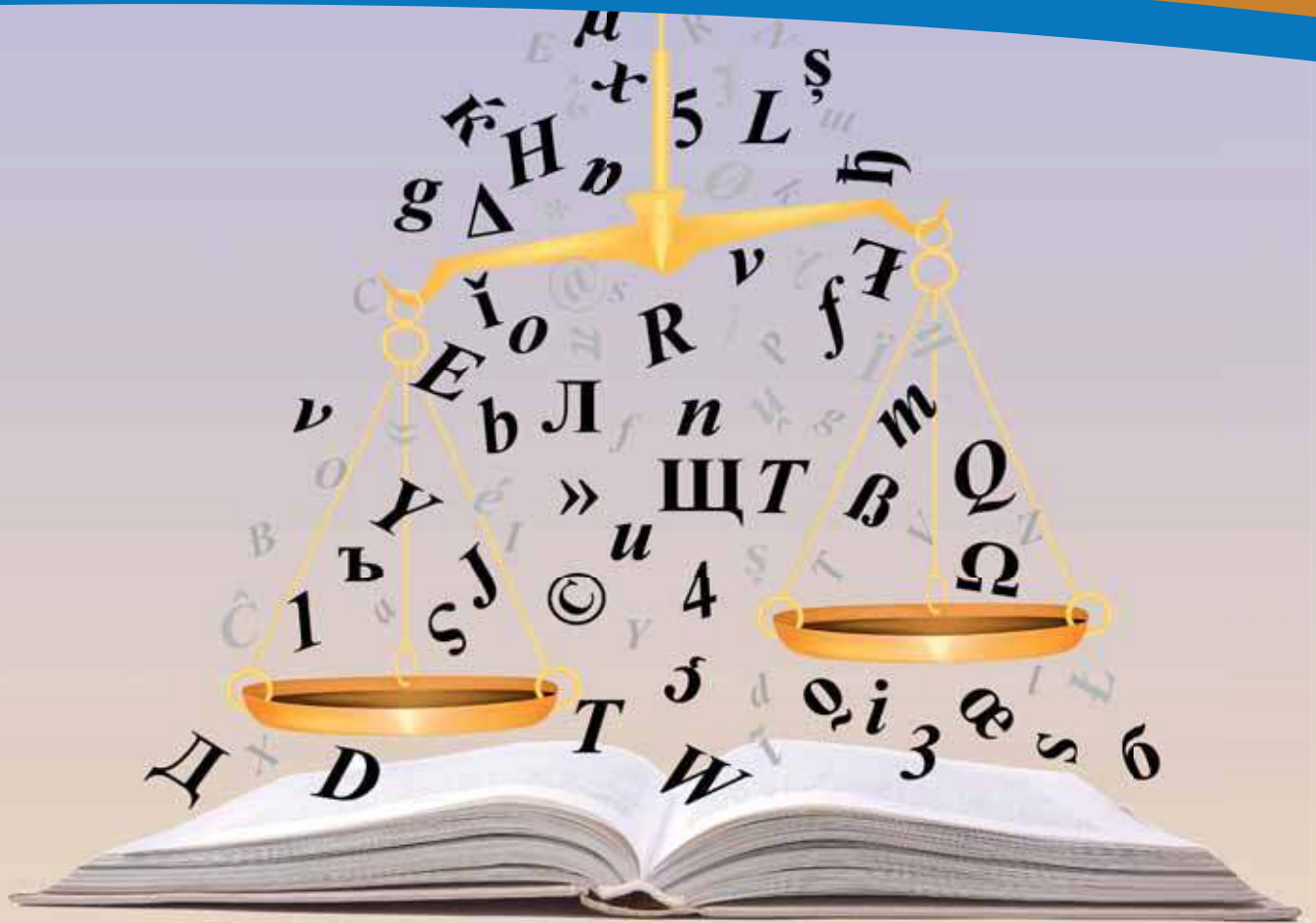


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Résumé

La politique du multilinguisme de l'Union européenne poursuit trois objectifs :

- encourager l'apprentissage des langues et promouvoir la diversité linguistique dans la société ;
- favoriser une économie multilingue performante ;
- donner aux citoyens un accès à la législation, aux procédures et aux informations de l'Union européenne dans leur propre langue.

La présente étude aborde le troisième volet de cette politique, et plus précisément le processus d'élaboration multilingue du droit européen, le rôle des différents acteurs institutionnels dans ce processus et les méthodes visant à assurer la bonne qualité rédactionnelle, juridique et linguistique des actes juridiques produits par les institutions européennes.

En fait, le régime linguistique de l'Union européenne est unique au monde avec ses 23 langues officielles et de travail jouissant du même statut. L'équivalence de chacune des langues est reflétée par le traité sur l'Union européenne dans son article 55 et son application au niveau législatif a été déterminée par le tout premier règlement adopté par le Conseil en 1958. L'Union est ainsi tenue d'adopter et de publier sa législation dans toutes les langues officielles afin d'assurer le respect de la sécurité juridique et l'égalité de traitement entre les destinataires.

Ce régime juridique multilingue met en évidence la relation étroite entre le langage et le droit, du fait de la cohabitation entre les 27 systèmes juridiques exprimés dans les langues officielles des États membres et le droit européen, rédigé officiellement en 23 langues qui ne sont pas dépourvues des influences juridiques des systèmes nationaux qu'elles décrivent traditionnellement.

L'étude donne un aperçu des fondements juridiques du multilinguisme européen, en clarifiant les notions de 'langue faisant foi', 'langue officielle' et 'langue de travail', et analyse le processus de rédaction multilingue des textes législatifs et non-législatifs depuis les travaux préparatoires au sein de la Commission jusqu'à l'adoption par le Parlement européen et le Conseil.

Ce processus ne consiste pas en une co-rédaction à 23 langues proprement dite, mais en un système basé sur l'alternance de trois phases : la rédaction dans la langue source, la traduction dans toutes les langues officielles et la révision juridique des différentes versions linguistiques visant à assurer une valeur juridique équivalente à chacune d'elles. Les traductions deviennent ainsi des textes qui font foi et les traducteurs ont une responsabilité égale à celle des auteurs des textes.

L'étude tend à démontrer que la traduction et la dimension linguistique de la législation constituent le pivot central du droit européen : les actes juridiques étant exprimés dans les différentes langues de l'Union, ces actes ne peuvent être appliqués de manière uniforme et conforme que s'ils sont rédigés d'une manière compréhensible, précise et dépourvue d'ambiguïté et si les différentes versions linguistiques sont concordantes et équivalentes.

La présente étude touche à la fois à des aspects théoriques (par exemple, les implications du point de vue linguistique du principe d'autonomie du droit de l'Union européenne et les grands

principes régissant les choix terminologiques) et à des questions pratiques (par exemple, le fonctionnement réel de ce système législatif multilingue, l'interaction entre langues juridiques au niveau national et au niveau de l'Union européenne, les problèmes qui émergent du fait de la rédaction multilingue, ainsi que la jurisprudence de la Cour de justice en la matière). Par souci de comparaison, l'étude examine d'autres systèmes législatifs multilingues dans le monde, en particulier ceux de la Belgique, de Malte, de la Suisse et du Canada.

L'expression linguistique particulière du droit européen, notamment sa croissante technicité et la spécificité de la terminologie, s'explique largement par les conditions de son élaboration et de son application, par l'impact des compromis politiques et les différents effets juridiques des actes du droit dérivé. Les langues doivent donc s'adapter, ce qui génère parfois un écho négatif dans les cercles de linguistes et dans la population. Par ailleurs, le multilinguisme européen contribue aussi au développement des langues nationales des États membres et à la création de ressources linguistiques structurées (surtout des bases de données). Il est à la source de termes nouveaux exprimant des notions propres au droit européen, de nouveaux sens attribués aux termes existants, ou de la reprise de mots abandonnés. Le fait que la langue officielle d'un État membre est devenue en même temps langue officielle de l'Union a déclenché dans plusieurs pays une politique linguistique plus consciente.

Le multilinguisme lance de nombreux défis aux langues officielles, et l'étude donne des exemples tirés de toutes les langues officielles. L'étude consacre aussi un chapitre entier à l'examen systématique de deux champs lexicaux, la protection des consommateurs et l'environnement, tous deux assez nouveaux parmi les compétences de l'Union mais différant substantiellement au niveau de la terminologie. Tandis que le vocabulaire du droit des consommateurs est étroitement lié à la terminologie traditionnelle du droit des contrats, consolidée depuis longtemps dans le droit privé des États membres, le vocabulaire du droit de l'environnement, souvent le produit de l'innovation et du progrès technologique, a dû être créé. La présente étude analyse le vocabulaire de base et les problèmes de traduction ou bien la réception de certains termes des directives.

La fin de l'étude aborde la jurisprudence européenne dans le domaine linguistique. La Cour a ainsi estimé à plusieurs reprises que le droit européen utilise une terminologie qui lui est propre et que les notions juridiques n'ont pas nécessairement le même contenu en droit européen et dans les différents droits nationaux. De plus, elle a souligné que, sauf renvoi exprès au droit national, une disposition du droit européen doit normalement trouver une interprétation autonome et uniforme, en tenant compte du contexte de la disposition et de l'objectif poursuivi par la réglementation en cause. Selon la jurisprudence permanente de la Cour, un texte ne peut être interprété isolément mais, en cas de doute, il doit s'interpréter à la lumière des autres versions linguistiques.

De la même façon que les systèmes juridiques, les cultures et les langues des États membres ont influencé le système juridique de l'Union, celui-ci rejaillit sur les systèmes juridiques des États membres et sur leur environnement linguistique et culturel. Pourtant, toutes les langues de l'Union ne peuvent pas participer de la même façon au processus législatif des institutions, puisque les réglementations se préparent en anglais, plus rarement en français ou en allemand, avant d'être traduites en 23 langues. L'égalité entre les langues officielles de l'Union est donc bien respectée, mais l'usage des langues de travail est subordonné à la rapidité du processus législatif. Le principal message de notre étude est que le système législatif multilingue de l'Union est pour le moment une réussite en ce qu'il arrive à répondre à la fois aux exigences de sécurité juridique et aux considérations pratiques.

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1. Introduction

The Commission's multilingualism policy¹ has three aims:

- to encourage language learning and promoting linguistic diversity in society;
- to promote a healthy multilingual economy, and
- to give citizens access to European Union legislation, procedures and information in their own languages.

Our study will focus on the latter aspect of multilingualism and, more specifically, on the lawmaking of the EU in a multilingual context. The lawmaking of the European Union (EU) is based on a unique multilingual system in which 23 languages which are now official in the EU enjoy an equal status.

This principle was enshrined by the founding Treaties of the EU and it was the subject matter of the very first Regulation of the Council of the European Economic Community, adopted in 1958. Generally speaking, it obliges the EU to publish its legislation and major policy documents in all the official languages so that everybody in the EU, including citizens, government entities and private organisations, is able to understand the rights and obligations that EU membership confers upon them and act accordingly. It also gives the right to EU citizens to communicate with the EU in any of the official languages. This unparalleled communication system is to make the EU more open, and its functioning more effective.



*"Si c'était à refaire, je
commencerais par la
culture."*

(JEAN MONNET)

Multilingualism is important for the EU institutions, too, since internal language regimes serve as the basis of their smooth functioning. It also means that new official languages may be, and usually are, added with each enlargement of the EU. The multilingualism of the EU also reflects its commitment to respecting and promoting its cultural and linguistic diversity, as stated recently by the Treaty on the functioning of the European Union (TFEU or Lisbon Treaty).²

We shall explore how this objective is reached, how the multilingual and multicultural environment of the EU affects its legislative processes and its outcome and the positive contribution of and the challenges raised by the multilingual drafting of legal texts in the EU context. This objective goes hand in hand with the importance of the adequate drafting of legislative texts and the proper linguistic expression of EU concepts. Law cannot exist without language, since legal concepts cannot be embodied and represented in any way other than by using linguistic signs. As such, a legal norm and its linguistic expression are inseparable from each other. If we want a legal act to be interpreted and applied uniformly by everyone, it has to be communicated in such a way that the same legal effect be reached in all circumstances. In a multilingual system such as that of the EU, it means that language, as a

¹ COM(2005)596 of 22.11.2005 " A New Framework Strategy For Multilingualism"

² "[The Union] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced." (Article 3 of the TFEU)

means of communication, has a much more important and complicated role than in national legal systems with a single language only. The legislator's messages have to be conveyed with exactly the same meaning in 23 languages, free from any semantic or cultural connotations or traditions a given linguistic sign might have in that language. As the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation³ states in point 5, *"Throughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care."*

The value of multilingualism lies, above all, in the fact that it is a way to preserve one's cultural identity in a Union which aims at the widest possible political and economic integration of its Member States. The EU has always considered its many languages as an asset, rather than as a burden. The significance of multilingualism is recognised even more in the EU as more new Member States accede. It was included in a Commissioner's portfolio as a fully-fledged policy area for the first time in 2004, after the accession of ten new countries

"A person drafting a Community act of general application must always be aware that his text must satisfy the requirements of Council Regulation No 1, which requires the use of all the official languages in legal acts. That entails additional requirements beyond those which apply to the drafting of a national legislative text."

(Joint Practical Guide)

which introduced nine new languages into the EU.⁴ However, one should not forget the fact that multilingualism poses several challenges in everyday practice. From the point of lawmaking, challenges emerge mostly due to the fact that each Member State has its own legal system and that the overall approach and the specific concepts of these are sometimes as different from each other as, say, the common law system prevailing in England and the continental law system of France. On the other hand, considering languages spoken in more than one Member State, one will notice that a single language may represent more than one legal system; take English which is the language of the common law system of England but also of the continental law system in Malta and Scotland (the latter being all the more puzzling as England and Scotland are parts of one and the same state). Nevertheless, even legal systems similarly based on continental law may display differences in their

legal concepts and terminology, which is partly explained by different paths the culture and traditions of each country have taken so far and, partly, by differences inherent in the way the community of speakers of a certain language map the world and create concepts through which to label its phenomena. Now this is, briefly, the background against which the EU has to create its own law, its own concepts and terminology and express it in 23 languages with the same effect.

³ Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1)

⁴ In 2004, Slovakian Ján Figel' was appointed Commissioner responsible for education, training, culture and multilingualism.

This study is going to touch upon both theoretical aspects (i.e., what the autonomy of EU law implies from a linguistic point of view; and which are the main principles governing terminology choices) and practical issues (i.e., how this multilingual legislative system actually works in the EU; the interaction between legal languages at national and at EU level, problems emerging from multilingualism, illustrated by case studies of concepts from consumer protection and environmental law, and the relevant case law of the European Court of Justice (ECJ)). For the sake of comparison, we shall examine other multilingual legislative systems in the world, too, particularly those of Belgium, Malta, Switzerland and Canada.

The methodology used for the purposes of this study relies on three pillars:

- a) gathering information from questionnaires filled in by translators and lawyer-linguists working at the three main EU institutions taking an active part in the legislative processes of the EU (that is, the Commission, the Council and the European Parliament), Member States' administration, and national experts or judges involved in the elaboration and application of EU norms in the field of consumer protection and environmental law;
- b) interviews with representatives of EU institutions involved in certain phases of the drafting of proposals and acts and with persons responsible for drafting, co-drafting or translation in countries with two or three official languages;
- c) the relevant literature, including textbooks, articles, conference papers and documents issued by the relevant institutions themselves and other publications that might be of relevance for the topic.

The study presents a lot of examples from all the official languages of the EU. Despite the fact that there is a higher number of examples from certain languages compared to others, examples cover all the official languages and thus demonstrate that, in some respects, EU languages were all affected by the challenges of multilingualism. Examples were either provided by our respondents or were identified in the relevant literature.

In addition to the general considerations and examples taken from several areas regulated by EU law, two fields of law were selected for detailed further analysis. We chose consumer protection and environmental law because these areas require a special approach by the EU policy officers in charge of drafting and also by translators as far as terminology choices are concerned. Consumer protection is in the deep core of traditional contract law, using well-established concepts of national private laws using a long-established terminology, while environmental law is constantly evolving, thereby requiring the creation of new concepts that have to be expressed linguistically again and again.

The reader shall find a glossary in the Appendix, containing terms used in this study in the context of legislative procedures, with useful explanations. The list of interviews we conducted and of the meetings we attended in the course of the study, the text of the questionnaires we sent out and the breakdown of the responses by language, and the legislative corpus we analysed for the purposes of our research are also included among the Appendices.

2. Review of the literature

Countless articles, studies and books focus on language-related issues in the EU context. Some of them are oriented towards legal aspects, while others are interested in the practical implications of the multilingual functioning of the EU instead. Some of them cover both issues.

Before going into a detailed presentation of these two main categories of works, reference should be made to the literature discussing the dilemma of linguistic diversity in the EU as such. These works do not touch upon the problems of multilingual lawmaking but they do offer us a solid theoretical, philosophical and historical background to the issue. Baggioni, in his *Langues et nations en Europe*, analyses how the languages of Europe evolved during the last centuries and under what circumstances and influences they became the official languages of certain countries and nation-states. He studies the link between languages and nation-states and the status of regional languages in Europe at the end of the 1990's. Calvet, in *L'Europe et ses langues*, examines whether the dominance of English may threaten the survival of the other languages of Europe. He presents initiatives already launched in order to promote the use of other languages. He inquires whether the EU could have a language policy of its own or whether European integration might lead to the over-dominance of certain European languages or, on the contrary, to the revival of lesser used, regional languages in the long term. Another book devoted to the presentation of the languages of European countries and their official status within those countries is the handbook entitled *Langues et Union européenne*, edited by Sabourin.

Not only the interrelation between languages, states and Europe but also the role of translation in Europe is examined in *Europe et traduction*, edited by Ballard. Lécivain, in her chapter entitled *Europe, traduction et spécificités culturelles*, underlines the difficulty in creating an equivalence between concepts of different languages arising from their different cultural roots and backgrounds. She thinks that a good quality translation needs to fulfil two requirements: “*bon usage culturel et bon usage de la langue*”. Touitou-Benitah in *Le modèle de la traduction en Europe: réalités et potentialité*, published in the same book, gives a definition of ‘plurilingualism’ and ‘multilingualism’. According to her, ‘plurilingualism’ means the ability to speak and listen in 3 or 4 languages, while ‘multilingualism’ refers to a system where at least 5 languages are used with the help of translation. At the same time, she believes that the current practice of multilingualism in the EU is considerably slowing down the lawmaking process. She claims that European multilingualism must be maintained, but, at the same time, renewed by reducing the volume of documents to be translated and by enhancing plurilingualism, that is, the ability to communicate in more than one language.

