This paper situates languages in the framework of European construction, analyzing problems resulting from the definition of languages' official status in the European Union (EU) juridical system. It explains that the process of European construction is historically defined by means of two distinct features (it is an open process, and at the same time, it is an accumulative process). The paper looks at the system of linguistic officiality in the EU (the Council, the Parliament, the Court of Justice, and Ombudsman), then it notes that the question for many policymakers, officials, and journalists is whether the current system is sustainable at this stage of the EU enlargement process. After summarizing a 1995 Parliamentary resolution on the use of official languages in EU institutions, the paper discusses minority languages, which are not EU official languages. It concludes that since the European construction process is an ongoing process, linguistic vertebration will continue to be a provisional matter. It suggests that if Europe is going to be constructed based on diversity and liberty, then Europe will be a place of bilingual people. (SM)
[ Working papers 5
[ Languages and institutions in the European Union
Manuel Alcaraz
1. Some preliminary ideas

I would like to begin this paper with an exposition of two preliminary ideas which will allow me, on the one hand, to situate languages in the framework of the European construction, and, on the other, to analyse those problems derived from the definition of the languages' official status in the EU juridical system.

The first idea that should be highlighted is that the process of European construction is historically defined by means of two distinctive features: it is an open process and, at the same time, an accumulative one.

In effect, this is a process that flourishes from the sum of political decisions developed over time - and not always planned - which have adopted different juridical formulae. For us, the most important juridical formula is that of an International Treaty, irrespective of the fact that some of these treaties have been innovative in juridical terms, thus creating systems that directly or indirectly bind the states. This is an important consideration for it necessarily affects linguistic regulation which, historically, has never been set down in this fashion.
However, we may at the same time identify the process of European construction with two other features which might seem to be opposites although they have in fact proved to have a symbiotic capacity:

1. *It is a functionally-based process,* that is to say, it is based on the adoption of decisions so that “things” may work out, while steering clear of political or juridical known precedents, including some of the big concepts of the European traditional ideology, such as “sovereignty”, “power division”, etc.

2. *It is a process highly concerned with symbols,* or, in other words, with providing in every stage of the process an increasing importance to a “European symbolic space”, to the extent that the “United Europe” becomes a very powerful symbol in itself.

The symbiosis that has taken place beyond the apparent paradox is explicable through functionalist pragmatists’ awareness of the fact that, in a such a plural and historical territory, pragmatism is required to incorporate symbols.

Obviously -and this is a first basic idea- linguistic pluralism is a basic fact in this reality. The problem, as we will see later on, is to what extent the functionality of symbols may become dysfunctional.

In order to elaborate on these ideas, I will briefly comment on a very interesting discussion that was held as to whether or not the EU needs to endow itself with a real constitution comparable to those of democratic countries. Such discussion may be found in the issue nr. 55 of the journal *Debats*, originally in German and subsequently translated into Spanish. I will now quote some parts from the latter version.

One of the viewpoints is defended by leading jurist Dieter Grimm. This author states, and it is true, that nowadays governments play the most relevant role in the European political process, or, using an already classical expression, they are the “Lords of Treaties”. This implies that EU power only derives from the people inasmuch as the governments’ power stems from the people’s will. This is, however, a feeble legitimacy, the so-called EU’s “democratic deficit” –it is interesting in this respect to read the European Parliament’s Resolution subsequent to the Treaty of Maastricht. Grimm infers from this fact that the traditional pattern aimed at putting an end to this problem is through the approval of a constitution that would result in more

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democracy and more legitimacy embodied in a civil society which expresses itself autonomously and which becomes reflected in the Parliament.

