

UNIVERSITY OF BIRMINGHAM

University of Birmingham
Research at Birmingham

Interaction of law and language in the EU

Cavoski, Aleksandra

License:

Creative Commons: Attribution (CC BY)

Document Version

Publisher's PDF, also known as Version of record

Citation for published version (Harvard):

Cavoski, A 2017, 'Interaction of law and language in the EU: Challenges of Translating in Multilingual Environment', *Jostrans*, no. 27, pp. 58-74.

[Link to publication on Research at Birmingham portal](#)

General rights

Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

- Users may freely distribute the URL that is used to identify this publication.
- Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
- User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
- Users may not further distribute the material nor use it for the purposes of commercial gain.

Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

Take down policy

While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact UBIRA@lists.bham.ac.uk providing details and we will remove access to the work immediately and investigate.

Interaction of law and language in the EU: Challenges of translating in multilingual environment

Aleksandra Čavoški, University of Birmingham

ABSTRACT

This paper analyses the interaction between law and language in the EU multilingual context. It focuses on challenges in legal translation stemming from a new and hybrid EU legal system that developed over time through the influence of several European legal traditions. It is argued that the choice of English in translation of EU law as a source language, and in communication with the EU institutions poses several challenges to legal translation, in particular an inability to reconcile civil law traditions with common law traditions. Equally challenging is to translate specific EU legal and expert terminology that is often exclusive only to the EU legal system.

KEYWORDS

Law, EU, source language, English language, French language, common law traditions, civil law traditions, EU law, legal concepts, EU expert terms.

1. Introduction

We often do not fully appreciate the demanding task of translation and difficulties surrounding this process. We expect a translator to be able to reproduce the message expressed in a source language (SL) while at the same time preserving all cultural or legal differences between languages. This understanding comes from the concept of equivalence which was long regarded as a “feature of Western translation theories in the second half of the twentieth century” (Pym 2010: 6). It means that the translation should have equal value with the source text (ST) and should make no difference whether it is translated from one language to another (Pym 2010: 6-7). However, it has been argued that symmetry in translation is an illusion and that the concept of equivalence may be highly problematic (Stern 2010: 163). This problem becomes even more prominent with legal translation. This is often regarded as the most demanding type of translation as the translator must simultaneously be an interpreter of a legal system concerned while preserving the fidelity of the ST. Hence, some argue that legal translation is frequently equated with untranslatability (Mac Aodha 2014: 207). Legal translation in a multilingual and multi-legal community such as the EU is even more demanding.

This paper will analyse the interaction between law and language in the EU multilingual context. The paper focuses on challenges in legal translation stemming from a new and hybrid EU legal system developed under the influence of several European legal traditions. It is argued that the choice of English in translation of EU law as a source language, and in

communication with the EU institutions poses several challenges to legal translation, in particular an inability to reconcile civil law traditions with common law traditions. Equally challenging is the translation of specific EU legal and expert terminology that is often exclusive only to the EU legal system.

2. Legal Translation in the EU context

Challenges of legal drafting and legal translation have existed for a long time in international law and international relations. As the process of globalisation relies on law and language, translators had to demonstrate attentiveness and creativity to rise to the challenge. The establishment of the European Economic Community (EEC) in 1957 and the subsequent deepening and widening of integration between Member States took this task to a completely different level. A new hybrid legal system was created in the EU, which is often described as “a new legal order of international law” (Case C-26/62 ECLI:EU:C:1963:1: para 3). It introduced new legal concepts and doctrines often not known nor recognised in some Member States. Equally, the new legal order was created under the influences of several legal traditions, in particular the German and French legal traditions at the very beginning of European integration. Subsequently, UK law had an impact after the UK’s accession to the EEC in 1973. No less important is the impact of international law on the development of EU law, as the EU is a legal entity that frequently accedes to various international treaties which are then incorporated into the EU legal system. Very often treaty terminology is incorporated in EU secondary legislation and imposes obligations on Member States¹.

Likewise, the exceptionality of this legal system stems from the fact that the EU ensures the respect of “its cultural and linguistic diversity” embodied in 24 official languages (Article 3(4) TEU). Similar provision respecting cultural, religious and linguistic diversity is guaranteed in the Charter of Fundamental Rights of the EU (Article 22 of the Charter). It is not surprising that the first piece of secondary legislation passed by the EEC was Regulation No 1 determining the languages to be used in the EEC in 1958. As Doczekalska (2009: 344) points out the EU multilingualism enables citizens to communicate with EU institutions in their own language. Furthermore, they can understand the law if they are bound by it (Sharpston 2009-2010: 409) and they can enforce their rights conferred by EU legislation before EU courts in their own language.

