

## Legal opinion

### **Subject: Introduction of a right of Members to speak in languages that are recognised constitutionally in Member States, but that are not official languages of the Union**

By letter of 22 October 2024 to the President, MEP Fernand Kartheiser (ECR) proposed to amend Rules 174 and 210 of the Rules of Procedure, with the aim of introducing a right for Members to speak in Parliament in languages that are recognised constitutionally in Member States, but that are not official languages of the Union. This proposed new right would be subject to the Member providing to the interpretation service a translation of the text of his or her speech into one of the official languages in advance.

The legal basis in primary law concerning the use of languages by the institutions of the Union is Article 342 TFEU, which reads:

*‘The rules governing the languages of the institutions of the Union shall [...] be determined by the Council, acting unanimously by means of regulations’.*

It is therefore very clear from the wording of Article 342 TFEU that the Council has the power to determine the rules governing the languages of the EU institutions (1), acting unanimously (2) by means of regulations (3).

On this basis, the Council determined the languages of the institutions in Regulation No 1 of 1958. In this regulation, the Council establishes the official and working languages of the EU institutions as a *numerus clausus*.

Article 6 of Regulation No 1 of 1958 reads:

*‘The institutions of the Community may stipulate in their rules of procedure which of **the** languages are to be used in specific cases.’<sup>1</sup>*

In my opinion, this clearly means that the European Parliament, as an EU institution, may define the rules on official and working languages more narrowly in its Rules of Procedure, but may not expand them. The institution’s discretion for doing this is defined by Regulation No 1 of 1958: It may fall below these limits but not exceed them.

This legal opinion is also reflected in Article 7 of the Statute for Members of the European Parliament (2005/684/EC, Euratom) which reads:

- ‘1. Parliament’s documents shall be translated into all the official languages.*
- 2. Speeches shall be interpreted simultaneously into all the other official languages.*
- 3. Parliament shall lay down the conditions for the implementation of this Article.’*

To elevate a nationally constitutionally recognised official language to an official or at least working language of the European Parliament through the Rules of Procedure would go beyond this framework. Such an approach would be contrary to the distribution of powers between the EU institutions, since Parliament would be exercising a power of the Council. Furthermore, Parliament would circumvent the procedural and formal requirements laid down in Article 342 TFEU, since, instead of a unanimously adopted Council regulation, a mere amendment to the Rules of Procedure by Parliament, approved by a majority of its component Members, would suffice to achieve that aim.

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<sup>1</sup> Emphasis added by author.

As for Parliament's autonomy to self-organise laid down in Article 232 TFEU, I see no reason to ultimately derive from this a power to regulate the language regime in an expanded manner. Article 232(1) TFEU reads:

*'The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members'.*

In effect, the allocation of powers among the EU institutions is based on the Treaties, which, as international law instruments, are founded on the unanimous will of the contracting parties. The unanimity requirement and the Council's power laid down in Article 342 TFEU suggest that the language regime should be settled by the Council, in accordance with the will of the Member States. Parliament is therefore the wrong institution to regulate this issue, even if ostensibly only for itself.

In my view, to derive from Article 232 TFEU a power for Parliament, through an amendment to its Rules of Procedure, to expand the language regime would constitute a *de facto* amendment to the Treaties.

I also see no relevant basis for such an approach in the Union's obligation to respect and safeguard the linguistic diversity of the Member States (Article 3(3) TEU, Article 165(1) TFEU, Article 22 CFR). In my opinion, this obligation does not automatically imply that every national official language should or even must be elevated to a working language. Working languages ultimately serve the functionality of the Union. Any claim to include other languages into the linguistic regime of the Union would have to be decided upon by the Council.

Nothing else can follow from the Council conclusions of 13 June 2005 (2005/C 148/01). First of all, this practice is not legally binding since it was adopted in the form of conclusions. Furthermore, primary law (Article 342 TFEU) provides for formal and majority requirements, according to which the language arrangements for all institutions must "be determined by the Council, acting unanimously by means of regulations".

A consequence-oriented analysis also raises considerable doubts. If the aim is to make constitutionally recognised official languages the working languages of Parliament in the abstract and general sense (as proposed by the MEP), Parliament would in effect grant the Member States the right to unilaterally introduce new working languages into Parliament through constitutional amendments. This would open a new gateway for Member States to virtually change Union law, besides the procedure to amend the Treaties, or to influence it by amending the Rules of Procedure, provided there is a corresponding majority in Parliament. This would also have a knock-on effect for the other institutions. The Union would then have uncertainty as to the actual language regime, even though this is already clearly regulated in secondary law.

Ultimately, Luxembourg would have to ensure that Luxembourgish – which is clearly what the MEP is concerned about – is included as an official and working language of the Union by amending Regulation No 1 of 1958. Until this happens, I see no legally permissible way – even by amending the Rules of Procedure – of adopting a language regime in Parliament that goes beyond that laid down in Regulation No 1 of 1958, as amended.

In light of the above legal considerations, I consider that there is no legal possibility of amending Parliament's Rules of Procedure in the way proposed by MEP Fernand Kartheiser.

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