So far this is a clear and impeccable theory. Grimm, though, immediately shows his lack of confidence and doubts about the real possibilities of this constitution—which would necessarily be a federal one—mainly because he is not of the opinion that such European civil society could be shaped at this stage. Of a major concern here is the relevance given to linguistic plurality. Grimm states that “the biggest obstacle to the europeanization of the political substructure, on which the functioning of the democratic system and the Parliament’s action depend, is language. Communication is closely linked to language and to the interpretation and experience of the world through language. Information and participation insofar as basic conditions for the democratic existence are mediated through language”. Therefore, given the European sociolinguistic reality, the majority of citizens find their participation restricted, as well as “they are in a disadvantageous position regarding the European opinion-making mediation of interests process, which becomes more affected than any other national type of estrangement from its basis.” He still insists on this: “the importance of the linguistic factor regarding the viability of European democracy is often underestimated, partly due to the predominance of a concept of democracy which is confined to the opinion-making area so that the linguistic skills of functional élites, or even a large-scale translation system, are considered to be sufficient. This fact partly derives from the incapability to perceive the democracy’s dependence on communication possibilities.” Grimm’s conclusion with respect to the viability of a European democratic-constitutional system is that a previous collective identity is needed in order to normalise the acceptance of decisions taken by a majority in community bodies, as well as assuming efforts involving solidarity that do not necessarily benefit part of the EU. The author finally states that the existence of historically multilingual states does not contradict his theory, either because there is not a dominant language, or because (their) geographical dimension limits the complexity which cannot be obviated in the European case.

The philosopher Jürgen Habermas -also German- contested these arguments. He starts by affirming that he subscribes to some of Grimm’s conclusions and that it is necessary to create a “political public sphere to allow citizens to take a stand at the same time on the same issues of the same relevance.” Though, instead of giving too much importance to language disparity, he insists on giving a priority to the setting up of European associative and political structures such as parties, trade unions, NGOs, etc., to vertebrate “a public communication that transcends the boundaries of those so far limited national public spheres.” What is more, he also criticises Grimm for his too static vision of national-linguistic realities which are undoubtedly not so homogeneous or rigid.
This was the debate. I have highlighted it as I think it contains some of the keys to the real questions that arise -in both theory and practice- on the linguistic issue. I personally think that both authors share part of the truth, although I am more inclined towards Habermas' opinions for at least two reasons:

1.- Despite the existing difficulties, it is obvious that European institutions need to be democratised and this will require at certain moments strong voluntary acts.
2.- The mere existence of a constitution generates a collective identity that can help to overcome those fears manifested by Grimm.

Nevertheless, what is more important here is the reflection we may make on the "irruption" of the linguistic question within the core of the debate on Europe's political future. Such reflection -made from a [multilingual context]- acquires significant features. Let me explain myself: should we follow the same line of reasoning of the authors -both German, by the way, which means that they live in a nearly monolingual state reality except for the immigrants [and some minorities]-, then we must realise that those who define linguistic pluralism as a problem also stress "community" and "identity" values, whereas those who look with relativity the importance of the question do it from a more "societary", or rather "artificial" viewpoint. I think that this reality somehow inverts the terms of the argument used in order to defend linguistic pluralism within the Spanish state. This reflection means one thing only: we will probably have to leave behind many of the certainties we have made use of until the present time. In other words, flexibility of thinking will be the best device to face new realities.

After these previous considerations we may now focus on the second preliminary idea that was mentioned at the beginning of this work: the peculiarity of the juridical forms concerning the European construction -i.e. Treaties- in their effect on the definition of the official status of languages.

I propose to try to avoid legal technical terms although it will be necessary to make some remarks that may be summarised in the following way:

1- Usually, the definition of one -or several- languages as the official one/s is included in the Constitution of states. Regardless of the precision of such definition, western juridical culture has been continuously redefining the specific effects of it. A good example of this juridical consensus is the Sentence from the Spanish Constitutional Court 82/1986, of June 26th, which stated that "a language is official when, regardless of its reality and weight as a social phenomenon, it is recognised by public powers -within and amongst them- and in their relation to private subjects, with
full validity and juridical effects." The development of this principle is, obviously, another story in several aspects.

2- The inclusion in the Constitution of a definition on the official status-as it happens in other cases-means that formal and material prominence is given, surpassing other subsequent possible norms which in no case can abolish or infringe the definition included in the constitutional text which, in addition, will have specific juridisdictional protection. Constitutional reforms are, on the other hand, far more complicated than those concerning any other juridical norm.

3- This does not occur in respect to Treaties: these are incorporated into the legal system of the state that signs them, although it is, in short, like a law that may be quite easily modified and which does not imply the activating of constitutional reforming processes, regardless of the fact that political reforms concerning such important issues in the EU may be politically complex.

