

# Lost in Translation – Legal Certainty in the EU’s Internal Market

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## Abstract

In this chapter, the author explores the role which translation of legal texts plays as a tool of harmonisation and the techniques involved in securing uniformity between texts, which uniformity is vital to ensure legal certainty.

## 1 Introduction

Sometimes, it may be argued that multilingualism in the European Union (EU) or legal translation could hinder the functioning of the EU’s Internal Market due to discrepancies from translating one language version to another. However, the EU cannot function as an Internal Market without multilingualism. Subsequently, this paper seeks to argue that legal translation is an inherent element of legal harmonisation, intrinsically connected to the very foundations of the EU. Therefore, it cannot be an obstacle. Therefore, this paper investigates how and to what extent EU legal translation contributes to achieving legal harmonisation in the EU. The arguments presented seek to show that EU legal translation is one link in the chain that strengthens the overall success of European harmonisation, contributing to this ongoing debate. However, this research is by no means exhaustive. Not least because the EU is ever-evolving, and so are academic contributions to this debate.

## 2 Lost in Translation – Legal Translation in the EU’s Multi-cultural Environment

“Legal Translation is not Transcoding, i.e. substituting words and phrases of the source legal system by the corresponding expressions of the target legal

system”.<sup>1</sup> The basic unit of translation is not the word but the concept. This is particularly true in the case of the EU, which currently has twenty-four language versions. Council Regulation 1/1958/EEC stipulates that once a language is recognised as official, according to Articles 2 and 4 of the same Regulation, the EU Institutions must communicate with citizens and enact legislation in all the recognised official languages. This includes the legislative instruments adopted for legal harmonisation. Legal harmonisation is the process by which national laws are brought closer to each other for the better functioning of the Internal Market.<sup>2</sup> This is mainly done through EU directives. Hence, the multilingual nature of EU law is inherently linked to the need for uniform interpretation and application of EU law. When Malta, the EU’s smallest Member State, joined the EU in 2004, Maltese became the official and the national language, one of two languages, the other being English, in which law in Malta is enforced and implemented. Through Regulation 1/1958/EEC, Maltese had to become an official language of the EU. All languages in national law must become an official EU language. EU law is *de facto* national law, interpreted and applied in the national courts, so EU law needs to be in the same language/s as national law.

EU legal translation contributes to the harmonisation of EU law and the evolution of the European legal culture. The Court of Justice of the European Union (CJEU) has regularly clarified that a uniform interpretation and application of EU law entails uniformity of all the language versions in which EU law exists. In fact, in numerous judgments, the CJEU has emphasised that the need for the uniform interpretation and application of EU law entails that EU legislation must be interpreted and applied “in the light of the versions in all ... Languages” (Case 29/69 *Stauder* [1969])<sup>3</sup> and more recently, Case C-375/07 *Heuschen & Schroff* [2008].<sup>4</sup> In the *Regina v. Bouchereau* case in 1977, the CJEU added that “the different language versions ... must be given a uniform interpretation” (Case 30/77 *Regina v. Bouchereau* [1977]).<sup>5</sup>

Thus, the Court makes it clear that while the EU Institutions operate in various legal cultures and languages, institutional multilingualism must still result in the uniform interpretation of the law.<sup>6</sup> Legal harmonisation is the

1 Šarčević, S. (1997), *New Approaches to Legal Translation*, Kluwer: The Hague 229.

2 Baaij, C.J.W. (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer: The Hague 2.

3 ECR 419, para. 3.

4 ECR I-8691, para. 46.

5 ECR 1999, para. 14.

6 Šarčević, S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate: Surrey 3.

process of using directives, and the EU instructs the Member States to bring their national laws within the parameters set by the Directive. The national laws are written in the official language/s of the Member States, and EU law also requires directives to be available as the authentic version in the official language of the Member State. EU legal translation is not just a ‘standard’ legal translation from one Source Language (SL) to another; it requires introducing new legal and linguistic concepts. ‘New’ means this legal culture is created specifically for the EU legal order. As Šarčević’s earlier work points out, a proper legal translation is not just being faithful to the text but also recreating the spirit of the text.<sup>7</sup> In the translation of EU legal texts, one can argue that Šarčević’s observation can be taken even further, as the legal translator needs to recreate not necessarily the spirit of the Target Language (TL) but must contribute to the creation of a ‘new’ European legal translation.