Thus, the issue of translation becomes even more important in such a multilingual and multi-legal environment. Language should be understood as a way of disseminating information in a diverse environment. However, in the EU context it is also a means of conferring rights and imposing obligations to natural and legal persons. Hence, incorrect translation can lead to serious legal implications for all parties involved. It may result in the application of the doctrine of state liability, which imposes an

obligation on Member States to pay damages to a party whose rights have been infringed as a result of incorrect transposition of EU legislation. This incorrect transposition may be caused by improper translation or misunderstanding of the meaning of certain legal concepts.

Legal translation in the EU is regarded as a challenge to the central concepts of translation studies and it is affected by a unique combination of political, ideological and procedural factors (Biel 2014: 335). As it is distinct from translation of national legislation due to its unique features and the requirement of multilingualism, there are submissions to treat it as a sub-genre of legal translation (Biel 2007: 144). In addition, Šarčević and Gotti (2006: 14) point out that the EU terminology is still in constant flux, which puts a great burden on EU translators. Their role is to find neologisms or select equivalents which will enable judges to differentiate EU and national concepts and ensure a uniform interpretation of EU law (Šarčević and Gotti 2006: 14). The institutional context also influences EU drafting and translation as translations are controlled and constrained by 'translation institutions' and translators have to negotiate their role and professional identity (Koskinen 2008: 2).

Some of the challenges surrounding legal translation in the EU are exposed by occasional differences between translations of the same legal text in various EU official languages. Despite the fact that legal texts in each of these languages are equally authentic (Article 55(1) TEU), there are differences between legal texts which can already be seen from Regulation No. 1, which regulates the use of official languages (Council Regulation No 1). If we look closely at Article 7 of this Regulation, we can identify difficulties in achieving equivalence between languages. The English version uses the term *the languages to be used*, while the French text uses the terminology *le régime linguistique* 'linguistic regime' (Robertson 2010a: 57-58).

Even more noticeable differences between language versions that may have significant legal implications can be identified in EU treaties. Article 191 TFEU proclaims one of the major environmental principles, which entails that *environmental damage should as a priority be rectified at source*, while in the French version of the EU treaty we can see a somewhat different terminology *le principe de la correction, par priorité à la source, des atteintes à l'environnement* 'principle of priority for corrective action for impairment of environment. It appears that the translator was not able to find an adequate equivalent in French legal terminology as the chosen expression in French corresponds more closely to an English concept of 'impairment' defined as "diminishing the value of (property or a property right)" (Black's Law Dictionary 2004: 767). Differences can also be identified in translations of secondary legislation and judicial decisions of the Court of Justice of the European Union, which certainly demonstrates the complex task of the translator. Some illustrative examples relating to environmental policy areas have been

presented in the Commission's study on multilingualism (European Commission 2010). Significant differences were identified between the official language versions in the translation of the expression 'canalisation and flood-relief works' listed in Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. As the German, Greek, Spanish, French, Italian, Dutch and Portuguese versions referred to 'canalization and regulation of watercourses' the ECJ had to clarify the term in Case C-72/95 (European Commission 2010: 116). Differences between languages occur in court judgements too. In the English version of the two ECJ cases (Case C-157/96, *R. v Minister of Agriculture* and Case C-180/96, *United Kingdom v Commission*), the Court made a reference to the principle of preventive action, while in French version the Court makes reference to *les principes de précaution et d'action préventive* 'the precautionary principle and the prevention principle' (European Commission 2010: 113). There is an important legal difference between the two principles as the prevention principle applies in situations when there is a "quantifiable risk" (Douma 2000: 132) and there is complete certainty that the damage will occur, while the precautionary principle applies even if there is no conclusive or precise scientific evidence of the existence or the extent of the risk. Thus, these differences in translation can have an impact on the interpretation and enforcement of the judgement while in some other cases can even change the entire meaning of a legal provision in question.

The greatest challenge for translators is to interpret legal concepts in the SL and find the appropriate legal terminology in the target language (TL). This ultimately means that the translator in the EU context is faced with the task of reconciling common law traditions with civil law traditions, which often becomes a 'mission impossible'. It is often forgotten that even between common law traditions there are important differences. The most noticeable differences are between the English and Scottish systems as the latter was developed under the influence of both Roman and common law. This affinity with civil law systems in Scottish law is demonstrated in the reliance on broad principles "as civilian lawyer naturally reasons from principles to instances, while common lawyer reasons from instances to principles" (Walker 1955: 331). The other example is the use of concepts that derive from Roman law such as *delict*. This concept signifies a wrongful act or omission giving rise to a claim for compensation and it is known in English law and other common law jurisdictions as tort (Black's Law Dictionary 2004: 460).

Likewise, the translation process is further intensified by a variety of new EU legal and expert terms that found their place in the new EU legal order. Many of those terms were created as a response to *sui generis* political and legal order which is founded on specific division of power between EU institutions and unorthodox voting procedures which had to be made distinct from systems in Member States. The best example is the *comitology* procedure, now known as ordinary legislative procedure, which

involves a partnership of the European Parliament and the Council of the EU in adopting EU legal acts. Specific EU legal and expert terminology also includes terminology which has different meaning than it would otherwise have in Member States. The fact that the EU now legislates in a wide variety of policy areas renders the terminology in legislation more complex and demands a high level of technical expertise from translators.