4- As regards this question, as is the case in any others, there occurs a de facto overlapping between community norms and constitutional and legal definitions from member states, including the Spanish state which, by the way, has one of the most complex and respectful legal systems-concerning linguistic pluralism- of all the EU states.

As we will now see, the definitions on official languages made by the EU are restricted to events and relations between the community structure and do not affect other aspects of those usual effects arising from the declaration of the languages' official status. In other words, we may talk about the official status of languages within European institutions, but we cannot strictly assimilate them into the concepts we usually make use of when we deal with, say, the Spanish Constitution or Statutes of Autonomy of those communities that it is made up of. We should bear in mind that such normative overlapping entailing theoretical contradictions does not actually pose real big problems from a juridical viewpoint. What the future may bring is another story as well.

2. The system of linguistic officiality in the European Union
Starting from these premises we may now move onwards through a simple description of the way in which linguistic officiality has been regulated in community institutions\(^2\).

Up to now, the main reference text as regards the current stage of the European construction process is the "Treaty of the Union". The linguistic question, however, is hardly mentioned in it\(^3\). Despite all this, we should remember that the Treaty of the Union does state that this is founded on the European Communities — that is to say, those which were constituted by means of particular Treaties.

The first of these Treaties was the one establishing the European Coal and Steel Community of 1951, which does not allude to linguistic provisions; its text is written in French though the following year the ministers of Foreign Affairs of signatory states agreed that the official languages of the community should be French, German, Italian and Dutch, by which a precedence was set, and it is still effective nowadays: official languages of the Communities are declared to be the official ones within their Member States. A reference to this principle was already included in the treaty establishing the European Atomic Energy Community of 1957.

According to the authorisation established by the preceding Treaties, the basic rule which is regarded to be effective is Council Regulation No 1, of 15th April, 1958. We may summarise this regulation as follows:

1 - It sets up the double concept of "official languages" and "working languages" which apply to the four languages that were official in the Member States at that time. (Art. 1)

2 - All texts sent to European EEC institutions by Member States, or else by individuals subject to the jurisdiction of a Member State, may be drafted in the language chosen by the sender, who will be entitled to be replied to in the same language (Art. 2). We note that the state is not obliged to use "its" official language.

3 - All texts submitted by EEC institutions to Member States or to individuals subject to a Member State jurisdiction shall be written in the language of the aforesaid state (Art. 3).

\(^2\) For this presentation I will specially follow: A. MILIAN MASSANA. "Le régime linguistique de l'Union Européene : le régime des institutions et l'incidence du droit communautaire sur la mosaïque linguistique européenne". In: Rivista di Diritto Europeo, nr. 3, Rome, 1995.

\(^3\) Article 149 of the Treaty, devoted to education, says: "1. The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and complementing their action, while fully respecting the responsibility of the Member States for the contents of teaching and the organisation of education systems and their cultural and linguistic diversity". And as a specific action in Section 2: "developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States". Apart from this, Article 151 mentions as well cultural pluralism.
4 - Regulations and other general texts, as well as the *Official Journal of the Community*, shall be written in the four official languages (Arts. 4 and 5).

5 - The diverse specialised institutions of the EEC may determine in their internal rules of procedure the modalities of application of such linguistic status (Art. 6), as well as the languages to be used in proceedings of the Court of Justice (Art. 7).

6 - In states where more than one language exists, the use of a language shall be governed by the general rules of the state's legislation (Art. 8).

The accession of new Member States will obviously widen the list of both "official" and "working" languages. Despite this fact it is necessary, however, to point out one exception for the record. As a matter of fact, Ireland's incorporation to the EEC did not result in a full officiality for Irish, although the Irish Constitution itself defines it as the national language and "first official language", whereas English is the "second official language". Certainly, the non-recognition of Irish means a breaking of the principle originally established, though it should not be considered an absolute dismissal since the English language is also an official language in Ireland.

The ultimate conclusion is that the last drafted version of Regulation nr. 1 of the Council —after the last adhesions— is: "The official languages and the working languages of the institutions of the European Union are German, English, Danish, Spanish, Finnish, French, Greek, Italian, Dutch, Portuguese and Swedish" and the *Official Journal* is also published in these languages as well as the UE general legal proceedings.

