

Anna Doliwa-Klepcka

University of Białystok
Poland

PREPARATION OF A LEGISLATIVE PROPOSAL IN THE MULTILINGUAL LEGAL SYSTEM OF THE EUROPEAN UNION

Abstract. The principle of multilingualism in the legal system of the European Union is one of the key elements that guarantees, among others, the right of access to EU legislation. It is particularly important not only in the sphere of the direct application of the EU law, but also in the sphere of access to information during the lawmaking procedures at the EU institutions. A special case is, however, a stage of preparing a draft legislative proposal by the European Commission. The EU member states agree to limit the use of official language version to the working documents for “working” languages of the Commission, i.e. English, French and German. In practice, English and French are the most widely used languages for the working arrangements in the preparation of the draft legislation, mainly due to costs of the necessary translations and an effectiveness of this stage. This article presents a course of the stage of the drafting a legislative proposal by the Commission and illustrates the scope of work partly exempted from the obligation to ensure the full application of the principle of equivalence of all the official languages of the European Union.

Keywords: legislative proposal, EC decision-making, draft of the of a legislative proposal

Introduction

Multilingualism of the Union law (24 equal official languages) implies various challenges. Most of works on the multilingual legal system of the European Union refer to the influence on the regularity of applying this law in the member states as well as securing it an appropriate efficacy. Semantic discrepancies between particular language versions of EU legal acts may have practical consequences for the interpretation of the law of the European Union. An important element in this area is also a proposal of cohesion of the European Union legal acts with national legal customs and commonly accepted terminology.

Another important question is the range of the practical application of the rule of multilingualism in the process of decision-making by the European Union institutions. It is particularly important in legislative procedures which adopt legal acts directly applied in the member states. In accordance with the Council Regulation No 1 of 15 April 1958 determining the language system of the European Economic Community (OJ of 6 October 1958, p. 385, as amended) 24 official and working languages are used in the European Union. Each official language is treated as equally important by the Union institutions. In reference to lawmaking procedures (from the moment of their initiation, i.e. producing an appropriate legislative proposal by the Commission) this means a possibility of working in each of the 24 official languages. Consequently, in legislative procedures, even a formal legislative proposal has to be submitted in all EU language versions in order to secure an appropriate share of, for example, entities entitled to participate in these procedures. Likewise, all legal acts adopted are always published in the Official Journal of the European Union in all official languages simultaneously.

The aforementioned rule of multilingualism of the EU in legislative procedures is not always secured, in particular at the initial stage of proposal drafting. Due to practical reasons, initial negotiations on the content of a proposal are conducted in selected working languages. Nevertheless, formal legislative proposals of the Commission are presented, for further legislative works, to the European Parliament and the Council in all 24 official languages.

The objective of this article is foremost presenting the course of the stage of developing the draft of legislative proposal by the Commission. It is illustrated by the range of works at least partly exempted from the obligation of securing the full application of the rule of equality of all official languages of the European Union.

Stages of works on the draft of a legislative proposal

Drafts of legislative proposals of the Commission are initially prepared at a middle tier of administration of the competent Directorate-General as well as the Secretariat General of the Commission (Doliwa-Klepcka, 2014: 177–188). At this stage English, French and German can be used as working languages of the Commission (Szapiro, 2013: 133–134) but in practice almost all acts are originally drafted in either French or English. The language of drafting is determined by the competent Directorate-General or unit (Robinson, 2007: 73).

The first phase of the works is defined as a pre-proposal stage (Raworth, 1993: 22–36, Peterson and Momberg, 1999: 38–43, Borchardt, 2010: 98–100). Each technical department or Directorate-General is responsible for preparing all proposals of the legal acts in its own field (Robinson, 2007: 71). If the proposal refers to an area for which more than one Directorate-General are competent, the draft is developed jointly. In such a case the coordinator (particularly in respect of evaluating potential effects of the proposal) is the Directorate whose range of competence concerns the issues in point to the greatest extent. The coordinating Directorate-General is responsible for cooperation with the remaining Directorates-General as well as Legal Service at the stage of preparing the text of the legislative proposal. In the case of all drafts of motions referring to legal acts, consultations with Legal Service are obligatory. They are a necessary condition to initiate decision-making procedures at the level of the College of Commissioners (Article 23, para 4 of the Rules of Procedure of the European Commission).