Multilingualism is the greatest challenge in EU law, and the paradoxical role of legal translation is very evident.<sup>8</sup> On the one hand, translation is essential for the functioning of EU law as it enables the production of equally authentic texts of EU legislation. On the other hand, legal translation may be seen as inherently imperfect and a potential obstacle to the very goal of legal harmonisation. In the quest for a better translation, which makes up 23 of the 24 authentic linguistic versions, the EU tries to improve the quality of the basic texts of EU legislation.<sup>9</sup> In 2009, DGT launched a *Programme for Quality Management in Translation* (European Commission 2009).<sup>10</sup> At this stage, it makes sense to outline what makes EU translation unique from the perspective of legal translation studies.

There is growing awareness of the inherent link between law, language and culture. This has resulted in greater interaction between lawyers and linguists. Legal Translation Studies is a truly disciplinary field that borrows from translation theory, the theory of law, comparative law and comparative legal drafting.<sup>11</sup> Like in other areas of translation, the legal translator’s basic tasks are to

7 Šarčević, S. (1997), *New Approaches to Legal Translation*, Kluwer: The Hague 229.

8 Kjaer, A., ‘Theoretical Aspects of Legal Translation in the EU: The Paradoxical Relationship between Language, Translation and the Autonomy of EU Law in Šarčević, S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate: Surrey, 91.

9 Šarčević S., ‘Coping with the Challenges of Legal Translation in Harmonisation’ in in Baaij, C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer: The Hague 84.

10 [ec.europa.eu/dgs/translation/publications/studies/quality-management\\_translation\\_en.pdf](http://ec.europa.eu/dgs/translation/publications/studies/quality-management_translation_en.pdf) last accessed on 10th September 2020.

11 Šarčević S., ‘Coping with the Challenges of Legal Translation in Harmonisation’ in Baaij, C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer: The Hague, 84.

translate texts anchored in a specific legal context and intended for a specific purpose or *skopos*, as it is often called in Translation Studies. Normally, this is a dual operation involving an SL and a source legal system with a TL and a target legal system. EU legal translation is more complex, but one must remember that EU law is considered an independent supranational legal system with its autonomous conceptual system.

In this sense, Professor De Groot<sup>12</sup> remarked that the translation of EU texts might be ‘relatively easy’ because equivalents for EU legal concepts exist in all the official languages. However, one can disagree and argue that this is a narrow approach given that most EU concepts are borrowed from several national systems, international law, and legal transplants, and their linguistic terminology acquires an autonomous EU meaning. One can refer to Anna Lise Kjaer,<sup>13</sup> who said that legal translation in the EU is neither within one legal system nor across legal systems. She argues that EU translation is so complex that it requires “theoretical categories of its own”, which consider the special characteristics of multilingual law-making in the EU to which traditional concepts of translation theory may no longer apply.

Regarding translation in EU legal harmonisation, it is necessary to identify the text producers and the receivers in the unique multi-level harmonisation process. EU legal instruments (Regulations and Directives) are produced and adopted by the EU institutions. The former are directly applicable and enforceable in all the Member States, while the latter would need to be transposed into the laws of the Member States. These two levels of governance (the EU and the Member State levels) bring about a corresponding two-step translation process: inter-lingual at the EU level but intra-lingual at the national level.<sup>14</sup> The two steps are inseparably linked and mutually dependent on each other. EU translators need to consider both phases when selecting an appropriate translation strategy. These legal instruments are normally drafted in English or French at the EU level. After the Legal Service approves, they are translated into the other twenty-three languages. The second phase of harmonisation in the case of Directives takes place at the Member State level. At this point, the normally

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12 De Groot, G., ‘The Influence of Problems of Legal Translation on Comparative Law Research’, in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer: The Hague, 20.

13 Kjaer, A., ‘Theoretical Aspects of Legal Translation in the EU: The Paradoxical Relationship between Language, Translation and the Autonomy of EU Law in Šarčević, S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate: Surrey, 91.

14 Kjaer, A., ‘Theoretical Aspects of Legal Translation in the EU: The Paradoxical Relationship between Language, Translation and the Autonomy of EU Law in Šarčević, S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate: Surrey, 97.

translated version of the language of the particular Member State is taken to draft the transposing local legislation. At this point, the EU linguistic concepts meet with the national linguistic concepts. If there are variations or neologisms, the challenge of integration into national law would be even more demanding.

From the above, one can argue that one of the greatest challenges of legal translation in the EU harmonisation of laws is for translators to produce a Target Text that reads like an original yet preserves good inter-lingual concordance to prevent unintended ambiguity and misinterpretations.<sup>15</sup> One can say that the paradoxical relationship between language, translation and the autonomy of EU law strengthens the argument that EU law mirrors the *sui generis* nature of the European legal order. One can agree with Anne Lise Kjaer,<sup>16</sup> who argues that it is a challenge for practitioners of legal translation and calls for reflection on the part of translation scholars and lawyer linguists. She rightly argues that the real challenge in European law is not a translation in the narrow sense of the word but translation in a broader sociological sense, that is, the transfer of the legal knowledge which is produced and developed by the interaction of lawyers and judges in the European institutions and at the European Courts as participants of discourse communities at the supranational level of the EU law. At the central level, the actors may agree on the ‘semantics’ of the emerging European law and declare its ‘semantic’ independence from national law.