In order to understand the role translation plays in the EU, we studied the difficulties of legal translation in general and the translation-related problems of international treaties that are equally authentic in more than one languages. De Groot, in both of his writings, *Law, Legal Language and the Legal System: Reflections on the Problems of Translating Legal Texts* of 1996 and *The dubious quality of legal dictionaries* of 2007, argues that the difficulty of translating legal texts lies in the fact that the concepts of a legal system are closely linked to

that system and therefore an absolute equivalence of legal concepts belonging to different legal systems is never possible, and that such an equivalence can only be approximate. This system-specificity of legal languages is the more underlined in his second article, where he also argues that the translation of legal texts is not possible without invoking comparative law. The same approach is followed by Grossfeld, in *Comparative Law as a Comprehensive Approach: A European Tribute to Professor J.A. Hiller*, who considers legal concepts being so closely bound to the legal system to which they belong that he thinks that their 'invested meaning' cannot be transferred from one language to the other and from one legal culture to the other by way of translation, as the translated terms will be influenced by the legal system of the target language. Krajnc argues along the same lines in *Die Übernahme ausländischer Rechtssätze in das nationale Rechtssystem als Problem der Rechtskultur* denying the complete transferability of a legal concept from one legal system to another and underlining the influence of legal systems on legal concepts. However, legal language as such is not considered by the majority of the authors to be such a 'real' technical language as the jargon of other disciplines like chemistry, or medicine. Morrison in her essay *Excursions into the Nature of Legal Language* describes legal language as one which is not able to reach the closed terminology system of technical languages but still uses technical terminology to a great extent. Lavoie touches upon a practical issue of legal translation in her *Faut-il être juriste ou traducteur pour traduire le droit?* With respect to European legal cultures and languages, two volumes of studies, edited by Gessner, Höland and Varga, and Guillorel and Koubi respectively, should be mentioned, together with Hage and Lepenies.

Translation or terminology problems linked to multilingual international treaties are analysed in a comprehensive manner by Kuner in *The Interpretation of Multilingual Treaties: Comparison of Texts versus the Presumption of Similar Meaning*. He is of the view that, when drafting or translating international treaties that are equally authentic in several languages, the differences in meaning due to the difficulty of expressing legal concepts in several languages are not merely possible but are inevitable.

Gambaro, in his essay *Interpretation of Multilingual Legislative Texts*, studies the link between language and culture and concludes that the linguistic choice of the interpreter often prevails over the linguistic choice of the legislator. He analyses how legal languages and legal cultures are harmonised in multilingual legal systems. When it comes to the interpretation of multilingual legislative texts, the analysis of the Vienna Convention on the Law of Treaties cannot be disregarded. Several authors dealt with the relevant articles of the Convention. Both Marletta, in *L'interpretazione dei trattati plurilingue nella prassi delle Comunità europee*, and Sacchetto, in *Translation and Tax Law*, give a detailed and critical analysis of Articles 31 to 33 of the Vienna Convention on the interpretation requirements and the equal authenticity of texts. Zumbansen argues in *Semantics of European Law* that if the terms *transnational law* or *global law* are to make sense, it is that they force one to disregard traditional legal categories and to adapt to a new way of thinking. He also put forward that, in order to decipher the language of European law, we must have a better understanding of our own. The issue was also studied by Klimas and Vaiciukaite in their *Interpretation of European Union Multilingual Law*.

The multilingual legal system of the EU and its specificities has already been subject of a series of legal and linguistic studies, due to the high and ever-growing number of equally authentic official languages. Some of these articles just give a presentation on the evolution and legal foundations of the language regime of the European legal system, including the relevant Treaty articles and Regulation No. 1 of 1958 together with its subsequent amendments. One of these articles giving a detailed analysis of the legal background of the relevant rules is *Diversité linguistique et construction européenne* by Fenet, which analyses Regulation No. 1 and tries to draw a line between the categories of official languages and working languages. He identifies a third category of languages, that is, the group of procedural languages, used in the daily administration of the institutions, for instance as the drafting languages of legal acts. Fenet argues that linguistic diversity is a virtue and also an obstacle for Europe. He comes to the conclusion that a ‘reasonably limited multilingualism’ where only legal acts would be translated into all languages and the translation of other documents would be limited to some working languages only, could better serve Europe. Athanassiou, in the first part of his paper *The Application of Multilingualism in the European Union Context*, also analyses the circumstances under which Regulation No. 1 has been amended, while the second part of the paper deals with the linguistic aspects of the name of the common EU currency, *euro*. Differences between the language regimes of EU institutions and of EU agencies is analysed by Gundel in *Zur Sprachenregelung bei den EG-Agenturen—Abschied auf Raten von der Regel der ‘Allsprachigkeit’ der Gemeinschaft im Verkehr mit dem Bürger*.

Another group of articles focuses rather on the practical implications and challenges of translating to serve a multilingual community. Yves in *Managing or celebrating linguistic diversity in the EU?* examines what it would imply with regard to the Maltese language if it became an official and working language of the EU. He further investigates practical consequences of the fact that the European institutions translate into Maltese and draws attention to the dilemma of linguistic diversity versus drafting texts in a single language. The same issue is touched briefly upon by Depares and Simon. This dilemma is analysed by Morris in a more comprehensive manner in *Multilingualism and Legislation: Dominance or Equality?* The practical aspects and the functioning of the EU institutions with all the official languages is examined by Sabino in *Les langues dans l’Union européenne; enjeux, pratiques et perspectives*, published at the end of 90’s. Sabino is of the view that the language regime can be simplified; although the number of the official languages cannot be reduced, the number of the working languages could still be limited and thus an explicit but, for the time being, non-existent distinction could be made between the two categories of EU languages. The sustainability of translating for an enlarged Union with 20 and 23 languages instead of 11 was studied in a number of articles on the eve of the accessions of 2004 and 2007. Forrest, in *The Challenge of Languages in Europe*, claims that the number of working languages should be limited to (at least) three. Such kind of a limitation is all the more justified in the case of meetings attended by Member States’ experts, who are usually able to communicate in languages other than their own. The same approach is represented by Pym in *‘Transfere non semper necesse est’*, who presents what is known as the ‘real needs policy’ which aims to limit translation and interpretation in cases where it is used for symbolic rather than practical reasons. Heynold, in *L’Union européenne: Jardin d’Eden ou Tour de Babel?*, considers that the growing number of languages is not the only challenge for managing multilingualism in

practice. The extension of EU competences also poses difficulties for the system. Heynold also refers to the fact that drafting of texts actually takes place in a single language by policy officers who are not native speakers of that language and that it can already be seen as a hindrance for multilingualism. *Respecting Multilingualism in the Enlargement of the European Union—the Organisational Challenge* by McCluskey, *Multilingualism and EU Enlargement* by Moratinos Johnston, *Les implications de l'élargissement sur le multilinguisme institutionnel de l'Union européenne* by Nabli, *Preserving Multilingualism in an Enlarged European Union* by Šarčević, *Translating for a Larger Union—Can We Cope with More than 11 Languages?* by Cunningham, *Languages and institutions in the European Union* by Alcaraz, Wagner's *Translating for the European Union Institutions* and *The Use of Languages by the EU Institutions* by Rowe are also among the sources that were examined in the context of EU multilingualism and its institutional implications. We should also refer to Black's article in *The Guardian*, De la Vega, Mori, Pool, Pym's *The European Union and its Future Languages: Questions for Language Policies and Translation Theories*, Toscani, and Luna here. Flückiger, in *Le multilinguisme de l'Union européenne: un défi pour la qualité de la législation*, examines how the growing number of official languages influences the quality of EU legislation. He believes that multilingualism is not a hindrance, but rather a challenge waiting to be taken up by the authorities responsible for the quality of legislation. Some of these articles try to put forward proposals for solving the dilemma of practicability and equal authenticity. Schilling, in his most recent article *Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of Community Law*, proposes, amongst other measures, the reduction of the number of authentic languages to one. Urban, in *One Legal Language and the Maintenance of Cultural and Linguistic Diversity*, argues that the efficient maintenance of a multilingual legal system is not possible with more than six languages. He considers linguistic equality in a multilingual system a fiction. An important contribution to the study was the Commission's Communication *A New Framework Study for Multilingualism* (COM(2005)596). The way translation activities had been organised at the European Commission since its beginnings, and the ongoing need to adapt the structure and methods to the growing translation needs and to the growing number of languages can best be understood from a newly published study of the European Commission, *La traduction à la Commission: 1958-2010*.

Our study devotes a chapter to the process and methods of legislative drafting within the EU. For these purposes, articles presenting the role of the different institutions in the drafting process, guides issued by the relevant institutions, inter-institutional agreements adopted in the field and the relevant articles of the Rules of Procedures of the institutions were analysed. We have to mention here a most recently published book, *Multilingualism and the Harmonisation of European Law*, edited by Pozzo and Jacometti, which contains a chapter on the role of each institution in the multilingual drafting system. We used its chapter on *The Quality of Community Legislation and the role of the European Commission Legal Revisers* by Dragone, the chapter *Understanding EC Law as 'Diplomatic Law' and its Language* by Gallas and the chapter *Multilingual legislation and the legal linguistic revision at the Council of the European Union* by Guggeis, all focusing mainly on the intervention of Council lawyer-linguists in the drafting process, and the chapter *Legislative Process from a Parliament Perspective—Past Practice in 11 Languages and Current Challenges in 20* by

Hakala, on the role of Parliament, for reference purposes. Hunt and Jacobs are further examples of the literature discussing certain aspects of EU legislative activities.

Some other articles focus on a particular phase of drafting legal texts. Murphy in *Mediated language in Non-native Speaker Texts from the European Commission* gives a presentation on the role of the Editing Service of the DGT of the Commission. The role of lawyer-linguists at the Council in the early period of setting up of a special unit within the Legal Service is explained well in an article by Morgan entitled *Multilingual legal drafting in the EEC and the work of Jurist/Linguists*. Wainwright, in *Drafting and interpretation of multilingual texts of the European Community*, also draws attention to the importance of the work performed by lawyer-linguists. Alfé, Christiansen, and Piedrafita, in their paper *21st Century Comitology: the Role of Implementing Committees in EU 27*, and Demmke in his article *The Secret Life of Comitology or the Role of Public Officials in EC Environmental Policy*, explain the functioning of the committees in the implementation of EU acts. Both touch upon the limited availability of the texts in the official languages submitted to the committees, underlining the difficulties it might cause, especially for national administrations in preparing their positions; however they recognise the need for such a limitation on the practical grounds of not wishing to slow down the adoption process.

Apart from the process of drafting legal texts, drafting and translation techniques and methods characteristic of the EU were also examined in our study. Berteloot, in *La standardisation dans les actes législatifs de l'Union européenne et les bases de terminologie*, underlines the importance of the creation and compulsory use of terminology databases at the European institutions and welcomes the fact that, since 2004, a single database is used instead of the three ones developed by the three main institutions preparing and adopting legal acts. Wainwright, in *Techniques of Drafting European Community Legislation: Problems of Interpretation*, identifies the fact that legislative texts are the outcome of lengthy political compromises as the main obstacle to achieving high quality legal texts in the EU. He suggests involving professional editors, who would escort the text from proposal until its adoption, along the drafting process. Magris and Musacchio, in *La terminografia orientata alla traduzione tra pragmatismo e armonizzazione*, list the most important requirements to be observed when translating. They claim that translations should not only enable the main message of the original text to be understood but they should also be adapted to the style and vocabulary of the target language. Cutts and Stark focus on clarity issues in the legislation. Buchin and Haller, in *Implications politiques des choix terminologiques*, illustrate problems linked to the translation of politically sensitive terms in European legislation.

Translation and drafting methods for multilingual legal texts were studied in a comprehensive manner in two volumes (*Les multiples langues du droit européen uniforme*, 1999, *L'interprétation des textes juridiques rédigés dans plus d'une langue*, 2002) published by the University of Turin as part of the research project on the common terminology for European private law, which examined the relationship between law and language in general and in particular in a multilingual legal system. Monateri, in *Cunning Passages. Comparison and Ideology in Law and Language Story* (1999), examines the similarities and differences in the evolution of law and language. He underlines the importance of comparative linguistics and comparative law in translation studies. Campana, in *Vers un langage juridique commun en*

Europe, pinpoints the different legal effects of the legal language used by directly applicable regulations and by directives which have to be implemented into national law. She argues that the choice of the legal form limits and determines the terminology used by and the linguistic choices of the legislator. Gemar, in *L'interprétation du texte juridique ou le dilemme du traducteur* (2002), underlines the responsibility of the translator of European legal texts to find the adequate term in order to reflect the exact meaning of a concept. According to him, the two main factors causing difficulty in translating legal texts are the language and the legal system. In this respect, Geeroms's work should be mentioned, too.

The difficulties of expressing concepts of European law were analysed by Moréteau in *L'anglais, pourrait-il devenir la langue juridique commune en Europe?* (1999) and in *Le prototype, clé de l'interprétation uniforme: La standardisation des notions floues en droit du commerce international* (2002). He argues, among other matters, that concepts of European law do not only have to be expressed by a proper equivalent but their uniformity also depends on their application and interpretation by national judges, and this uniformity can only be ensured if national judges can access the jurisprudence of other Member States' jurisdictions. In his analysis, he uses two different French terms—*langage* and *langue*—for the language of law. The former is the abstract form of the legal language, which can be expressed by any natural language. If the legal language has a solid and all-embracing terminology, it can be translated into any natural language. Vanderlinden, in *Le futur des langues du droit ou le dilemme du dernier orateur*, published in the same volume, articulates a similar view. He believes that the law has a skeleton free from any external impact coming from traditions, society, etc., and that this skeleton can be expressed using any language. This skeleton, consisting of legal concepts, cannot be explored using anything other than comparative law. Sacco, in his article *Langue et Droit* (1999), represents an advanced form of Vanderlinden's theory based on what he named 'legal formants'. He considers that any law must be studied not only as written law, but also in the light of any element that might influence its content, such as legal traditions, the relevant jurisprudence and the social environment. These legal formants must be analysed one by one and represented diagrammatically. The comparison between the legal formants and the diagrams makes it possible to establish equivalence or distinction between the legal concepts of different legal systems. He argues that equivalence might be established with regard to concepts which are, based on their main elements, similar and differ only with regard to additional, supplementary aspects (*notions métapositives*). Most of the notions of contract law are such concepts. He further argues in *L'interprète et la règle de droit européenne* (2002) that it is not the difference between languages that hinders the further harmonisation of European private law. Concepts of European private law, which might differ slightly but not fundamentally differ from similar national concepts, can only be accepted by lawyers across Europe if they are considered with an open mind and with the ability to interpret these concepts in the light of the European legislation. As far as translation aspects are concerned, the term 'reciprocal translanguistic attraction' used by the present study is also taken from Sacco. Similar aspects are discussed by Allan in *Legislative Supremacy and Legislative Intention: Interpretation, Meaning and Authority*.

Legal articles, however, often analyse the linguistic diversity from a cultural and historical perspective as well, trying to give a balanced overview of the factors that shape the legal system of the Union. These authors also mention some practical drafting problems, especially

the problem of a unique drafting language where the role of the other official languages is limited to being target languages in the process of translating the texts. One of the challenges specific to the European multilingual system is the impact the drafting language might have on other language versions. Capelli, in *Legal Drafting in Italy*, highlights the influence of the French language on Italian, in that the use of correct Italian terms is avoided and, instead, transliterated or 'italianised' French words do appear in EU legal acts, and this may have serious consequences on national law as well, especially in the case of directly applicable regulations where the national legislator does not have the option of altering the term to be used. The same problem is underlined by Sacchetto in *Translation and Tax Law*, citing the case of the Italian version of the 6th VAT directive. Peyro, in his article *Le "qui-dit-quoi" de l'acquis communautaire*, made a comparison of how the official languages of the EU-12 express terms peculiar to EU legislation, like *acquis communautaire*, and whether the languages keep the original version or they try to create own equivalents and, in the latter case, whether such equivalents are accepted by the public or not. Krimpas and Bassias, in *Traduction, plurilinguisme et harmonisation des marchés des capitaux en Europe: terminologie juridique de la législation communautaire et pratiques traductionnelles*, complain, on the other hand, about the prevailing influence of English on French relating to European financial legislation. However, the current drafting language, English is already a specific form of English. Its specificities are highlighted by Salmi-Tolonen in *On Some Syntactic Features of European Community Law English*.

Another language-related feature of EU law is the freedom the national legislator enjoys in implementing EU concepts when transposing the directives into national law. This purely legal activity has important linguistic implications as the Member State is allowed to use more appropriate legal terms at the national level in order to express the same legal content. This linguistic aspect of implementation is called 'intralinguistic translation' by some academics. Timmermans, in *How to Improve the Quality of Community Legislation: the viewpoint of the European Commission*, believes that the difficulty in understanding EU concepts is due to the fact that the EU legislator sometimes borrows national concepts and makes EU concepts out of them ('pick and choose' technique). One of the preconditions of the effective application and acceptance of EU law is that foreign concepts are not perceived by national laws as 'legal irritants' (called by Teubner). Kilian, in *General Problems of Transposing EC-Directives into Member States Law*, analyses the shift of meaning in certain terms at the European and national level. Samuels, in *Incorporating, Translating or Implementing EU Law into UK Law*, refers to the different implementation techniques of certain Member States. At the level of languages, it means that some implementing measures leave the terms used by the directive intact and unchanged while others adapt them to the legal terminology of the national law.

The present study deals with the legal consequences of multilingual drafting, thus with the correction of legal acts. Only a few articles deal with this issue, and among these we should mention a recently published article, *Corrigenda in the Official Journal of the European Union: Community Law as Quicksand* by Bobek, which expresses a rather critical view. Bobek argues that some corrigenda to EU acts amount to amendments, given the high number and seriousness of the corrections. He also gives a comparative analysis of the correction mechanisms and systems of some countries.

The chapter analysing the case law of the European Court of Justice is based, above all, on the jurisprudence of the Court. However some articles were also studied. In his article *Interlocking legal orders in the European Union and Comparative Law*, Lenaerts emphasises the importance of an autonomous interpretation of EU concepts and presents the methods used by the ECJ to distil concepts from national laws. He states that the interpretation method most frequently used by the Court is based on comparative law. Van Gerven's *The ECJ Case Law as a Means of Unification of Private Law* presents the ECJ's role in shaping the European concepts of private law. Derlén, in his *Multilingual Interpretation of European Union Law*, reminds us that the day-to-day interpretation and application of Community law actually takes place in the many courts and tribunals of the Member States and he provides an in-depth analysis of the actual use of multilingual interpretation of Community law in national courts.

