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## UPC: Advocate General Bot, Philippe Cochet; the good, the bad and the ugly

Miquel Montaña (Clifford Chance) · Thursday, December 11th, 2014

As the readers will know, on 18 November 2014, Advocate General Yves Bot published his conclusions in cases C-146/13 and C-147/13, whereby he has proposed that the Court of Justice of the European Union (“CJEU”) reject the nullity actions filed by the Kingdom of Spain against Regulation (EU) 1257/2012 (Enhanced cooperation) and 1260/2012 (Translation arrangements) of 17 December 2012. One of the legal grounds on which he based his conclusions in case C-147/13 is that, under European Union (“EU”) law, no principle of equality of languages exists. If this is so, it is a matter of regret that the Advocate General’s views on this principle did not reach his fellow French politicians who, by rejecting the “English-only” proposal put forward by the Spanish EU’s presidency in 2010, which Germany was prepared to accept, forced two of the five countries (Spain and Italy; 40%, if my math is correct) normally designated in European patents, out of the joint project aimed at creating a truly European patent with a truly unitary effect.

To justify France’s opposition against the “English-only” solution, on 1 March 2011, Philippe Cochet, former Mayor of Lyon and current member of the French National Assembly, gave the following explanation to the Committee of European Affairs of the French Parliament:

*“The Commission had studied four options. The one that has been chosen – prosecution, grant and publication in one of the three working languages of the EPO, the claims being translated into the two other working languages – will reconcile simplicity and good efficacy/cost ratio, while responding to legal certainty imperatives and preserving linguistic diversity, in particular the use of French. The patent «everything-English» would obviously have been unacceptable for France.”*

Fair enough. But are we not applying a double standard here?

It is of course most respectful for France to be the only member of the EU that opposed the “English-only” solution proposed by Spain to unravel the linguistic *imbroglio*, and to have put the project at risk due to such opposition. However, taking into account the background of the discussions that led to the deadlock on the language regime, I am not sure he was judging things by the same standard when he sought to justify the stubborn opposition against the “English-only” solution to the need for “*preserving linguistic diversity*”.

All in all, I leave to the readers to decide which role should be assigned to Germany, France and Spain in the repertoire of *The Good, the Bad and the Ugly*. The only thing that appears to be clear is that the role of *The Good* should go to Germany.

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