However, stating autonomy does not automatically result in autonomy. It still depends on the interpreter’s application of the text. Nevertheless, stating the autonomy of European legal concepts does mark a shift in the legal discourse of European lawyers, also at a national level, and discourse can change what people believe is real. When European concepts are constructed as autonomous, people will increasingly treat them as such. Hence, from this argument, one can appreciate the nature of EU legal translation and its contribution to the harmonisation of law in the Internal Market.

### 3 Legal Certainty – Form and Substance

Legal certainty is a general principle of EU law. Formal legal certainty implies that laws and adjudication must be predictable. Laws must satisfy the imperatives of clarity, stability, intelligibility, and predictability so that those concerned can accurately calculate the legal consequences of their actions and

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<sup>15</sup> *Ibid.*, 105.

<sup>16</sup> *Ibid.*, 105.

the outcome of legal proceedings.<sup>17</sup> Substantive legal certainty is related to the rational acceptability of judicial decision-making. It is not sufficient that laws are predictable. They must be accepted by the legal community in question. Legal certainty encompassing its formal and substantive elements forms an important principle in national legal systems. While principles and the national legal system do not apply automatically to EU law, one would also accept that EU law being enforced alongside pure domestic law will have similar principles. Law requires a certain degree of predictability so that those concerned can know the legal consequences of their actions in advance. The principle of legal certainty comprises a wide concept essential in EU law and the European Union's legal systems. It is the ultimate necessity for the law to be clear, stable, and intelligible.

Therefore, transparency and legitimacy are seen as driving forces behind multilingualism and are closely connected to legal certainty and legitimacy. This is not so much formal validity of the legal system as substantive act ability intertwined with legitimacy. On the one hand, established law guarantees enforcement of legally accepted behaviour and the certainty of law. On the other hand, rational procedures for making and applying the law and a guarantee of legitimate expectations. Law stabilises societal behavioural expectations to create legal certainty that enables law addressees to calculate the legal consequences of their behaviour and those of others. Consequently, legal norms must assume a comprehensible, consistent, and precise form and be made public and known to all addressees. They may not claim retroactivity, and they must govern the factual circumstances in general terms and connect the factual situation with legal consequences so that it is possible to apply the normal to all persons and to comparable cases in the same way.<sup>18</sup>

The concepts of legal certainty and the rule of law are closely connected. The notion of legal certainty is generally used in similar systems. The closest equivalent in common law appears to be the rule of law. Thus, because of its immediate connection to the concept of legal certainty, it is necessary to sketch the basic tenets of all law principles governing the power of authorities. In normative terms, the rule of law refers to the characteristics of an ideal legal system. However, irrespective of the legal system in which the rule of law is virtual, at least one point exists on which there is broad agreement, and the principle escapes any precise definition. The imperatives associated with the

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17 Paunio E., *Legal Certainty in Multilingual EU, Language, Discourse, and reasoning at the European Court of Justice*, Ashgate, Surrey, 51.

18 *Ibid.*, 52.

rule of law, especially clarity, require that indeterminacy, such as vagueness and ambiguity, be avoided.

Nevertheless, this initialises the following question: how can this view be reconciled with the reality of EU law drafted in over twenty languages, or more accurately, translated into many languages which can carry different views about the meaning of law? How does this work in the multilingual legal system? Accordingly, judicial reasoning must satisfy conditions of rationality and reasonableness. This means that reasons must accompany assertions, and whatever is asserted may be challenged as long as reasons are offered to justify such a claim.<sup>19</sup>

The rule of law forms a building block of any legal system, including that of the EU. Indeed, this is expressed in Article 2 TEU, in which the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. In essence, the rule of law depends on the idea that laws, preannounced rules that govern behaviour in a given legal system, are determinate. Nevertheless, at the same time, the rule of law requires that people can challenge cases laid against this; therefore, it requires stability and flexibility. Again, this relates to multilingualism and legal certainty. If the organising principle is accepted as the guideline for constructing the ideal of the rule of law, then multilingualism and differences between language versions may be acceptable. As long as multilingual EU law is not to waver or not to easily be changeable, it does fulfil the requirement of the rule of law, which is the capacity to guide behaviour. In essence, it has to remain predictable enough; complementing this relativist theory of certainty, it is imperative that those subject to the law must be capable of challenging acts that concern them. This brings about the essential role of the European Court of Justice in harmonising and legal translation.