For the purposes of comparison, other multilingual legal systems than the EU are presented in our study. The Canadian legal system has been analysed by a number of authors, while the Maltese system has not yet been analysed in a comprehensive manner and the literature on the subject is quite poor. One of the specificities of the Canadian system is that it is supported by empirically developed and approved bilingual legal terminology. The way *Common Law en Français* was formed is presented in several papers. *Normalisation du vocabulaire de la common law en français* by Blais presents the PAJLO project and the work done by the CTTJ (see our chapter on Canada). The methodology used by the CTTJ is outlined by Snow in *Techniques de transfert du droit dans un context multilingue*. Didier analysed not only the development of the bilingual legal terminology but also its transferability to the European level in *La traduction juridique en Europe. Etat et perspective de la Common Law en Français et du Droit Civil en anglais*. He also lists the advantages and disadvantages of using certain translation methods (neologism, calque, using loan words). Drafting of legal texts at government level in Canada is done by the Legislative Services Branch. The way these services and drafting offices in general are organised is explained by MacCormick and Keyes in *Roles of Legislative Drafting Offices and Drafters*. The way bills and amendments are drafted is presented by Roy in *Drafting Bills in the Senate and House of Commons*. The interpretation rules of bilingual texts in Canada are presented by Coté in *L'interprétation des textes législatifs bilingues au Canada*. According to these rules, both versions must be taken into account and, in the event of a divergence, it must be established which meaning can be best adapted to the aim of the legal text. If possible, a common interpretation of the two texts must be found.

As to Maltese, the status of this language after accession was presented by Badia in *A view of the linguistic situation in Malta*. He reports on the establishment of the National Council of Maltese Language responsible for the coherent standardisation of the Maltese language. A terminology-oriented presentation of the Belgian system is made by Kockaert, Vanallemeersch, and Steurs in *Term-based context Extraction in Legal Terminology: a case study in Belgium*. The authors suggest improving current extraction practices in the area of legal translation so that legal translation in Belgium can be at par with today's generally expected quality assurance requirements. Drafting methods, traditions of drafting and co-drafting in Switzerland, and the impact of the drafting language on the translation are discussed by Flückiger in *Les racines historiques de la légistique en Suisse*.

Our study presents two case studies from two specific legal areas: consumer protection and environmental law. The literature examined in this respect is diverse. There are articles specifically devoted to terminology- and translation-related problems, but the majority of the literature is concerned with different specific legal or technical aspects of these fields and, in doing so, makes reference to some linguistic aspects. As far as the consumer *acquis* is concerned, articles and studies dealing with the legal aspects of harmonisation of private law all refer to the relevance of clearly defined European terminology. Articles from as early as the mid 1990's draw attention to this problem. Joerges, in his article *Die Europaisierung des Privatrechts als Rationalisierungsprozess und als Streit der Disziplinen* (1995), underlines the difficulty that lies in expressing and understanding EU concepts (*Europäische Begrifflichkeit*) in the consumer *acquis* in particular, and Weir, in his somewhat critical article *Die Sprachen des europäischen Rechts—eine skeptische Betrachtung* also draws attention to the importance of languages (which people generally underestimate) in approximating legislation in the area of private law. In 1999, after the EC had adopted a series of documents in the field of consumer protection, Schulte-Nölke advocated the relevance of languages in approximating the consumer *acquis* (*Elf Amtssprachen, ein Recht? Folgen der Mehrsprachigkeit für die Auslegung von Verbraucherschutzrichtlinien*).

Articles published since the 1990's until today, on either the harmonisation of private law in general or on specific directives, have all touched upon terminology problems to some degree. Most relevant articles published in the most significant European law reviews (Common Market Law Review, European Review of Private Law, European Business Law Review, Europarecht, Cahier du Droit européen, Revue trimestrielle du droit européen) were analysed. Some of these articles express a rather critical approach, also referring (although to different extents), to language problems. Among these, we can list Weatherill: *Why Object to the Harmonization of Private Law by the EC?*; and Legrand: *On the Unbearable Localness of Law: Academic Fallacies and Unreasonable Observations*. Others (Blair—Brent: *A Single European Law of Contract?*) try to underline both pros and contras referring thereby to some linguistic aspects as well.

Comprehensive books on European private law were also analysed within the framework of the study. One of the most important works of this field is *Diritto privato della Comunità Europea* by Benacchio⁵, which provides a historical and theoretical introduction to the European legislation in the field of private law and analyses the relevant directives in force, through which some important aspects of creating legal concepts at a European level, and expressing them with the appropriate terminology, are outlined. Most of Benacchio's examples are taken from Italian language versions and from Italian law. Another comprehensive book is *Contract law* by Beale, Hartkamp, Kötz, and Tallon. It provides a comparative analysis of the contract laws of the main European legal systems, which influence at the same time the contract law provisions of European consumer protection law. In 2004, when the third communication of the European Commission on contract law appeared, a book devoted to the chances of a European Civil Code (*Towards a European Civil Code*) edited by Hartkamp and Hondius was published. The book aimed to integrate academic views on a European civil code and contains articles covering different aspects of

⁵ Used in Hungarian translation for the purposes of this study (Benacchio, Giannantonio: *Az Európai Közösség magánjoga*. Translated by Csizmazia and Földi. Osiris, Budapest, 2002)

private law. References to some of these articles can be found in this study (Fabre-Magnan and Green, Sacco, Van Gerven, Hesselink) and will be briefly summarised here.

Some central concepts of private law analysed in this study are mentioned by several authors as being problematic from the point of view of terminology. One of the most important concepts is that of ‘good faith’. Some articles are specifically devoted to the analysis of this concept. Földi, in *Az “objektív jóhiszeműség” olvasatai a pádovai bona fides-konferencia aktáinak tükrében*, gives a detailed description of the evolution of the concept, from Roman law until today, also outlining the difficulties of making the difference between the objective and subjective concepts of ‘good faith’. Similarly, Auer studied the problems linked to an adequate expression of the concept of good faith in an article dealing exclusively with this question: *Good Faith: A Semiotic Approach*. Hesselink, in *Good Faith*, first gives an overview of the historical roots of the concept and concludes by arguing that the meaning of the concept should be fine-tuned and shaped in the jurisprudence of the national courts and it is not necessary to achieve a horizontally defined concept of ‘good faith’ at the European level. Other essays, which are not devoted to the analysis of this concept, nevertheless undertake a thorough examination of it. McKendrick, in *Traditional Concepts and Contemporary Values*, refers to translation problems of the term *good faith* being a key element of the definition of unfair contractual terms in Directive 93/13/EC due to the fact that the notion is not familiar in every legal system (for example in the common law system). This issue is also analysed by Ajani, Weatherill, Blair and its importance is also underlined by Berteloot. Howells, studying different approaches in interpreting directives adopted in the field of consumer protection in *Interpretation of EC Consumer Law*, characterises the concept of ‘good faith’ as an autonomous concept of EU law and not as a concept taken over from legal systems of the Member States. In the field of consumer protection, there are other terms which are easy to translate but which convey slightly different meanings in national laws. Wilhelmsson, in *Private Law in the European Union, harmonised or fragmented Europeanisation?*, is of the view that the difficulty in harmonising private law effectively lies in the fragmented nature of the concepts of private law. He mentions the concepts of ‘damage’, ‘contract’ and ‘mistake’, the latter two also being analysed in detail way by Legrand and Blair. Fabre-Magnan and Green, in their article *Defects on Consent in Contract Law*, analyse the different ways contracts might be validly concluded in different European countries and the additional legal requirements that are necessary in these legal systems for a contract to be considered as valid (‘consideration’ in a common law system or ‘cause’ under the French law). Chatillon, in *Droit et Langue*, goes beyond analysing the concept of ‘contract’ and examines other concepts closely linked to it, such as the concept of ‘offer’, which might also be easily translated from one language into the other but where the terms used cover different legal institutions with different legal implications. Analysing the concept of ‘contract’, Sacco recalls in his article *Formation of Contracts* that the conceptual difference is not only due to the differences in languages, as different legal systems using the same language might also have different understanding about the perception of ‘contract’ (for instance, the term *Vertrag* has different implications in Germany and in Austria). Lundmark, in his article entitled *Soft stare decisis and harmonization*, gives an overview of the diverging judicial interpretation in England and in Germany of the term *defect* used in Directive 85/374/EEC, underlining thereby that concepts of European directives might be interpreted by national judges in the light of their own legal traditions.

Articles analysing the Proposal for a Directive on Consumer Rights did not neglect the linguistic aspects, either. Loos, in *Consumer Sales Law in the Proposal for a Consumer Rights Directive*, highlighted not only the terminology but also the translation problems and the divergence between the different language versions of the existing proposal.

Terminology problems of European private law have already been studied in a comprehensive manner within the framework of research which resulted in the creation of the European Taxonomy Syllabus and in numerous publications. Articles like *Legal Taxonomy Syllabus: Handling multilevel legal ontologies* by Ajani, Boella, Lesmo, Mazei, Radicioni, Rossi and *Terminological and Ontological Analysis of European directives: multilingualism in law* by the same authors, *La lingua del legislatore. Modelli comunitari e attuazione negli stati membri* by Ferreri, *Terms and Concepts. Towards a Syllabus for European Private Law* by Rossi and Vogel give a description of how the European Taxonomy Syllabus was created, the methods used during the project, how the different ontologies were set up and especially why it is important to study how certain concepts of private law change at European and at national level as to their meaning and whether some of them are even expressed by different terms in European and in national law.

Within the framework of the study, Communications adopted by the European Commission on European contract law (COM(2001)398 final, COM(2003)68 final, COM(2004)651 final) were analysed especially as far as these documents touched upon linguistic and terminology aspects. Opinions of academics on these communications were also integrated. Hesselink underlines in its article *The European Commission's Action Plan: Towards a More Coherent Contract Law?* the rather undefined nature of the Common Frame of Reference and questions its eventual future role in the development of European Private Law. V. Bar, in his essay *Working Together Toward a Common Frame of Reference* (2005), also underlines the fact that there have been diverging views on whether the CFR should function as a toolbox, a sort of a legal dictionary, an optional instrument to be referred to by contracts or as a basis for a future European Civil Code.

In the field of consumer law, we have to refer to *National differences in setting the severity threshold for application of the Environmental Liability Directive* by Waris, and especially his interpretation on 'compensatory remediation'. A key reference book, Krämer's *EC Environmental law: The book on the European Community environmental law*, summarises the more than thirty years he has spent on this comprehensive issue. Bándi, Csapó, Kovács-Végh, Stágel, and Szilágyi, in *The environmental jurisprudence of the European Court of Justice*, provide a unique summary of the ECJ's environmental case law just as Bándi and Baranyai. Birnie and Boyle's *International Law & the Environment*, a respected textbook on the subject, was updated to take full account of all the developments in international environmental law since the Rio Conference in 1992. Scotford, in *Mapping the Article 174 (2) EC Case law: a first step to analysing Community Environmental Law principles*, provides a unique collection of surveys and analyses of the latest developments of EU environmental law. Bérczi's extended essay concerns the principles of Hungarian environmental law.

3. EU multilingualism – What are the legal bases?

Contrary to the Treaty establishing the European Coal and Steel Community (ECSC) which was authentic in French only,⁶ the European (Economic) Community and later the European Union has always been based on the principle that at least one official language of each Member State should become an official language of that Community. Article 314 of the Treaty establishing the European Community (TEC) provided in 1958 that the Treaty be drawn up in a single original in Dutch, French, German and Italian languages and that each of the four texts was equally authentic. This Article was amended by the respective Accession Treaties upon each entry into the Community/Union of new Member States.⁷

With the last accession in 2007, the number of equally authentic Treaty languages reached 23. This is reaffirmed by the current Article 55 of the Treaty on European Union (TEU) which enumerates all the 23 languages in which the text of the TEU shall be authentic. Paragraph (2) of the same Article authorises Member States to translate the Treaties into any other languages which, in accordance with their constitutional order, enjoy official status in all or part of their territories. However, these translations would not become authentic texts of the Treaties.

As far as secondary legislation adopted by EU institutions is concerned, Regulation No. 1 of 1958, determining the languages to be used by the European Economic Community, as amended, must apply. So the first Regulation ever adopted by the Council laid down the rules governing languages and thereby created a multilingual system of lawmaking specific to the EU.⁸

While the Treaties use the term ‘authentic language’, the terms ‘official languages’ and ‘working languages’ of the institutions of the Union appear in the Regulation. Official languages and working languages of the EU are the same, that is, the 23 languages are authentic languages of the Treaties. However, it must be pointed out that until 2007 there was one language which was an authentic language of the Treaties but was not included among the official and working languages of the EU. Irish became, with the accession of Ireland, an authentic language of the Treaties but it did not acquire the status of an official language under Regulation No. 1 until 2007 when the regime was extended to Irish with some limitations.

The Regulation does not define what should be meant under ‘official language’ and ‘working language’. One can presume that the former is used in the context of the external communication of the EU (publishing documents, legal acts, sending documents to Member

⁶ See Article 100 ECSC

⁷ In 1973, English, Irish and Danish, in 1981 Greek, in 1986 Spanish and Portuguese, in 1995 Finnish and Swedish, in 2004 Czech, Estonian, Hungarian, Lithuanian, Latvian, Maltese, Polish, Slovenian and Slovak, and in 2007 Romanian and Bulgarian became official languages.

⁸ The Regulation was adopted on the basis of former Article 290 TEC which instructs the Council to unanimously take decisions on the rules governing the languages of the Community institutions.

States and citizens) while the latter in its internal communication (using languages within and among EU institutions).⁹

Let us now examine the provisions of the Regulation which would affect lawmaking. According to Article 4, “*Regulations and other documents of general application shall be drafted in the official languages.*” Under ‘other documents’, one should understand directives and decisions of general application.¹⁰ Article 5 of the Regulation provides for the simultaneous publication of the *Official Journal of the European Union* in all the official languages.

Two derogations from Article 4 were foreseen by later amendments of the Regulation, one for Maltese in 2004 and one for Irish in 2005. Although in Malta, one of the official languages is English, Maltese became an official language of the European Union in 2004 with the



accession of Malta. However, as it was not technically possible to guarantee the drafting in Maltese of all acts adopted by the institutions from 1 May 2004 onwards, the EU introduced a derogation from the obligation to draft all acts of general application in Maltese and to publish them in this language in the *Official Journal*. The requirement of drafting in Maltese covered regulations adopted jointly by the European Parliament and the Council only.¹¹ The derogation—which aimed to leave sufficient time to recruit well-trained Maltese translators—was only temporary and ended after 3 years in 2007.

In addition, at the end of the transitional period, all acts which were not published in Maltese at that time should also have been published in that language.¹²

After Maltese became an official language of the EU, the Irish Government requested that Irish be granted the same status as that given to national official languages of the other Member States. In June 2005, Regulation No. 1 was amended again¹³ and Irish became an official and working language of the European institutions in 2007 subject to similar derogations as foreseen for the Maltese language. For a transitional period of five years, the institutions of the European Union are not bound to draft and publish all acts in Irish, just the Regulations adopted jointly by the European Parliament and the Council.

Thus, with the exceptions outlined above, the multilingual legal system of the EU is based on the principle that legal acts of the EU shall be drafted and published in all official languages. It is, however, not regulated how the drafting in 23 languages should be managed in practice.

⁹ Fenet, p. 239

¹⁰ Athanassiou, p. 9

¹¹ Article 1 of Regulation 930/2004/EC on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union

¹² Article 3 of Regulation 930/2004/EC

¹³ Regulation 920/2005/EC

This study shall demonstrate the procedures followed by the European institutions when adopting legal acts (being either legislative or non-legislative ones).

The European Parliament and the Council are co-legislators of acts adopted under what is called the ordinary legislative procedure (see Appendix A). However, the final product of the legislative process is the outcome of the joint contribution of several actors, including the Commission drafting and translating the proposal submitted to the other two institutions, the Member States contributing within the Council, the Secretariat General of the Council being responsible for translation and legal linguistic verification, the Member States submitting linguistic observations, Members of the European Parliament introducing amendments, and the services of the European Parliament involved in the translation and legal linguistic verification of the text.

Before analysing the institutional aspects of drafting legal acts under the ordinary legislative procedure, let's discuss the translation regime of EU institutions.

Regulation 1/58 refers to the drafting and not to the translation of EU acts (in order to avoid one language being singled out and thus the principle of the equality of the official and working languages being breached), however, this aspect of the principle of the multilingualism of the EU is put into practice by the translation services of EU institutions. All the major institutions have their own translation services. The largest one is the Directorate-General for Translation (DGT) of the European Commission with c. 1750 translators located in Brussels and Luxembourg. The European Parliament has 1200 translators in Luxembourg. The Council Secretariat employs 700 translators in Brussels. The Court of Justice, the Committee of the Regions and the European Economic and Social Committee (these two latter jointly), the Court of Auditors, the European Central Bank and the European Investment Bank, which are not legislators in the sense of this study, all have their own translation services and the decentralised bodies and agencies of the EU which have no own translation services can resort to a joint Translation Centre. Most EU translation services have freelance contractors, too, in order to lessen their workload (according to Commission statistics, 28 % of the Commission's translation workload was outsourced to freelance contractors in 2008).

The activities of the above translation services cover many areas affected by the multilingual regime other than the translation of legislative documents. One of their main functions is to ensure the smooth internal functioning of these institutions communicate with the citizen and contribute to their public image by translating the relevant documents (which is why they translate working documents, web-pages, etc.). The other important thing is that not each and every document an institution produces (or receives) is translated into all official languages. As a general rule, all legislative and legally binding documents (directives, regulations, decisions, conventions, agreements etc.) shall be translated into all official languages.

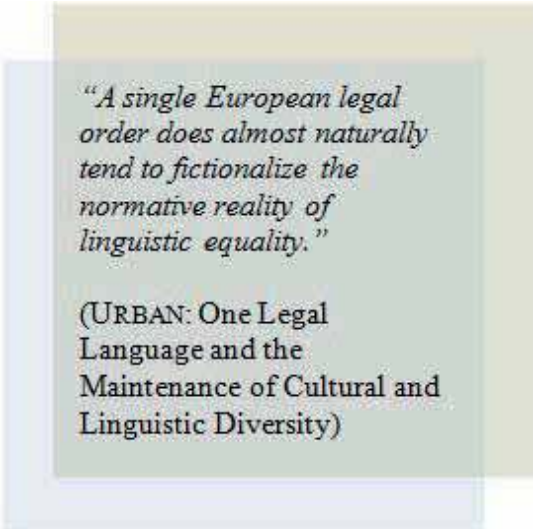
As a result of this drafting and translation activity, the compendium of all EU legislation in force is available online, in all the official languages (however, there can be certain exceptions) at *EUR-Lex* (<http://eur-lex.europa.eu>). This large database also serves as a point of reference for further drafting and translation activities.

4. How does it work?

The TFEU, which entered into force on 1 December 2009, establishes two distinct categories of legal acts, that is, ‘legislative acts’ on the one hand which are to be adopted under a legislative procedure, being either an ordinary or a special legislative procedure and ‘non-legislative acts’ adopted by the Commission. That latter category contains two sub-groups: 1. ‘delegated acts’ which are acts of general application to supplement or amend certain non-essential elements of the legislative acts if such acts delegate to the Commission the power to adopt non-legislative acts and ‘implementing acts’ in cases where uniform conditions for implementing legally binding Union acts are needed and those acts confer implementing powers upon the Commission. In this Chapter, we are going to demonstrate from the perspective of multilingualism how legal acts, that is, legislative and non-legislative acts, are drafted.

