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Legal Revisers Group

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SEMINARS ON QUALITY OF LEGISLATION

How to interpret legislation which is equally authentic in twenty languages

Lecture by Advocate General Francis Jacobs, Brussels, 20 October 2003

Summary report

Mr Frank Benyon, Principal Legal Adviser in the Commission Legal Service, welcomed the speaker. He pointed out the danger of the principle of multilingualism simply being taken for granted. He examined how the principle is taken into account in practice by rules such as the requirement to use clear, simple language, to avoid terms too specific to one national system and to ensure consistency both within one text and with other texts. He mentioned the procedural safeguards and the key role played by the translators and the legal revisers. It was stressed that Advocate General Jacobs was giving only his personal view.

Advocate General Jacobs began by looking at the salient features of the approach to interpretation taken by the Court of Justice (ECJ).

The ECJ delivers a single judgment in which there is no sign of the views of individual judges. This is important as a means of fusing national perspectives.

The ECJ's approach to interpretation has been consistent over the years. It is teleological, taking account of the purpose of the legislation. It is contextual, taking account of the scheme of the legislation and its place in the framework constituted by the Treaties and European law in general.

Reflecting the involvement of different States in European law - and Article 31 of the Vienna Convention on the Law of Treaties - the ECJ may have regard to the travaux préparatoires, such as the Commission proposal and the explanatory memorandum. On the basis of those elements, the ECJ may be ready to depart from clear wording more than certain national courts.

The Community legislative process is characterised by the political input and the fact that it sometimes appears that the need to have a text prevails over the actual content of the act, although efforts to improve that situation have been visible more recently. One consequence is a lack of clarity, whether conscious or unconscious. Even experienced practitioners may be caught out by *faux amis*.

That is part of the reason why it is more necessary for the ECJ to take a purposive approach. Another factor is the difficulty of amending the Treaty - or of amending legislation in the case of Council acts. The ECJ cannot take the approach of many English courts which determine the meaning of a provision, acknowledge that that meaning may have unfortunate consequences, but state that it is up to the legislator to alter the text if it does not like those consequences.

Because of the multilingual nature of Community law, the ECJ may take an approach inspired by Article 33 of the Vienna Convention: if comparison of different language

versions reveals differences, the interpretation should be chosen which best reconciles the text and the purpose. Its approach may be compared with, but is not the same as, other bodies confronted with multilingual texts such as the European Court of Human Rights and the World Trade Organisation.

Legislative drafting styles may be divided into “fuzzy” or “fussy”. Common-law countries tend towards a “fussy” or very detailed style. The aim is that a person cannot misunderstand the provisions or better still cannot pretend to misunderstand them. However, there is a risk that the search for ever-greater precision can lead to incomprehensibility. A “fuzzy” style is typically used in civil-law countries, where legislation is framed in general terms and courts are left a freer hand in interpreting it. A simple, general provision is clearer to the man in the street.

Against that background the ECJ’s approach to interpretation is clearly not a threat to legal certainty. While there may be occasional surprises, those who are familiar with the ECJ’s approach can usually predict the result. It must be viewed against the danger of disintegration if Community law were examined through different lenses, even if it were written in a single language.

It is a fiction to say that the legislature has considered all the language versions. What of legislation adopted by the Six? Each accession increases the number of texts that were not originally authentic in all the current languages. It would, however, be contrary to the accession treaties to suggest that only those language versions existing at the time the legislation was adopted are authentic.

In fact, European legislation is most often interpreted by national courts. It has sometimes been suggested that the judgment in *Cilfit* seems to impose an exacting requirement on national courts in calling on them to compare all the language versions. But in fact the principle that all language versions are equally authentic means that no single version is authentic.

Linguistic discrepancies can rarely be resolved just by comparison of different versions. National courts would be better advised to apply the ECJ’s approach to interpretation and to seek an effective and appropriate solution having regard to the context and the purpose of the provision.

In conclusion, Advocate General Jacobs stressed that the fact that the interpretation of Community law is less text focussed does not mean that the language of any one text is not important. On the contrary, it is of utmost importance that each language version should be as good as possible, in particular to make the task of the national courts easier. Accordingly it is essential that efforts to improve drafting be maintained. There is an inverse relationship between the quantity of legislation and its quality: the less legislation is produced, the better it can be. The legislature should, therefore, constantly ask itself: Is this legislation really necessary?

Mr Bevis Clarke-Smith, Head of the Legal Revisers Group, thanked Advocate General Jacobs on behalf of the participants from both within and outside the European institutions for a fascinating insight into aspects of judicial interpretation which are of direct concern to all.

For more information on this and other aspects of the Legal Revisers’ work contact:

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