3. Implications of English language as a SL

Since the membership of the UK and Ireland in 1973, the English language assumed an unprecedented significance in the translation process of the EU. It has displaced French to become the *lingua franca* of the EU. As Figure 1 shows, in 2013, 81 per cent of legal texts are drafted in English, while in 1997 French and English were used equally in legal drafting.

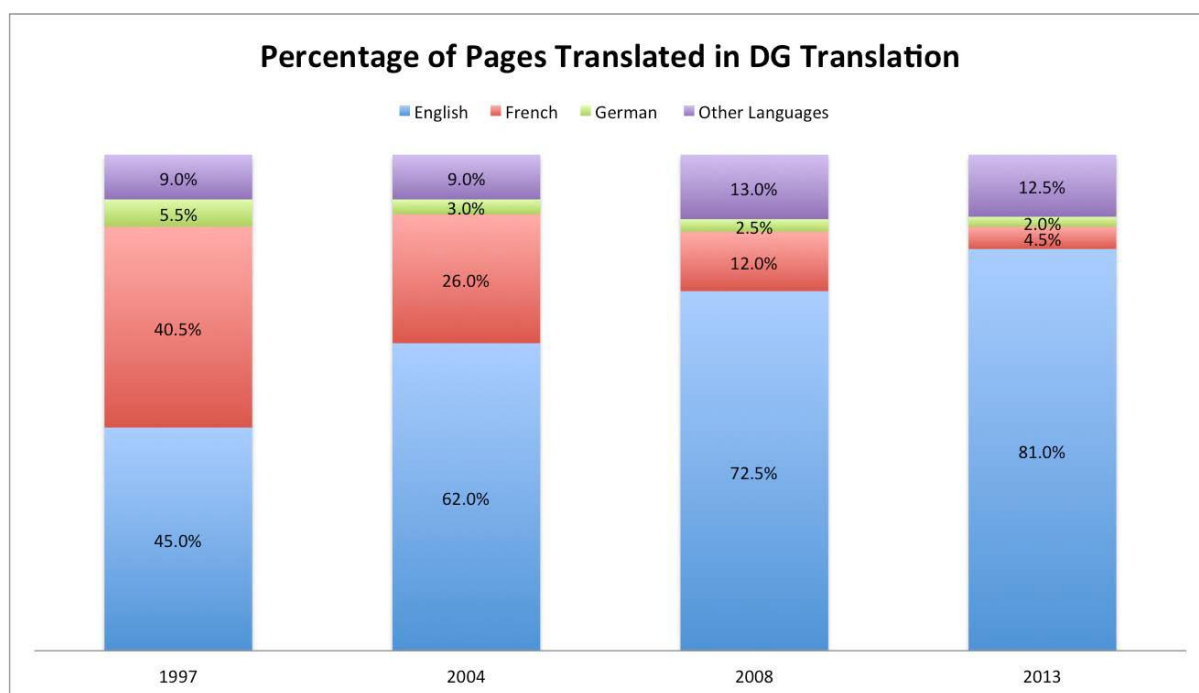


Figure 1: Percentage of Pages Translated in DG Translation, Source: European Commission (2014:7).

The preference for English is easily understandable. It is one of the most widely spoken languages, not only in the EU but worldwide. It has become one of the working languages in almost all EU institutions and international organisations. Equally, there is a great preference for the English language in new Member States as a majority of translators and national officials speak English as their first foreign language. Likewise, all candidate countries to the EU have already made a conscious choice to use English as a SL in the process of translating EU law in national languages, as well as to use English in all other correspondence with the

EU officials. However, this new English language used in the EU context has nothing to do with the language of Shakespeare (GRASPE: 2003: 9). It is a novel version of the language, often called 'EU English' that is different from the English spoken in the UK or Ireland (Robertson 2012: 1234).

This new language results from the drafting process which often involves input from non-native speakers who bring their own ideas and concepts into the translation process but also from the constant interaction in English in almost all formal and informal EU settings. Unlike in Member States, the legal drafting in the EU is a multi-stage enterprise that brings together three main EU institutions and a range of public and business interest groups trying to voice their own objectives. Even before the Commission's proposal reaches the European Parliament and the Council of the EU for adoption in the ordinary legislative procedure (Art 289 TFEU), it is drafted by the relevant Directorate General in the European Commission in English, often by a non-native speaker, in consultations with experts groups which are not part of the EU institutional architecture. As the Commission does not have sufficient expertise, it relies on expert advice provided by a wide range of national and EU interest groups comprising diverse social interests. The inclusion of various participants is also part of the adoption process in the European Parliament and the Council of the EU where the negotiations are usually conducted in English by representatives of all 28 Member States. The final legal act is a product of political compromise between various interests which is often reflected in a neutral legal language.