4.1. The ordinary legislative procedure

As from the entry into force of the TFEU, most of the legislative acts of the European Union are to be adopted jointly by the European Parliament and the Council under the ordinary legislative procedure (formerly called the co-decision procedure). The ordinary legislative procedure is governed by Articles 293 to 299 TFEU.



“A single European legal order does almost naturally tend to fictionalize the normative reality of linguistic equality.”

(URBAN: One Legal Language and the Maintenance of Cultural and Linguistic Diversity)

The role of this procedure seems to have gained an ever growing significance since, under the TFEU, it became the general way to adopt legislative acts. From the point of view of drafting, the text of a legislative act is a joint product of the three institutions concerned, the Commission submitting the proposal, and the European Parliament and the Council adopting the act. The text submitted to this procedure is, however, not co-drafted in the usual sense of the term (see Appendix A), neither is it merely

translated from one language version into 22 target languages. The drafting approach followed during the decision-making process varies according to the relevant stage of the procedure. These stages are the following:

At the Commission:

- drafting (in the source language)
- translating (into all official/target languages)

At the European Parliament and the Council:

- drafting (in the source language)
- translating (into all official/target languages)
- legal-linguistic revision (adjusting the texts)

4.1.1. The proposal of the Commission

The ordinary legislative procedure starts with the submission of the Commission's proposal. According to Article 293 TFEU, the Commission shall submit a proposal to the European Parliament and the Council. Practically, it means that the proposal is drafted by the Directorate-General (DG) of the Commission competent in the subject area concerned. The drafting language of the proposal (for the purposes of this study, this language is also called the 'source language') is usually English or (in the minority of cases) French. Proposals are, in most cases, drafted by non-native speakers of these two languages. This fact usually affects the wording of the texts where the syntactic structures or terms are sometimes unfamiliar to the legal English of the UK or to the legal French of France, Belgium or Luxembourg.¹⁴ For this reason an Editing Service was established at the DGT, in the framework of the inter-service consultation procedure within the Commission, in order to overcome this deficiency and it could be consulted for linguistic comments on the draft text by native speakers of the source language.¹⁵ The Editing Service undertakes the revision of the text, focusing on layout, grammar, punctuation, syntax and spelling issues on the one hand, and overall improvements including rewriting for content, lexical choices, and style on the other.¹⁶ The involvement of the Editing Service is optional, depending on the choice of the competent DG responsible for preparing the draft proposal.

The draft proposal is submitted to inter-service consultation once the competent DG finalised its proposal. In the framework of the inter-service consultation, the Legal Service, the Secretariat-General of the Commission, other competent DGs and the Editing Service of the DGT may comment on the draft proposal. At this point, the role of the Legal Service of the Commission is important since it will check the original version of the draft proposal not only for legality issues and legal content but also for the drafting style.¹⁷ The Legal Service works on the draft proposal in the source language version since no other language versions are available at this stage. Thus, its comments can affect that version of the text only. Its contribution is, however, important for language aspects as well, because any linguistic improvements to the original text can help to create good quality texts in other language versions. This practice corresponds to the requirements of the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation of Community institutions laid down in point 5.2., which specifies that the original text must be particularly simple, clear and direct, since any over-complexity or ambiguity, however slight, could result in inaccuracies, approximations and actual mistranslations in one

¹⁴ Guggeis calls this language a 'contaminated' form of English with 'foreign' influences apparent in constructions and phrases which are often incomprehensible to English natives themselves. (Guggeis: Multilingual legislation and the legal linguistic revision at the Council of the European Union, in Pozzo—Jacometti, p. 115)

¹⁵ The Editing Service of the DGT is a new unit which was established after it became clear that DGT translators spend a considerable amount of time trying to understand texts written in poor English. A pilot service was thus set up to start editing documents written in English and French by DG Economics and Finance, and DG Environment. Staffed by ex-translators with a considerable experience in translating for the EU institutions, the pilot unit met immediate success, and this led to the establishment of a special Editing Unit within the DGT (Murphy, p. 6)

¹⁶ Murphy, p. 6

¹⁷ This important contribution to the drafting quality has become an established practice since 2001. (Dragone: The Quality of Community Legislation and the role of the European Commission Legal Revisers. In Pozzo—Jacometti, p. 101)

or more of other EU languages. Thus, by commenting legislative proposals at an initial stage, legal revisers ensure a certain extent of coherence as regards the drafting technique in all legislative sectors.¹⁸

In complicated cases, the Legal Service may intervene in the drafting of the original text at an earlier stage, that is, before the document is sent to inter-service consultation.¹⁹

As a general rule, it is only after the text of the draft proposal was finalised following the inter-service consultation and is to be submitted to the Commissioners' College for approval that it is sent to translation to the DGT which produces all language versions of the text.²⁰ The Rules of Procedure of the European Commission²¹ requires that the Commission must have all the language versions available when adopting instruments.²² The document defines instruments as any instrument referred to in Article 288 TFEU, that is to say, regulations, directives, decisions, recommendations and opinions. It seems that legislative proposals are not covered by that obligation, only the legal acts. This practice also shows that a legislative proposal must be available in three procedural languages only by the time of its adoption by the College and that the text of the proposal is submitted for translation into all official languages after it is adopted and before it is transmitted to the legislating institutions. In all cases, the language in which the original version was drafted is indicated in the documents distributed to the Members of the Commission for adoption.²³

Language versions of Commission proposals submitted for ordinary legislative procedure (the so-called COM final documents) are, as a general rule, not revised by the legal revisers of the Commission.

4.1.2. First reading

After the Commission's proposal has been received by the two institutions, work starts on the text in parallel, at the competent parliamentary committee and at the competent Council working group. Since the Treaty of Amsterdam, it has become possible to conclude a co-decision dossier at the first reading. This, however, necessitates parallel work in both institutions, together with an intensive exchange of information, and the availability of the Council Presidency for negotiations with the European Parliament.²⁴ Thus, in practice, the two institutions work simultaneously on the same text during the first reading, which means that, at some stages of the procedure, there is no clearly identifiable 'master version' available of the proposal.²⁵

¹⁸ Dragone in Pozzo—Jacometti, p. 102

¹⁹ Dragone refers to the successive amendments of the Sixth VAT Directive where such kind of an early intervention proved useful (Dragone in Pozzo—Jacometti, p. 102).

²⁰ In some cases, the DGT receives requests for translation as early as during the inter-service consultation and it may occur that new versions of the text are drawn up until the adoption.

²¹ C(2000) 3614

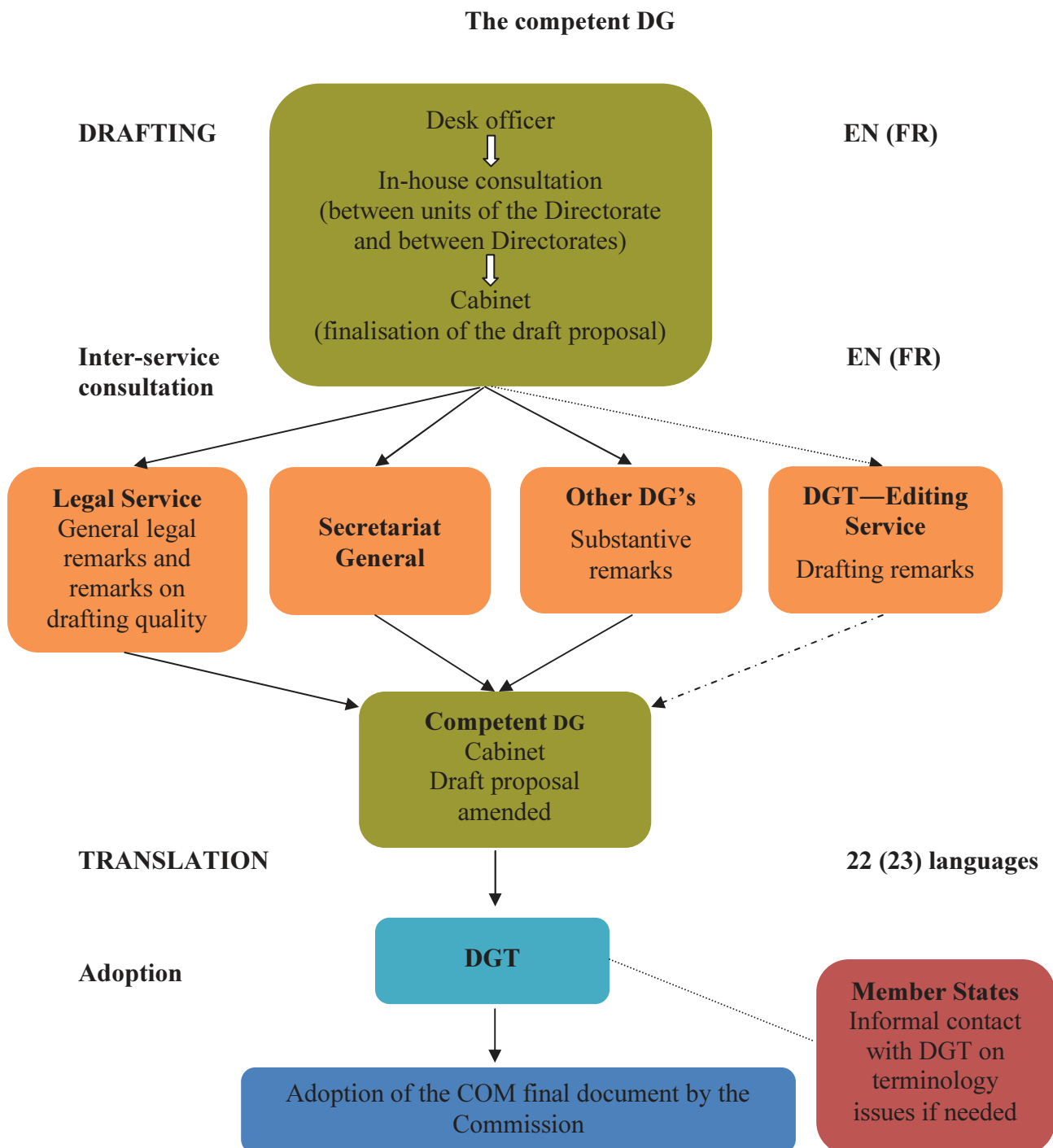
²² Article 17 of the Rules of Procedure states that "*Instruments adopted by the Commission in the course of a meeting shall be attached, in the authentic language or languages, in such a way that they cannot be separated, to a summary note prepared at the end of the meeting at which they were adopted*".

²³ See SEC(2008) 2397, p. 2

²⁴ Co-decision Guide of the Council, p. 2

²⁵ *Co-decision: the translation aspect*. Presentation by John Beaven at the Romanian DGT Seminar, Luxembourg, 29 October 2008

Figure 1. Path of the Commission's proposal



Council working groups usually work on the text in its source language version (which is usually English). Nevertheless, experts representing the Member States in the working groups have the COM final document in their own languages at hand and thus, at certain key stages of the procedure, amendments agreed on at working group meetings are reflected in all

language versions. Since work is based on the source language version, experts generally do not check their own language version during the discussions, although they have the possibility of tabling linguistic remarks and make linguistic reservations as early as at this phase, when the text still may bear the traces of being drawn up by non-native speakers of the drafting language (members of the relevant working groups) due to the compromises adopted. Interpretation problems will first emerge when the proposed modifications to the Commission's proposal are translated into other official languages and later, when they are revised by the Council's lawyer-linguists. Both translators and lawyer-linguists are important actors in the drafting process. Nevertheless, as they do not participate in working group meetings, they meet the text out of context, without being aware of how, why and for what purpose a certain wording was chosen during the negotiations at working group meetings. In order to bridge this information gap and to contribute to the enhancing of the quality of the original text, the Directorate for the Quality of Legislation of the Council's Secretariat General's Legal Service, which is responsible for the legal revision of Council acts, established so-called *équipes qualité* (quality teams) involving a legal adviser and a *conseiller qualité* (quality adviser) being both in charge of the dossier. The task of the *conseiller qualité* is to advise the working group on drafting aspects in order to improve the quality of the text and to facilitate subsequent translation work. The involvement of lawyer-linguists (or at least one lawyer-linguist) in the working groups' work makes it possible that, during the finalisation of the language versions, lawyer-linguists representing other languages consult this person if they have doubts about the meaning the working group intended to assign to a term in the source language.²⁶

Versions in the official languages of the draft text (Commission proposal with working group's proposed amendments) are produced by the Translation Service of the Council after the working group has accomplished its work and the text is to be submitted to the COREPER and then to the Council for political agreement at the latest.²⁷ The meeting of the Mertens Group in charge of the preparation of the COREPER I is the forum where the Member States are able to lodge linguistic reservations. This is the point where Member States contribute to the drafting process with linguistic comments. They receive the texts in their own language versions through their Permanent Representation.

Parallel to the work of Council working groups, the competent committee of the European Parliament starts to work on the same text. With the intention of improving the quality of texts adopted by the Parliament, a lawyer-linguist (known as the file coordinator), together with a native speaker lawyer-linguist (called the language coordinator) assists the committee secretariat in order to advise it on drafting issues with more or less the same purpose as the *conseiller qualité* at the Council working groups. The draft report and the amendments to the Commission proposal in their original version (ie., in the language in which they are tabled) are verified by the file coordinator and the language coordinator before being sent for

²⁶ The involvement of a *conseiller qualité* is still not self-evident for every legislative act. For the time being, he/she may be involved either at the request of the Presidency, or at the request of the competent DG of the Secretariat General of the Council or at the request of the Legal Service of the Council. (Presentation by Geneviève Tuts, at the internal seminar of the Secretariat General of the Council, Brussels, 23 February 2010)

²⁷ Amended draft legislation is sometimes translated well before reaching the COREPER stage. It depends on the number of amendments made and the likelihood of the proposal being adopted at first reading. This requires planning and a decision on the optimal utilisation of the resources.

translation. The texts are translated into the working languages of the committee²⁸ and after the committee has voted on the amendments and these are entered into the report of the committee, the final report in its original version is verified again by the lawyer-linguists and translated by the Parliament's Translation Service into all official languages before it is sent for an examination in the plenary session of the Parliament. This is where the work of the lawyer-linguists at the Parliament begins in all official languages. Their work would include not only the revision of the amendments adopted by the committee from a legal linguistic point of view but they also have the possibility of also checking the text of the original proposal when they prepare the consolidated version of the proposal and the amendments adopted to reflect Parliament's position. The plenary session discusses the legislative proposal on the basis of the report drawn up by the relevant committee, which will include any proposed amendments to the proposal, a draft legislative resolution, and if appropriate, an explanatory statement.²⁹

The legal revision of the texts by the lawyer-linguists of the Council begins after a political agreement is reached on the text within the Council but before its adoption. It is imperative that lawyer-linguists of the two institutions work in close cooperation in order to be able to establish a single coherent text. Virtually, this is made possible by the fact that the content of the text is agreed on informally by what are known as 'trilogues' (tripartite meetings of the Council Presidency, the European Parliament and the Commission)³⁰ and there is an ongoing exchange of texts. The language of these political consultations and the drafting is usually the source language of the text or another *lingua franca* (generally English or French).³¹ The trilogues often allow for agreements in the first reading: the Parliament includes the Council's propositions in its own first reading amendments and the Council commits itself to accept the legislative proposal as amended by the Parliament with the procedure closed and the act adopted accordingly.

The task of lawyer-linguists at the Council is twofold: to improve the drafting quality of the (original) text, on the one hand, and to ensure consistency between the language versions of the text, on the other. The first mission is undertaken within the lawyer-linguist working group of the Council, where lawyer-linguists (one per language) and experts of the competent working group finalise the draft text in the drafting language (assisted by the Commission officer responsible for the file and his counterpart from the Secretariat of the Council).³² A lawyer-linguist from the European Parliament is also present at this meeting. Convening the working group is not compulsory in every case; however, in the case of new legislative acts or key amending acts, it is useful to avail of this opportunity. This forum provides an opportunity for lawyer-linguists to have the meaning of certain terms or wording used by the draft act clarified with the help of the Member States' experts who are co-authors of the text. The working group meets in the finalisation phase of the text, i.e., after the political

²⁸ As such, the choice of languages into which translation is required depends on the MEPs sitting in the parliamentary committee. The number of these languages can vary between 10 and 20 (Hakala: Legislative Process from a Parliament Perspective—Past Practice in 11 Languages and Current Challenges in 20. In Pozzo—Jacometti, p. 150).

²⁹ Co-decision Guide, p. 3

³⁰ See points 7-8 of the Joint declarations (European Parliament, Council, Commission) on practical arrangements for the co-decision procedure, 2007/C 145/02

³¹ Hakala in Pozzo—Jacometti, p. 155

³² Guggeis in Pozzo—Jacometti, p. 115

agreement is reached and before its adoption. The second task of lawyer-linguists is to reconcile their language versions with the original text and ensure the consistent use of legal terminology. In this respect, lawyer-linguists at the two institutions share the same task. Their concern is to ensure the use of correct legal and technical terminology, with a view to the specific nature of EU terms. Member States' administrations which officially received the texts from the Council's General Secretariat have the possibility to channel their legal linguistic remarks to the lawyer-linguists or to the translation unit of their language at the Council. Lawyer-linguists of the Parliament do not receive comments from Member State experts as a rule since this happens through the institution representing the Member States, i.e., the Council.

Intervention for legal linguistic purposes into the legislative process thus takes place after the agreement on the substance of the text between two institutions has been reached. It has a very important role as the Joint Declaration of the three institutions on practical agreements for the co-decision procedure (hereafter referred to as Joint Declaration) subjects all agreements to legal linguistic verification.³³ However, legal linguistic finalisation may by no means be used to reopen discussions on substantive issues. As a general rule, legal linguistic revision may not change the meaning of the agreed text.

As the outcome of the ordinary legislative procedure is an act adopted jointly by the two institutions, collaboration in the field of the drafting of different language versions is inevitable. The Joint Declaration states in its General Provisions that where an agreement is reached at first or second reading, or during conciliation, the agreed text shall be finalised by the lawyer-linguist services of the European Parliament and the Council acting in close cooperation and by mutual agreement.³⁴ However, the finalisation of the text is not an additional phase of the procedure but a part of it and, as such, it must fit the respective procedures of the two institutions without raising difficulties, which means that it must be completed within the deadlines set for the conclusion of internal procedures.³⁵ This requires high quality drafting work within short time frames. Documents under finalisation are normally exchanged twice between lawyer-linguists and the second phase is called *relecture*. Acts already adopted by both institutions (documents called LEX) still come back for a further reading before signature, but it means that only typing errors may be corrected, and no terminology or phrasing adjustments are allowed.

