear benchmark in all circumstances (see below, section 5).

A comparison of the On Air Media case with a ‘classic’ case involving language discrepancies, such as the Heuschen & Schrouff case (C-357/07), reveals a marked difference in approach.²⁰ The latter case concerned a customs declaration relating to the import of rice paper from Vietnam. A Dutch company, Heuschen & Schrouff, an importer of foodstuffs and food ingredients, had made an error in its customs declaration. However, that error was due to the fact that the Dutch language version of the applicable EU Regulation differed from the other language versions. Nevertheless, three years after the alleged infringement, the Dutch authorities imposed a fine on Heuschen & Schrouff. The case was then brought before the Amsterdam Court of Appeal (Gerechtshof Amsterdam).²¹ This Court compared various other language versions (English, French, German and Finnish) with each other and found that they did not correspond to the wording of the Dutch version. However, it was not the case that the Dutch version was *clearly* incorrect: the mistake in the translation of the Dutch language version did not seem to be obvious. Indeed, in actual fact, the Dutch authorities themselves had applied the incorrect Dutch version for a long time without realising the error.

The Court of Appeal therefore ruled that a Dutch taxpayer could not reasonably be expected to consult customs Regulations in other languages. Furthermore, there was no indication that Heuschen & Schrouff had not acted in good faith. The Court of Appeal therefore annulled the fine imposed on Heuschen & Schrouff by the tax authorities. However, in cassation, the Dutch Hoge Raad (Supreme Court) referred the case to the Court of Justice for a preliminary ruling. The ECJ reiterated its established case law and compared the Dutch version with other language versions, in which the obligations were clearly and correctly stated (in contrast with the inaccurate Dutch version). It gave an interpretation to the provision in question in accordance with the other language versions, from which it followed that Heuschen & Schrouff had indeed violated that provision of EU law.²² The Court furthermore confirmed the existence of manifest negligence, referring in particular to the importer’s professional experience and its obligation to make enquiries and obtain all possible clarifications in order to avoid infringing EU law. Consequently, the Dutch Hoge Raad had no choice but to uphold the fine imposed on Heuschen & Schrouff.

Another case in point in this regard is the one regarding the Dutch cattle farmer Endendijk (2008).²³

In 2005, Dirk Endendijk was prosecuted in the Netherlands for tethering calves in contravention of Dutch legislation based on an EU Directive. In his defence, Endendijk argued that the Dutch language version of the annex to the Directive referred several times to a *metal* tether, which effectively excluded the use of *chains* (*kettingen*), whereas he had used a rope for tethering (a situation which therefore seemed to fall out of the scope of the provision). The Dutch judge who was seized of the case on the criminal prosecution of Endendijk by the Dutch authorities referred a preliminary question on this matter to the ECJ. In line with its established case law on linguistic discrepancies, the ECJ rejected the linguistic argument: it cited its doctrine, as explained above, according to which the scope of the obligation in

²⁰ ECJ Judgment of 20 November 2008, *Staatssecretaris van Financiën v. Heuschen & Schrouff Oriëntal Foods Trading BV*, Case C-375/07, ECLI:EU:C:2008:645.

²¹ Gerechtshof Amsterdam, Case 01/90096 DK X. B.V., NL:GHAMS:2004:AR7276.

²² An additional complication in this case was the involvement of the European Commission. The Dutch customs authorities had requested the Commission’s opinion, whereupon the Commission had ruled that the fine imposed on Heuschen & Schrouff should be upheld, as the company had acted “negligently”. In separate proceedings, the company appealed against this decision before the General Court of the EU and subsequently before the Court of Justice, but without success (see Judgment of the Court of First Instance of 30 November 2006, *Heuschen & Schrouff Oriental Foods Trading BV v Commission of the European Communities*, Case T-382/04, ECLI:EU:T:2006:369 and ECJ Judgment of 20 November 2008, *Heuschen & Schrouff Oriental Foods Trading BV v Commission of the European Communities*, Case C-38/07 P, ECLI:EU:C:2008:641).