3.1 Lack of precision and clarity

The choice of English as a source language may prove challenging for several important reasons. EU legal texts in English very often contain imprecise terms, which is not something one would associate with traditional UK legal language. The importance of precision and clarity of provisions in the English common law system is greatly cherished both among academics and practitioners. Francis Bennion, a former UK parliamentary draftsman, in discussing various difficulties in legal drafting identified nine specific parameters which the drafter of legislation has to take into account, including certainty and comprehensibility of the legal language (Slapper and Kelly 2012: 88-89). The impreciseness in EU legal texts in English often comes as a result of legal drafting by non-native English speakers who are not very familiar with the common law system and key legal concepts. The use of imprecise terms is especially prominent in EU treaties which use expressions such as *aforementioned*, *abovementioned*, *above*, *below*, *hereby* and *provisions set below* (Robertson 2010b). This renders the text imprecise, cumbersome and very difficult to follow. The translator must demonstrate an extreme caution in translating from the English as a ST as he or she has to ensure

that it is clear to the reader to which provision these terms make reference to.

The inconsistency in using certain terminology is not unusual in EU legal texts in the English language. As Šarčević (2010: 31) argues, terminological inconsistency on the part of the EU legislator results in multiple references causing incoherence, leading to legal uncertainty and inevitable linguistic diversity in the translations. A good illustration is the treaty provisions concerning judicial cooperation in criminal matters where the treaty uses interchangeably the terms *crimes* and *criminal offences* in Articles 83 and 87 TFEU, although those two terms have the same meaning in the treaty. Despite the fact that these terms occasionally tend to be used as a synonym in academic debates (Black's Law Dictionary 2004: 1110), it is legal custom to always use the same term to denote an identical concept in a legally binding text. This stems from the principle of legal certainty as addressees of the provision must understand their rights and duties prescribed by a legal norm. This rule is strictly followed the legal text in German which consistently uses the expression criminal offences (*Straftaten* 'criminal offences').

Another illustrative example of lack of clarity is the use of term *arrangement* in EU treaties which is used consistently in the English text but has various meanings depending on the treaty provision concerned. According to the Oxford English Dictionary, it is explained as "an action, process, or result of arranging or being arranged" (Oxford Dictionaries). However, the translation of this vague term in other languages is more precise depending on the context. If we look at the French version we can immediately see this difference. The legislator uses several different terms depending on the context of the provisions as to render provisions more accurate. For example, Article 48 TFEU states:

- EN: make **arrangements** to secure for employed and self-employed migrant workers and their dependants
- FR: en instituant notamment **un système** ('a system') permettant d'assurer aux travailleurs migrants salariés et non salariés et à leurs ayants droit.

In this example, the text in French gives more clarity as it imposes an obligation on Member States to institute a system for making certain provisions for employed and self-employed migrant workers and their dependants.

Furthermore, Article 28 of the Protocol (No 5) on the Statute of the European Investment Bank:

- EN: The Statutes shall define, in particular ...means of intervention and **auditing arrangements**, as well as their relationship with the organs of the Bank.

- FR: Les statuts en définissent notamment ... les instruments d'intervention, **les règles de contrôle** ('rules of control') ainsi que leur relation avec les organes de la Banque.

3.2 Reconciling different legal traditions

The choice of English in translation of EU law as a SL also reveals another problem for translators and that is the occasional inability to reconcile civil law traditions with common law traditions in translating legal terms. The following example provides a good illustration of this challenge. Article 103 TFEU prescribes rules for drafting legal acts that will regulate competition law in the EU. One of the requirements is to design rules which will "ensure effective supervision on the one hand, and to simplify *administration* to the greatest possible extent on the other hand". If the term *administration* was to be literally translated in languages representing countries with a civil law tradition it would not denote the correct meaning of this provision. In this context, *administration* does not entail the process of running an organisation but the legal process of administrative control of the process that only becomes apparent in French (*contrôle administratif* 'administrative control') and German legal texts (*Verwaltungskontrolle* 'administrative control'). The example vividly illustrates the continuous inability to reconcile civil law traditions with common law traditions as the "local character of law resists the establishment of uniform law" (Glanert, 2008: 161). This problem is particularly prominent in regard to administrative law concepts, as common law systems do not have a long tradition in developing this public law discipline. As Bradley and Ewing (2011: 605) point out there is no "bright line demarcating constitutional and administrative law" in the English legal system. Unlike Germany and France where administrative law is a well-established discipline and there are separate administrative and constitutional courts, in the modern English legal system the lack of demarcation between the two legal disciplines is best illustrated by the actual work of courts (Bradley and Ewing 2011: 606). In the United Kingdom there is no clear distinction between cases with constitutional significance and cases dealing with disputes between the citizens and the administration (Bradley and Ewing 2011: 606). This difference in legal traditions is certainly embedded in English legal language which lacks a more extensive and varied legal administrative terminology.

