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Translating end-user license agreements: issues, strategies and techniques

Patrizia Anesa

1. Introduction

- 1 The super-ordinate term “legal texts” comprises a variety of text types, the translation of which requires different types and levels of competency, as well as the application of different translation processes. In the translation of these texts, a sort of endonormative process is carried out, which leads to a strict observance of the conventions of a certain text type. This level of homogeneity in the variety of language used limits the possibility of diversification into various native styles (Gotti 2003) and this concept clearly applies to translated texts. The translator has to move within the limits imposed by the need to respect the main features of a specific register and comply with the requirements of a certain genre. However, the translation of a legal text also calls for a constant process of adaptation, not only regarding the legal language to be used, but also the legal system and context (for an insightful discussion of the Common and the Civil Law systems, see Lundmark 2012).
- 2 This study focuses exclusively on one specific type of legal document, namely EULAs (End-User License Agreements). This investigation is based on a qualitative analysis of some authentic examples of translations from English into Italian, as well as on a preliminary investigation of EULAs originally drafted in Italian, which are used merely for contrastive purposes. The aim is not to offer a comprehensive analysis of all the processes involved in legal translation, but to offer some insights into a very specific legal genre. A dynamic and functional approach to translation techniques is adopted, in line with the dynamic character of equivalence in translation theory (for a discussion of the concept of equivalence see *inter alia* Snell-Hornby 2006). Particular attention is devoted to the description and the examination of some of the most relevant linguistic,

textual and pragmatic strategies that translators rely on in the translation of this type of document. More specifically, the linguistic and the pragmatic perspectives are constantly intertwined and combined in order to attempt to describe and explain the most salient linguistic features also in the light of the pragmatic functions of the texts. The focus is on terminological and stylistic issues, as well as on divergences in the socio-cultural context and in the legal system related to the source language (SL) and the target language (TL).

- 3 Translation criticism is a highly complex field of inquiry, which should have both a macro-analytical and micro-analytical focus. A systematic examination of translations should include a complex network of dimensions, which are outlined by Matulewska as:
 - (i) the impact of the author on the source text,
 - (ii) commissioner's impact on translation,
 - (iii) translator's competences,
 - (iv) source and target text properties,
 - (v) source and target communicative communities and their impact on rendered translations. (Matulewska 2013: 13-14)
- 4 It may be argued that an exhaustive analysis should take the translator's own voice into account, but this approach may lead the evaluator to assume a specific viewpoint, instead of a multiple focus that would best fulfil the requirement for a multi-perspective evaluation, without necessarily having prescriptive goals. The aim is not to reach apodictic judgements that are not intersubjectively verifiable, but to acknowledge the complexity of translation processes and stress the need for a holistic approach (House 2001) in translation analyses. When it is applied to EULAs, such an approach should take into account a variety of factors, such as genre conventions, the legal tradition and the legal culture, as well as the continuity with previous versions of the same text, when available. As has been mentioned, this preliminary investigation focuses on a small parallel corpus and on a comparable one to gain insights into an under-researched text type and its translation. Further studies in this direction may also be based on a wider multilingual corpus, including English EULAs translated into other target languages (TLs) and Italian EULAs which are translated from other source languages (SLs).

2. EULAs as a genre

- 5 An EULA is often a transnational legal genre and constitutes a contract between the user of a product or a service and the provider granting the license to use it. Although generally ascribable to the category of "private legal texts" (for a complete classification see Cao 2007), EULAs comply with a series of clearly identifiable canons, both at macro and micro-structural level, and therefore represent a specific sub-genre.
- 6 EULAs may be considered as hybrid texts from a functional perspective. Within her theory based on the notion of translation-oriented text typology, Reiss identifies three oft-quoted typologies of texts: expressive, conative and informative (Reiss 1971, following Bühler 1934), and she then describes contracts as informative texts (Reiss 1976: 9-10). However, contracts cannot be defined as purely and exclusively informative (Šarčević 1997: 7) and Bühler originally placed them within the conative category, focusing on their imperative nature. Subsequent categorizations of legal texts distinguish between regulatory and informative, or prescriptive and descriptive texts

(Kelsen 1991; Bocquet 1994; Šarčević 1997), and contracts are generally seen as primarily prescriptive. Starting from the assumption that all genres may assume different functions according to the situational context and the target audience, the prescriptive function of EULAs emerges preponderantly in that they have a normative character. Rather than adopting a dichotomous view, these categories are intended here as developing along a continuum ranging from predominantly prescriptive to predominantly descriptive texts. It should also be kept in mind that the role and the function of a text may vary according to the specific legal system. For instance, predominantly descriptive texts written by legal scholars are traditionally considered authoritative and influential in defining legal concepts in certain Civil Law countries (Vanderlinen 1995: 343-351, cf. Šarčević 1997: 11-12), although several aspects of the Civil and the Common Law traditions are gradually converging (Mattei & Pes 2008).