²³ See S. VAN DER JEUGHT, *The Multilingualism Paradox in EU Law - In our own Language Version we Trust?*, in *International Journal of Language and Law*, 14 (2025), pp. 81-98 (<https://www.languageandlaw.eu/jll/article/view/212>); S. VAN DER JEUGHT, *EU Language Law*, Groningen, 2025, p. 133-139.



question could not be examined solely on the basis of the Dutch version.²⁴ It pointed out that other language versions, such as the German (*Anbindevorrichtung*), the English (*tether*), the French (*attache*) and the Italian (*attacco*), all referred to a more general term (own emphasis added):

DE *Werden die Kälber angebunden, so darf die verwendete **Vorrichtung** die Tiere nicht verletzen und muß regelmäßig überprüft und gegebenenfalls reguliert werden, um einen beschwerdefreien Sitz zu gewährleisten. Die **Anbindevorrichtung** muß lang genug sein, um dem Tier die unter Nummer 7 vorgesehene Bewegungsfreiheit zu bieten. Sie muß so beschaffen sein, daß sich die Tiere möglichst nicht strangulieren oder verletzen können.*

EN *Where **tethers** are used, they must not cause injury to the calves and must be inspected regularly and adjusted as necessary to ensure a comfortable fit. Each **tether** must be of sufficient length to allow the calves to move as stipulated in paragraph 7. The design must be such as to avoid, as far as possible, any risk of strangulation or injury.*

FR *Lorsque les veaux sont attachés, leur **attache** ne doit pas les blesser et doit être inspectée régulièrement et ajustée si nécessaire pour qu'ils se entent bien. Chaque **attache** doit être suffisamment longue pour permettre à l'animal de se déplacer conformément au paragraphe 7. Elle doit être conçue de manière à éviter, dans la mesure du possible, tout risque de strangulation et de blessure.*

NL *Wanneer de kalveren worden aangebonden, mogen de daarbij gebruikte **kettingen** geen verwondingen veroorzaken en moeten deze kettingen regelmatig worden /geïnspecteerd en eventueel bijgesteld zodat zij gemakkelijk zitten. Elke **ketting** moet lang genoeg zijn om het kalf de gelegenheid te geven zich te bewegen zoals aangegeven in punt 7. De ketting moet zo zijn ontworpen dat de kans op wurging en verwonding voor zover mogelijk wordt vermeden.*

The ECJ therefore concluded that the word *chains* used in the Dutch version was contrary to the objective pursued by the EU legislator: a calf is tethered where it is tied by any means. The ECJ referred the case back to the Dutch judge. From the interpretation provided by the ECJ it clearly followed that Endendijk had indeed committed a criminal offence.²⁵

4. Standing case law as to the absence of an official language version

In his Opinion in the On Air Media case, Advocate General Szpunar refers to the seminal Skoma-Lux case (2007).²⁶

This case concerns yet another scenario, namely the one in which one or more language versions have not been officially published in the Official Journal of the EU.

In its Judgment in this case, the Court of Justice explicitly established that a Regulation cannot be enforced against individuals in an EU Member State in a language in which it was not published, even if those individuals were able to familiarise themselves with the provisions of the Regulation.

²⁴ The Court also dismissed the action on the grounds that the exception in question only applied to calves that were housed in groups at the time of being fed milk. This was not the case with the Endendijk calves, which were kept in individual pens.

²⁵ See other examples of such cases: ECJ Judgment of 27 February 1986, Criminal proceedings against Hans Röser, Case 238/84, EU:C:1986:88; ECJ Judgment of 27 October 1981, Anklagemyndigheden v Hans Ulrich Schumacher, Peter Hans Gerth, Johannes Heinrich Gothmann and Alfred, Case 250/80, ECLI:EU:C:1981:246. The latter case is, admittedly rather atypical, in that the Danish company did not raise the language issue in its defence.