Translators may often identify the differences between legal traditions when it involves family law matters as legal concepts vary significantly between legal traditions. The Council regulation concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility applies to issues related to *guardianship, curatorship and similar institutions* (Council Regulation (EC) No 2201/2003). It is clear that this provision relates to situations when a person is incapacitated and unable to act and someone else is taking care

of that person. However, civil law lawyers would not be able to know what type of incapacity each of those expressions involves. Official translation in French answers the question as it uses the terminology '*la tutelle*' for guardianship and *la curatelle* for curatorship, both terms deriving from Roman law.

A similar problem arose in issues of separation and divorce. The Council Regulation on the law applicable to divorce and legal separation addresses the issue of *legal separation* (Council Regulation (EU) No 1259/2010). As this institution is not recognised in many civil law systems, it becomes important for a translator to find an equivalent term in other languages spoken in countries with a civil law tradition. Black's Law Dictionary gives the following explanation: "an arrangement whereby a husband and wife live apart from each other while remaining married, either by mutual consent or by judicial decree" (Black's Law Dictionary 2004: 1396). But for civil law lawyers this provision becomes understandable only after consulting French language version of the legal text that uses the terminology *la séparation de corps* 'separation of bed and board', which derives from canon law. As Walker points out, in the Middle Ages the church courts exercised wide civil jurisdiction and canon law of the Roman Catholic Church has had a continuous influence on the legal and social system (Walker 1997: 45).

Examples can be found in other areas of law such as criminal law. Both the EU treaties and other EU legislation often make a reference to the legal concept of *law and order* which is used in the context of Member States' powers to maintain law and order in national jurisdictions. This would, on the basis of the English language text of the treaty, involve a state's powers to undertake measures for preventing any criminal activity or disorder. This term is translated in French as the requirement of *l'ordre public* 'public order', while in German as *öffentliche Ordnung* 'public order' which entail a broader legal concept of compliance with the laws of a country. This example demonstrates how difficult it is for a translator to find an equivalent legal concept. At the same time, the French and German translations provide more guidance to translators from countries based on the civil law system as they use expressions that is widely recognised and accepted in most civil law countries.

4. EU legal and expert language

No less challenging for translators is how to interpret new EU legal and expert terms and find appropriate equivalents in the TL. This task becomes even greater as the EU is a dynamic entity that constantly evolves. Gibová (2009: 145) points out at the increased interaction among Member States at the supranational level that leads to greater cultural and legal convergence of all national legal traditions and such a dynamic communication environment requires a medium to overcome these cultural-legal gaps. In time, this interaction leads to the EU

continually acquiring new competences which results in new areas of expert and highly technical legislation that requires translation. The best indication of the variety of areas in which EU acts is the number of policies the EU negotiates with candidate countries. At the moment there are 35 policy areas involving a great number of legally binding legislation published in all official languages². Likewise, EU legislation is frequently amended and translators must maintain consistency in translation between all subsequent translations and the original translations.

Another difficulty facing translation is the strict EU rules on translating from the original source language. One very complex and demanding rule for a translator is to preserve to the greatest extent the same sentence structure in all language versions (Legislative Drafting: A Commission Manual 1996:63). This often means that the translator cannot break one long sentence into two, even if this would improve the quality of translation as the syntax may differ in various languages. As the rule states, “the text must be divided into separate sentences at the same places in all language versions” (Legislative Drafting: A Commission Manual 1996: 63). The only option for a translator in those situations is to possibly use semicolons to break the sentence.

The differences in drafting techniques may have an indirect impact on less experienced translators as it diverges significantly from common practice, especially in civil law countries. This is best illustrated by numbered and non-numbered paragraphs in legal drafting, particularly in the EU treaties. Civil law systems are known for very strict legal drafting rules where correct and consistent numbering plays a crucial part. But even with this, the EU legislator is not consistent as the system of numbering may vary between various types of legal acts. In addition, the legal drafters often make cross references in the text. However, this referencing is neither consistent as sometimes referencing is done by words such as “under the first paragraph of an article”, and sometimes by using numbers Art. 123 (1)(i). This renders the work of a translator much more demanding as he or she must not only ensure correct references but also make a note of these inconsistencies for a legal linguist who will be responsible for final verification of translation. As the EU legislation has a different structure than national laws and by-laws, it may take some time for translators whose previous experience was exclusively translating national legislation to become accustomed to this new structure. Drafting rules prepared by all EU institutions offer further guidance on the required structure of EU legal texts as each language version must follow the same structure (*Joint Practical Guide for the drafting of European Union legislation; the Commission’s Manual on Legislative Drafting and the Inter-institutional Style Guide*).