- 7 A further distinction is offered by Tiersma (1999: 139), who distinguishes between *operative legal documents* which have a performative (see Austin 1962: 6) function, *expository documents*, and *persuasive documents*. Contracts fall within the first category, in that they establish legal relationships. However, it is not excludible *a priori* that secondary expository and persuasive functions may also be present.
- 8 Beyond their functional typology, EULAs are also linguistically hybrid in that they inevitably combine the features of a legal text with the features of a technical text (in our case, within the IT field), especially from a lexical perspective.

3. Investigating EULAs

3.1. Aims and methods

- 9 The main aim of this analysis is twofold: firstly, to investigate the peculiarities of EULAs as a genre and define to what extent they may be seen as hybrid texts; secondly, to identify what translation approaches and techniques are found in the corpus of EULAs compiled. The small corpus of documents consists of six EULAs written in English and drafted by North-American IT companies (C1) and their Italian translations (C2). Six EULAs originally drafted in Italian constitute the Italian section of the comparable sub-corpus (C3). In this case, exclusively Italian software companies were considered. In fact, several EULAs written in Italian are available for companies whose headquarters are located in the Republic of San Marino. However, in order to guarantee consistency and avoid any discrepancy given by a potentially different legal context, those agreements were not taken into account. Table 1 shows the names of the companies involved as well as the codes used to identify the respective texts for the purpose of this article.

Table 1. Outline of the texts analyzed

License Agreement	Code (English Text)	No. of tokens	Code (Italian text)	No. of tokens	License Agreement	Code (English Text)	No. of tokens
	Subcorpus: C1		Subcorpus: C2			Subcorpus : C3	

Microsoft	MS-EN	5163	MS-IT	2888	Lycans Lab	IT-1	1432
Apple	APPLE-EN	1370	APPLE-IT	1461	AliasLab	IT-2	2103
HP	HP-EN	1654	HP-IT	1221	Lucidinet	IT-3	2971
Laplink	LL-EN	1158	LL-IT	1989	Cospro	IT-4	961
Corel	COREL-EN	6657	COREL-IT	6485	Clingrouper	IT-5	2917
Intel	INTEL-EN	640	INTEL-EN	685	Wintech	IT-6	3322

- 10 The issue of comparability is particularly complex in this case. Given the quasi-monopoly of some of the companies in certain business areas, the possibility of finding EULAs written in Italian referring exactly to the same products is reduced. However, the texts included are all license agreements between a software company and its end-users. The documents investigated clearly do not represent an exhaustive corpus but may be used for a preliminary investigation into this specific type of text. The collected data were coded using *QDA Miner Lite* and analyzed by adopting a qualitative approach focusing on their macro-structural features as well as their micro-linguistic peculiarities.

3.2. Comparison between texts: Macro-structural features

- 11 Contracts tend to comply with a standard format and their macro-structure is highly predictable. The layout of a text contributes significantly to identifying the type of text and locating the most important information. No major differences are observed between the ST (source text), the TT (target text) and C3 texts as regards typographical features and layout.
- 12 These agreements are generally introduced with a title that identifies the type of contract:
- End user license agreement [HP-EN]
Contratto di licenza per l'utente finale [HP-IT]
- 13 In some cases the name of the company is also included in the title. When this happens, both the ST and TT retain the name. Similar choices are also found in C3 texts:
- Laplink Software, Inc. ("Laplink") End User License Agreement [LL-EN]
Laplink Software, Inc. ("LAPLINK") - Contratto di licenza [LL-IT]
Contratto di licenza d'uso software della QBGROUP [IT-5]
- 14 Whereas *license agreement* is a well-established term, it may be translated in slightly different ways. In the TTs *Contratto di licenza con l'utente finale* (MS-IT) and *Contratto di licenza per l'utente* (HP-IT, COREL-IT) are often used, but while the former is also found in C3 (IT-1), the latter never appears in that corpus. Another strategy which may be adopted is the deletion of part of the title and a reduction to *Contratto di licenza* [License agreement] (LP-IT). This deletion may be interpreted as a way of avoiding redundancy and enhancing conciseness without affecting the meaning of the text (for a more detailed discussion of the terms *agreement* and *contract* and their translation see Section 3.3). The comparable sub-corpus (C3) also shows a tendency to use the title *Contratto di*

licenza, which appears in three cases, while in two cases the title is *Condizioni di Licenza* [License Terms].

- 15 As happens in the prototypical structure of a contract, the different provisions of the agreement are divided into sections and sub-sections, and this structure increases accessibility and readability. A provision which is often included in EULAs is the “language clause”. Cao points out that the extensive increase in translations of private legal documents has enhanced the need for this clause, the aim of which is to indicate which version of the document will prevail in case of discrepancies and inconsistencies (Cao 2007: 86-87).