²⁶ ECJ Judgment of 11 December 2007, Skoma-Lux sro v Celní ředitelství Olomouc, Case C-161/06, ECLI:EU:C:2007:773. See other examples: ECJ Judgment of 25 January 1979, A. Racke v Hauptzollamt Mainz, Case 98/78, ECLI:EU:C:1979:14; ECJ Judgment of 26 November 1998, Covita AVE v Elliniko Dimosio (Greek State), Case C-370/96, ECLI:EU:C:1998:567; ECJ Judgment of 8 November 2001, Silos e Mangimi Martini SpA v Ministero delle Finanze, Case C-228/99, ECLI:EU:C:2001:599; see also ECJ Judgment of 15 May 1986, Oryzomyli Kavallas OEE and others v Commission, Case 160/84, ECLI:EU:C:1986:205. In the latter case the Court seemed to imply that the fact the company had been able to acquaint itself with the provisions, was relevant. In later case law the Court was, however, very clear on this issue: if the language version is not available, there can be no enforceability against nationals of that language.

This Judgment must be read against the backdrop of the accession of ten new Member States in 2004. At the time of accession, i.e. 1 May 2004, the *acquis communautaire* had not yet been fully published in the Official Journal in the languages of the acceding EU Member States. However, unofficial translations in these languages were made available by the national authorities and through the Eurlex database.²⁷ This led to a rather problematic legal situation, with national judges in the new Member States ruling differently on the enforceability of EU legislation that had not been officially published in the national language. In Poland, for example, judges ruled that EU acts that had not been published in the Official Journal in Polish were not enforceable against individuals, while in Estonia the Supreme Court ruled that the lack of publication in Estonian was irrelevant because professionals, such as customs officers, should be familiar with EU law.²⁸

In this context, a case was brought before the Court of Justice. *Skoma-Lux*, a Czech wine importer and wine trader, was fined by the Czech customs authorities for repeated infringements of customs legislation. In its defence, *Skoma-Lux* argued that the customs authorities could not enforce EU legislation which had not yet been published in the Official Journal of the EU in the Czech language. The customs authorities, on the other hand, argued that the Czech Ministry of Finance had published the Czech version of the relevant customs provisions in electronic form, that *Skoma-Lux* had been able to familiarise itself with these provisions at customs offices and that *Skoma-Lux*, which had been active in international trade for a long time, was aware of the relevant EU provisions.

The ECJ adopted, however, a strict and formal approach, holding that EU Regulations are not enforceable against individuals in an EU Member State if that Regulation has not been officially published in the language of that Member State. This applies even if the individuals concerned were able to acquaint themselves by other means with the provisions of the Regulation at issue.²⁹ The ECJ held that such an interpretation was the only one consistent with the principles of legal certainty and non-discrimination.

5. Three scenarios: coherence and fairness?

5.1. Three scenarios

In summary, three distinct scenarios concerning linguistic discrepancies seem to emerge from the ECJ case law discussed above.

In the first scenario, as previously discussed in Section 2, an incorrect language version is corrected by a subsequent correcting act that has retroactive effect. This is exemplified by *On Air Media*. This company could rely on legal certainty and legitimate expectations. The company was under no obligation to compare the Romanian language version with other linguistic versions.

The second scenario pertains to a discrepancy that evades detection until it reaches the courts. As discussed in Section 3, *Heuschen & Schrouff* or *Endendijk* were adhering to their respective language versions, which were revealed to be incorrect subsequent to a ruling by the ECJ on a reference for a preliminary ruling. In this scenario, there appears to be an implicit mandate for a comparison of linguistic versions. The prevailing ECJ doctrine implicitly suggests that other language versions should have been consulted, which would have clarified the obligations in question.

The third scenario pertains to the absence of one or more official language versions. *Skoma-Lux* could establish its defence on the basis that the Czech language version had not yet been published in the Official Journal of the EU. It was not necessary to consult provisional or other available language versions. The fact that *Skoma-Lux* was most probably familiar with its obligations under EU law was irrelevant.