Within the Legal Service the Legal Revisers Group is extremely important. They intervene at an early stage of the procedure to ensure that Commission legislative proposals are drafted clearly and precisely and comply with the rules as to form. In addition, a lawyer specializing in the proper technical sector examines the substantive aspects of the proposal (Dragone, 2006: 100–106). The Legal Revisers check that the correct legal terminology is used and the legal implications are the same in each official language. Revision on the relatively early stage offers major practical advantages because the text is only in one language. Improving the quality of the draft at this stage makes future translators' work easier (Robinson, 2007: 74).

The consultation from the Secretariat-General is required in a few cases. This refers in particular to any initiatives subject to approval within the oral procedure, of political importance and provided for in the annual schedule of works of the Commission, subject to evaluation of effects or public consultation (Article 23 para 5 of the Rules of Procedure of the Commission). Consultations with Directorate-General competent in economic and financial affairs are obligatory in particular in the cases of all initiatives concerning economic growth, competitiveness and stability in the European Union or in the Eurozone (Article 23 para 5a a of the Rules of Procedure of the Commission). Consultation with the Directorate-General responsible for budgetary questions and the Directorate-General responsible for human resources and security is obligatory in reference to all documents which may affect the budget, finances, personnel and administrative issues. If necessary, consultations are also carried out with the service responsible for combating financial abuses (Article 23 para 6 of the Rules of Procedure of the Com-

mission). At this stage all the consultations on the content of a proposal are conducted in selected working languages of the Commission (most often in English).

In the course of developing the text of the proposal, the results of the consultations with the stakeholders are taken into consideration (Mendza-Drozd, 2010). This type of procedure is expected to secure the Commission an extensive political support for the subsequent formal legislative proposal from both future participants in the legislative procedures and the stakeholders (Kassim, 2001: 15, Mazey and Richardson, 2015: 247–275).

Already at this stage actions are taken to secure support from governments of the member-states. Appropriate consultations can be carried out on the forum of various committees (committees of experts), composed of experts designated by national authorities; and consulting committees composed of representatives of the non-government sector, including the private one (Nugent, 1999: 121). Depending on the interests represented, the stakeholders may also lobby for ceasing to work on a particular draft (Mazey and Richardson, 1993: 3–26). The officials responsible for the works on a particular motion also use the support from advisory and expert committees of the Commission. These committees include national experts (scientists, employees of independent analytical institutes), representatives of social and economic partners, representatives of European and national groups of interest as well as national officials from the member states. The purpose of their engagement is substantive support in the area to which refers the draft, or presentation of interests of the entities to which it may refer in the future (Buitendijk and van Schendelen, 1995: 37–57). The stakeholders, including representatives of civil society, may also propose, on their own initiative, studies and expert's opinions referring to the drafts of legal acts under preparation (Richardson, 2001: 4–26). At this stage – the wide range of consultations are provided in all 24 official languages by the rule of multilingualism of the EU. The Commission is obliged to conduct consultations with the stakeholders as well as other institutions in order to familiarize with their positions. It is also obligatory to consult national parliaments and governments of the member states. The scope of the necessary consultations connected with the legislative proposal drafted is decided on by the Director-General of the competent coordinating Directorate-General of the Commission.

In the European Transparency Initiative, the Commission recommended, among priority actions, application of minimum standards for consultations (Welch, 2007: 312–316). The Commission underscored that extensive consultations enable the participation of various stakeholders in the

process of shaping EU policies and are an essential instrument to improve the quality of the Commission's legislative proposals.

The Commission's minimum standards for consultations on drafted EU proposals constitute the fundamental part of the action plan "Better law-making", the main purpose of which was to improve the quality of the Union legislation. As early as December 2002, the Commission adopted the communication on minimum standards for consultation ("Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of stakeholders by the Commission"). The Commission proposed creating a transparent and cohesive universal framework for consultations, yet flexible enough to enable the services of the Commission to adjust the methods of consultations to particular policies. A general assumption of this model was to secure proper hearing the entities concerned in the part of the legislative process for which the Commission is responsible. The communication defined consultations as a process with which the Commission wanted to secure participation of the stakeholders in shaping policies before the decision is made. The term "stakeholders" includes, in this case, all entities which want to participate in consultations carried out by the Commission, regardless of whether they are organizations or private persons.

The minimum standards determined by the Commission (in force since the beginning of 2003) are applicable to consultations referring to legislative proposals of the Commission, for which the effect evaluation is required. The Commission presents plans referring to this type of motions in annual work programmes of the Commission. The minimum standards are also applied to consultations on the so-called 'Green Papers' – initial proposals of future legal solutions. To promote openness and public access to EU documents these documents are provided in the 24 EU official languages.