According to the wording of the TFEU, the first reading consists of two steps: (1) the adoption of the position of the European Parliament; and (2) the approval of this position by the Council. In practice, it is possible only if the position of the Parliament contains the amendments that the Council wished to make. It means that the work done within the Council working groups (including substantive and wording changes) must be successfully channelled to the Parliament and the position of the Parliament should reflect it so that the text can be approved by the Council and a first reading agreement can be reached.³⁶ However, the

³³ See points 14, 18, 23 of the Declaration

³⁴ See point 40

³⁵ See point 42

³⁶ The Council working party examines the Commission proposal while following the work within the relevant parliamentary committee. From the moment the examination of the dossier reaches a certain degree of maturity — and the positions of the delegations become clear on the main questions it raises — the Presidency may

position is drafted by the Parliament which means that it is the master of the text in the first reading. This might also mean that only the substance of the Council working group's achievements is reflected in the Parliament's position and wording changes get lost. Substantive wording changes affecting all language versions can be addressed during the informal trilogue meetings. However, it is much more difficult to tackle language-specific changes mainly linked to terminology problems. These either require intensive and proactive informal co-operation between the Council's and the European Parliament's translators or that such changes are reintroduced when the lawyer-linguists of the two institutions verify the final text of the act to be formally adopted.

As far as the technical aspects of a first reading agreement are concerned, according to the Joint Declaration, when an agreement is reached through informal negotiations in trilogues, the chair of the COREPER shall forward details of the substance of the agreement in the form of amendments to the Commission proposal in a letter addressed to the chair of the relevant parliamentary committee. This letter shall indicate the Council's willingness to accept that outcome, subject to legal linguistic verification, should it be confirmed by a plenary voting.³⁷ According to Article 294(4) TFEU, if the Council approves the European Parliament's position, the act concerned shall be adopted "*in the wording corresponding to the position of the Parliament*". This provision in practice limits the intervention of lawyer-linguists of both institutions to the period preceding the plenary voting as this is when the wording of the text will be decided.³⁸

If the Council does not approve the European Parliament's position, it shall adopt its position³⁹ at first reading.

The first reading is special in the respect of time limits since the Treaty does not provide for a time limit for the first reading, either for the Parliament or for the Council.⁴⁰ However, once an agreement is reached, the legal linguistic finalisation of the text is subject to time constraints in order to proceed as quickly as possible to formal adoption.

get in contact with the representatives of the European Parliament at the level of parliamentary committees (rapporteur/Chairman of the parliamentary committee). (Co-decision Guide, p. 13)

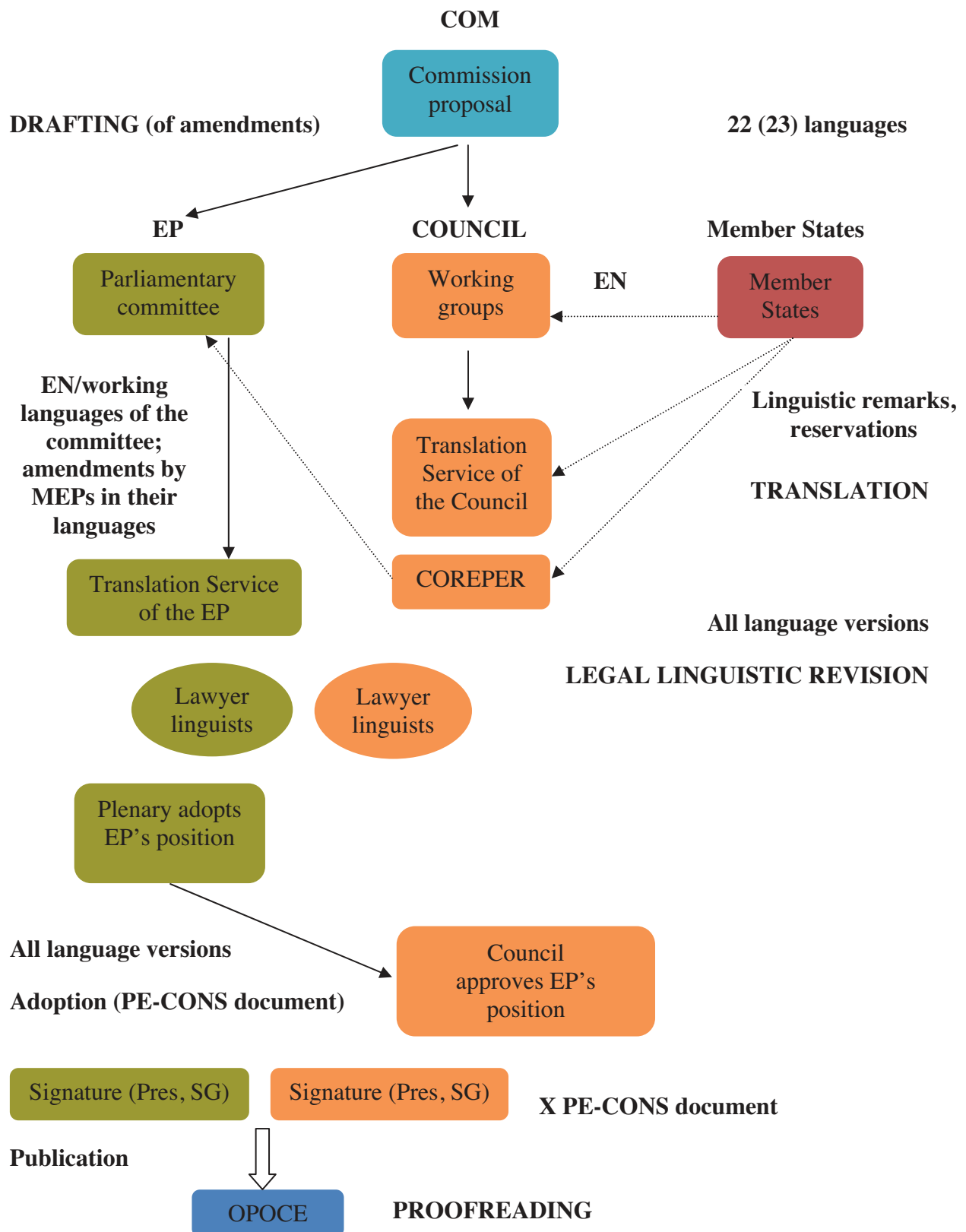
³⁷ Point 14 of the Joint Declaration

³⁸ This provision specifying that the act shall be adopted in the wording which corresponds to the position of the European Parliament is a novelty introduced by the TFEU. Ex-Article 251 TEC contained a less strict provision on this point. The Parliament issued an opinion and not a position on the Commission's proposal and paragraph (2) foresaw that, if the Council approves all the amendments in the European Parliament's opinion, it may adopt the proposed act thus amended. Although the act had to be adopted with regard to such amendments, no explicit reference to the 'freezing' of the wording was made.

³⁹ The former 'common position' of the Council is now called 'position at first reading' following the entry into force of the TFEU.

⁴⁰ Hakala in Pozzo—Jacometti, p. 151

Figure 2. First reading



4.1.3. Second reading

According to Article 294(7) TFEU, the Parliament still has the possibility to approve the Council's position in first reading. The Joint Declaration of 2007 considered this possibility as being part of the first reading⁴¹ but the TFEU is quite clear on this point under its heading Second reading. In the event of such an agreement, it is the chair of the relevant parliamentary committee who shall indicate in a letter to the Chair of the COREPER his recommendation to the plenary to accept the Council's position at first reading without amendment, subject to confirmation of the position by the Council and legal-linguistic verification. As far as the linguistic aspects of this kind of adoption are concerned, the Treaty specifies that the act concerned shall be deemed to have been adopted "*in the wording which corresponds to the position of the Council*". As such, the finalisation of the text to be adopted by the lawyer-linguists of the two institutions must take place before the position of the Council is adopted and the 'master' of the text in this phase is the Council.

If the Parliament proposes amendments to the Council's position at first reading, the Council may approve or reject these amendments. Again, if an agreement is reached, it is through informal negotiations in trilogues. In that case, the chair of the COREPER shall forward details on the substance of the agreement in a letter to the relevant parliamentary committee, in the form of amendments to the Council's position at first reading. That letter shall demonstrate the Council's willingness to accept the outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary. If approved, the act in question shall be deemed to have been adopted and the lawyer-linguists of both institutions would intervene again. Should the Council not approve the amendments, a meeting of the Conciliation Committee is convened.

Contrary to the procedure followed at first reading, the second reading is subject to strict time limits.⁴² According to Article 294(7) TFEU, the Parliament has three months to approve the Council's position at first reading or to reject it or to propose amendments to it. Then the Council has another three months to approve or reject the amendments of the Parliament. The Conciliation Committee must be convened within six weeks following a refusal by the Council of the Parliament's amendments.

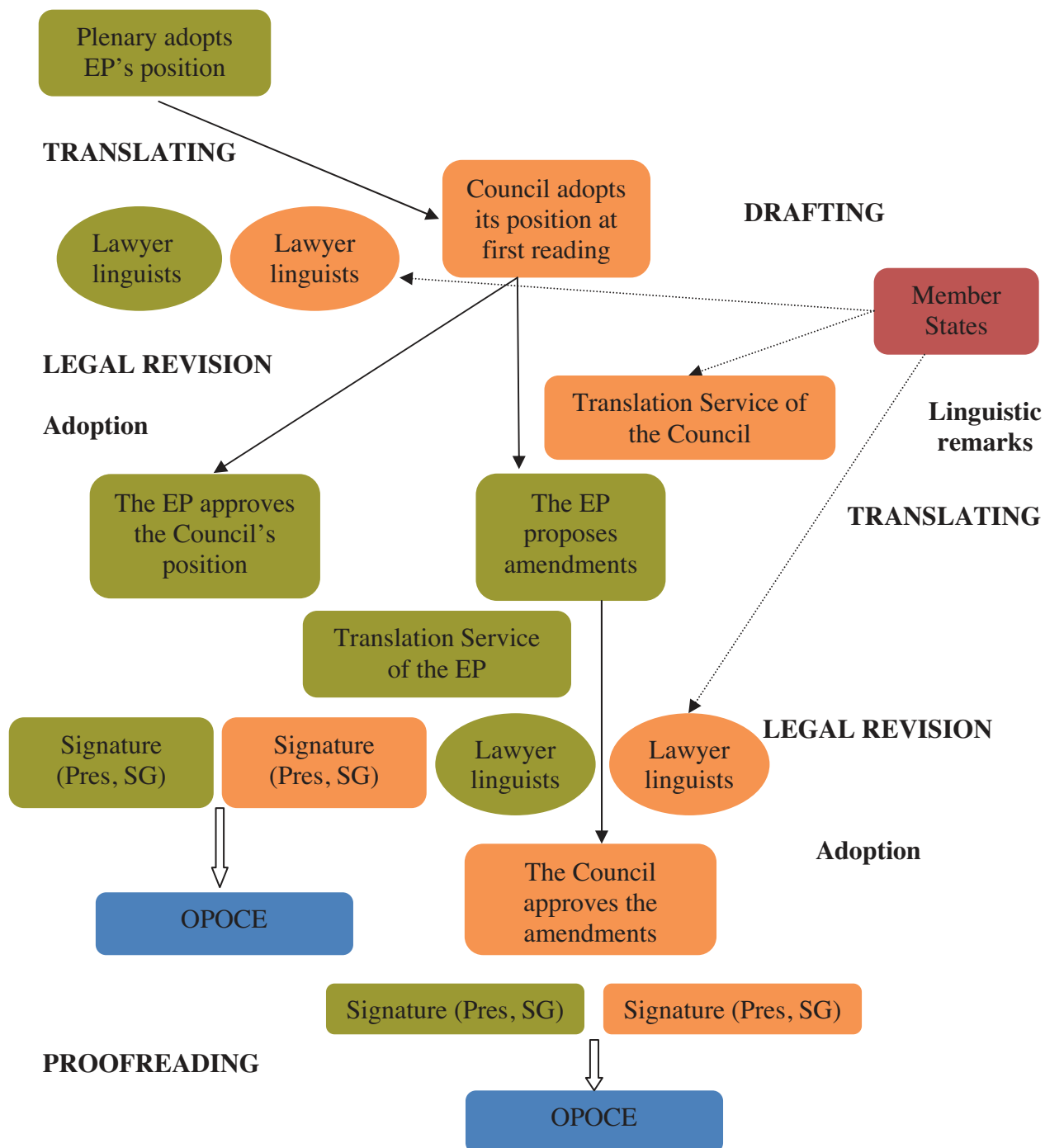
As to the role of the Commission in the ordinary legislative procedure following the submission of its proposal to the two legislating institutions, it must be pointed out that it has a limited impact on the wording of the draft act as its actual role is to facilitate informal contacts between the two institutions and to give its opinion on the positions of the Council and the Parliament with a view to reconciling these positions. It can, however, alter its proposal (for instance by including some of the Parliament's amendments in a modified proposal) any time during the procedures leading to the adoption of the act until the Council acts.⁴³ In such a case, the Commission regains its influence on the wording of the text of the proposal.

⁴¹ Agreement at the stage of the Council's common position

⁴² Hakala in Pozzo—Jacometti, p. 152

⁴³ See Article 293(2) TFEU

Figure 3. Second reading

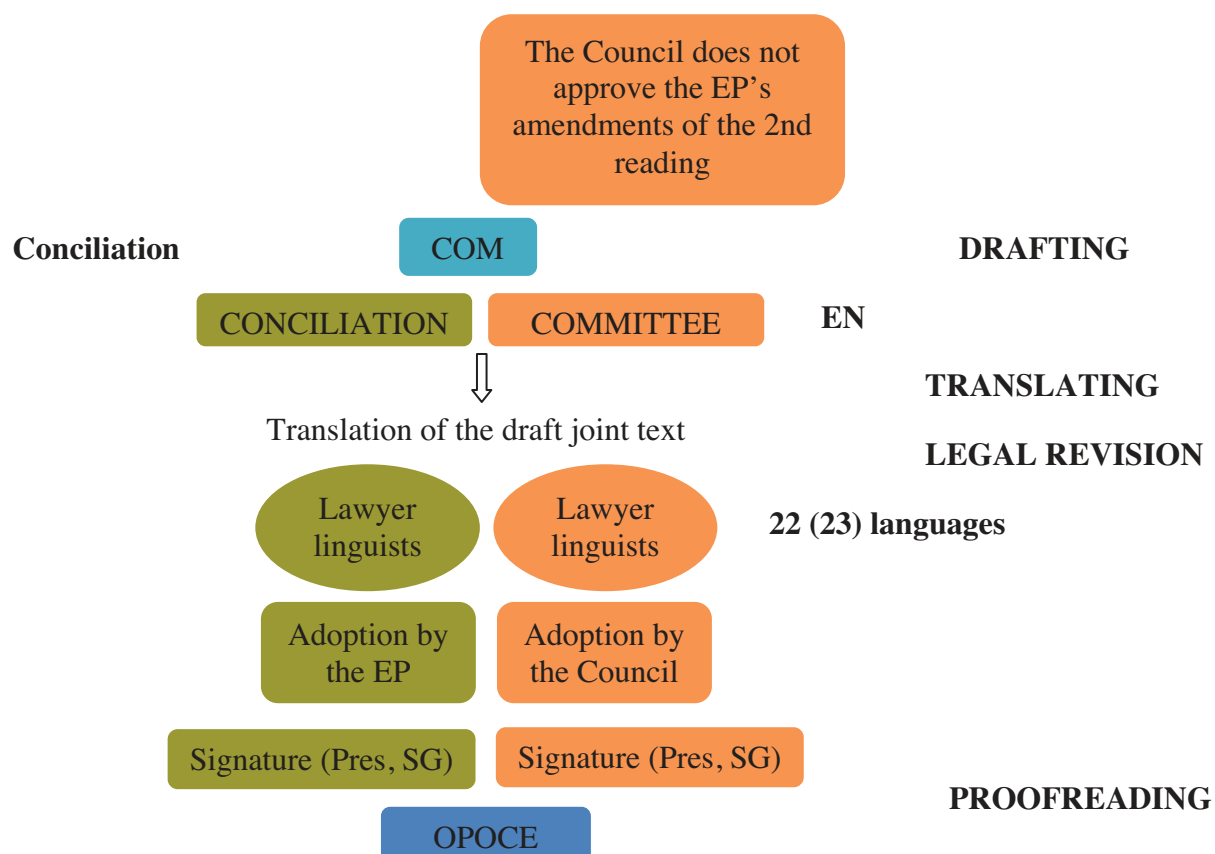


4.1.4. Conciliation and third reading

The task of the Conciliation Committee⁴⁴ is to reach agreement on a joint text. Finalisation of the joint text is the joint task of the lawyer-linguists of both institutions, the draft text being prepared by the institution which hosts the meeting. According to the Joint Declaration, agreement on a joint text shall be reached at a meeting of the Conciliation Committee, or subsequently, by way of an exchange of letters between the co-chairs (President of the European Parliament and the President of the Council). The Conciliation Committee normally works and drafts using the languages of the full-fledged members of the Committee. Moreover, informal trialogues continue to be held in the original drafting language.⁴⁵ The text is translated to all official languages only after agreement is reached. The draft joint text (known as PE-CONS), is prepared on the basis of the joint working document and any modifications agreed in conciliation. It is first drafted in one language and subsequently translated into other official languages.⁴⁶ The text is subject to a legal linguistic verification.

If the Conciliation Committee approves the joint text, the European Parliament and the Council have six weeks from that approval to adopt the act in question according to the joint text.

Figure 4. Conciliation and third reading



⁴⁴ Composed of the members of the Council or their representatives and an equal number of members representing the European Parliament

⁴⁵ Hakala in Pozzo—Jacometti, p. 157

⁴⁶ Hakala in Pozzo—Jacometti, p. 159

4.1.5. Publication

If an agreement is confirmed by the institutions at any stage of the procedure (should it be the first, the second or third reading after conciliation), the Presidents of the Parliament and of the Council sign the proposed act and arrange for its publication in the *Official Journal of the European Union*.⁴⁷ The case law of the Court of Justice made it clear that no alteration to the text is allowed, for instance by the Secretariat General of the Council (see case 131/86), after it has been approved by the legislator.⁴⁸

After the act has been sent to the Publication Office of the European Union, language versions of the text remain unchanged with the exceptions of formatting and linguistic correction requirements, of which the Publication Office is in charge. According to Article 5 of Decision of 26 June 2009 on the organisation and operation of the Publication Office of the European Union,⁴⁹ the tasks of the Publication Office include the preparation, graphic design, correction, page make-up and verification of the texts and other components, in whatever format and on whatever medium, as instructed by the institutions and in compliance with the typographical and linguistic presentation requirements established in cooperation with the institutions. Article 5 sets clear limits to the intervention into the text of the act. With regard to these limits, correction would include the proofreading of the adopted act (i.e., the observing of orthographic conventions, abbreviation rules, etc.). Language layout requirements established in cooperation with the institutions are specified in LegisWrite rules and in the Interinstitutional Style Guide.