#### 4 Harmonisation and Legal Translation at the CJEU

Term harmonisation is an essential requirement of any terminological activity. Multilingual terminology harmonisation implies the establishment of equivalences across languages. In several of her works, Sarcevic discusses the problem of conceptual incongruence between different legal systems, which in EU multilingual terminology can be identified as a problem of conceptual mismatching and suggests the need for thorough conceptual analysis as a starting

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<sup>19</sup> *Ibid.*, 57.

point for determining the adequacy of potential equivalents.<sup>20</sup> EU concepts are often intentionally vague in order to facilitate their application in the different legal and political systems of the Member States. Hence, it is important to improve terminological precision, which may be lacking in some instances. While EU law presupposes the existence of the autonomy of EU concepts, *de facto*, this is an ongoing process, and one can safely conclude that the autonomy of EU concepts is a work in progress. The same official language may be used in more than one state; hence, it is used across more than one legal system, making the possibility of quite complex variations within the same language itself. Naturally, this means that conceptual variability may exist at all levels.

Terminological inconsistencies in the translation of the *acquis* (the body of EU law) occur at the level of the term when different terms are used in the TL to designate the same EU concept, as well as the level of the concept when the term used in the TL is linked to more than one concept, either at EU level or on EU and national levels. To address these issues, creating specific translation tools that enable translators to have points of reference is essential. This brings up the subject of corpora. Vast amounts of documents are constantly translated and made available online. Some examples of large-scale corpus-based linguistic research have produced a parallel corpus on European Parliamentary Proceedings for Machine Translation, a representative parallel corpus of the *acquis* and multilingual text mining and news-gathering tools leading to the creation of the EU's terminology management system designated Interactive Terminology for Europe (IATE).<sup>21</sup>

One can easily identify IATE as a leading corpora concerning EU texts from the above. The various departments of DGs of the European Commission produce EU documents. These documents are usually drafted in English or French. As the writer of these documents is often a non-native speaker of the drafting language, he/she must have access to the terminology used for consultation. Hence, accessing previous texts, particularly the terminology used, is essential to drafting the Source Text. Furthermore, as the Source Text is translated into twenty-three different Target Texts, translators need access to the same corpora the original drafter would have had. As IATE is a parallel corpus, the translator could simultaneously compare the languages used in the Source

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20 Sarcevic S., 'Coping with the Challenges of Legal Translation in Harmonisation' in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer, 203.

21 Murphy A., 'Corpus Analysis of European Union documents' in *Encyclopaedia of Applied Linguistics: Corpus Linguistics*, C. Chapelle (ed.) (2014), Wiley-Blackwell, Oxford, 139.

Language and those used in the Target Language, thus ensuring a smooth and accurate translation.

IATE results are based on input from various groups working at different production levels (drafting) and translating EU texts. If the words are entered into the database by an individual, they are marked with one or two stars depending on the individual's grade. If they are inputted by a Head of Unit, they carry three stars; if they are fields inputted upon by an inter-institutional agreement, they are ranked four stars. This means that words and terminologies carrying four stars result from consultations and agreements by the respective authorities. Hence, the terminology in question carries enough weight to be used in subsequent texts. IATE is more than just a bank of terminology. It has the function of a bank of language as it enables a study of how words and terminology are used in that particular language. It is also much more than a bank of a language as it is available in twenty-four different languages and assists in translating and establishing terminology across policies that fall under EU competence. As stars mark inputs, they serve as a tool for various players to contribute to the linguistic issues of their language without compromising decisions taken at a higher level.

Nowadays, most EU drafting of documents and their translation is made by reference to the corpus. The EU corpora, including IATE, embody most of the different types of corpus mentioned in the introduction of this essay. IATE is a specialised corpus that can be used for specific fields, such as competition policy or environmental policy, and a general corpus of many types. It can be used to compare corpora and teach language.<sup>22</sup> Many EU legal translators study another foreign language during their careers, and IATE is a good tool for learning new terminology and constructing specific language for specific types of documents. Hence, IATE also serves as a learner corpus. As IATE has become larger and more diverse, it is frequently used to make definitive statements about how the language is used. The bigger it grows, the more authoritative it becomes as it assumes more of a representative nature and permanence. IATE is not a mere text collection but is designed to help users understand how certain terminology has gradually been accepted and how this has been mirrored in the chosen Target Language. The IATE interface enables users to search words or phrases through concordance lines.