The Commission recommended applying certain standards also in the case of another type of consultation. Certain types of consultation were exempted from the obligation of minimum standards, which concerns decisions taken in the process encompassing official consultations with member states (i.e. in the case of committee procedure), consultation in the framework of "public dialogue" in the area of social policy (Article 153–155 of Treaty of the Functioning of the European Union) as well as consultations required by virtue of international agreements.

Generally the European Commission considers the compliance of minimum standards for consultation as satisfactory. The Commission's reports on the "better law-making" indicate that the services of the Commission have properly applied most of the minimum standards (Annual Reports on

Better Lawmaking). In particular they noted the frequent use of the central access point to consultation, which is the portal “Your Voice in Europe”, in order to announce new open public consultations. In most cases the deadlines for responses have been met. The reports assessing the effect describe clearly the processes of consultation and their effects. It is important to note that the responses to open public consultations have not always been published on websites. In certain cases the information on whether and to what extent the observations received during consultations have been included in the final legislative proposal of the Commission was very laconic.

Expert groups play an essential role in the area of exercising the right to legislative initiative of the Commission. In principle, they use the working languages of the Commission only in their activities. On the one hand, the expert groups are competent to express their position (non-binding) on the need for amending the EU legal acts in force. On the other hand, they may prepare preliminary drafts of new legal acts in the areas which, in their opinion, require regulations on the Union level or amending areas already regulated (Ambroziak et al. 2005: 27). Working groups of the Commission constitute an essential support in preparing expert opinions within the competences of the European Union. In this context, they are consulted not only at the stage of preparing the draft of proposal in the Commission but also at further stages of legislative procedures in the Council and the European Parliament. At the first stage of the procedure their job is to analyze the need for the amendment of the provisions in force or the development of a new proposal and to propose the Commission further actions thereupon and active participation in their implementation. Having developed the preliminary draft of the proposal, the task of the group of experts is, in turn, issuing an opinion on the problematic questions presented by the Commission as well as agreeing on the draft text (Ambroziak et al., 2005: 33).

At the stage of works in a working group of the Commission, it is relatively easy (in comparison with the subsequent stages of the procedure), both in the Commission and at the stage of strictly legislative procedure to affect the content of a particular proposal (Folsom et al., 1996: 55–56). At the earliest phase of the decision-making process, key elements are: expertise, cohesive position agreed on with the other partners, good justification of the proposal and negotiation skills. In the course of meetings of the Commission expert groups no formal voting is conducted. Expert groups’ activity is based on reaching a compromise. The degree of support for a particular solution is evaluated by the chairperson of the group on the basis of the positions expressed by the members during the session (Snyder, 1990: 34).

The activity of European Union institutions, foremost legislative, in each of the areas in which they are competent, is carried out with the perspective of a certain aim. However, it may often result in effects in other areas. The lack of knowledge of potential effects in the other areas may result in ineffectiveness and inconsistency of the actions conducted. In this context the Commission recognized, already in 2002, the necessity of estimation of the effect of a legislative proposal as an element of the integrated approach, determining fundamental rules in this matter (Communication from the Commission on impact assessment). The fundamental documents referring to the rules of impact assessment are guidelines developed by the Commission. Prepared in 2002, the Impact assessment guidelines were amended a few times: in 2005, 2006 and 2009. In July 2015, a new document of the Commission was adopted: the Better Regulation Guidelines. They are general guidelines referring to actions taken to improve the quality of EU legal regulations, for example, assessing the effects of the regulations. They specified instructions for the Commission services referring to the methods of conducting such assessments and concrete guidelines for the Commission workers.

Before presenting each legislative proposal, the Commission analyses the state of the regulations in force and conducts an assessment of potential effects (economic, social and environmental) of a particular legal act coming into force. The objective of these actions is recognition and quantitative determination of both intended and unintended effects of the proposals on various areas of policies (Chittenden et al., 2007: 271–286).

Each draft of the future legislative proposal should be prepared after a thorough review of the issues it concerns. Here, at the stage of the arrangements within the Commission a draft is conducted in selected working languages of the Commission (most often in French and English). Next, the proposal is developed on the basis of the impact assessment, which clearly determines the objectives and variants of actions with which these objectives may be implemented. Defining potential compromise solutions in the impact assessment is of particular importance. The integrated effect assessment points at, for example, advantages and disadvantages of potential options and analyzes their probable impact on economy, environment and society. The general assessment of potential effects of the regulation proposed also estimates its administrative costs. All the impact assessment reports are provided only in English.