²⁷ K. LASINSKI-SULECKI, W. MORAWSKI, *Late publication of EC law in languages of new Member States and its effects: obligations on individuals following the Court's Judgment in Skoma-Lux*, in *Common market law review*, 2008/3, pp. 706-707.

²⁸ *Ibid.*, pp. 708-709.

²⁹ See, in the same sense, ECJ Judgment of 12 July 2012, *AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus and Põllumajandusministeerium*, Case C-146/11. ECLI:EU:C:2012:450.

5.2. Incoherences

It should be noted that the particular circumstances may vary in each instance. In the case of *On Air Media*, for instance, a national decision was held to give rise to legitimate expectations. Nevertheless, fundamental inconsistencies do appear to emerge between the three scenarios. The seemingly valid emphasis placed on legal certainty and legitimate expectations in the Romanian case of *On Air Media* does not appear to carry any weight in classic language discrepancy cases, as demonstrated in the cases of *Heuschen & Schrouff* and *Endendijk*. Admittedly, the primary function of the ECJ is to provide a consistent interpretation of EU law across all official language versions. However, it must be acknowledged that the result may appear to be unjust for individuals or companies facing the consequences. It can be argued that, in terms of legal certainty and legitimate expectations, the situation was even more disadvantageous for *Heuschen & Schrouff*, which was fined, whereas *On Air Media* merely had to pay back a subsidy to which it was, in actual fact, not entitled.

5.3. The duty to compare

The question of the extent to which a *duty to compare language versions* applies in the second scenario (that of *Heuschen & Schrouff* and *Endendijk*) remains unresolved.

In this regard, the question arises as to whether a *criterion of doubt* could be considered relevant. More particularly, it remains unclear as to whether individuals or companies should only be required to consult other language versions when they are or should be aware of issues with their own language version.

The ECJ appears to imply the existence of such a criterion of doubt; however, it has not elaborated on this point. In the *On Air Media* Judgment, the ECJ employs the argument that the provision at issue appeared to be *clear* (albeit incorrect) in the Romanian language version. This suggests that the companies in question had no reason to doubt the accuracy of their own language version, and therefore did not have a duty to consult other language versions. Yet, it may be argued that in the cases of *Endendijk* and *Heuschen & Schrouff*, the obligations also appeared to be unambiguous in the Dutch language version.

In the seminal cases of *CILFIT* and *Consortio*, the ECJ did not provide a clear definition of this criterion of doubt. Admittedly, in these Judgments, the matter is not investigated from the point of view of the legal or natural person concerned, but rather from the vantage point of a national judge. An analysis of the pertinent passages in *Consortio* reveals the following (own emphasis added):

“According to the Court’s settled case-law, one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. (para. 43)

While a national court or tribunal of last instance cannot be required to examine, in that regard, each of the language versions of the provision in question, the fact remains that **it must bear in mind those divergences between the various language versions of that provision of which it is aware, in particular when those divergences are set out by the parties and are verified.**” (para. 44)

Once more, the ECJ appears to allude to a criterion of doubt, yet it does not provide a clear benchmark. Furthermore, this pertains exclusively to the evaluation of a national judge regarding the referral of a matter to the ECJ.

The criterion of doubt is also discussed in legal doctrine. In the context of correcting acts and their temporal effect, Bobek suggests that the retroactive effect of substantial correcting acts should be limited to cases where it is evident to a reasonably prudent person that there is an issue with their own language version.