Use of specific terminology in the EU context is yet another complex challenge facing a translator. For translators coming from long-standing Member States this is less demanding as those countries have already

developed an EU glossary encompassing the new terminology. This is more difficult for more recent Member States or for those preparing to join and are currently in the process of translating EU legislation in a language that is still not an official language of the EU. One of the best examples is the term '*acquis communautaire*' which denotes the body of EU law and comes from the French language. This expression has such a unique meaning only in the EU legal context that was promptly accepted by all Member States without the need to be translated in other EU official languages. Likewise, this category also includes terminology such as *advocate general*, *ordinary legislative procedure* or *comitology*.

All these legal terms have a very specific meaning in the EU context that may diverge from their meaning in a specific national jurisdiction. The Court of Justice of the European Union recognised that "Community law uses terminology which is peculiar to it" and that "legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States" (Case C-283/81 ECLI:EU:C:1982:335: para 19). The best illustration is the term *EU citizenship* which does not have the usual meaning that we associate with this term. In a conventional translation it would be translated as a national of a particular country. However, in the EU context its meaning had changed as to denote certain privileges conferred on nationals of any EU Member State, such as a right to vote in local elections in other Member States. The different meaning of this concept provoked strong debates among Member States after it was introduced by the Maastricht Treaty in 1992 and even led to temporary non-ratification of this treaty.

Some EU terminology has only a specified meaning within certain EU provisions and the translator sometimes needs to be familiar with the context in order to find an appropriate translation. Until recently this was the case with judicial cooperation in criminal matters where the EU legislator introduced an odd terminology to describe different types of legal or political acts such as *joint action*, *joint position* or *common position*. These notions only had meaning within the context of judicial cooperation in criminal matters. Their vague definitions soon raised controversy over their legal nature (Peers 2011: 14-15). *Joint positions* were adopted to "promote, using the appropriate form and procedures, any cooperation contributing to the pursuit of the objectives of the Union" which opened a debate on their legal effect (Peers 2011: 15). *Joint action* was less controversial as it was adopted by the Council "in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged" (Article K3(2)(b) TEU). However, the term *common position* proved to be difficult to translate and interpret as the same term was used also in the area of defence and security. As the common positions affirmed the position of the Union on certain matters, the general view was they are not binding on Member States (O'Keefe 1995). Still, the use of the same term in two different policy areas opened a

question of its translation in other official languages, especially in some candidate countries whether the translators had to be made aware that these are two different terms (Serbian European Integration Office 2015).

The terminology in the field of defence and security policy also poses challenges for translators when translating from the English as a SL. The best examples are *enhanced cooperation*, *permanent structured cooperation* and *Troika*. Enhanced cooperation entails a flexible cooperation between certain Member States which want to deepen their collaboration in matters having military or defence implications (Article 20 TEU). Finding an appropriate word to translate the term *enhanced* is not an easy task as it involves at the same time closer and deeper cooperation. In the French official version it is translated as *la coopération renforcée* 'reinforced cooperation'. Not less creative term is the *permanent structured cooperation* which again signifies another form of closer cooperation between Member States "whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area" (Article 42(6) TEU). Finally, the term *Troika* once more involves a deeper collaboration between the High Representative of the EU, the Permanent President of the European Council and the President of the European Commission.

5. Translation becomes a 'research adventure'

The interaction between law and language was always considered to be a part of process of globalisation. However, the legal discourse in the multilingual and multi-legal environment of the EU revealed exceptional difficulties surrounding the translation process. As the EU constantly evolves to assume new powers, new Member States and new policy areas, the number of official languages is always on the rise. In addition, the EU represents an amalgam of different cultures and legal traditions which have a profound impact on translation. Hence, legal translation becomes an Achilles heel of this process. Two major challenges of legal translation are the use of English as a SL and the EU specific and expert terminology.

What does this mean for translation? It seems that translators embark on a research adventure when translating EU law, especially translators in Member States which have recently joined the EU or translators in candidate countries. This new adventure requires a more profound understanding of different legal traditions in order to enable a translator to interpret new legal concepts as a part of the translation process. Despite the engagement of lawyer-linguists in the legal drafting process, translators are encouraged to continuously enrich their knowledge of different legal traditions and to follow any changes in policy areas which fall within their translation expertise. This includes any EU legislative amendments, as well as familiarisation with non-binding documents such as the Commission's guidelines which often offer explanations of certain terminology. In addition, translators have to be in touch with sources of

international public law in their relevant areas as they may often find appropriate legal and expert terms that are subsequently used in EU law. Likewise, the translator should also be familiar with legal drafting rules prepared by all EU institutions, although translators are not part of the legal drafting process. The European Commission also developed special guidelines for external translators which should assist them in translating for the Directorate General for Translation (European Commission 2016) as well as different style and grammar guides in all EU languages (European Commission 2012).