The impact assessment is a useful instrument in the context of forming policies by the Commission and an important support for political decision-making in the institutions which finally adopt a particular legal act. Accord-

ing to the Commission, it is one of the most effective methods of enhancing the quality of EU legislation as it provides politicians with information on potential effects of a given proposal of a legal act, but taking a decision remains in the sphere of political discretion. Each proposal of the Commission is appended with a report of the impact assessment of a particular proposal. It contains argumentation on the basis of which the Commission recognizes that the actions proposed are appropriate. The analyses of potential effects of the proposal are prepared by competent Directorates General of the Commission, in particular by the Directorate General for Economic and Financial Affairs (ECFIN).

All impact assessment reports are currently scrutinized for quality by the Regulatory Scrutiny Board, which on 1 July 2015 replaced the Impact Assessment Board. It is (likewise the Impact Assessment Board) an independent control body supporting the accuracy of the decision-making process. It assesses the quality of the drafts of final reports on impact assessment as well as provides Directorates-General with recommendations referring to improvement of their quality.

The Commission endeavours to make the system of impact assessment developed by the Board orderly and transparent. Beside the expert opinions of the Commission services, the preparation of impact assessment includes, for instance, opinions submitted by the stakeholders. To continue the works on the initiative for which the effect assessment is conducted, in principle, a positive opinion from the Regulatory Scrutiny Board should be obtained. These opinions are published together with the final report on the effect assessment and the legislative proposal adopted by the Commission.

The Commission's perspective plans include further perfecting of the effect analysis system. An important step towards increasing transparency was the introduction of publishing "Action Plans" for all the initiatives of important impact with the information which analyses have already been conducted and which ones are yet planned.

The preliminary draft of a new legal act, having been approved of by a direct superior of the official who developed it, is sent to the director of the political cabinet of the Commissioner competent in the area which the proposal concerns (Christiansen, 2001: 95–114). The job of the employees of the Commissioner's political cabinet is editing and evaluating proposals of proposals received from various Directorates-General before passing it to the Commissioner and the whole College of Commissioners (King, 1999).

In this scope, the cabinet of each Commissioner maintains permanent contacts with political cabinets of the remaining Commissioners in order to establish the difference of opinion and reporting potential objections at

a possibly early stage of legislative works. The cabinet prepares a position which the Commissioner will hold on the legislative proposal at the College of Commissioners meeting. Each political cabinet follows current works of all Directorates-General of the Commission. In practice, the cabinets also maintain contacts with the member state from which the particular Commissioner comes, despite the fact that he/she acts independently as an international officer (Cini, 2007; 202–203).

Having been approved of by the political cabinet of the Commissioner superior to the Directorate-General which has prepared the preliminary draft of the legislative proposal, this Directorate submits the draft for “interdepartmental” discussions between the Directorates-General concerned and other Commission services (Cini, 2007: 203–209). The consultations between the Commission services are formally organized and coordinated by the Secretariat-General under the control of the Chairperson of the Commission. Legislative drafts are obligatorily evaluated by the Legal Service of the Commission. The position of the Commission services concerned (including Directorates-General), after the approval of the political cabinet of the Commissioner who is their superior, is presented in writing according to an established model. In the event of reporting essential observations on the evaluated draft, the Secretariat-General of the Commission organizes a meeting in order to eliminate discrepancies. At this stage, the Secretariat-General of the Commission may submit the draft to the Economic and Social Committee or the Committee of the Regions (in accordance with their competences) for evaluation. Their opinions are used in works on the final legislative draft.

Each draft of the legislative proposal passes through all the internal discussion stages within the Commission in just one language. Regardless of the language in which it is drafted, a document generally needs to reach the College in all three of the Commission’s procedural languages (English, French, German) and thus needs to be translated (Szapiro and Kaeding, 2013: 134). This responsibility is vested in the Translation Directorate-General of the European Commission.