We should recall that within such a general principle, every institution has a certain capacity for modulation. The next section will deal with the accords reached as regards the main institutions.

a) The Council

Its internal rules of procedure specify in Article 10 that the Council shall only deliberate and take decisions on the basis of documents and drafts drawn up in the languages envisaged in the rules in force governing languages, except for the cases in which the contrary may be unanimously accorded, or on grounds of emergency. This legal system is also followed regarding discussions on possible amendments. It should be reminded that such a principle does not result in the use of all official languages. As a matter of fact, documentation is in many cases only drafted in French, English and sometimes in German.
b) The Commission

In this case, norms are laid down in Article 18 of its internal rules of procedure, reformed by decision of the Commission itself on March 8th, 1995. This article rules that the minutes of a meeting shall be attached in such a way that they cannot be separated, in the language or languages in which they are “authentic” (in juridical terms), to the Commission’s minutes of the meeting.

As occurs in the case of the Council, the documentation related to the Commission’s debates are mainly drawn up in some of the official languages.

c) The Parliament

Its Regulations establish the general principle that all Parliament’s documents shall be drawn up in all official languages. This refers either to emergency sessions, as to the oral development of the sessions or the minutes including previous considerations, etc. that usually have never been uttered in sessions.

On the other hand, paragraph 2 of the same article states that speeches delivered in one of the official languages shall be simultaneously interpreted into the other official languages and into “any other language” that the Bureau may consider necessary. We are thus dealing with an exception to the general rule according to which the use of European minority languages—as well as others, in principle—is possible within the Parliament, whenever its ruling bodies consider it appropriate, and thus following a practice established in international bodies. Finally, one should bear in mind that, by virtue of Article 150.4, all that has been previously said concerning the Plenary of the Parliament shall also be applicable to the Committee’s meetings.

What is more, it is also obvious that the Right to Petition devoted to in Article 138 D of the Treaty of the Union, for all physical or legal persons, may be exercised in any of the official languages.

d) The Court of Justice
As expected, linguistic rules in courts of justice have certain peculiarities deriving from the attempts to provide a higher degree of guarantee to participants in the process. In the case of the European Court of Justice, such rules may be summarised as follows:

1. The languages of procedure are all those official ones plus Irish.

2. The language of procedure in all actions is the one selected by the person initiating the process. Such a principle, though, has an important exception: if the defendant is a Member State, or a body or person directly related to a state, the language of procedure shall be that of the state.

3. In cases of prejudgmental remittance to a national court, the language to be used shall be that of the state to which the court belongs.

4. The Court may consent, whenever this is considered relevant, to the use of languages other than the official ones in cases involving statements by experts.

5. Decisions shall be adapted to the language of procedure, subsequently translated into all official languages—that is to say, they are not translated into Irish--, and shall be published in collections edited in each of the official languages.

d) Ombudsman

This institution, envisaged in Article 138 E of the Treaty of the Union, may receive complaints in any of the official languages and maintain whatever relations with citizens in the language of their choice.

3. Present and future problems

The question that arises for many policy-makers, officials and journalists is the following: is the current system sustainable at this stage of the EU enlargement process? This has been up to now an unanswered question. The problem, though, cannot be denied. Precisely, someone who is not suspect of defending linguistic uniformity, Miquel Siguan⁶, has reminded us that in 1995—when the last incorporations took place—1,800 translators plus 600 administrative supplementary staff were working for the EU institutions. This figure represents 12% of the total amount of the Commission’s personnel, and 30% of the personnel with university degrees. The total expenses represent 30% of the operational budget. Siguan also points out that an increase in the

number of official languages -two, for example- does not represent a 20% of extra work; it represents a change in the number of translations, from 72 to 110. Milian-Massana\textsuperscript{6} has also highlighted the terminological and interpretative difficulties that affect legal safety. However, any attempt to substantially modify the EU linguistic legal status has immediately been opposed through strong criticism and a generalised rejection. As happened, for instance, in the year 1997, when under French presidency some politician made some critical public comments regarding the exacerbation of multilingualism. Such a statement automatically led to a flood of questions in the European Parliament which forced the Commission to withdraw any other attempt concerning modifications. Nevertheless, concern about this question continued to be under discussion, as it is shown by the MEP’s opinions.

