In recent years, the European Union has reaffirmed at numerous occasions its commitment to the principle of “unity in diversity” and its intention to respect the cultural and linguistic diversity of its Member States. Article I-3 (par.3) of the Treaty establishing a Constitution for Europe states that the Union “shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced”, while article II-82 states that “The Union shall respect cultural, religious and linguistic diversity”. The problem however is that there is a significant potential for conflict between this fundamental commitment to respect cultural and linguistic diversity and the other equally fundamental EU principle dealing with the economic integration of EU Member States, that is, the principle of free movement of persons, goods and services (article I-4). The realm of language policy offers a particularly good illustration of this tension between the commitment to respect diversity and the commitment to promote internal market freedoms. While in principle, EU Member States retain the full capacity to initiate and develop language policies that are suited to their own particular political and cultural context, in reality, this capacity is significantly circumscribed by internal market rules requiring the unhampered circulation of persons,

1. I would like to thank Dimitri Karmis for his comments on earlier versions of this paper.
goods and services. Indeed, as Siobain Jane Murray argues, “At first sight it would [...] appear that membership of the EC should have no implications for the national linguistic policy-making discretion of the respective Member States. However [...] the principles of EC market integration indirectly circumscribe the ability of national governments to act in relation to language”.2

My paper will seek to evaluate the nature and the scope of this tension between the requirements of economic integration and the commitment to linguistic diversity. The paper will be divided into two main parts. In the first part, I will look at the pressures made the European Union on France to bring its language legislation into line with Community law, particularly with respect to the issue of language use in the labelling of goods. In the second part, I shall look at the implications of Community law and jurisprudence for the linguistic territoriality principle.

The Toubon Law and EU Market Freedoms

In 1992, France revised its constitution to include a provision stating that French is the language of the French Republic.3 Two years later, the Toubon law was adopted. The stated objective of the law was to guarantee citizens of the French Republic the right to use their language in their professional and daily lives.4 One of the most contentious provisions of the Toubon law was article 2, which stipulates that “Dans la désignation, l’offre, la présentation, le mode d’emploi ou d’utilisation, la description de l’étendue et des conditions de garantie d’un bien, d’un produit ou d’un service, ainsi que dans les factures et quittances, l’emploi de la langue française est obligatoire”.5 Similar requirements are to be found in the French Consumer Code (article 112-8 du Code de la consommation), which stipulates that “Toutes les mentions d’étiquetage prévues par le présent chapitre doivent être facilement compréhensibles, rédigées en langue française et sans autres abréviations que celles prévues par la réglementation ou les conventions internationales [...]”.6

3. Article 2, paragraph 2 of the revised constitution stipulates that, “La langue de la République est le français”.
EU pressures on France to amend its legislation on labelling started following two important judgments by the European Court of Justice, the *Colim* judgment in June 1999 and the *Geffroy* judgment in September 2000. The *Colim* case involved two supermarkets, operating in the Dutch-speaking province of Limburg in Belgium, who were found in violation of the law, which requires that products sold in the region carry labels in the language of the region, that is Dutch. One of the main questions that the national court was asking to the European Court of Justice was “whether, and to what extent, the Member States may require information appearing on imported products to be given in the language of the area in which those products are sold or in another language which may be readily understood by consumers in that area”. The European Court of Justice ruled that Member States may legitimately adopt national measure imposing such language requirements as long as the law does not discriminate between national and imported goods, and as long as the requirements are proportionate to the aim pursued, that is, consumer protection. The requirement of proportionality involves that Member States’ legislation “must not exclude other means of informing” consumers “such as designs, symbols or pictograms”.

Soon after this decision, French authorities received a formal notice from the European Commission asking them to take into account the implications of this judgement, and to bring their legislation into line with the European Court of Justice jurisprudence. However, it is not until after another important judgment from the European Court of Justice, the *Geffroy* judgment, that French authorities started answering the European Commission’s call for change. Indeed, the *Geffroy* case increased significantly the amount of pressure on French authorities because, this time, the French legislation dealing with language requirements on food labelling was directly concerned.

The *Geffroy* case involved a supermarket (Casino) and its manager (*Geffroy*) who were fined for carrying on their shelves bottles of Coca-Cola and other beverages labeled in English only, in breach of the French law which mandates the use of French on food product labels. An appeal to the decision was made before the Lyon Court of Appeal. The Lyon Court referred the case to the European Court of Justice to determine whether the French law mandating the use of French on labels was compatible with Community law.

In its decision of September 2000, the European Court of Justice confirmed previous Court judgments, and ruled that Community law “ […] preclude[s] a national provision from requiring the use of a specific language for the labelling of foodstuffs, without allowing for the possibility for another language easily understood by purchasers to
be used or for the purchaser to be informed by other means.”.\footnote{11} The Court referred to its previous judgments on language requirements and food labels, the \textit{Piageme} case and the the \textit{Goerres} case.\footnote{12} The common denominator to all these decisions is that Member States’ legislation can prescribe the use of a specific language for the labelling of foodstuff, but cannot preclude the possibility that “another language easily understood” be used as an alternative to the language prescribed. Otherwise, they are held to be in breach of internal market rules because they constitute a barrier to the free movement of goods.\footnote{13} Of course, this raises the question of which other “easily understood” language could be used as an alternative to the French language. Surely, what the court had in mind was neither Finnish nor German, but English.