4.2. Legal acts adopted by the Commission

The TFEU brought about major changes in the adoption of Commission acts. It put the European Parliament and the Council on an equal footing in deciding, for each legislative act, which type of power (delegated or implementing) should be conferred upon the Commission. The adoption of the two types of acts (delegated acts and implementing acts) is subject to completely differing legal frameworks. In practical terms, it means that they will not be governed by a single instrument anymore, namely Council Decision 1999/468/EC (the 'Comitology Decision'), as amended by Council Decision 2006/512/EC, but by different procedures and by a new Regulation to be adopted by the European Parliament and the Council.

4.2.1. Delegated acts

Article 290 TFEU allows the legislator to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act. This Article provides for the legislator (European Parliament and the Council or the Council) to control the exercise of the Commission's powers by means of revocation and/or right of objection. These provisions are sufficient in themselves and do not

⁴⁷ Hakala in Pozzo—Jacometti, p. 151

⁴⁸ Case 131/86, *United Kingdom v. Council*, [1988] ECR, 905

⁴⁹ Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions of 26 June 2009 on the organisation and operation of the Publications Office of the European Union (2009/496/EC, Euratom), OJ L 169/41

require any legally binding framework to make them operational. However, the Commission thought it would be useful and necessary to define the general framework within which such a delegation of power should operate.⁵⁰ Therefore, in December 2009, it issued a Communication on the Implementation of Article 290 of TFEU.⁵¹ The procedure foreseen is similar but not identical to the former regulatory procedure with scrutiny introduced by Council Decision 2006/512/EC. Since Article 290(2) concerns the control which may be exercised by the legislator at a later stage, the Commission enjoys wide autonomy in the adoption of the acts after the mandate has been exercised. Contrary to implementing acts, participation of Member States' experts under the comitology procedure would not apply to delegated acts.

From the point of view of drafting, it means that drafting the measure is the exclusive responsibility of the Commission. However, the Commission Communication on the Implementation of Article 290 TFEU foresees the involvement of Member States experts in a consultative rather than an institutionalised role, by offering them an opportunity to make useful and effective contributions. This kind of participation concerns most probably substantive elements of the draft act rather than the drafting aspects and wording. The act must be drawn up in a way similar to how legislative proposals (COM final documents, see above) are drafted, with two major differences. The first difference is that all linguistic versions of legal acts must be revised for legal aspects by the legal revisers of the Legal Service before adoption and the second difference is that every language version (not only some of them) of the legal act to be adopted must be submitted to the College of Commissioners for adoption under Article 17 of the Rules of Procedure of the Commission. The European Court of Justice is quite clear on this point. In case C-137/92, a decision of the Commission was adopted in three linguistic versions only, while the remaining two linguistic versions that were authentic languages of the decision that time were translated only after the adoption. The Court of Justice stated that the Commission has an obligation to take the steps necessary to ensure that the complete text of acts adopted by the College of Commissioners is identified with certainty.⁵² That requirement means, in the light of the Rules of Procedure of the Commission in force that time,⁵³ that the authentication of acts is intended to guarantee legal certainty by ensuring that the text adopted by the College of Commissioners becomes fixed in the languages which are binding and that it constitutes an essential procedural requirement, the breach of which gives rise to an action for annulment.⁵⁴

In case of delegated acts, control by the legislator(s) can be exercised either in the form of revocation or opposition. While the former is a general and absolute withdrawal of the delegated powers from the Commission, the latter is a specific motion of censure directed at a clearly defined delegated act after it has been adopted.⁵⁵ According to the Commission's Communication, once the Commission has adopted the delegated act, it will notify the

⁵⁰ See the second paragraph of the Introduction of Commission Communication on the Implementation of Article 290 of the TFEU

⁵¹ COM(2009) 673 final

⁵² See paragraph 73 of the judgement

⁵³ *"Acts adopted by the Commission, at a meeting or by written procedure, shall be authenticated in the language or languages in which they are binding by the signatures of the President and the Executive Secretary."*

⁵⁴ See paragraphs 75-76 of the judgement

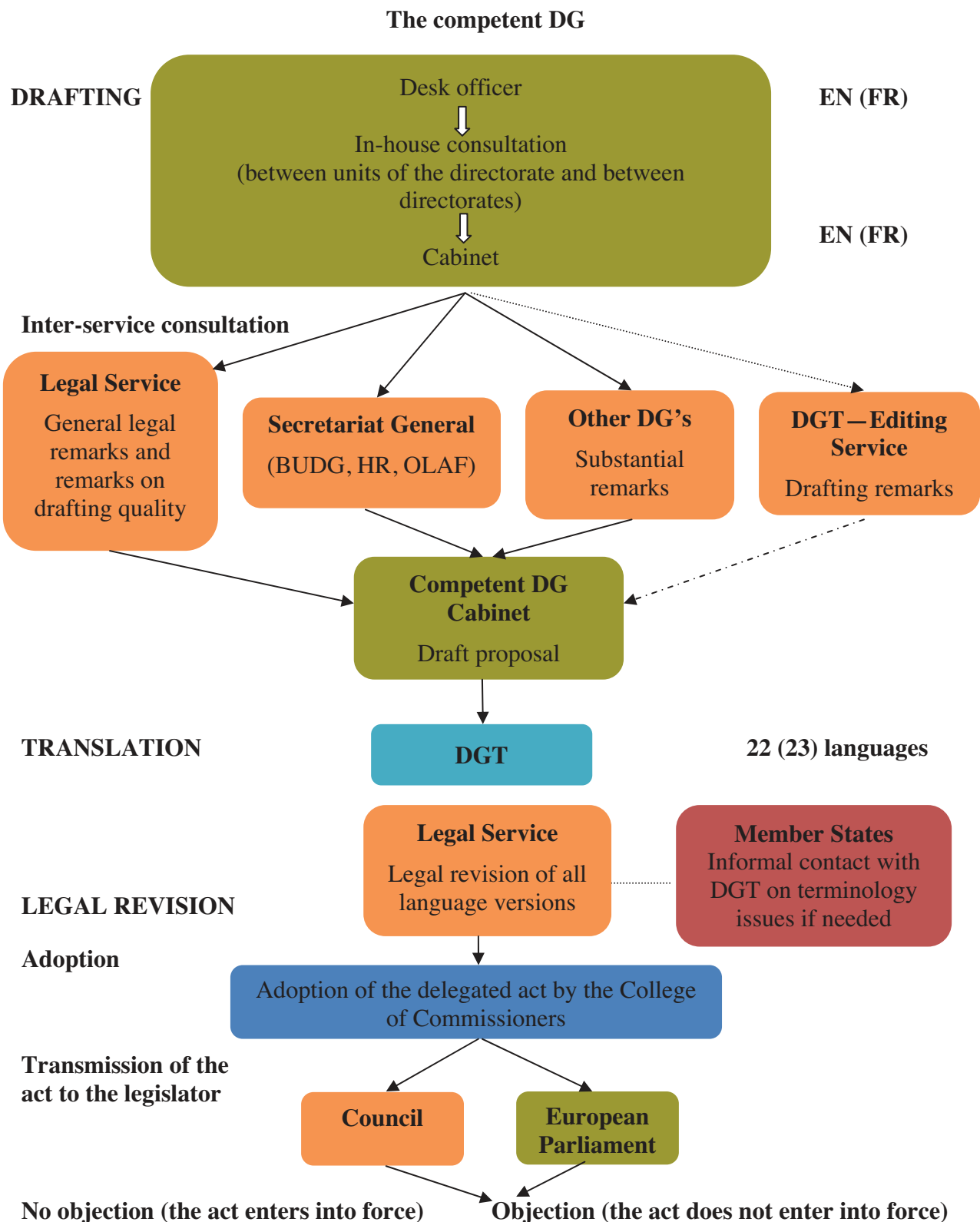
⁵⁵ See the chapter on 'Scrutiny of delegated acts of the Commission's Communication'

legislator (both to the Parliament and the Council simultaneously if the act is governed by the ordinary legislative procedure) of the fact. The entry into force of the delegated act adopted by the Commission would be suspended for a period specified by the legislative act, during which the legislator would have the right to lodge objections.

As to the question of languages, the Commission's Communication foresees important legal and procedural guarantees: the period for expressing objections would start to run from the moment the Commission transmitted the delegated act, adopted in all the EU official languages. That requirement goes back to the Rules of Procedure of the Commission as the act must be authenticated in all language versions when being adopted. A delegated act that the Parliament or the Council opposed may not enter into force. However, the legislators, when exercising their control, do not have an influence on the formulation and wording of the text which remains exclusively in the hand of the Commission. Availability of all language versions is a procedural requirement.

For its part, the European Parliament adopted the Resolution of 5 May 2010 on the power of legislative delegation. Under point 10 of this Resolution, the Parliament considers that certain practical arrangements could be better coordinated in an inter-institutional agreement between the institutions which would ensure an earlier involvement of the legislating institutions in the procedure under the form, *inter alia*, of consultations in the preparation and drawing-up of delegated acts. This would imply an early and continuous transmission of information and relevant documents to the Parliament's relevant committees, including successive drafts of delegated acts, too. Such an arrangement in the framework of an inter-institutional agreement could be problematic from a translation perspective, as the drafts of the delegated acts would not be available in all language versions at this stage and it is most probable that they would be transmitted to the parliamentary committees only in the drafting language. The Resolution of the Parliament refers to the language aspect only in the context of the scrutiny of delegated acts, that is, the period for objection, where it insists under point 14 that such periods must only start on transmission by the Commission of all language versions. As to the availability of drafts, the Resolution is silent.

Figure 5. Delegated acts of the Commission



4.2.2. Implementing acts

Contrary to delegated acts, Article 291 setting out the provisions on implementing acts does not provide any role for the European Parliament and the Council to control the Commission's exercise of implementing powers. Such control can be exercised by Member States only and requires a new legal framework to be established that substitutes for the former Comitology Decision. The Commission therefore tabled a Proposal for a Regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.⁵⁶ The proposal builds on the former committee structure but rationalises it by keeping the former 'advisory procedure' and establishing a new 'examination procedure' which would replace the former 'management procedure' and 'regulatory procedure'. Although only Member States can control the exercise of implementing powers by the Commission, draft Article 8 foresees that both legislators should be properly and continuously informed of committee proceedings through the continued use of the Comitology Register.

As the draft Regulation does not touch upon the question of languages, we can presume that it will follow the previous practice of comitology procedures. The standard rules of procedure of committees do not contain general statements concerning the availability of different language versions of documents before committee meetings and the practice differs from one committee to another.⁵⁷ Because of limited resources, not all official language versions are generally available for Member States' experts and the working language used in comitology committee meetings is usually English (and French in some committees). According to Special Report 9/2006 concerning translation expenditure incurred by the Commission, the Parliament and the Council, including the institutions' replies, the language regimes of the different 'comitology' Committees vary according to the needs of their members: some use a single working language; others only request documents in a limited number of agreed languages.⁵⁸ The Report further points out that documents that would, in any case, be translated at a later stage (in particular, draft measures whose final version must be published in the OJ) are in principle already translated for committee meetings.⁵⁹

However, failure to receive documents submitted to committees in the national languages can make the coordination of national positions within the Member States' administration difficult especially taking into account the short time limits applicable (formally at least 14 days) before the meeting takes place.⁶⁰ In case C-263/95, the Court of Justice ruled that the deadlines stated in the rules of procedure must be respected by the Commission and Member States should have the necessary time to study the documents which should (also) be sent to the Permanent Representatives of the Member States in addition to the members of the committee.⁶¹ As far as language aspects are concerned, the Court stated in this case that sending only the English version of the document to the German delegation within the time

⁵⁶ COM(2010) 83 final

⁵⁷ Alfé—Christiansen—Piedrafita, p. 7

⁵⁸ See point 29 of the document 2006/C 284/01

⁵⁹ See footnote 2 of the document 2006/C 284/01 ³⁰

⁶⁰ Alfé—Christiansen—Piedrafita, p. 7

⁶¹ Demmke, p. 9

limit and the German version only at a later stage clearly does not constitute compliance with Article 3 of Council Regulation No. 1, according to which documents sent by an institution to a Member State are to be drafted in the language of that State.⁶² However, the reason the Commission Decision in question was annulled was not the lack of availability of the German language version, but rather the violation of the obligation to send the draft document to two separate addressees within the time limit laid down and the failure to postpone the voting despite the request made by a Member State. More recent case law of the Court of Justice is less strict on the point of the non-availability of language versions under the comitology procedure. In case C-465/02, the Court ruled that even if the lack of a linguistic version of the draft committee opinion was not to comply with Regulation No. 1, such an irregularity would not lead to annulment of the contested decision, only if the procedure could have led to a different result.⁶³ In this case, however, the German delegation which did not receive the draft opinion in its own language voted against the opinion anyway, and thus, according to the Court's point of view, it would have been unable to object to it more effectively if it were in possession of the German version.

Even if there is a theoretical possibility for members of the committee to ask for their own language version from the Commission, there is a general understanding by the members of the committees that massive requests would definitely slow down the whole process and might lead to the collapse of the system.⁶⁴ This might be especially detrimental in cases where urgent measures have to be taken. As such, a practical arrangement has developed, according to which the Member State representatives request their respective language versions only when this is actually necessary due to the nature of a particular measure.⁶⁵

However, when receiving the draft opinion and other complementary documents in their language version, they can table linguistic and terminology comments, although the wording of the text will be ultimately defined by the Commission adopting the document.

Documents adopted under the comitology procedure are generally of a highly technical nature. They contain special technical terminology in the majority of cases, and thus their translation requires in-depth knowledge of the technical field concerned. For this reason informal cooperation between translators and national experts during the translation phase might be very helpful.

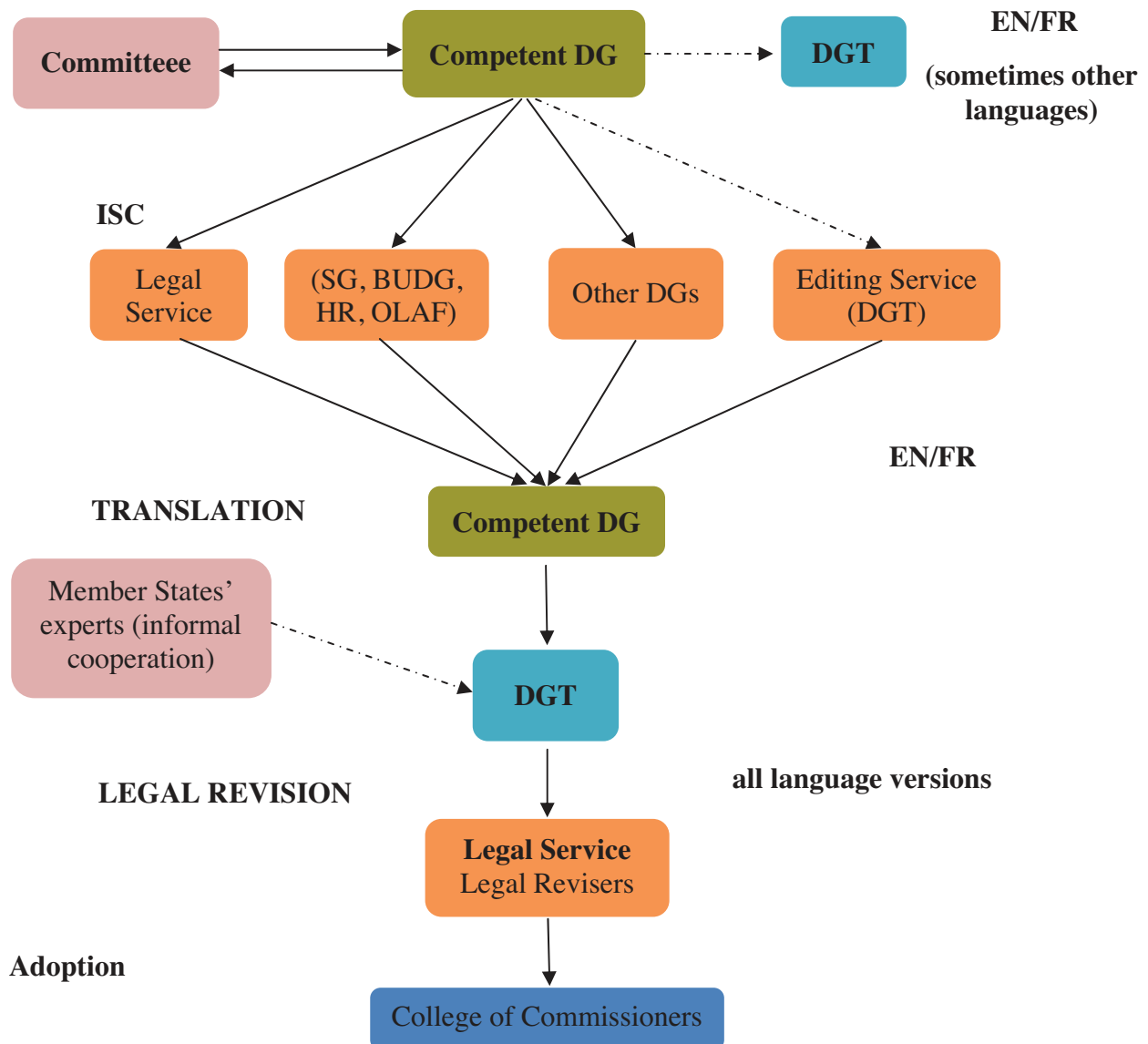
⁶² See paragraph 27 of the judgment

⁶³ See paragraph 37 of the judgment

⁶⁴ Alfé—Christiansen—Piedrafita, p. 7

⁶⁵ Alfé—Christiansen—Piedrafita, p. 8

Figure 6. Implementing acts of the Commission



4.3. Special features of the process

Examining the drafting process under the lawmaking mechanism of the EU and especially under the ordinary legislative procedure, one can see that there are certain elements and solutions in the system which aim at ascertaining, in formal and informal ways, that the legal text finally adopted is of an appropriate linguistic quality to ensure the same legal effect in all official languages. These special elements of the multilingual lawmaking of the EU are the following.

a) An alternating system of drafting, translating, and legal revision

The EU's multilingual system is based on a mixed system where drafting, and translating activities and ensuring the legal-linguistic consistency alternate. Drafting (approximating views on the substance of the proposed legislative act and elaborating the compromise text) is carried out at all procedural stages in the source language of the proposal, including the elaboration of the Commission's proposal, discussions in the Council working groups and the trilogue negotiations. Within the parliamentary committee, only the working languages of the committee are used for drafting. Neglecting the requirements of multilingualism at these stages can be justified by practical constraints. Translation and legal linguistic revision will take place in all institutions when the substance of the draft act is settled. This is the point at which multilingualism comes into the picture. However, the system is more than a mere 'source-text—subsequent translations' system, where an original unchangeable text is to be transposed as such into other languages.⁶⁶ The source text might have to be modified retroactively according to other language versions if these reveal errors or ambiguities in the original.⁶⁷ This issue may be raised at the finalisation phase by lawyer-linguists.