“(…) one could try to conjure a compromise solution, which could try to balance the two interests and the two extreme approaches – the equal authenticity dogma on the one hand and the protection of legitimate expectations on the other. One could try to conjure, for instance, a middle yardstick of a ‘reasonable and/or circumspect interpreter’. This interpreter would be a normally diligent reader of



Community legislation. If s/he would be able to detect that there is something wrong with a national language version of a Community measure, then so should the relevant national authority”.³⁰

However, Bobek immediately identifies the obvious arbitrariness of such an approach:

“Such a volatile standard, however, which anyone can set at a different level, would perhaps not be entirely helpful. An omitted comma in a sentence, which one reader could consider to be a tragedy, might not be noticed at all by the next reader.”³¹

This assertion is indeed valid. As was the case with On Air Media, it could be contended that even less diligent companies might find it peculiar that enterprises that had been experiencing difficulties for a period exceeding three years could benefit from the aid scheme, while ‘nascent’ companies (which had existed for less than three years) in difficulty could not. In its ruling, the ECJ did not address this particular aspect of the case. The provision in question was determined to be “clear” in the Romanian language. Clear in its incorrectness, as it were...

It is possible that further complications may arise in relation to the prevailing Court doctrine. Indeed, what would have been the implications of a subsequent correction of the incorrect language version (in the case of Heuschen & Schrouff) through a correcting Regulation with retroactive effect? It is submitted that, in accordance with the principles set out in the On Air Media Judgment, the imposition of a fine on Heuschen & Schrouff would then also have to be cancelled retroactively (provided national procedural law allows for this).

As a point of relevance, it is important to reiterate the case of farmer Endendijk from Ermelo, wherein this very scenario nearly materialised. As was explained in section 3, Endendijk risked being convicted on the basis of an incorrect Dutch-language version of an EU Directive. The Directive under scrutiny was Council Directive 91/629/EC of 19 November 1991, which established minimum standards for the protection of calves.³² The Court delivered its judgment on 3 April 2008 and found that the Dutch language version was incorrect.³³ The Directive was later codified.³⁴ However, it was not until 2015 that the discrepancy in the Dutch language version was corrected.³⁵ In the event of Endendijk’s conviction by the Dutch court, could it be hypothesised that, subsequent to a rectifying legal act, he would be entitled to initiate a new case before the Dutch court on the grounds of violations of legal security and legitimate expectations?

Luckily for him, Endendijk was only found guilty by the Dutch court, yet not sentenced to a financial sanction or imprisonment. It was evident that following the ruling by the ECJ that a chain could also be considered a rope, in the sense that it was a generic term for a tether, in accordance with other language versions, the Dutch court was obliged to conclude that Endendijk had indeed committed a criminal offence. However, as an attenuating circumstance, it was acknowledged that Endendijk’s contribution had clarified the scope of EU rules. Consequently, the court refrained from imposing a financial penalty or a custodial sentence.

Arguably, this is a remarkably sound approach, which has the potential to serve as the foundation for resolving the issue under discussion.³⁶ The reasoning of the Dutch judge deserves a further and detailed analysis. The Dutch judge first provided the following comments on the ECJ’s judgment, which he had requested (own translation):

“Point 8 of the annex to Directive 91/629, as amended in the Dutch language version, refers to a metal fastener, since it uses the word ‘chains’. The Court may not examine the word in question solely in the light of the Dutch language version, since Community provisions must be interpreted and applied uniformly in the light of the text in all languages of the European Community.

Where there are differences between different language versions of a provision, the interpretation of that provision must take into account the general structure and purpose of the legislation of which it

³⁰ M. BOBEK, *op. cit.*, p. 960.

³¹ *Ibidem*.

³² OJ L 340/28 of 11.12.1991, as amended by Commission Decision 97/182/EC of 24 February 1997 (OJ L 76/30 of 18.3.1997).

³³ ECJ Judgment of 3 April 2008, Endendijk, Case C-187/07, ECLI:EU:C:2008:197.

³⁴ Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves, OJ L 10/7 of 15.1.2009.

³⁵ OJ L 10/46 of 16 January 2015.

³⁶ Rechtbank Zutphen, Judgment of 20 October 2008, NL:RBZUT:2008:BG0605.



forms part. The Court has established that language versions other than the Dutch version of point 8 of the annex to the amended Directive use a general term. The term ‘chain’ therefore appears to be contrary to the objective pursued by the Community legislature.”

It is therefore established that a criminal offence has been committed by farmer Endendijk in light of the interpretation given by the ECJ.