Less than a year after the \textit{Geffroy} decision, French authorities published a directive containing recommendations for the application of the Toubon Law. The directive made explicit references to the European Court of Justice judgments, and sought to soften the application of article 2 of the Toubon law on labelling. It stated that “l’article 2 de la loi ne fait pas obstacle à la possibilité d’utiliser d’autres moyens d’information du consommateur, tels que des dessins, symboles ou pictogrammes. Ceux-ci peuvent être accompagnés de mentions en langue étrangère non traduites en français, dès lors que les dessins, symboles ou pictogrammes et les mentions sont, soit équivalents, soit complémentaires sous réserve qu’ils ne soient pas de nature à induire en erreur le consommateur”.\footnote{14} In other words, the directive was trying to bring the application of its law closer to the requirement of proportionality by authorizing other means of informing consumers, such as pictures, symbols and pictograms.\footnote{15}

\begin{itemize}
\item \textbf{11.} ECJ, Case C-366/98, \textit{Yannick Geffroy and Casino France}. The Court based its judgment on Article 30 of the EC Treaty and on Article 14 of Directive 79/112.
\item \textbf{12.} Consider paragraphs 24 to 27 of the judgment, who read as follow: 24. “As to the language requirements concerning the labelling of foodstuffs which a Member State is entitled to impose, the Court has already ruled on this matter a number of times. 25.First, in Case C-369/89 \textit{Piageme v Peeters} \textit{[1991]} ECR I-2971, the Court ruled that Article 30 of the Treaty and Article 14 of Directive 79/112 preclude a national law from requiring the exclusive use of a specific language for the labelling of foodstuffs, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other means. 26.The Court then further ruled in Case C-85/94 \textit{Piageme v Peeters} \textit{[1995]} ECR I-2955 that Article 14 of Directive 79/112 precludes a Member State, as regards the requirement of a language easily understood by purchasers, from requiring the use of the language most widely spoken in the area where the product is offered for sale, even if the use at the same time of another language is not excluded. 27. Finally, in Case C-385/96 \textit{Goerres} \textit{[1998]} ECR I-4431, the Court ruled that Article 14 of Directive 79/112 does not preclude national legislation which, as regards language requirements, prescribes the use of a specific language for the labelling of foodstuffs but which also permits, as an alternative, the use of another language easily understood by purchasers.”
\item \textbf{13.} Article 30 of the EC Treaty stipulated that “Quantitative restrictions on importation and all measures with equivalent effect shall, without prejudice to the following provisions, hereby be prohibited between Member States”. Article 30 corresponds to Article 28 in the \textit{Consolidated Version of the Treaty Establishing the European community}. See \textit{Official Journal of the European Communities} 24.12.2002 C 325/47
\item \textbf{15.} Essential parts of this directive were cancelled by the Conseil d’État in July 2003. See Conseil d’État, 30 juillet 2003, n° 245076, Association “Avenir de la langue française”.
\end{itemize}
Obviously, the directive did not fully meet the expectations of the European Commission because, in July 2002, the Commission went a step further in its pressure on French authorities by issuing a “reasoned opinion”, giving them two months to provide a satisfactory response to its request of bringing French law into line with European law and jurisprudence, or else, they would be referred to the Court of Justice.16 This time, the Commission insisted more specifically on the implications of the Geffroy judgment for French law, and emphasized that Community law and jurisprudence “preclude national regulations from imposing the use of a specific language for labelling foodstuffs without allowing the use of another language that is easily understood by the consumer or allowing the consumer to be informed by other means”.17

Less than a week after the release of the European Commission’s “reasoned opinion”, French authorities adopted a decree modifying the provision of the French Consumer Code, which applies the Toubon law with respect to labelling. The decree did not remove the mandatory use of French on food labelling, but added a paragraph allowing the use of other languages on labels.18 While the European Commission’s “reasoned opinion” seemed to emphasize the need for French authorities to amend their legislation so as to allow the use of “another language easily understood” by consumers as an alternative to the French language, the new decree only allowed other languages insofar as they are used as complements to the French language. Although this modification of the French law seemed to satisfy only partially what the European Commission required in its “reasoned opinion”, it appears that French authorities have taken advantage of a new directive on food labelling adopted in March 2000 (Directive 2000/13/EC), and whose implications were not properly taken into account in the Commission’s “reasoned opinion”. The new directive seemed to leave much more room to Member States than the previous directive used by the European Court of Justice in all its earlier judgments on language requirements and food labelling. Indeed, article 16 of the new directive on food labelling provides that Member States can “[...] in accordance with the rules of the Treaty [...] stipulate that [...] labelling particulars shall be given in one or more languages which it shall determine from among the official languages of the Community”, and that this “shall not preclude the labelling particulars from being indicated in several languages”.19 Since, the decree adopted by French authorities seems to meet the standards

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of this new directive, France has not been under further pressure to amend its legislation on food labelling. However, some scholars like Niamh Nic Shuibhne, have argued that “there is no guarantee that this legislation would survive review by the Court (a strong advocate in the past of the ‘easily understood’ formula)”, because the new directive stands in tension with article 28 of the EC Treaty.  