Most EU documents and legislation are drafted along pre-established templates. Some text parts are standard form templates with little (such as the date or place) or no variation. Then, the majority of the body of the text requires

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22 Hunston S., (2002), *Corpora in applied Linguistics*, Cambridge University Press, 12.

the drafter to create the text. However, unlike free literature, while the writer creates the text, he/she is bound by pre-established terminology. This includes proper names of legislation, places or institutions, and predetermined terminology. There may be some words that, in normal language, may be accepted as interchangeable. One can mention 'court jurisprudence' and 'case law' as examples. IATE helps the drafter choose the appropriate wording that fits the sequence of the document. While in a stand-alone translation, any of the two terminologies mentioned above can fit, if the document is part of a sequence, then a drafter has to follow the predetermined choice to ensure consistency even if he/she thinks his choice is better. Without corpora, such as IATE, such a task would be impossible.

The same principle applies to translating the same text into the Target Language. The translator has two important roles that cannot be fulfilled without corpora. The first, as in the case of the drafter in the previous paragraphs, is to fulfil the same task of choosing consistent terminology that respects the type and use of the document. Secondly, suppose the translator works in a new language such as Estonian or Maltese. In that case, the translator is responsible for carefully choosing the appropriate terminology and contributing to developing terminology in his/her target language. Hence, one must ensure consistent terminology in the mentioned Target Language if translating from English into Maltese. However, it may well be that no terminology exists in the target language. In this sense, IATE helps the translator understand how the term is used in the Source Language. Then, one can do a comparative exercise in another more established language (established in the sense of EU terminology), such as Italian. Having studied the use of words in Italian, one can then make choices for the Maltese version. Eventually, such choices may be entered into IATE itself, expanding the corpus in the Target Language and assisting future translators of similar texts. While corpora are useful, one should look at linguistic concerns while translating EU law.

Legal translation in a multilingual environment is not only a linguistic undertaking but may have direct legal consequences caused by faulty translation. A good example of possible faulty translation has been addressed by the CJEU in Case C-54/05 *Commission V Finland* ([2006] ECR I-02473), where the Court explains:

Although the Finnish version of that provision contains no reference to the requirement that overheads are allocated 'pro rata' to the operation in question, the fact is of no consequence, since it follows from settled case-law that Community provisions must be interpreted and applied uniformly in the light of the versions existing in all Community languages

and since, in this case, the language versions other than Finnish expressly refer to the requirement that overheads be allocated pro rata or proportionately to the operation in question.

The challenge for legal translation brought about by the above judgment is how to mix linguistically and legally different national legal cultures and that of the EU and maintain coherence. Even in one of the old landmark cases dealing with the general principle of human rights, the CJEU in *Stauder* ([1969] ECR I-419) said that for the sake of uniform interpretation, it was impossible to consider one version of the text in isolation. At that time, only four official languages were spoken. Hence, one can say that the experience of EU translation today may go beyond multilingualism and into the concept of plurilingualism.

The above can be taken as an argument whereby legal translation requires understanding the deeper level of legal language, which may be called the legal-epistemic level. In the past, Europe’s legal language was Latin. Today, English may be regarded as a technical *lingua franca*, although there are problems associated with this.<sup>23</sup> The main problem is that some jurisdictions may still prefer other languages, such as Latin.<sup>24</sup> Considering EU law, one realises that around 90% of legislative documents are drafted in English. The rest is almost translated into English immediately, and stakeholders, eurocrats and translators are more likely to use the English version, given that it is the main working language. If English is not the drafting language, the English version will still likely be the main bridge to translate into other languages. Hence, is it safe to answer the question of what language law speaks? The answer is English. Therefore, one can conclude that English is the main language for drafting and translation as it would probably be a Source Language if not a Target Language.

In the past decades, the spread of English has received considerable attention among scholars of the English language. The case of English in the EU is no exception. It is a new variety of English with its special jargon, even if the existence of a specifically European variety of English as a *lingua franca* is far from being widely acknowledged. Some writers use ‘Euro-English’ as opposed to ‘EU English’ as described below. These terms refer to English as a *lingua franca* in the European context. As Modiano points out, Euro-English brings non-native speakers of English into contact with other non-native speakers in Europe, even more perhaps than native speakers. As a result of

23 Pozzo B., ‘English as Lingua Franca in the EU Multilingual Context’ in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer, 184.

24 *Ibid.*, 201.

this phenomenon, one can notice the emergence of typical lexical choices, discourse strategies and even accents that can be studied if Euro-English is to be accepted as a linguistic reality.

Contrary to Euro-English, which can be described as a non-native variety of English, often used in drafting documents mainly by non-native speakers, EU English is produced by native speakers of English since it is produced by linguists whose English is the first language. When a particular text is originally drafted in another language, this is translated by the English unit of DGT, who are, as per employment requirements, native speakers of English. Research projects focusing on EU English have investigated lexical features with the help of corpora of the EU, mainly legal documents.