A preliminary draft of the legislative proposal is initially discussed by the forum called special chiefs, composed of the members of cabinets of particular Commissioners responsible for the area of the Commission’s activity to which the proposal refers. Having been approved of by them, the proposal is passed to another group, the so-called chiefs of cabinets, including the Director of the Legal Service of the Commission (Nowak-Far and Michoński, 2004: 50). It is discussed (from the point of view of political solutions) at one of the weekly (usually on Monday) meetings of the directors of the po-

litical cabinets of all Commissioners, presided by the head of the political cabinet of the Chairperson of the Commission. The objective of these meetings is to substantially prepare the meeting of the College of Commissioners. The drafts of proposals, agreed on at this stage, are entered into “part A” of the Agenda of the College of Commissioners meeting and usually no additional discussion is provided for. If at the level of heads of the cabinet not all doubts have been explained, the consideration of the particular draft of a legislative proposal is entered into “part B” of the Agenda of the College of Commissioners meeting. Subsequently, the draft of the legal act is sent to the College of Commissioners (Stie, 2013: 59).

The subject of the debate at the meeting of the College of Commissioners is those proposals only, which were placed in “part B” of the Agenda. In the beginning, the competent Directorate-General, in consultation with the competent Commissioner, proposes to select an appropriate procedure of adopting the proposal. The Commission may adopt it in an oral procedure (at the Commissioners’ plenary meeting), in a written procedure, in the procedure of authorization or delegation. The oral procedure is applied in the case of legislative proposals which are “politically sensitive” and require a debate among the Commissioners. In practice, it is applied in reference to the most important (or the most disputable) drafts of proposals, entailing considerable financial effects. Decisions on such legislative proposals are taken in the weekly meetings of the College of Commissioners. The points in the Agenda placed in “part B” are presented by the Commissioner competent in the area which the point under discussion concerns. Before the meeting the Commissioners receive from their chiefs of cabinets reports referring to the particular points of the Agenda with the positions of the remaining Directorates-General and other services of the Commission as well as potential amendments they propose (Ambroziak et al, 2005: 47). After the discussion is over the Commission adopts a resolution on the approval of the draft as a legislative proposal of the Commission. The quorum constitutes the majority of the Commission members (Article 7 of the Rules of Procedure of the European Commission). Voting is held on the proposal of one of the members. The Commission’s decisions are taken by the majority of votes determined in the Treaty (each Commissioner has one vote – Article 8 of the Rules of Procedure of the European Commission).

The Secretariat-General is responsible for the correct course of further actions after adopting the draft of a legislative proposal by the College of Commissioners. Foremost, the legal and language correctness of the text of the proposal is examined. The legislative proposals adopted by the College are translated into all official languages of the European Union. Again, the

Directorate-General for Translation of the European Commission is responsible for the work. Next, the proposal is assigned with an appropriate reference of the Commission – COM [e.g. COM (2010) 708 etc.] as well as an interinstitutional reference indicating the type of legislative procedure applied in the particular case. As regards the proposals which are considered in a regular legislative procedure, the reference is COD (e.g. 2015/0176 (COD) etc.). In reference to the proposals considered in a special legislative procedure, in the variant of consultation procedure, it is CNS (e.g. 2015/0176 (CNS) etc.) and as far as the proposals which are considered in a special legislative procedure are concerned in the variant of consent procedure the reference is APP (e.g. 2012/0221(APP) etc. – before the Treaty of Lisbon entered into force the reference AVC had been used).

The works on the draft of a legislative proposal are concluded with directing the legislative proposal for publication in the Official Journal of the European Union (series C) and in the internet service Pre-Lex. The last formal action is passing the adopted legislative proposal to institutions which, in a particular case, will participate in the legislative procedure as well as other entities enumerated in the Treaties (national parliaments, consultative committees, such as the Economic and Social Committee, the Committee of the Regions).

Conclusions

The principle of respecting the multilingual system of the European Union is of special importance in the issues referring to access to the texts of EU legal acts. Since as early as the moment of initiating the legislative procedure, the rule has been to ensure universal access to documents in all 24 language versions. As demonstrated in this article, at the stage of works prior to a formal submission of a legislative proposal to the European Council and Parliament, the working languages are usually reduced to English, French and German (with the prevalence of English), which is justified by purely practical reasons. The workload and time required to translate extensive documents would exceed operational capacities of the Commission. Translating every working document into all official languages of the EU before making them available to the entities concerned would definitely delay substantive discussions. Besides, it is important to remember that the vast majority of negotiations are conducted within the framework of the Commission's internal structures as well as with the participation of its consultative bodies. Consultations at this stage are treated as preliminary,

whereas the final form of an legal act is determined in the course of legislative procedures. At this key stage the stakeholders concerned enjoy the facilitation and availability of all official language versions of the European Union.

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