**EU Market Freedoms and Language Diversity**

Up to now, I have focused mainly on the pressures made the European Commission on France to bring its language legislation into line with Community law, with respect to the issue of language use in the labelling of goods. However, it is by no means the only case where national language legislations have come into conflict with internal market rules. As Bruno De Witte argues, national language policies are susceptible to be scrutinized “whenever they constitute a barrier to economic integration” because the “connection between language use and economic integration arises with regard to each of the central principles of economic integration: the free movement of goods, the free movement of services and the free movement of persons”. Over the years, the European Court of Justice has recognized, in a number of cases, that Member States are entitled to adopt language policies affecting the free movement of persons and services, provided that these policies do not operate a discrimination between nationals and non-nationals, or be disproportionate to the aim they pursue. These principles of non-discrimination and proportionality have not only affected Member States, but have also been used to pressure Candidate States to the EU to amend their language legislation so as to prevent, as much as possible, conflicts with market freedoms. For instance, in the process leading to their accession to the EU, Latvia and Estonia have been repeatedly reminded of the central importance of the principles of non-discrimination and proportionality for internal market freedoms, and have been under considerable pressure by the European...

It thus appears that EU internal market rules circumscribe significantly the range of language policy measures available to Member States, and that Member States bear the burden of proof when it comes to showing that their policies are not disguised protectionist measures, but based on legitimate objectives. This highlights the tension between the EU’s expressed commitment to linguistic diversity and its commitment to secure internal market freedoms. What the EU’s internal market requires to be efficient seems to lead to a certain erosion of territorially-based protections of language diversity. The problem is that economic exchanges necessarily have a linguistic dimension insofar as they involve communicative exchanges, but that language diversity multiplies barriers to the free flow of these exchanges. As Van Parijs and Azziz argued in a recent paper “[…] linguistic uniformity fosters internal mobility, and thereby economic efficiency. When framed on a European scale, this concern obviously creates a tension with the linguistic territoriality principle applied at a national or a sub-national level”.\footnote{Philippe Van Parijs and Miriam Aziz, “Linguistic Legislation for XXIst Century Europe”, 14. Available at: www.etes.ucl.ac.be/DOCH/DOCH%2087.pdf} Van Parijs may be right in thinking that one important way to show respect for language diversity in the European Union and to counterbalance the adoption of English as a lingua franca at the EU level is to allow languages “to be ‘King’ in some part, large or small, of the EU’s territory”, but the EU does not seem to be moving in this direction.\footnote{Philippe Van Parijs, “Europe’s Linguistic Challenge”, Archives européennes de sociologie, XLV, 1, 2004, 142-143.} As things now stand, EU internal market principles appear to be so pervasive that their effect is not limited to the private sector, but can also be used to challenge language proficiency requirements in the public sector of Member States.\footnote{For a confirmation that principles of non-discrimination and proportionality also apply to language requirements in the public sector, see Case C-379/87 Groener v. Minister for Education and the Dublin Vocational Education Committee, 1989. See also Bruno De Witte who maintains that, “The present legal situation is that European Union citizens can only be excluded from those public sector jobs which directly involve the exercise of state authority (justice, police, administration of the higher levels) but not from the much more numerous jobs in public service sectors such as health care, education or transport. There, the prohibition of indirect discrimination through the use of linguistic conditions fully applies”, Bruno De Witte, “Free Movement of Persons and Language Legislation of the Member States of the EU”, op.cit., 2.} With this presumption in favor of market laws, it is difficult to think of any language legislation who would remain intact after scrutiny\footnote{Consider, for instance, Quebec’s Charte de la langue française, Catalonia’s adopted in 1998, etc}. 


26. For a confirmation that principles of non-discrimination and proportionality also apply to language requirements in the public sector, see Case C-379/87 Groener v. Minister for Education and the Dublin Vocational Education Committee, 1989. See also Bruno De Witte who maintains that, “The present legal situation is that European Union citizens can only be excluded from those public sector jobs which directly involve the exercise of state authority (justice, police, administration of the higher levels) but not from the much more numerous jobs in public service sectors such as health care, education or transport. There, the prohibition of indirect discrimination through the use of linguistic conditions fully applies”, Bruno De Witte, “Free Movement of Persons and Language Legislation of the Member States of the EU”, op.cit., 2.

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