This was not, as a matter of fact, the first time that the issue reached the Parliament. As a result of this lasting fear for the current status quo, on January 1995 a parliamentary resolution on the use of official languages in the EU institutions was passed. The text may be summarised as follows:

The European Parliament:

1. Reaffirms its commitment to the equality of all official and working languages-as a cornerstone of the concepts of the European Union itself- while confirming linguistic pluralism as a characteristic feature of European culture.

2. Declares its determination to oppose any attempt to establish a discrimination between official and working languages.

3. Insists on the right of all Community citizens to use their own language, either written or orally, in their relations with all European institutions.

4. Considers the right of an elected representative to work and express him/herself in his/her own language as a democratic one.

5. Reaffirms the European Parliament’s independence and power to regulate its own modus operandi in regard to languages, while avoiding any kind of discrimination.

6. Commissions its President to forward this resolution to the governments of Member States and the presidents of the rest of European institutions.

\textsuperscript{6}MILIAN-MASSANA, A. op. cit, page 501.
4. Minority languages

We will hereinafter use this label for those languages which do not enjoy a status of state official languages, and are not therefore EU official languages.

We may state, in general, that European institutions do not strictly have power to take decisions regarding the protection and promotion of these languages and that, in addition, we are dealing with a highly complex situation given the diversity of existing modalities of recognition within the Member States. Probably, the most significant actions have been a series of European Parliament resolutions in favour of linguistic pluralism. The most relevant one was the resolution on linguistic and cultural minorities in the European Union (Kiliilea Resolution), passed on February 9th, 1994, by a vote of 318 in favour, 1 against and 6 abstentions. This text includes recommendations addressed to Member States underlining the need to provide linguistic minorities with specific rights that guarantee their capacity of self-expression. In the same manner, the text also includes specific recommendations to the Commission that we now summarise:

- To include minority languages in those programmes involving cultural activities, educational exchanges, etc.;
- to favour the use of lesser-used languages in the EU audio-visual policy;
- to use the new technologies of information in order to diffuse such languages;
- to establish specific programmes aiming at the teaching of minority languages.

We find, on the other hand, some -few- Commission specific actions that contribute with community funds to the promotion of these languages. Similarly, there is the creation of the European Bureau for Lesser Used Languages, with a central office in Dublin - recently closed down -, and an information office located in Brussels, as well as delegations in many states, which is obliged to submit studies and reports to the Commission. One of its main activities is the Mercator Project, with centres devoted to Education (Ljouwert, Friesland), Legislation (Barcelona, Catalonia), Media (Aberystwyth, Wales) and General Affairs (Paris, France) (currently non-functional).

A special case is that of the Catalan language. As a matter of fact, and provided that its number of speakers is higher than some of the EU official languages, a major sensitisation was possible by means of Petition 113/88, of the Parliament of Catalonia, and 161/89

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of the Parliament of the Balearic Islands, aimed at its declaration as an official language of the European institutions. The response from the European Parliament was in terms of a resolution, passed on December 11th, 1990. The resolution dismisses the declaration of full officiality—which was an impossible fact given the community legal framework—though at the same time it called on both the Council and the Commission to take actions to favour the use of Catalan in some community activities. Specifically, it recommends the fulfilment of the following objectives:

- The publication in Catalan of the Treaties and some other basic texts of European Communities;
- the diffusion in Catalan of public information on European institutions in the mass media;
- the inclusion of Catalan in the Commission programmes for the acquisition of European languages;
- the use of Catalan in oral and written dealings with the public in the Autonomous Communities concerned.

Any appraisal of this resolution must necessarily be a contradictory one. No one can doubt in effect about its symbolic value—placing Catalan a step forward on its way to normalisation, mainly in comparison to other minority languages-. On the other hand, some of these measures are only practical ones in terms of the possibility to exercise the right to use one's own language. However, it has been equally pointed out⁹ that the application of the resolution has not been carried out in many fields, specially in those relating to education. It may seem in any case that the existence of such a tool cannot be disregarded and that autonomous institutions should continue to urge the state government and community institutions to strictly observe the resolutions that have already been passed.