EU English deals with various activities in which the EU is involved. Reference can be made to the work of Trebits in her article *English for Specific Purpose*,<sup>25</sup> who studied the use of English in the recruitment competitions organised by the European Personnel Selection Office (EPSO) and compared the results with the Corpus of EU English (CEUE). All the texts in the CEUE were published after 2000, and the final version contained over 200,000 running words. This corpus may appear small but valid as it is highly specialised and limited. She compared the results with the written part of the British National Corpus (BNC) using lexical frequency and range computer programs. The frequency list allowed her to draw up the list of the most frequent conjunctions in the CEUE and compare the two corpora in terms of categorises of the conjunctions used.

Another corpus-driven study by Jablonkai Reka was published in the *Journal English for Specific Purpose*, where she identified and analysed lexical bundles in written English EU discourse using the corpora mentioned above. She concluded that English EU discourse differs from other written registers in several aspects.<sup>26</sup> First, she observes that EU texts use bundles with verb phrases more. Secondly, lexical bundles appear in fairly high frequencies. Hence, the corpus suggests that most EU texts consist of formulaic patterns. The different nature of the lexical bundles in written English EU discourse is important to raise awareness of the difference between English used for EU purposes and general English. Reka's study shows that the use of English in European affairs has developed in a special way to fit its purpose, and this comes out clearly when one looks at the various applicable corpora. In her study, she concludes

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25 Trebits A., 'Conjunctive cohesion in English language EU documents – A corpus-based analysis and its implications', *English for Specific Purpose* 28 (2009), 204.

26 Reka J., 'English in the context of European integration: A corpus-driven analysis of lexical bundles in English EU documents' *English for Specific Purpose* 29 (2010) 253–267.

that corpora-driven research about the use of English in EU texts provides a coherent picture of the lingua franca’s use within an EU context for courses and materials designed to teach English for EU purposes.

Turning back to the problems of legal translation, every comparative lawyer is a translator, as language is central to acquiring knowledge of foreign law.<sup>27</sup> The complexity of the multilingual situation necessitates European institutions to take the initiative to rationalise the situation, given that EU legal translation needs to navigate among more than 500 possible language combinations from all official EU languages into all official EU languages. They used a lingua franca, even if merely as a point of reference, which will contribute to better uniformity. However, the use of English also presents an additional challenge. The English language necessarily brings with it the ideas of common law. The English used in EU law differs from that used in common law. It is a new language, and its role is quite peculiar. It is just one of twenty-four languages, and EU texts take their meaning from all language versions, which are often drafted and negotiated by non-native speakers. Styles, concepts, and words are taken from other languages and adapted to English. Hence, English in the EU has become a ‘neutral’ or ‘descriptive’ language, a reference point for the Eurocrats and the stakeholders. It is a comprehensible language that is not necessarily tied to English law. It is the language from which one can create neologisms. In this context, English is undergoing an evolution.

Most problems relating to translating the Draft Common Frame of Reference (DCFR) and the Communication on European Sales Law (CESL) are apparent when translating this *lingua franca* into all the other official languages. For example, how can one translate French concepts codified in English with a German background? These legal instruments contain agreed or compromised definitions offered by the authors in their commentaries. The appendix to the DCFR has a long list of definitions of the terms used in formulating the rules.<sup>28</sup> In translating standardised English into the other twenty-three languages, if there is no equivalent in the language and the particular context of notions and concepts belonging to the national experience, it will be necessary to create ‘new’ terms, concepts and principles.

Felici explains how, although English has been used since the EU acceded to what was then the European Economic Community in 1973, the increase in the use of English as a *de facto lingua franca* gathered momentum, first with the Scandinavian enlargement in 1995 and then achieved the current boost with

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27 Pozzo B. *op cit.*, 200.

28 Pozzo B. *op cit.*, 200.

the 2004 enlargement.<sup>29</sup> This is supported by the statistics published by the Commission in 2009 (*Translating for a Multilingual Community* (2009), which reports that while English as SL was 72.5% in 2008, fifteen years before, it was 45.4%. French went down from 40.4% to 11.8%. Such a considerable increase in the use of English over a short period inevitably contributed to an unmarked form of English devoid of cultural specificity. Hence, one can find new terms such as *internal market*, *pigmeat*, etc. Other words or phrases have acquired new meanings due to the influence of other languages. For example, one can mention the *actual* meaning of 'current' or *if it is* used to replace the preposition 'for'. These are just examples, and listing them down is beyond the scope of this work.