"Pour rester sur cette question de lingua franca, je crains que cette bataille si tant est qu'il y en ait eu une - concernant l'anglais comme langue d'élaboration des documents soit déjà perdue. Il faut alors positionner nos forces de manière stratégique, et plutôt qu'une bataille de masse, nous devons investir dans une meilleure maîtrise et qualité de la langue anglaise. Sinon la mauvaise qualité de l'original se perpétuera dans les 22 autres avatars des versions linguistiques, et ne fera qu'accroître les risques de mettre en cause la légitimité et la crédibilité de l'Union européenne."

(KARL-JOHAN LÖNNROTH,
General Director of DGT)

b) Improving the quality of the original text before translation

Setting up mechanisms and techniques to enhance the linguistic quality of the original text is based on the presumption that high quality original texts further the production of high quality translations. Producing high quality translations is all the more important within a system where translated texts will become equally authentic as the original one. The lack of efforts to improve quality might either lead to mistranslations or to spotting errors and inconsistencies in the original text only in the translation phase, as a consequence of which the translations might ultimately be of higher quality than the original text.

⁶⁶ Gallas: Understanding EC Law as 'Diplomatic Law' and its Language. In Pozzo—Jacometti, p. 124

⁶⁷ Gallas, p. 124

Practices aiming at improving the quality of the original text received much attention within the institutions recently. At the Commission, quality improvement is provided for during the inter-service consultation by the Legal Service and by the Editing Service, the approaches of which are different as regards the drafting quality of the Commission proposals. The former ensures the appropriate legal wording and style while the latter enhances the linguistic quality of the original text through the intervention of native speakers of the drafting language. At the Council, the work of the lawyer-linguist working group has focused on this aspect for quite a long time, although there have been some attempts to further this endeavour: the recently established practice of having a *conseiller qualité* from the Unit for the Quality of Legislation participating in the drafting activities of the Council working groups dealing with a proposal clearly serves this very objective. The same can be witnessed at the Parliament, where former lawyer-linguists have assisted the committees since 2010. In addition to this, raising the awareness of policy officers responsible for preparing the original document at the competent DG can also contribute to the improvement of the quality of the texts. Since 2001, legal revisers at the Commission have frequently organised courses in drafting techniques for several Directorates-General. A further step towards this direction is the clear-writing campaign launched in the middle of March 2010, addressing those in charge of drafting EU law and policy documents.

c) Tools

Consistent and coherent legal and technical terminology is a key element of good quality multilingual legal texts. While until 2004 each institution had used and managed its own terminology database, there has been a single database, *IATE* (Interactive Terminology for Europe)⁶⁸ since then, the use of which is highly recommended to all translators and lawyer-linguists.⁶⁹ The use of a common reference database clearly enhances the quality of the language versions. Furthermore, the database was opened to the public in 2007 with its 9 million entries constituting the ‘official’ European terminology and offering a reference point for the consistent use of the EU vocabulary not only in texts issued by the European institutions but also in texts produced outside the institutions.

The production of high quality legislation is facilitated by the publication of drafting guides, which set out common rules to be followed by the institutions. Since the Edinburgh European Council of 1992, the need for better lawmaking—that is, acts with a clearer, and simpler text complying with the principles of good legislation—has been recognised at the highest political level. It was reaffirmed by Declaration No 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty. As a result of that Declaration, the three institutions involved in the procedure for the adoption of Community acts adopted common guidelines intended to improve the quality of drafting of Community legislation by the Interinstitutional Agreement of 22 December 1998.

⁶⁸ IATE incorporates all the existing terminology databases of the EU’s translation services into a single, new, highly interactive and accessible interinstitutional database. The following databases were imported into IATE: Eurodicautom (Commission), TIS (Council), Euterpe (EP), Euroterms (Translation Centre), and CDCTERM (Court of Auditors) (http://iate.europa.eu/iatediff/about_IATE.html) ⁶⁹

⁶⁹ Berteloot, p. 15

Pursuant to that Agreement, the three legal services of the institutions drew up a guide (the *Joint Practical Guide*)⁷⁰ to develop the content and explain the implications of those guidelines, by commenting on each and illustrating them with examples. The Guide is intended to be used by everyone who is involved in the drafting of the most common types of Community acts.⁷¹

The three institutions have their own guides too: see the Council's *Manual of Precedents*, the Commission's *Manual on Legislative Drafting*, the *Interinstitutional Style Guide* published by the Office for Official Publications of the European Communities or the models in *LegisWrite*. The *Joint Practical Guide* intends to supplement and not to replace these manuals.

d) Personal contacts

Informal personal contacts between various actors participating in different phases of the procedure can and, in practice, do contribute to the improvement of the quality of the texts. Such contacts can be established between policy officers in charge of drafting the texts (for the purposes of this study, we will refer to them as draftspersons) of the relevant DG at the Commission, on the one hand, and the translators or legal revisers of the Commission, on the other, who work with the same language. At the level of the Council, these contacts involve Members States' experts, too, either when they contact the lawyer-linguists finalising the text or when they participate in the work of the Council working group of lawyer-linguists. Lawyer-linguists of the two legislating institutions are obliged to cooperate. Translators and lawyer-linguists at all institutions may also communicate if it is necessary to clarify the meaning of a certain term or in order to receive information on why a certain term was selected by the translator. The ELISE system created by the Commission aims to facilitate this cooperation by enabling translators/lawyer-linguists to comment on drafting and linguistic aspects of draft texts and to contact each other if they have specific terminology- or translation-related questions. ELISE is an inter-institutional electronic tool enabling translators, terminologists and lawyer-linguists to attach notes and comments to the draft texts being translated or legally revised. Comments might concern the original language version or the target language version.⁷² Thus, ELISE is a tool for exchanging information and transferring ownership to the 'language communities'. An express goal of the system is to ensure better quality and coherence of inter-institutional legislative proposals, in particular in co-decision procedures, a better use of resources by avoiding the duplication of efforts by the various actors in the translation-legal revision process and promoting sustainable cooperation and knowledge sharing between institutions.⁷³ Those actors who have to deal with the same text at a later stage can have an overview on the research and terminology work undertaken by previous actors in the process, can use the results of that work and do not have to repeat it

⁷⁰ Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, 2003

⁷¹ *Joint Practical Guide*, p. 6

⁷² Such comments might concern key new terms, terminology choices other than the terms used in the earlier legislation, substantial modifications in the terminology of legislative proposals, hidden quotations and key reference texts other than those mentioned in the text, solutions translators are not fully convinced about or that might be improved.

⁷³ ELISE Activity Report 2009

themselves. Moreover, the system facilitates officials working on the same text at different phases of the legislative procedure in getting into contact with each other.⁷⁴

In addition, important informal collaboration can be established for each official language where translators, terminologists and lawyer-linguists of different institutions using the same language work together in an informal or, sometimes, even in a formalised manner in order to find consensus on certain translation problems or on consolidating technical, and legal terminology.⁷⁵ Some of these informal groups issue terminology newsletters or other informative notes.⁷⁶ This kind of collaboration clearly enhances the quality of the legal texts in the given language and raises awareness regarding the fact that, in the EU, law is a coherent corpus of legislative texts regardless of which institution(s) are to issue the relevant act in question and that this coherence must be reflected at the level of legal terminology with respect to each official language.

4.4. The process as perceived by the participants

As outlined above, our research was partly based on the analysis of replies received to questionnaires drawn up by the research team for this purpose. There were three different questionnaires, one addressed to translation units (T) of the three EU institutions, one to lawyer-linguists (LL) and one to the Member States' central administration. The activity and the level of involvement of the respective units of the three institutions was different. As far as translation units are concerned, 21 language units of the Commission, 3 language units of the Council and 12 language units of the European Parliament forwarded their replies. With regard to lawyer-linguists are concerned, only lawyer-linguists working at the Parliament replied (9 responses were received). This means that a total of 45 replies from those involved in the multilingual drafting process could be analysed.

⁷⁴ Although the number of users of the ELISE system gradually increases, its use is still sub-optimal and could be further encouraged in order to profit from the advantages the system offers.

⁷⁵ By way of good practice, the collaboration between Greek translators and lawyer-linguists of all EU institutions and bodies should be mentioned. They discuss terminology issues in a formalised manner by formally approving (i.e., voting for) certain terms they decide to use for a given concept. They meet on a regular basis (every 2 months) and have their own rules of procedure. There are less formalised but regular meetings for other languages, too, e.g., such as Estonian (inter-institutional forum of the translators/lawyer-linguists of the institutions are held twice a year) and Slovak (where such forums are complemented by informal e-mail contacts.) Slovenian translators, lawyer-linguists and Member States' experts decide on terminology issues in the framework of a forum created in the CIRCA website of the Commission. Their decision-making follows the rules of procedure adopted for this purpose. Swedish translators organise inter-institutional meetings on language issues twice a year with representatives from the institutions and from the Swedish authorities. Given the fact that Swedish issues interest both Sweden and Finland, a representative of the Finnish authority in charge of the translation of legislation also participates in these meetings.⁷⁵

⁷⁶ Berteloot, p. 15

On the basis of the questionnaires received, the following conclusions can be drawn concerning the multilingual legal drafting process. The linguistic quality of draft texts sent for translation was considered by the majority of replies given by the linguistic units of the translation services as “Average, occasionally leading to translation problems”. The three options proposed by the questionnaire were the following: a) Excellent or good; related translation problems are rare, b) Average, occasionally leading to translation problems, c) Not sufficient, leading to frequent translation problems. Twenty-four linguistic units chose option b) (19 linguistic units from the Commission, 2 units from the Council and 3 units from the Parliament). Five linguistic units chose option c), considering that the quality of draft texts is not sufficient, and 3 respondents claimed that draft texts are excellent or good.

As to whether translators contact the Commission expert responsible for the draft text in the event of an uncertain terminology, 18 linguistic units replied that they do so on a case-by-case basis when needed and only 5 units replied that they contact the Commission expert systematically. Five units contact Commission experts rarely and 4 respondents chose the “no” option. However, it must be pointed out that, of the nine respondents choosing the “rarely” and “no” options, five were translations units of the Council and the Parliament where the necessity to contact the Commission draftsperson would not arise at all. They all underlined in their responses that, when faced with uncertain terminology, they either contact the translator at the Commission (especially because, in most cases, they are not even aware of who is the draftsperson at the Commission) or use the results recorded in

Figure 7. The number of replies received from the institutions

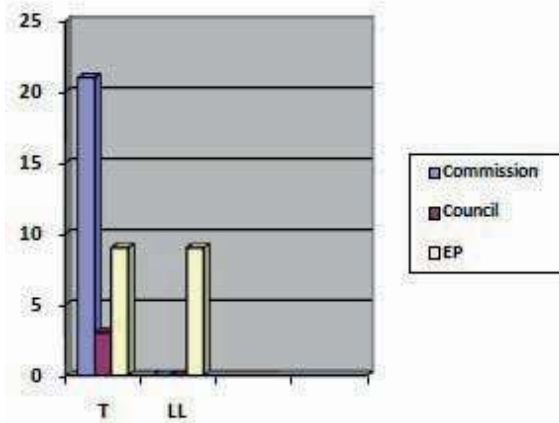


Figure 8. Linguistic quality of draft texts according to respondents

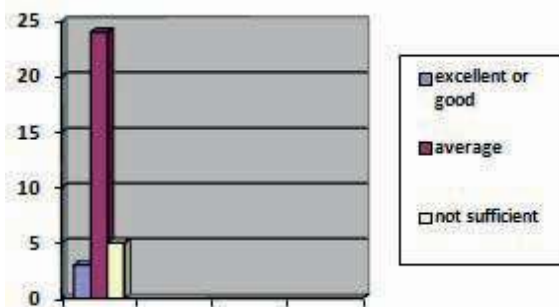
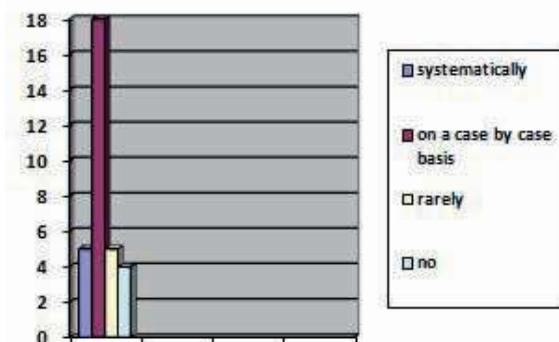
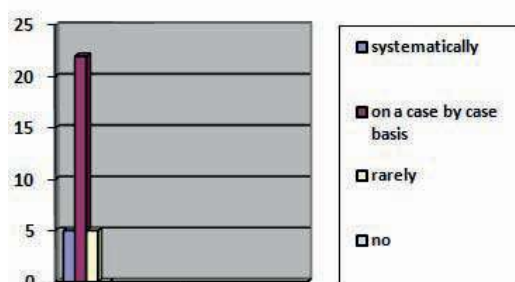


Figure 9. Frequency of contacting the Commission expert in the event of uncertain terminology



the ELISE system. Replies given by the Commission’s translators might therefore be more illustrative. Five linguistic units of the Commission replied that they contact their colleagues responsible for the draft text systematically in the event of uncertain terminology. Fifteen linguistic units ask the draftspersons at the Commission for further clarification on a case-by-case basis and only one unit underlined the “rarely” option.

Figure 10. Frequency of contacting Member State’s experts in terminology issues



As far as the replies regarding the question on contact with Member States’ experts is concerned, they cannot be considered representative since only three replies were received from the Council’s translators, although this is the forum where such contacts could be, in practice, more frequent than at other institutions. All other replies from translation units were sent by the Commission’s linguistic units and 9 replies were sent by the Translation Service of the European Parliament. According to the total responses, 22 linguistic units get in contact with Member States’ experts on a case-by-case basis when needed,

whereas 5 linguistic units of the Commission are systematically in contact with the Member States’ experts and 2 units of the Commission and 3 units of the Parliament contact Member States’ experts rarely.

The questionnaire asked both translators and lawyer-linguists which factor of the drafting process should be strengthened in their opinion. The questionnaire offered four options for translators and three options for lawyer-linguists and invited them to make suggestions other than those indicated in the questionnaire, too. One or more choices could be selected. Fifteen translations units chose more systematic contact with Member States’ experts at an earlier stage of the translation process. Seventeen translation units and 2 lawyer-linguists selected more institutionalised cooperation with Member States’ experts (including communication between Member States’ experts and EU institutions via a database or electronic forum). Twenty translation units believed that a more institutionalised form of cooperation with the Commission’s/Parliament’s draftspersons would be welcome (this question was not put to lawyer-linguists). One unit recalled that, in the past, a sort of an institutionalised cooperation between draftspersons and translators was established when translators were seconded to certain DGs. This practice was considered to be useful but it was abandoned in recent years.

Fourteen translation units were of the view that a more institutionalised form of cooperation with lawyer-linguists and translators at EU institutions would be necessary, while lawyer-linguists considered the current cooperation between lawyer-linguists representing different institutions to be adequate. When reporting the answers, it must be added that 7 units underlined all options, considering them being equally important without indicating a clear priority.

It is interesting to note that 6 lawyer-linguist teams considered that linguistic feedback from Member States at an earlier stage (i.e., Member States could/would be invited to send their comments on the COM final document immediately after it was published) would contribute

to the strengthening of the drafting system. Only two answers received from lawyer-linguists did not select this option.

Additional comments presented by the translators mainly concerned the drafting phase of the proposal at the relevant DG of the Commission. These comments can be divided into two broader categories. Comments belonging in the first category advocate the inclusion of new actors or structural units in drafting the original text. Some of them suggest that translators should be involved in the very last phase of finalising the original draft in order to improve the linguistic quality of the original text, which is no longer possible under the translation phase. For the same reasons, 3 units suggested that drafting should be done by mother tongue draftspersons/editors while 4 units were of the view that every Directorate General at the Commission should have its own drafting/editing unit to scrutinise all outgoing texts. These suggestions can be considered proposals aiming to enhance the current system of editing offered by the Editing Service of the DGT, which is not compulsory for every legislative document for the time being. Comments belonging in the second category do not propose the involvement of new actors but rather the further development of the drafting competences of policy officers. Mandatory legislative drafting training for all draftspersons at the Commission was also proposed by 2 units while 2 units suggested the clear-writing campaign of the Commission be enhanced. The establishment of a system whereby source texts are annotated by the author of the text, indicating the sources used or providing any information that might help the translator, was also proposed. One unit complained about frequent incorrect formatting of documents which often results in wasteful duplication of efforts in 22 or 23 languages. One translation unit of the Parliament indicated that deadlines set for translation are too short to be able to produce high quality texts.

However, some reservations concerning contacts with Member States were expressed, too. These reservations stress the independence of EU institutions when relying on Member States' experts and also the institutionalised nature of cooperation between EU institutions and Member States when it is compulsory.