Complete Agreement; Governing Language. This License constitutes the entire agreement between the parties with respect to the use of the Apple Software licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Apple. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern. [APPLE-EN]

Integrità dell'accordo. Questa Licenza costituisce l'intero accordo tra le parti relativamente all'uso del Software Apple oggetto di questa licenza, e sostituisce ogni eventuale accordo precedente o contemporaneo riguardante quanto in oggetto. Per essere efficaci, eventuali emendamenti o modifiche di questa Licenza dovranno essere effettuati in forma scritta e sottoscritti da un rappresentante autorizzato di Apple. La presente Licenza viene tradotta unicamente per esigenze locali e nel caso in cui la versione inglese della Licenza e la versione tradotta fossero discrepanti farà fede la versione inglese. [APPLE-IT]

- 16 In the examples observed the language clause (if present) always states that the English version governs the agreement in all texts where English is the ST and the same principle is illustrated in the TTs. Similarly, all texts originally drafted in Italian, despite their transnational character, state that the governing version is the Italian one, and in some cases it is specified that translated versions have merely an informative function. This indicates that, despite their legal validity, TTs assume a slightly less performative value than the STs.

3.3. Lexical and terminological choices

- 17 Despite the affirmation of the Plain English movement, anfractuous and arcane vocabulary often characterises the language of contracts (Williams 2010; Adams 2013; Mattila 2013). From a lexical point of view, EULAs display a high level of technicality and precision, not only from a legal perspective, but also at a technical level, in that they display specific terms related to a specific subject matter (e.g. software technical aspects).
- 18 Terms are intended here as semantically loaded words which represent a precise and definable concept and are used to define specialized knowledge in specialized discourse.¹ In their approach to terminology, Alcaraz and Hughes (2002) identify three main categories of terms:
- purely technical terms;
 - semi-technical terms;
 - ordinary terms.

- 19 However, these categories at times overlap and these terms may be intended differently by the parties. For instance, the word *agreement* may be seen as semi-technical and context-dependent by the public at large, who may not be aware of its high level of technicality and precision. The contract drafter may instead pragmatically construe it as a highly technical term which defines a precise legal concept. The conception and conceptualization of terms is also related to the pragmatic perspective adopted. On the one hand, EULAs can be seen as to have an informative purpose in that users are informed about the different provisions. However, an EULA is predominantly a prescriptive text (see Section 2). The ST text is generally drafted by a company's legal department and addresses a multiplicity of subjects. Therefore, the terms are not generally negotiated and the user only chooses whether to accept the EULA or not. This situation displays a power asymmetry, which leads to the consideration that EULAs are inherently meant to protect the rights of the grantor, rather than inform the users. However, it should be noted that the *contra proferentem* legal principle may apply to contractual disputes. This principle indicates that ambiguities in private documents must be resolved against the interests of the party that drew up the documents. This doctrine (also sometimes referred to as 'ambiguity doctrine') is not applicable when both parties are equally involved in the wording and the inclusion of the ambiguous clause. This rule aims to impede intentional ambiguity on the part of the drafting party (Anesa 2007; Tiersma 2005: 123) to the disadvantage of the other party (i.e., to the disadvantage of the end-users, in the case of EULAs).
- 20 The translation of technical terms across legal systems is particularly complex. For instance, *agreement* may be translated as *accordo*, but the term *contratto* is preferred in the TTs analysed, as well as in the C3 corpus, in order to stress the legal validity of this agreement. In the SL the difference between the terms *contract* and *agreement* is very subtle. It has been stated that "the term 'agreement,' although frequently used as synonymous with the word 'contract,' is really an expression of greater breadth of meaning and less technicality. Every contract is an agreement, but not every agreement is a contract"² (Garner 2009: 365). Technically, the definition of *contract* is that of "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law" (Garner 2009: 365), whereas an *agreement* broadly refers to "a mutual understanding" (Garner 2009: 78). From a more general perspective, the term *agreement* may be used specifically as a synonym for *contract* or may be intended as a wider concept including different forms of consent or assent (see also Burke [1977: 447-452] for a discussion of the term *contract* and Burke [1977: 75] on *agreement*). On a practical note, the term *agreement* seems to be more widely used. All the companies investigated use it in the type of documents analysed here, and, for the sake of consistency, the same term is used throughout all documents. The term *contract* appears only as an intertextual reference to other texts (e.g. 'This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods', APPLE-EN). The word *agreement* could be translated both as *contratto* and *accordo*. The use of *contratto* in all TTs is in line with the Italian section of the comparable corpus, which shows the use of the term *contratto* in all texts written in Italian, demonstrating a preference for this term, which stresses the enforceability of the document (De Palma 2012). Therefore it can be argued that lexical choices in the contractual language of EULAs are characterized by a certain level of predictability, and

the identification of a specific text type entails a limitation of the potential terms to be adopted.