As legal drafting is done mostly in English and to a lesser extent in French, as those two languages are regarded as two base texts (Robertson 2010a: 53), it would be also very important for a translator from civil law countries to familiarise himself or herself with the French language version before starting with the translation in his or her own mother tongue language. As translation progresses in other EU official languages, the significance of consulting other language version is essential. The requirement of referring to translation in other languages was recognised by the Court of Justice of European Communities. It ruled in the *Stauder* case that “the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of, the versions in all four languages” (Case C-29/69 ECLI:EU:C:1969:57: para 3).

Finally, this research adventure should be understood as a joint venture between translators and lawyers both at the EU level, where official translations are prepared, and at the national level, where EU law becomes part of the national legal systems. Only in this manner will translators may be able to moderate the arduous task of translation in the EU and ensure the greatest extent of equivalence between different EU official languages.

Bibliography

- **Biel, Łucja** (2007). “Translation of Multilingual EU Law as a Sub-genre of Legal Translation”. Danuta Kierzkowska (ed.) (2006). *Court Interpreting and Legal Translation in the Enlarged Europe*. Warsaw: Translegis, 144–163.
- **Biel, Łucja** (2014). “The textual fit of translated EU law: a corpus-based study of deontic modality.” *The Translator* 20(3), 332-355.
- **Black’s Law Dictionary** (2004). 8th Ed. Edited by Bryan A. Garner. St. Paul, Minn: West Group.
- **Bradley, Anthony W and Ewing, Keith D** (2011). *Constitutional and Administrative Law*. 15th Ed. Harlow: Longman.

- **Legislative Drafting: A Commission Manual**, (1996). http://ec.europa.eu/smart-regulation/better_regulation/documents/legis_draft_comm_en.pdf (consulted 18.10.2016).
- **Doczekalska, Agnieszka** (2009). "Drafting and interpretation of EU law – paradoxes of legal multilingualism." Günther Grewendorf and Monika Rathert (eds) (2009). *Formal Linguistics and Law*. Berlin: de Gruyter, 339–370.
- **Douma, Wybe Th.** (2000). "The Precautionary Principle in the European Union." *RECIEL* 9(2), 132-143.
- **European Commission** (2010) *Studies on translation and multilingualism: Lawmaking in the EU multilingual environment*. 1/2010. Luxembourg: Publications Office of the European Union.
- **European Commission** (2012). *How to write clearly*. Luxembourg: Publications Office of the European Union. http://ec.europa.eu/translation/french/french_en.htm (consulted 04.05.2016).
- **European Commission** (2014) *Translation and multilingualism*. Luxembourg: Publications Office of the European Union.
- **European Commission** (2016). *Guide for external translators*. http://ec.europa.eu/translation/documents/guide_contractors_en.pdf (consulted 15.06.2016).
- **Gibová, Klaudia** (2009) "EU Translation as the Language of a Reunited Europe Reconsidered." Milan Ferenčík and Juraj Horváth (eds) (2009). *Language, and Culture in a Changing Transatlantic World: International Conference Proceedings*. Prešov: Prešovska Univerzita v Prešove, 145-153.
- **Glanert, Simone** (2008). "Speaking Language to Law: The Case of Europe." *Legal Studies* 28(2), 161–171.
- **GRASPE** (2003) "Les institutions européennes et les langues: Tour de Babel, langue unique ou multilinguisme maîtrisé?" in Terminologie et Traduction, Luxembourg : Office des publications officielles des Communautés européennes.
- **Koskinen, Kaisa** (2008) *Translating Institutions. An Ethnographic Study of EU Translation*. Manchester: St. Jerome.
- **Mac Aodha, Máirtín** (2014). "Legal translation – an impossible task?" *Semiotica* 201(1-4), 207–221.
- **O’Keeffe, David** (1995). "Recasting the Third Pillar." *Common Market Law Review* 32(4), 893–920.
- **Peers, Steven** (2011). *EU Justice and Home Affairs Law*. Oxford: Oxford University Press.
- **Pym, Anthony** (2010). *Exploring Translation Theories*. New York, London: Routledge.
- **Robertson, Colin** (2010a). "Legal-linguistic Revision of EU Legislative Texts." Maurizio Gotti and Christopher Williams (eds) (2010). *Legal Discourse across Languages and Cultures*. Frankfurt am Mein: Peter Lang, 51-74.