One can argue that EU legal English looks more like civil law than a common law style. The EU style guides are closely built on the original French style guide drafted before the UK and Ireland joined the EU. Before this, French was the *de facto lingua franca* among just four official languages. English crept in slowly like an incoming tide up an estuary, and as a result, one can say that we have the anglophonification of the incumbent French style. While English may have replaced French as the *lingua franca*, the same cannot be said about style and terminology. Some new terms or styles come from French, even from the few examples in the preceding paragraph. Hence, it can be argued that Euro-English is, in fact, 'English' in the French way. This may be debatable, but some form of French influence exists.

Felici explains that:<sup>30</sup>

These semantic changes can be attributed to the multilingual production of EU legislation and to the translation from one language to another during drafting and negotiations, as well as to the need of adapting English to the EU legal context. On the other hand, the first EU English translations were translations from French; hence, both terminology and drafting style are inevitably shaped by the continental legal traditions and Romance language influence.

Thus, multilingualism's next challenge in the EU is translating English into a *lingua franca*. The more English is used, the more challenges may be posed. One may no longer face the problem of transferring legal concepts from one legal

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29 Felici A., 'Translating EU Legislation from *Lingua Franca*: Advantages and Disadvantages' in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate, Surrey, 126.

30 *Ibid.*, 127.

language into another, but the challenge would be translating from a hybrid language. Hence, a ‘common frame’ of reference is essential, even for linguistic purposes. Also, while neologisms may be necessary, they create new challenges in their own right, and they would require monitoring, ideally through some form of institutional supervision. A similar approach has been taken in franco-phone parts of Canada, where legal terminology has been standardised in multiple languages. Is English suitable for the purpose? English is a forced choice in the current circumstances of the EU, and the larger the enlargements, the more essential the use of English becomes as a *lingua franca*. Euro English will develop its path and terminology independently of what the Law Lords think. Euro-English could become a new dialect of English while contributing to achieving the much-sought uniformity in EU law.

From the above, one can conclude that EU legal translation is a special genre in its own right because English as the dominant language renders EU legal translation beyond the normal classification of SL and TL. This results from negotiations and interactions among speakers of different languages, mainly through a language that may not even be their second language. Hence, many authors or drafters from different cultural or linguistic backgrounds may prevent professional translators from identifying the author’s clear intention.<sup>31</sup> Text intention is rather influenced by the intercultural communicative process among the Member States, and tests reflect the dynamics of intergovernmental cooperation, resulting in a situation where languages and legal systems are in contact. Going beyond this argument, one can also appreciate that the different EU institutions have different needs. Hence, EU multilingual legislation poses new challenges to translation depending on the genre and function of the legal text and the different institutional needs, making the effect of multilingualism in the EU on European legal translation even more challenging.

## 5 Conclusion

The central question examined in this paper is how legal translation can contribute to legal harmonisation. The pivotal function of legal translation is one of the most elementary operations of the EU. The EU cannot function without translation. Legal translation is indispensable to harmonise laws to benefit the Internal Market. EU law must be accessible to all EU citizens independently of

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<sup>31</sup> *Ibid.*, 129.

the language version, so in this sense, legal translation is critical to achieving the objectives of the European Treaties.

As highlighted in this paper, translation to draft the EU's multilingual legislation is a complex legal translation as each language version is considered authentic. As a consequence of this uniformity, the unity of the law must be preserved. Each version must correspond not only linguistically but also in structure and content. Hence, it is the task of the EU legal translators to produce twenty-three accurate and reliable texts with the same meaning. As stated earlier, complete correspondence between the language versions of the EU legislation is essential to harmonise laws. It has also been argued that EU legal translation merits considering a special genre of legal translation as certain skills and techniques are particular to EU legal translation as opposed to legal translation in general.

The real challenge of EU legal translation is not just the lack of uniform terms but also the lack of uniform legal concepts. This means that EU legal translators face the challenge of managing the conjuncture of national and EU legal languages while maintaining sufficient coherence. Thanks to the legal translation process, EU experts can contribute to creating a 'new' European legal culture with autonomous legal concepts. The autonomy of the 'new' European legal culture not only creates a challenge to lawyers but also a new challenge to linguists regarding how to achieve a single legal language in all the official languages. Regarding this challenge, the increasing use of English as a *de facto lingua franca* in which a single legal language contributes to developing a 'new' legal culture is facilitating the achievement of some form of uniformity in EU law.

## Bibliography

- Alcaraz E. & Hughes B. (2012), *Legal Translation Explained*, Routledge.
- Arnall A. (1993), Owing up to fallibility: precedent and the Court of Justice, *Common Market Law Review*, 30, 247–266.
- Baaij C.J.W. (2012), *The role of Legal Translation in Legal Harmonisation*, Wolters Kluwer
- Baaij C.J.W., 'The significance of Legal Translation' in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer.
- Baaij C.J.W., 'Translation and the Burden of Legal Knowledge' in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Baker P. (2006), *Using corpora in discourse analysis*, Continuum.
- De Groot G., 'The Influence of Problems of Legal Translation on Comparative Law Research', in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer.