- 21 One of the main terminological issues in translation is that the TL may lack a matching set of etymologically and semantically related words. For instance, in the following example several technical terms which have a specific meaning within the US legal system are introduced:

Microsoft disclaims all warranties, conditions and other terms, either express or implied (whether by *statute, common law, collaterally or otherwise*) [...] [MS-EN]

Microsoft non riconosce alcun'altra garanzia o condizione, esplicite o implicite (siano esse derivanti dalla *legge, dagli usi, da altre fonti, ovvero siano garanzie accessorie*) [...] [MS-IT]

- 22 In particular, the expression *common law* seems to be associated with the term *usi*. However, Garner defines *common law* as “the body of law derived from judicial decisions, rather than from status and constitutions” (Garner 2009: 313). De Franchis states that the expression *common law* is basically untranslatable (1984: 493) and refers to a complex system of laws. In his description of *common law* (1984: 493-496) the term *usi* is not mentioned as a possible translation. Instead, *usi* is generally translated as *usage* or *custom* (De Franchis 1996: 1431), which, despite being an important element of *common law*, cannot be used to translate such a complex concept. Therefore, a back-translation process seems to suggest that *usi* is not a completely satisfactory choice in terms of equivalence. *Usi* does not convey the complexity and the multifaceted nature of the source term, but, given the system-bound nature of the term, it is plausible to assume that a semantic modification was deemed necessary. The term *giurisprudenza*, which may be used in modern law to define sources of legal knowledge and also includes the concept of judicial decisions, is sometimes offered by lexicographers as an appropriate translation. However, in the Italian comparable sub-corpus this term is absent. The difficulty in translating this concept is confirmed by the fact that the C3 does not present any term which is clearly related to the notion of *common law*, because of the differences in the legal system.
- 23 The majority of specialized terms encountered in the three corpora belong to the sphere of law. Some IT terms are also present, given the nature of the agreement, but their number is limited. The TTs present some English loanword and calques, which are typical of this field:

The software (including Boot ROM code) [APPLE-EN]

Il software (incluso il codice Boot ROM) [APPLE-IT]

- 24 However, the number of IT terms present in the C1 and the C2 is small and they are often semi-technical rather than purely technical terms:

You may not copy or make any changes or modifications to the Software, and you may not translate, decompile, disassemble, or otherwise reverse engineer the computer program(s). [LL-EN]

L'utente non è autorizzato a copiare o apportare modifiche al software e non può tradurre, decompilare, disassemblare o decodificare i programmi. [LL-IT]

- 25 Similar terminological choices are found in the C3 corpus, where clauses present analogous textual realizations:

L'Utente non può decodificare, decompilare, disassemblare, modificare o tradurre il prodotto Software [IT-2]

[The user may not reverse engineer, decompile, disassemble, modify or translate the Software]

- 26 The limited presence of IT technicality seems to indicate that, despite being to some extent lexically hybrid, EULAs are inherently and predominantly private legal texts.

3.4. Translation techniques

- 27 From a linguistic point of view, different strategies are used to resolve translation issues (e.g. Newmark 1988; Baker 1992; Sager 1994) and some of the most widely used in EULAs will be introduced. The following passages are purely illustrative examples of some of the processes which are considered particularly relevant in the translations in question.

Transposition

- 28 Transposition refers to the replacement of one grammatical category with another, without generally introducing a change as regards semantic features. Among the different types of transposition, Alcaraz and Hughes (2002: 181) identify the ‘pronoun for noun’ transposition and a clear exemplification of this process is present throughout the text. Indeed, the pronoun *you* becomes *l’utente* [the user] in most cases. This form of transposition may be seen as a way of providing elements of continuity between the two texts and at the same time respecting differences in terms of the linguistic conventions which are typical of the this genre in Italian and in English. Indeed, the word order is preserved, but the category shift allows to avoid ambiguity (in that the pronoun *you* may be translated differently if it indicates a singular or a plural referent). Moreover, a comparison with the Italian sub-corpus shows the very limited use of a pronoun of this type. In only one case *tu* (corresponding to the second person singular pronoun *you*) is used (IT-1), while all the other contracts use the expression *l’utente*.