“Based on the above interpretation of ‘tethered’, the court [of Zutphen] considers it legally and convincingly proven that the defendant [suspect] on or around 20 October 2005 in [place], at [address], deliberately kept 25 calves, while this was not done in accordance with point 8, first sentence of the annex to Directive 91/629/EEC, as those calves were tethered.”

Consequently, Farmer Endendijk can be considered as having committed the act in question and is therefore subject to the corresponding penalties.

“The defendant is guilty, as no circumstances have been established or become plausible that would exclude the defendant’s guilt.”

As to the sentence, the prosecution has asked for the following sanctions:

“The public prosecutor has demanded that the defendant be sentenced to a fine of €250, or alternatively five days’ imprisonment. In explanation of his sentence demand, the public prosecutor argued that the defendant was initially offered a settlement of €500. He took into account the time that had elapsed and the associated (additional) costs incurred by the defendant, and therefore moderated his demand to the amount claimed.”

But then comes the most interesting part of the reasoning of the national judge:

“First and foremost, it has not been demonstrated that the defendant failed in his responsibility as a livestock farmer with regard to the care of the animals he kept. The defendant has shown himself to be a conscientious livestock farmer who cares deeply about the health and welfare of his livestock. In the method he uses to rear young cattle (in this case calves), he tries to take these interests into account as much as possible. He is appreciated by his peer group for his approach. However, it has now been established that the suspect did not keep the calves on his farm in accordance with the legal guidelines applicable within the European Community. In order to establish this, it was necessary to refer questions to the Court of Justice for a preliminary ruling, which the Court has answered. The fact that the Court was able to provide clarity on a method of keeping calves that ultimately appears to be unlawful is partly due to the contribution of the defendant. That is all there is to it. In this case, imposing a penalty would not serve any reasonable punitive purpose. Therefore, no penalty or measure will be imposed.”

It is evident that the national judge does take into account the good faith of the defendant. The national judge also implies that the legal obligations contained in the provision at issue were not clear in Dutch, as demonstrated by the fact that a clarification by the ECJ had been necessary. Consequently, no penalty was imposed.

However, it is important to note that this solution may be at odds with the prevailing case law of the ECJ on the matter. The judgments in *CILFIT* (1982) and *Consortio* (2021) indicate that there may be only relative trust in the own language version of EU law. This far-reaching doctrine effectively calls into question the notion of equal authenticity, since one or more language versions may be disregarded if they do not accurately reflect the legislative intent. The ECJ’s primary duty is, of course, to provide a uniform interpretation of EU law, ensuring that all language versions are aligned both formally and substantively.³⁷ Consequently, it is clear that citizens, national administrations and courts cannot rely exclusively on their own language version of EU law. Instead, they should compare language versions.³⁸

³⁷ See C. BERGOMI, *Comparative law and autonomous concepts – The making of common European legal meanings*, Turin, 2025.

³⁸ See, in the same sense, F. STURM, *Lingua latina fundamentum et salus Europae*, in *The European legal forum*, 2002, p. 316; R. L. CREECH, *Law and language in the European Union: the paradox of a Babel “United in Diversity”*, Groningen, 2005, p. 29; L. IEVA, *Il latino come lingua dell’Europa unita: studio sul regime linguistico dell’U.E.*, Napoli, 2009, p. 40.



This case law appears to be at conflict with the other scenarios outlined above (Skoma-Lux and On Air Media). There does not seem to be an objective reason as to why legal certainty (and legitimate expectations) are less relevant in the case of discrepancies that are detected in the course of legal proceedings. As a matter of fact, the Court itself has hinted at the incompatibility with the principle of legal certainty. In the Kerry Milk case (1977),³⁹ which concerned the processing of skimmed milk, the linguistic discrepancy pertained to the concept of “due and payable” in English. In contrast, the other language versions did not make reference to the concept of “payment” at all, but rather to the notions of “right” or “obligation”. The Court elected to pursue a solution without favouring any particular text. However, it acknowledged that the elimination of linguistic discrepancies through interpretation could, in certain instances, contravene the imperative for legal certainty. This is because one or more of the texts in question might necessitate an interpretation that departs from the natural and usual meaning of the words.⁴⁰