- Derlen M., 'A Single Text or a Single Meaning: Multilingual Interpretation of EU Legislation and CJEU Case Law in National Courts' in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Felici A., 'Translating EU Legislation from *Lingua Franca*: Advantages and Disadvantages' in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Ganbaro A. (2007), Interpretation of multilingual texts, *Electronic Journal of Comparative Law*, 11(3), available at: <http://www.ecjcl.org/113/article113-4.pdf>
- Graziadei M., 'Law, Language and Multilingualism in Europe: The call for a New Legal Culture' in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Gundel J. (2001), Zur Sprachenregelung bei den E.G-Agenturen – abschied auf Raten von der Regel der 'Allsprachigkeit' der Gemeinschaft im Verehr mit dem Bürger? Anmerkung zum Urteil des EuG von 12.7.2001.
- Hoffman Sebastian et al. (2008), *Corpus Linguistics with the BNCweb – a Practical Guide*, Peter Lang.
- Husa J., 'Understanding Legal Languages: Linguistic Concerns of the Comparative Lawyer in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer.
- Hunston S. (2002), *Corpora in Applied Linguistics*, Cambridge University Press.
- Kjaer A., 'Theoretical Aspects of Legal Translation in the EU: The Paradoxical Relationship between Language, Translation and the Autonomy of EU Law in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Lefevere A. (1992), *Translation, Rewriting and the Manipulation of Literary Fame*, London & New York: Routledge, xi.
- Merz E. (1982), Language and mind: A Whorfian folk theory in United States language law. *Sociolinguistics Working Paper Nr. 93*. Available at <http://ccat.sas.upenn.edu/~harofolds/540/theory/mertz.html> [accessed on 1 April 2023]
- Modanio M. (2003), 'Euro-English: A Swedish perspective', *English Today*, 74(19), 35–41.
- Munday Jeremy, (2001), *Introducing Translation Studies – Theories and Applications*, Routledge.
- Murphy A., 'Corpus Analysis of European Union documents' in *Encyclopaedia of Applied Linguistics: Corpus Linguistics*, C. Chapelle (ed.) (2014), Wiley-Blackwell, Oxford.
- Plaunio E. (ed.) (2013), *Legal Certainty in Multilingual EU Law – Language, discourse and Reasoning at the European Court of Justice*, Ashgate.
- Pozzo B., 'English as *Lingua Franca* in the EU Multilingual Context' in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer.
- Reka J., 'English in the context of European integration: A corpus-driven analysis of lexical bundles in English EU documents', *English for Specific Purpose* 29 (2010) 253–267.

- Robertson C., 'EU Multilingual Law: Interfaces of Law, Language and Culture in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Sarcevic S. (1997), *New Approaches to Legal Translation*, Kluwer.
- Sarcevic S., 'Coping with the Challenges of Legal Translation in Harmonisation' in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer.
- Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- Schleiermacher F.D.E. (2004), On the different methods of translating in *The Translation Studies Reader*, edited by Venuti L. 2nd edition, London and New York: Routledge, 43–63.
- Strandvick I., 'Legal Harmonisation Through Legal Translation: Texts that Say the Same Thing?' in Baaij C.J.W. (ed.) (2012), *The Role of Legal Translation in Legal Harmonisation*, Wolters Kluwer.
- Strandvick I., 'On Quality in EU Multilingual Making' in Sarcevic S. (ed.) (2015), *Language and Culture in EU law – Multidisciplinary Perspectives*, Ashgate.
- 'Tosi A. (ed.) (2003), *Crossing Barriers and Bridging Cultures – the Challenge of Multilingual Translation for the European Union*, Multilingual Matters Ltd on behalf of EU Translation Service.
- Toury G. (1995), *Descriptive Translation Studies and Beyond*, Amsterdam and Philadelphia: John Benjamins.
- Trebits A., 'Conjunctive cohesion in English language EU documents – A corpus-based analysis and its implications, *English for Specific Purpose* 28 (2009) 199–210.
- Venuti L. (1995), *The Translator's Invisibility: A History of Translation*. 2nd Ed. Oxon: Routledge.
- Venuti L. (2004), Foundational Statements, in *The Translation Studies Reader*, edited by Venuti L. 2nd edition, London and New York: Routledge.
- Wagner E et al. (2002), *Translating for the European Union Institutions*, Manchester: St Jermone Publishing.
- Zimmermann R., 'Comparative Law and the Europeanization of Private Law', in Reimann M. & Zimmermann R. (2006) *The Oxford Handbook of Comparative Law*, OUP.