Expansion

- 29 This phenomenon consists of a periphrastic translation of a certain term or expression in order to avoid ambiguity and convey naturalness and appropriateness. Expansion is not to be seen as a circumlocution, but as a technique which may avoid artificiality in the TL:

For the exclusive use of the primary user of the first copy of the software. [MS-EN]
A uso esclusivo dell’utente principale che utilizza la prima copia del software.[MS-IT]

- 30 Alcaraz and Hughes (2002: 185) also identify the translation of adverbials, in particular, adverbials ending in *-ly*, with a prepositional equivalent as a process of expansion. For instance, the adverb *inherently* may be translated as *per propria natura* [by their nature]. Indeed, the frequent use of adverbial forms in the SL may call for alternative forms which may appear preferable in the TL, especially from a stylistic point of view.

You should understand that speech and handwriting recognition are inherently statistical processes; [MS-EN]
Resta inteso che il riconoscimento vocale e della scrittura è per propria natura un processo statistico; [MS-IT].

Additions, notes and glosses

- 31 They are used to provide extra information about certain words or expressions which are generally highly culture-bound. In the following example, in order to fulfil the TL readers’ expectations, an extra piece of information which is not present in the ST has been introduced in brackets:

For additional information see <<http://www.microsoft.com/exporting/>>. [MS-EN]
 Per ulteriori informazioni visitare la pagina <<http://www.microsoft.com/exporting/>> (*informazioni in lingua inglese*). [MS-IT]

32 The specification of the language used, *informazioni in lingua inglese* [information in English], is functional in order not to create false expectations on the part of the readers, and this approach is in line with the concept of usability and acceptability (see Scarpa 2008).

33 Elimination

34 The TT may present the omission of entire sections which are highly culture-bound and system-bound. For instance, among the different clauses that may be present, it is customary to include a section regarding the applicable law, stating which set of laws governs the agreement. All elements of this provision are generally included in the TT:

APPLICABLE LAWS. Claims arising under this Agreement shall be governed by the laws of Delaware, excluding its principles of conflict of laws and the United Nations Convention on Contracts for the Sale of Goods. You may not export the Software in violation of applicable export laws and regulations. Intel is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Intel. [INTEL-EN]

LEGGI APPLICABILI. Tutte le eventuali controversie derivanti dal presente Contratto saranno regolate conformemente alle leggi dello Stato del Delaware, se non in conflitto con altre leggi applicabili e con la Convenzione delle Nazioni Unite sulla vendita di beni. L'utente non potrà esportare il Software in violazione alle leggi e ai regolamenti sulle esportazioni applicabili. Intel non riconoscerà alcun altro contratto non scritto e non autorizzato da un rappresentante Intel. [INTEL-IT]

35 However, in the following example an evident process of domestication is present, as it is not only the language that changes, but also some of the elements of the contractual provision itself. References to specific foreign contexts are completely eliminated in the Italian version:

APPLICABLE LAW. If you acquired this Software in the United States, this EULA is governed by the laws of the State of Washington. If you acquired this Software in Canada, unless expressly prohibited by local law, this EULA is governed by the laws in force in the Province of Ontario, Canada; and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the federal and provincial courts sitting in Toronto, Ontario. If you acquired this Software in the European Union, Iceland, Norway, or Switzerland, then local law applies. If you acquired this Software in any other country, then local law may apply. [MS-EN]

Legge regolatrice - Il presente Contratto è disciplinato dalle leggi dello Stato di Washington, USA. Qualora l'utente abbia acquistato il Software nel territorio dell'Unione Europea, in Islanda, in Norvegia o in Svizzera, troveranno applicazione le leggi dello Stato nel quale l'utente ha acquistato il Software. [MS-IT]

36 In the case of EULAs, the ST provided to the translators generally undergoes a preliminary adaptation (using localization and domestication strategies) by the legal department of the company. For example, the elimination of the scenario in which that product is purchased in Canada is related to the improbability of such an event if the agreement is meant for an Italian-speaking audience. The room for applicability of this clause would be particularly limited and therefore would not be relevant, but rather a merely complicating factor. Pragmatically, this is also in line with Gricean principles (1975), in particular with the maxim of quantity and relation.

3.5. Other pragmatic issues

- 37 Translation is intended here as a “source-text induced target-text production” (Neubert 1985: 18), where the translator has the onus to use the most appropriate terminology, style and register regarding a variety of parameters, such as the target language, text type, legal system, subject-field, expectations of the readership and, in the case of legal texts, their legal effect (Šarčević 1997).
- 38 The analysis of English agreements and their translations shows some apparent divergences, which are often the result of pragmatic needs. This happens for instance in the first section of the Microsoft agreement:

YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR USING THE SOFTWARE. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY, OR USE THE SOFTWARE; YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND, IF APPLICABLE. [MS-EN]