- **Robertson, Colin** (2010b). *Introduction to EU Legal English*. Seminar on EU Legal English and Terminology, Belgrade.
- **Robertson, Colin** (2012). "EU Legal English: Common Law, Civil Law, or a New Genre?" *European Review of Private Law* 20(5/6), 1215–1239.
- **Sharpston, Eleanor** (2009-2010). "Transparency and Clear Legal Language in the European Union: Ambiguous Legislative Texts, Laconic Pronouncements and the Credibility of the Judicial System." *Cambridge Yearbook of European Legal Studies* 12, 409-423.
- **Slapper, Gary and Kelly, David** (2012). *The English Legal System*. 13th Ed. London: Routledge.
- **Stern, Ludmila** (2010). Book review of *Translation Issues in Language and Law* by Olsen, F., Lorz, A. and Stein, D. (eds) (2009). *The International Journal of Speech, Language and the Law* 17(1), 161–166.
- **Šarčević, Susan** (2010). "Creating a Pan-European Legal Language." Maurizio Gotti and Christopher Williams (eds) (2010). *Legal Discourse across Languages and Cultures*. Frankfurt am Mein: Peter Lang, 23–50.
- **Šarčević, Susan and Gotti, Maurizio** (2006). "Introduction." Maurizio Gotti and Susan Šarčević (eds) (2006). *Insights into Specialized Translation*. Frankfurt am Mein: Peter Lang, 9-23.
- **Walker, David M.** (1955). "Some Characteristics of Scots Law." *The Modern Law Review* 18(4), 321-337.
- --- (1997). *The Scottish Legal System: An Introduction to the Study of Scots Law*. 7th ed. Edinburgh: Sweet and Maxwell.

Norms

- **Case C-26/62**, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, EU:C:1963:1.
- **Case C-29/69**, *Erich Stauder v City of Ulm - Sozialamt*, EU:C:1969:57.
- **Case 283/81**, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, EU:C:1982:335.
- **Case C-72/95**, *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland*, EU:C:1996:404.
- **Case C-157/96**, *R. v Minister of Agriculture*, EU:C:1998:191.
- **Case C-180/96**, *United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities*, EU:C:1998:192.
- **Charter on Fundamental Rights of the European Union**, *Official Journal C* 326, 26/10/2012, 391–407.
- **Consolidated version of the Treaty on European Union**, *OJ C* 326, 26.10.2012, 13–390.

- **Council Directive 92/43/EEC** of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *OJ L 206*, 22/7/1992, 7.
- **Council Regulation No 1** determining the languages to be used by the European Economic Community, *OJ 17*, 06/10/1958, 385–386.
- **Council Regulation (EC) No 2201/2003** of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *OJ L 338*, 23/12/2003, 1–29.
- **Council Regulation (EU) No 1259/2010** implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, *Official Journal L 343*, 29/12/2010, 10–16.
- **Publications Office of the European Union** (2011). *Inter-institutional Style Guide*. <http://publications.europa.eu/code/en/en-000100.htm> (consulted 08.08.2016).
- **Legal Services of the European Commission, the EP and the Council of the EU** (2015). *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*. Luxembourg: Publications Office of the European Union. <http://eur-lex.europa.eu/techleg/index.html> (consulted 14.04.2016).
- **Oxford Dictionaries** <http://www.oxforddictionaries.com/definition/english/arrangement> (consulted 13.04.2016).
- **Serbian European Integration Office** (2016). *Serbian Manual for the Translation of the EU Acquis*. Government of the Republic of Serbia and the European Integration Office. <http://www.seio.gov.rs/prevodjenje/prirucnik.129.html> (consulted 07.07.2016).
- **Treaty on European Union (TEU)**, *Official Journal C 326*, 26/10/2012, 0001–0390.
- **Treaty on the Functioning of the European Union (TFEU)**, *Official Journal C 326*, 26/10/2012, 0001–0390.
- **Treaty of Maastricht on European Union**, *Official Journal OJ C 191*, 29/7/1992, 0001–0112.

Biography

Aleksandra Čavoški is a lecturer at Birmingham Law School, University of Birmingham. Previously she was a Professor at Union University School of Law in Belgrade, Serbia and a Visiting Professor at Washington and Lee University, in Lexington, Virginia. Aleksandra was a Principal Investigator on an EU funded project to translate 16,000 pages of the EU *acquis* into Serbian.

E-mail: a.cavoski@bham.ac.uk



Notes

¹ Secondary legislation comprises regulations, directives, decisions, opinions and recommendations.

² Free movement of goods; Freedom of movement for workers; Right of establishment and freedom to provide services; Free movement of capital; Public procurement; Company law; Intellectual property law; Competition policy; Financial services; Information society and media; Agriculture and rural development; Food safety, veterinary and phytosanitary policy; Fisheries; Transport policy; Energy; Taxation; Economic and monetary policy; Statistics; Social policy and employment; Enterprise and industrial policy; Trans-European networks; Regional policy and coordination of structural instruments; Judiciary and fundamental rights; Justice, freedom and security; Science and research; Education and culture; Environment; Consumer and health protection; Customs union; External relations; Foreign, security and defence policy; Financial control; Financial and budgetary provisions; Institutions and other issue.