5. Some conclusions

The first possible conclusion is the fact that, given that the European construction process is an unfinished one, as well as a pending matter as regards its enlargement and institutional extension, linguistic vertebration will continue to be to a certain extent a provisional matter. Once this much has been stated, one should still bear in mind some of the questions that have already been pointed out, specially in reference to the difficulty to maintain the current situation, in which every state official language automatically becomes at the time of its accession an official and working language of the European institutions. Many are the reasons that will oppose such reality in the future; needless to say that those economic-bureaucratic ones will necessarily have to be taken into account. But there will be some others such as legal safety, for instance. We

should neither forget a reality that some authors have already highlighted: a permanent dispersal - on the contrary of what one might think originally - may result in a practical concentration around one single language, the "strongest" one, which in this case would probably be English.

Obviously, one could hardly imagine that State Members - the current ones as well as those which will be incorporated - will accept the removal of their language as an official one. Thus, the path to be taken will probably involve a distinction between official language and working language for many Community bodies. Accordingly, all languages would continue to be official ones in the main political institutions, as for the publication of norms and, generically, for the interrelation between citizens and institutions. At the same time, though, the everyday running of the EU related bodies would require a limitation in the number of languages to English, German, French and, probably, Spanish and Italian plus the language of the state where the body's headquarters are located. As a matter of fact, several measures of this kind have already been adopted concerning the regulations on trade mark registers, or in the case of the "vehicular language" concept, which must be used in European schools.

As for non-official languages, pressure will have to be exercised, as well as some imagination, in the setting of new formulae. I will follow in this account the line of argument of professor Milian-Massana\(^{10}\), which might be summarised as follows:

- To reduce to the maximum the juridical effects between the actions developed in official and non-official languages, while bearing in mind that such a task should rather be developed within each state than before the European institutions;
- the proportional introduction of non-official languages in Community programmes on the teaching and diffusion of languages in order to favour communication between EU citizens;
- the extensive application of the principles of the Community law in order to avoid any type of discrimination on grounds of language, while formally recognising in the scope of the institutions the same rights with which the original States are entitled. The recognition by the European institutions of the European Charter of Languages, approved by the Council of Europe's Parliamentary Assembly on October 4th, 1988\(^{11}\), the European Charter for Regional or Minority Languages, adopted by the Council of Europe's Committee of Ministers on June 25th, 1992\(^{12}\), and the Universal Declaration of Linguistic Rights, passed by civil and cultural organisations in Barcelona, on June 1996, would therefore be very significant;


\(^{11}\) For a further analysis, see: DE PUIG, L. M. "Debat i elaboració de la Carta Europea de les Llengües". Revista de llengua i Dret [Barcelona], nr. 16, (1991). Passim.

- to accept the provision by Member States of funds for minority linguistic communities concerning language protection and promotion activities, as well as direct funding to achieve this purpose by the European institutions;
- to include in certain EU activities the use of non-official languages, specially in those ones that directly address the citizens and which are carried out in communities having one of these languages of their own.

In addition, I believe that one should insist on an element that has previously been mentioned when dealing with Habermas' opinions around a possible European construction. It is the element of multiform pressure from civil society, thus establishing European networks for the defence of common interests, with clear and practical proposals to be transmitted to the incipient European structure that will vertebrate the EU construction and redefinition process: political parties, trade unions, civic organisations, etc.

In this slow and complex task we will probably have to put forward new arguments and theories that go beyond the particular and specific defence of a single language, in order to define the Europe we would wish for the future as the cornerstone of such discussion. From this viewpoint, I think that the following words by Miquel Siguan are very suitable in order to conclude this work: “Monolingual people tend to believe in an identification between reality and their verbal expression, and therefore tend towards an absolute and absolutist thinking, whereas those who are accustomed to using several languages accept differences and ambiguities more easily. So, if we have given up the idea of building a Europe based on one single model, [...] and have opted for the respect for variety and liberty, we may conclude that we have opted at the same time for a Europe of bilingual people and even of, why not?, half-castes.”

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