INSTALLANDO, DUPLICANDO O ALTRIMENTI UTILIZZANDO IL SOFTWARE, L'UTENTE ACCETTA DI ESSERE VINCOLATO DALLE CONDIZIONI DEL PRESENTE CONTRATTO. QUALORA L'UTENTE NON ACCETTI LE CONDIZIONI DEL PRESENTE CONTRATTO, ALLORA NON POTRÀ INSTALLARE, DUPLICARE O UTILIZZARE IL SOFTWARE E DOVRÀ RESTITUIRLO PRONTAMENTE AL RIVENDITORE. IN TALE IPOTESI, QUALORA AL MOMENTO DELL'ACQUISTO IL RIVENDITORE ABBIA EMESSO FATTURA, L'UTENTE POTRÀ OTTENERE IL RIMBORSO DEL PREZZO. DIVERSAMENTE L'UTENTE POTRÀ OTTENERE LA SOSTITUZIONE DEL SOFTWARE CON ALTRO PRODOTTO DI PARI PREZZO O UN BUONO PER IL FUTURO ACQUISTO DI UN ALTRO PRODOTTO DI PARI PREZZO. [MS-IT]

- 39 The verbal economy of the ST and the use of elliptical forms have been replaced with a much more detailed version of the contractual conditions. In the translated version, Grice's cooperative principle seems violated, especially regarding the Maxim of Quantity. However, the extra information is not superfluous as it specifies the conditions under which a refund may be requested in the Italian context, which is in accordance with the Maxim of Relation. In particular, the straightforward refund procedure illustrated in the ST has been expanded to a much more complex procedure. However, this apparent discrepancy may be seen as a manifestation of the well-established understanding that legal translation is not a mere transfer of information, but rather a “dynamic transformation” (Pommer 2008). This adaptation should be interpreted in light of the concept of “legal culture”,³ which inevitably emerges in transnational contracts. These choices demonstrate that the TT is not only the result of correct translation from a purely linguistic point of view, but should also be a pragmatically efficient text.

4. Discussion

- 40 Like other written agreements, an EULA is a very standardized and conventionalized “translation-specific document type” (Sager 1998), which often even assumes formulaic contours. The high level of standardisation displayed by certain types of texts, including contracts, also stems from the fact that they “are never written afresh every time a lawyer has to draw one up” (Stubbs 1983: 485, quoted in Trosborg 1997: 59), as they are based on templates and pre-existing versions. This drafting process ensures a reduction in terms of time and costs and provides homogeneity in the texts, generally limiting room for interpretative issues. On a practical note, the level of standardisation

is very significant especially as regards contracts drafted by the same company, as a demonstration that these texts are never written from scratch, and a similar process of standardisation is displayed in contracts resulting from a translation process. For example, license agreements for new editions of software releases are often a modification of previously adopted agreements and their translation also draws considerably on previous versions. Although not all the companies contacted gave specific indications on who translated the specific documents under investigation, what emerges is that these software companies generally tend to ask major translation agencies or companies to carry out the translations. This is in line with a growing “tendency among major manufacturing companies to outsource the whole multilingual documentation process” (Gouadec 2007: 139). The translation providers are generally well-established agencies and companies which can guarantee the fulfilment of quality assurance requirements. As Gouadec points out, they make use of different types of translation software, such as translation memory management systems, because they are often dealing with “fairly repetitive documents, with frequent updates” (*ibid.*: 139), and therefore there is a clear “need to ‘capitalize’ on previously translated works” (*ibid.*: 140), especially in the case of specialized texts.

- 41 It is generally agreed that the translation of legal texts requires a heterogeneous competency in the source and the target language as well as in the source and the target culture (Cao 2007). More specifically, Smith (1995) remarks that in order to carry out satisfactory legal translations, translators should possess competency in at least three different areas: knowledge of the legal systems; familiarity with the specific terminology; and awareness of the writing style that characterizes a specific type of legal text in the target language.⁴ Indeed, the translator has to draw on different professional cultures and fields of expertise, such as translation studies, writing skills, linguistics and law. In the texts analysed here the TTs retain the main macro- and micro-linguistic features of the STs, and, at the same time, several culturally determined elements are necessarily adapted to the Italian context. This is done, for instance, through the omission of sections which would not be relationally and quantitatively appropriate from a pragmatic point of view, such as the elimination of an entire section related to the terms of warranty applicable even if irrelevant for Italian users. The result is a sort of holistic approach, which goes beyond a clear-cut distinction between word-for-word, phrase-for-phrase and concept-for-concept translation. Given the culture-bound and system-bound nature of legal texts, a complex process of socio-cultural adaptation, which extends beyond the more strictly linguistic adaptation, has to be carried out in order to ensure a high quality translation (Scarpa 2006, 2008; Bocquet 2008).