In a case concerning the freezing of economic resources of persons suspected of supporting terrorist activities (The Queen, 2010), the Court emphasised the significance of an interpretation that ensures that provisions are aligned with the general principles of EU law and, more specifically, with the principle of legal certainty. This is to guarantee that those involved have a clear understanding of their rights and obligations.⁴¹

It thus appears that the Court is fully aware of the potential issues concerning legal certainty and that this is a factor it considers when interpreting the relevant provisions. Nevertheless, as it is a widely accepted premise that no legal texts in different languages will ever have an identical meaning, a certain degree of legal uncertainty is an inevitable consequence when acts are authentic in all EU official languages.⁴² And especially in cases where an interpretation *contra legem*, against the explicit wording in one language has to be given, and there is no apparent case of bad faith as to the individuals concerned, it seems that their rights are insufficiently safeguarded by the prevailing doctrine.

6. Concluding remarks

The present analysis was initiated with a review of the recent judgment On Air Media (2025). In this judgment, the ECJ affirms the retroactive effect of a correcting act of EU law with regard to a specific language version. Moreover, the ECJ provides a novel perspective on the ramifications of linguistic discrepancies between equally authentic language versions of EU law. The emphasis placed by the ECJ on the principles of legal certainty and legitimate expectations in this Judgment is commendable. The fundamental principle appears to be, accurately, that both natural and legal persons are permitted to rely on their own language version and are under no obligation to compare it with other language versions.

The ECJ had previously emphasised the absolute necessity of formal legal certainty with regard to the absence of an official language version (Skoma-Lux, 2007). In that scenario, there is no obligation to compare one’s own language with other language versions either.

Conversely, the scenario in which a linguistic discrepancy is detected in a case before the ECJ, notably in a preliminary ruling procedure, still poses significant concerns. Indeed, in such cases, the requirement for a uniform interpretation of EU law across all language versions may indeed result in

³⁹ ECJ Judgment of 3 March 1977, *North Kerry Milk Products Ltd. v Minister for Agriculture and Fisheries*, Case 80-76, ECLI:EU:C:1977:39.

⁴⁰ ECJ *Kerry Milk* Judgment, para. 11.

⁴¹ ECJ Judgment of 29 April 2010, *The Queen, on the application of M and Others v Her Majesty’s Treasury*, Case C-340/08, ECLI:EU:C:2010:232, para. 64-65. See Tiberi, arguing that multilingualism may very well threaten the very principle of legality in criminal justice (G. TIBERI, *Multilingualism and Legal Translation of the Sources of Law of the European Union: The Implications for Criminal Law of the New Post-Lisbon Treaty Area of Freedom, Security and Justice*, in F. RUGGIERI (ed.), *Criminal proceedings, languages and the European Union: linguistic and legal issues*, Berlin, 2014, pp. 18-19).

⁴² See Leung on the “certainty of uncertainty” when dealing with equally authentic legal texts (J. LEUNG, *Interpreting Multilingual Legislation: The Limits of Language and the Certainty of Uncertainty*, in J. LEUNG (ed.), *Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders*, Oxford, 2019, pp.183-208).



negative consequences for natural or legal persons who have followed their own inaccurate language version. This suggests that, in practice, there is a necessity to make comparisons with other language versions. Nevertheless, the extent of that duty remains ambiguous.

It is submitted that a relatively straightforward solution to this conundrum exists. It is imperative that the ECJ maintains its role in providing a consistent interpretation of all language versions of EU law. It is not possible for it to formulate ad hoc solutions for a particular language or case. However, national judges could, in principle, take such adverse effects on an individual into account, thereby protecting legal certainty and legitimate expectations as to the language version concerned, as was illustrated in this article.

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