5. Conclusion

- 42 The paper initially hypothesized a high level of hybridity in EULAs with a significant interconnectedness of the legal and the IT sphere. However, a closer analysis has shown the strict observance of the macro and micro features which characterize contracts at large from a linguistic, textual and pragmatic perspective. From a lexical point of view, to some extent it is plausible to define EULAs as lexically hybrid texts, in that specialized legal terminology is also accompanied by technical and semi-technical IT terms, but the former category is clearly predominant.

- 43 This analysis does not aim to be an exhaustive exploration of how the complex process of translating a specialized legal text takes place. However, the conclusion outlined here could be tested for external validity, taking into consideration other STs belonging to the same text-type category, or observing the translation strategies adopted in the translation of these end-user license agreements to be implemented in other countries, characterized by different linguistic, cultural and legal contexts. Another interesting aspect would be the investigation of original English EULAs, the adapted versions for the international market which are provided to the translators and represent their STs, and the final TTs.
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BIBLIOGRAPHY

- Adams, K. 2013. *A Manual of Style for Contract Drafting*, 3rd ed. Chicago, IL: ABA.
- Alcaraz, V.E. & B. Hughes. 2002. *Legal translation explained*. Manchester and Northampton: St. Jerome.
- Anesa, P. 2007. "Vagueness and precision in contracts: a close relationship". *Linguistica e filologia* 24, 7-38.
- Austin, J.L. 1962. *How to Do Things with Words*. Oxford: Clarendon.
- Baker, M. 1992. *In Other Words: A Coursebook on Translation*. London: Routledge.
- Bocquet, C. 1994. *Pour une méthode de traduction juridique*. Prilly: CB Service.
- Bocquet, C. 2008. *La Traduction juridique. Fondement et méthode*. Bruxelles: De Boek.
- Bracey, D.H. 2006. *Exploring Law and Culture*. Long Grove, IL: Waveland Press.
- Bühler, K. 1934. *Sprachtheorie: die Darstellungsfunktion der Sprache*. Stuttgart: Gustav Fischer.
- Burke, J. 1977. *Jowitt's Dictionary of English Law*, Vol. 1, 2nd ed. London: Sweet & Maxwell.
- Cabré, M.T. 2003. "Theories of Terminology: Their description, prescription and explanation". *Terminology* 9-2, 163-199.
- Cabré, M.T. 2005. "Sur la notion de 'terme'". *Meta* 50/4, 1112-1132.
- Cao, D. 2007. *Translating Law*. Clevedon: Multilingual Matters.
- Cotterrell, R. 2006. *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory*. Aldershot: Ashgate.
- De Franchis, F. 1984. *Dizionario giuridico inglese-italiano*. Vol. 1. Milano: Giuffrè.
- De Franchis, F. 1996. *Dizionario giuridico italiano-inglese*. Vol. 2. Milano: Giuffrè.
- De Palma, S. 2012. *Dizionario di inglese legale applicato*. Bologna: Filodiritto.
- Garner, B. (ed.) 2009. *Black's Law Dictionary*, 9th ed. New York: Thomson Reuters.
- Gémar, J.C. 2006. "Traduction spécialisée et droit. Langages du droit, styles et sens". In Gotti, M. & S. Šarčević (eds.), *Insights into Specialized Translation*. Bern: Peter Lang, 79-106.

- Gotti, M. 2003. *Specialized Discourse*. Bern: Peter Lang.
- Gouadec, D. 2007. *Translation as Profession*. Amsterdam: John Benjamins.
- Grice, H.P. 1975. "Logic and Conversation". In Cole, P. & J.L. Morgan (eds.), *Syntax and Semantics*. New York: Academic, 41–58.
- House, J. 2001. "Translation quality assessment: Linguistic description versus social evaluation". *Meta: journal des traducteurs/Meta: Translators' Journal* 46/2, 243–257.
- Kelsen, H. 1991. Translated by Hartney, M. *General Theory of Norms*. Oxford: Clarendon.
- L'Homme, M.C. 2004. *La terminologie: principes et techniques*. Montréal: Presses de l'Université de Montréal.
- Lundmark, T. 2012. *Charting the Divide between Common and Civil Law*. New York: Oxford University Press.
- Mattei, U. & L. Pes. 2008. "Civil Law and Common Law: Toward convergence?". In Whittington, K.E., R.D. Kelemen & G.A. Caldeira (eds.), *The Oxford Handbook of Law and Politics*. New York: Oxford University Press, 267–280.
- Mattila, H. 2013. *Comparative Legal Linguistics*, 2nd ed. Farnham: Ashgate.
- Matulewska, A. 2013. *Legilinguistic Translatology: A Parametric Approach to Legal Translation*. Bern: Peter Lang.
- Neubert, A. 1985. *Text and Translation*. Leipzig: Verlag Enzyklopädie.
- Newmark, P. 1988. *A Textbook of Translation*. London: Prentice Hall.
- Pommer, S.E. 2008. "No creativity in legal translation?". *Babel. Revue internationale de la traduction* 54/4, 355–368.
- Reiss, K. 1971. *Möglichkeiten und Grenzen der Übersetzungskritik*. München: Hueber.
- Reiss, K. 1976. *Texttyp und Übersetzungsmethode. Der operative Text*. Kronberg im Taunus: Scriptor.
- Sager, J.C. 1994. *Language Engineering and Translation: Consequences of Automation*. Amsterdam and Philadelphia: John Benjamins.
- Sager, J.C. 1998. "What distinguishes major types of translation?". *The Translator* 4/1, 69–89.
- Šarčević, S. 1997. *New Approach to Legal Translation*. The Hague: Kluwer Law International.
- Scarpa, F. 2006. "Corpus-based quality-assessment of specialist translation: A study using parallel and comparable corpora in English and Italian". In Gotti, M. & S. Šarčević (eds.), *Insights into Specialized Translation*. Bern: Peter Lang, 156–172.
- Scarpa, F. 2008. *La traduzione specializzata*, 2nd ed. Milano: Hoepli.
- Smith, S.A. 1995. "Culture clash: Anglo-American case law and German civil Law in translation". In Marshall, M. (ed.), *Translation and the Law*. Amsterdam and Philadelphia: John Benjamins, 179–200.
- Snell-Hornby, M. 2006. *The Turns of Translation Studies: New paradigms or shifting viewpoints?* Amsterdam: John Benjamins.
- Stubbs, M. 1983. "Can I have that in writing, please? Some neglected topics in speech act theory". *Journal of Pragmatics* 7, 479–494.
- Tiersma, P.M. 1999. *Legal Language*. Chicago: The University of Chicago Press.

- Tiersma, P.M. 2005. "Categorical lists in the law". In Bhatia, V., J. Engberg, M. Gotti & D. Heller (eds.), *Vagueness in Normative Texts*. Bern: Peter Lang, 109–132
- Trosborg, A. 1997. *Rhetorical Strategies in Legal Language*. Tübingen: Narr.
- Vanderlinen, J. 1995. *Comparer les droits*. Brussels: Story-Scientia.
- Williams, C. 2010. "Functional or dysfunctional? The language of business contracts in English". *Rassegna Italiana di Linguistica Applicata* 3, 217–227.

NOTES

1. For a comprehensive discussion of the notion of "term" see Cabré (2003; 2005) and L'Homme (2004).
2. Quoting Stephen's *Commentaries on the Laws of England* 5 (L. Crispin Warmington ed. 21st 1950).
3. Legal culture is a multifaceted concept which may be interpreted as a complex network of "ideas, attitudes, values, beliefs and behavior patterns about law and the legal system" (Cotterrell 2006: 81), or more generally as the cultural embeddedness of law (Bracey 2006). Procedural and doctrinal structures influence the translation process, and the apparent over-specification of cases and conditions related to the refunding procedure may be seen as an expression of Italian legal culture, which is often in line with the conventional use of wordiness and high levels of specifications when dealing with these kinds of procedures.
4. For a discussion of style in legal translation also see Gémard (2006).

ABSTRACTS

The number of goods and services which are sold on the worldwide market makes the translation of end-user license agreements (EULAs) particularly necessary. This study highlights why EULAs may be considered as hybrid texts, which include some of the typical characteristics of legal texts as well as of technical texts, and it observes to what extent these aspects are maintained in the translated text from a qualitative perspective. The analysis makes use of a small corpus of authentic EULAs in English and their Italian translations, and a small comparable corpus of original Italian texts has also been compiled in order to allow for a contrastive analysis. The aim is to highlight the main issues emerging in the translation of this specific text type, as well as the approaches and the techniques adopted (such as transposition, expansion, addition, and elimination).

La quantité de biens et de services vendus sur le marché mondial rend la traduction de contrats de licence d'utilisation particulièrement importante. Cette étude met en évidence la raison pour laquelle les contrats de licence peuvent être considérés comme des textes hybrides, qui incluent certaines des caractéristiques typiques des textes juridiques ainsi que des textes techniques. Elle analyse, du point de vue qualitatif, la mesure dans laquelle ces aspects sont maintenus dans la traduction. L'analyse fait usage d'un petit corpus de contrats de licence en anglais et de leurs traductions italiennes. Un petit corpus comparable de textes italiens a également été rassemblé en vue d'une analyse contrastive. L'étude vise à mettre en évidence les problèmes principaux

dans la traduction de ce type de texte spécifique, les approches et les techniques adoptées (telles que transposition, expansion, addition et élimination).

INDEX

Mots-clés: contrat de licence, traduction (qualité de la), traduction anglais-italien, traduction juridique

Keywords: legal translation, license agreement, English-Italian translation, quality (translation)

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