Figure 11. Replies of translation units

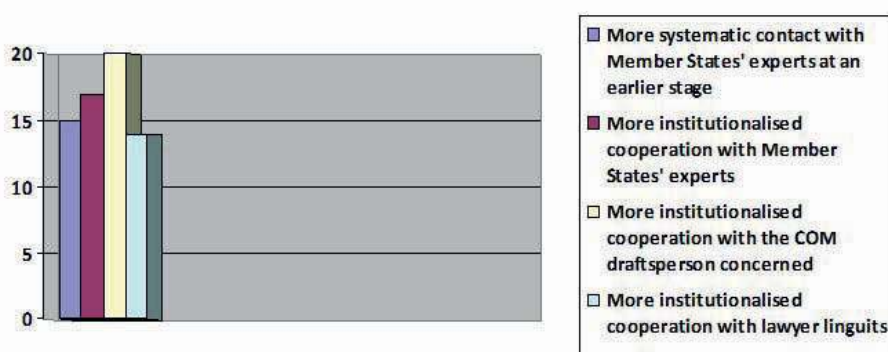
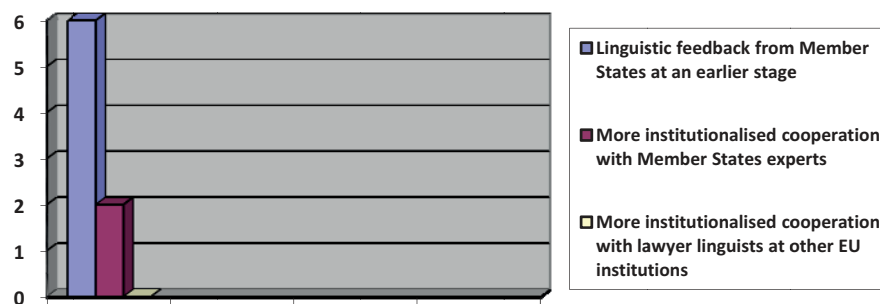


Figure 12. Replies of lawyer-linguists



On the basis of the above analysis, we can state the following. The quality of the original draft text was considered by the translators to be satisfactory on the whole. However, improving the linguistic quality of the original draft text submitted for translation is seen by the respondents as a task to be continuously pursued. Intervention or initiatives for improving the quality of the original draft texts may take various forms (strengthening the editing services, ongoing training organised for draftspersons or clear-writing campaigns laying down general rules for writing clearly). Active participation of translators as early as in the drafting process, which was proposed by some respondents in addition to the options offered by the questionnaires, is an interesting idea based on the presumption that translators—even if not native speakers of the drafting language—could influence the text in the drafting phase in order to make it more suitable for purposes of rendering it into another language on the basis of their own experience. The current system, however, is based on another approach, wherein translators are excluded from the drafting process itself and the quality of drafting in the pre-translation phase is the responsibility of the Legal Service of the Commission. Involving experienced translators in the drafting of proposals could be an idea to be considered as it would most probably bring different perspectives into the drafting process than those represented by the Legal Service. As an alternative or additional element, the involvement of native speakers in the drafting of the document could also be considered in order to eliminate eventual discrepancies which might arise because the text has been drafted by non-native speakers of the original language. This service is now offered by the Editing Service of the DGT in a centralised manner under the inter-service consultation, albeit not in a mandatory manner. Making more frequent use of services provided by this unit or making their involvement compulsory for legislative proposals or autonomous legal acts of the Commission could be a step forward. The idea of setting up internal editing units at each Directorate General goes even further. As far as the quality of original texts is concerned, it is interesting to note that the Cabinet Office Legal Advisers (COLA) of the United Kingdom, which is currently undertaking a project on improving the EU law and the drafting and negotiation standards of proposals drafted in English, is considering making a proposition to the Commission on secondments to the Legal Service from the Office of the Parliamentary Counsel of the UK responsible for drafting UK legislation. The involvement of competent drafters in the drafting of EU texts in English could be—according to the UK—beneficial in promoting better drafting. Such an arrangement should by no means aim at touching the substance of the proposals, just to provide assistance in improving the standard of English drafting so that when texts are translated the meaning would be clearer.

Translation units at the Commission expressed their need for more institutionalised contacts with lawyer-linguists working in the legislating institutions. It must be stressed that the ELISE system set up by the Commission could enhance and deepen such a form of cooperation. However, the current practice shows that translators and lawyer-linguists do not avail themselves of the benefits of the system, which is most probably due to the fact that the daily administration of the system for each document would pose an additional workload on them.

On the contrary, lawyer-linguists consider the level of cooperation with their counterparts in the other institutions to be institutionalised enough and do not feel that any further change should be undertaken.

As far as cooperation with Member States' administration is concerned, there is already quite active cooperation with Member States during the translation phase at the Commission. It clearly shows that Member States' administrations tend to get involved in terminology questions during the drafting procedure before the text reaches the Council and where they can formally comment on it. During the translation phase at the Commission, it is of course not the whole text (which is still not adopted by the Commission) but just the problematic terms that can be commented upon. However, it seems that translators find it useful to contact Member States' experts for problematic terminology issues in an informal way in order to ensure that adequate technical terms are used within the text. Some Member States have established well-functioning electronic networks for such kinds of informal cooperation.⁷⁷

Under the current system, Member States may comment on the draft text from a linguistic point of view before the text is sent to COREPER and then they can channel linguistic and terminology remarks to the Secretariat General of the Council after a political agreement has been reached and lawyer-linguists start to work on the text. Replies to our questionnaires suggest that comments from the Member States would be welcome at an earlier stage (for example immediately after the COM final document is published). This option is deemed useful with regard to the key terminology even if the text itself is subject to a lot of changes in the subsequent drafting process.

4.5. Subsidiarity—The role of the Member States

A legislative act is the end-product of the drafting processes of the European institutions. It is a European law to be respected in all its official language versions, all of which are equally authentic. Therefore, the drafting, translating and legal revision of the texts must remain the sole responsibility of the European institutions. The natural point of intervention in the drafting process for Member States is within the Council (at the level of working groups, at the meeting of the Mertens Group, in COREPER, and by sending officially linguistic comments on draft texts). It is the task of the Member States to organise their participation, to determine the extent to which their system is centralised, the extent to which experts of the working groups are motivated and accustomed to check and to comment on the draft text in their language version, and the efficiency of the system for sending remarks to lawyer-linguists.

⁷⁷ E.g., Sweden, Finland, and Slovenia. See the chapter on the role of Member States' administrations in the drafting process.

It became clear that those Member States which established a sort of a coordination system for the channelling of linguistic remarks have, at the same time, realised the necessity for quasi-structured informal cooperation between national experts, on the one hand, and EU translators and lawyer-linguists, on the other, well before the text reaches the Council, that is, at the Commission phase. Such cooperation includes, in general, assistance in matters of technical terminology which can result in a coordinated decision-making on technical terms to be used in EU acts, where sometimes this decision-making is moderated by the national coordinating body. In 2008-2009, there was a boom in several Member States which strengthened their national structures for coordination in terminology issues. In Slovenia, for instance, a new project was launched in 2009 for the establishment of a national mechanism for interdisciplinary and inter-institutional authentication of the Slovene terminology. The project is coordinated by the central coordination body for linguistic cooperation with EU institutions, which is the Government Office for European Affairs. It involved academic experts, and the linguistic services of the national authorities and EU institutions. Discussions on terminology issues take place via the CIRCA website of the Commission and are moderated by staff members of the central body. Decision-making on problematic terms follows the rules of procedure of this cooperation. Approved terms will be uploaded into the IATE database.

Phases of the legislative procedure	Member States' involvement
<i>Drafting of the Commission proposal</i>	<i>Informal cooperation on terminology issues with Member States experts</i>
<i>Council working groups</i>	<i>Members of the working group may put forward linguistic remarks and reservations</i>
<i>Meeting of the Mertens Group</i>	<i>Member States officially receive the draft act to make linguistic remarks. Linguistic reservations may be lodged.</i>
<i>Finalisation of the draft act by lawyer linguists</i>	<i>Member States may send their linguistic remarks to the lawyer linguists</i>

At the same time, a network (called ESKO) for the translation of EU legislation was established in Finland in 2009 to facilitate cooperation between Finnish translators of EU institutions and national officials. The aim of the network was to contribute to the consolidation of Finnish EU terminology. Due to the network, rapid contacts can be established between translators and Member States' experts on terminology issues or correct Finnish usage before a text is formally adopted. The coordinating body, that is, the Government Terminology Service of the Prime Minister's Office, ensures that questions forwarded by EU institutions are answered by a specialist in a ministry. The network operates through personal contacts and functional mailboxes both at the EU and at the Finnish end. However, the new network does not in any way replace the contacts of Finnish EU translators with national experts, which translation units or individual translators had before. Instead, it is designed to provide a more organised structure for queries and feedback and to help translators in situations in which they do not really know to whom to turn. The main

advantage of the network is that in situations like this the translators do not have to figure out who would be the right expert but this work is done by the contact persons in Finland.

A best practice model of coordinating cooperation between translators, lawyer-linguists at EU institutions and national administrations is the Swedish model which is followed by some other Member States which established their coordination system later. In Sweden, it is done by the EU Language Service of the Ministry of Justice, which maintains a contact network at the ministries and around 40 public agencies. By way of this network, translators and lawyer-linguists at the EU institutions can quickly get into contact with national experts in order to help find the right terminology in Swedish. However, requests can be sent both via the coordinating body and directly to the responsible ministry or body. The efficiency of the system lies not only in the structured cooperation it provides but also in the early involvement of national experts in the translation process, who are contacted as early as during the translation of the proposal at the Commission, when needed.

Linguistic and terminological networks have in addition been set up by DGT with the administrations of Member States, such as the REI ("Rete per l'eccellenza dell'italiano istituzionale"³) or the RESK for Slovak terminology, in order to compensate for the lack of formal coordination.

In some Member States, apart from the central government, translation and terminology committees (whether set up by the government or not) do also play a role in transmitting linguistic remarks concerning their respective language version especially as far as the approval of terms is concerned. In Ireland, the Irish Terminology Committee is in regular contact with the Irish translators at EU institutions in relation to problematic terms. The Committee supports EU translators by making recommendations for new terms and reviewing all terms proposed for inclusion in the IATE database. In making recommendations, the Committee follows its own agreed terminology principles. In Latvia, the Latvian Translation and Terminology Centre did not only issue a handbook on Latvian language and translation rules but takes part in the consolidation of Latvian EU terminology as well. In Poland, the Polish Language Council actively assists the Polish unit of the DGT in working out standards concerning EU language use. An example of this cooperation was the laying down of the capitalisation rules for different types of EU structures, in respect of which the Polish language has not been regulated so far.

One can see that cooperation is most developed in Member States which acceded to the EU later and had to translate almost the whole *acquis* in force before their accession. These countries established their own translation or translation-coordination units (TCU) engaged in centralised terminology activities. Even if, after the accession, they had to reduce their staff numbers and the units ceased to exist as translation (coordination) units, the core or at least part of the units were transformed into a central coordination body responsible for cooperation with EU translators and lawyer-linguists and for mainstreaming technical terminology. In Hungary for instance, a former lawyer-linguist of the TCU remained at the Ministry of Justice with responsibility for transferring linguistic remarks of the national administration to the translation or legal revision services of the EU institutions and connecting experts with translators if needed using the former unit's database of experts after the winding-up of the Unit. In the course of time, these new units found their new role in the multilingual drafting system and most of them tried to institutionalise the form of their cooperation, in some cases by asking the Commission's formal assent to their involvement. For example, an exchange of letters signed in 2008 between the TCU of the European Institute of Romania and the DGT of the Commission enables the Romanian TCU to transfer validated terminology entries to the DGT in order to be included into the IATE database from time to time.

On the contrary, ‘old’ Member States or ‘founding’ Member States which, for historical reasons, did not have such kinds of a coordination system specifically set up for translating EU texts and ensuring coherent EU terminology in their languages, generally do not have an institutionalised or integrated national system for ensuring cooperation with translators and lawyer-linguists. Thus, we can state that most newcomers used the opportunity to keep their already proven system and to assign new functions to it when channelling linguistic remarks on draft texts or when becoming involved in the terminology approval procedure sometimes even by moderating the approval procedure. In the case of ‘old’ Member States, the rather underdeveloped level of cooperation is not only due to the lack of institutional basis but also to the reticence to consult Member States’ experts as they wish to avoid that Member States be able to influence the political balance of the text through language-related and terminology comments. This attitude emerged mainly in the case of sensitive texts, such as those on financial issues or banking.

However, this resistance loosened in the recent years, when cooperation between EU institutions and Member States’ administration was gradually established in several cases. As far as French is concerned, permanent cooperation was established with the General Delegation for the French Language and Other Languages of France (Délégation générale à la langue française et aux langues de France, DGLFLF) and the French Community of Belgium. French translators also started to rely on experts, especially in very technical fields.

Central coordination bodies often issue drafting guides underlining some important linguistic and drafting rules which EU translators and lawyer-linguists are not bound by but can and generally do follow (see the manual entitled *Slovene in the EU institutions*, the Latvian manual *Tiesību aktu tulkošanas rokasgrāmata* or the Hungarian *Útmutató*). In some Member States, coordination bodies also instruct competent ministries on how they could submit linguistic remarks efficiently and try to draw their attention to the necessity to table linguistic comments at the earliest stage of the legislative procedure possible (Slovenia, Finland, Hungary).

In most of the Member States which replied to our questionnaires, cooperation between EU translators and lawyer-linguists on the one hand and national experts on the other is not fully centralised, not even in countries where there is a central coordination system. Central units usually prepare instructions for competent ministries, and ask them to designate experts for specific areas of EU legislation whom EU translators and lawyer-linguists can directly contact, forward and update this directory on a regular basis, but the contacts between experts and EU staff are of a personalised nature (Slovenia, Slovakia, Hungary)

In some Member States, there is no centralised cooperation at all and EU translators and lawyer-linguists contact the relevant ministries in all cases directly for terminology assistance (UK, Greece, Lithuania)

An undoubtedly positive effect of European multilingualism is that, in many Member States, it has increased the state’s awareness regarding language issues in general and led to more conscious national language policies focusing on the standardisation of technical terminology, boosting terminology activities, preparing comprehensive style-guides, handling the influence of globalisation and providing linguistic assistance for drafting at EU institutions. One of the examples is the Slovene National Programme for Language Policy 2007-2011. Another one is

the Lithuanian Term Bank, set up in 2004 for a thorough standardisation of Lithuanian terminology, and the establishment of the State Commission of the Lithuanian Language. Similarly, the Parliament of Malta set up a National Council for Maltese Language, in charge of promoting the Maltese language and its standardisation. The Council also deals with EU terminology in Maltese. In 2005, it published a Report on the names of the European currency in Maltese, among others. Other countries tried to involve the civil society in drawing up the correct national equivalents of EU terms. In 2003, a competition was held in Estonia in order to find Estonian equivalents to EU jargon words, including *globalisation*, *integration* and *subsidiarity*, which existed before as loan words only.

Involvement of Member States' administrations, terminology or language committees in the drafting of EU acts is an important factor in raising awareness of the impact of EU law at the national level. It can foster the acceptance of EU norms by bringing them closer to the experts in specific fields of law or to the target groups of the legislation concerned at a linguistic or terminology level. Strengthening informal networks, and terminology cooperation between translators and lawyer-linguists of the EU institutions and Member States' administrations, should be further encouraged and supported by the Commission. However, responsibility for the linguistic quality of the texts, the translation process itself and defining the drafting and linguistic policy must remain in the hands of EU institutions.

5. Multilingual lawmaking in the world

The linguistic regime of the European legal system is unique in having 23 official languages, all being equally authentic. With the accession of further Member States this number will automatically increase. Even if such a high number of official languages is unusual in other legal systems, there are well-functioning examples of multilingual legal systems with two or

“Lorsque la section [de législation] est saisie de textes rédigés en français et en néerlandais, son examen porte tant sur les textes rédigés dans chacune des deux langues que sur la concordance de ces textes.”

(Act on the Council of State of Belgium)

three official languages and well-established drafting practices. For the purposes of comparison, we investigated some multilingual legislative systems in detail. Four of them are nation states: Belgium and Malta, being at the same time Member States of the European Union, the former as a founding state of the EU and the latter as a recently acceded country; Switzerland, although not being a EU Member State is a member of the EFTA, and Canada as a non-European example.

5.1. Belgium

In Belgium, French, Dutch and German are all official languages, but only the first two are used for drafting the authentic versions of the law. A German translation is published in the *Moniteur Belge* afterwards and for information purposes only. The Belgian administration pays particular attention to achieving an effective parity between French and Dutch.⁷⁸

“Lorsque vous rédigez un texte bilingue, sa version dans une langue ne peut pas être une simple traduction de l’autre langue.”

(Principes de techniques législatifs of the Council of State, Belgium)

In Belgium, the Council of State (FR: *Conseil d’Etat*, NL: *Raad van State*) has a primary role in the bilingual drafting of laws. It gives advice on draft laws and decrees. In that regard, it has three functions: reviewing the constitutionality and legality of the new texts, their cohesion with the existing legislation and the readability of the texts. The reason behind conferring these functions on the Council of State was to eliminate the complexity and obscurity of legal texts and the former dominant influence of French language on the Dutch version (which often went to such an extent that the relevant features of Dutch language were not respected). In fact, the current drafting approach is that draftspersons have to take into account the fact

that Dutch is a Germanic language with a language structure that does not necessarily follow

⁷⁸ Gambaro, p. 6

that of French and therefore, Belgium tends to give up word-by-word translation in order to produce laws in good and proper Dutch.⁷⁹

The Council of State prepared a manual for legislative techniques for those drafting legislative or regulatory texts for the Federal Authority and for the federal entities.⁸⁰ It lays down rules on legislative techniques, that is to say, best practices concerning the drafting of legal and regulatory texts. It sets out general drafting rules aiming at comprehensibility, readability, transparency and consistency which are relevant for adequate drafting, be it bilingual or monolingual. However, a good drafting approach enhances the chances of a good quality bilingual text. Section 5 of the manual regulates the co-drafting of bilingual texts and the review of the concordance between the French and Dutch versions. The manual specifies that the drafting of a bilingual text goes well beyond a mere translation of one version into the other. On the contrary, it suggests that texts should be co-drafted together with a native speaker of the other language, and consistency of the two texts be ensured by systematically comparing them. The manual highlights the advantages of co-drafting, meaning a more critical approach in choosing terms and formulating sentences on the one hand and the high potential for achieving concordance between the French and the Dutch versions of the text on the other.

The competences of the Belgian Council of State in the drafting of the legislation are specified by the Act on the Council of State of 12 January 1973 as last amended in 2008. Federal Ministers and Members of the Community and Regional Governments, the United College of the Common Community Commission of Brussels-Capital and the College of the French Community Commission of Brussels-Capital must seek the opinion of the Legislation Section of the Council of State on every pre-draft act, decree or ordinance and on every draft regulatory text.

The Chairman of each Legislative Assembly has to obtain an opinion on drafts of law, decrees or ordinances and amendments to drafts or to proposals if at least one-third of the Assembly members request so. The Chairman of the Senate, of the House of Representatives or of the Parliament of Brussels-Capital and of the United College of the Common Community Commission has to request an opinion on drafts of law or ordinance and on their amendments if the majority of the members of a language group so request. Moreover, the Presidents of the Senate and of the House of Representatives have to request an opinion on drafts of law and their amendments, adopted after a first vote following a request based on Section 16 of Act of 6 April 1995 on the Parliamentary Consultation Committee as laid down in Section 82 of the Constitution.

In addition to compulsory consultation, optional consultation is also provided for. The President of each Legislative Assembly may request an opinion on every draft of a law, decree or ordinance or on their amendments. Federal Ministers and members of the Community or Regional Governments, the United College of the Common Community Commission and the College of the French Community Commission may request an

⁷⁹ Gambaro, p. 8

⁸⁰ http://www.raadvst-consetat.be/?page=technique_legislative&lang=fr

opinion from the Legislation Section on every draft of a law, decree or ordinance or on their amendments.

Draft laws are received by the Registry which has two chambers, one being francophone, the other Dutch, each chamber having a member whose first language is German and another who is bilingual. The chambers take care of the documents received and provide for the coordination of each document. The auditors and the counsellors reviewing the drafts make comments which concern legal questions, however, they can also draw attention to linguistic and drafting aspects. The opinion is drafted by the registrars on the basis of the comments received in one of the two official languages and is sent for translation. The service of the concordance of texts provides for the translation of the opinion to the other language and may put forward linguistic remarks concerning the concordance of the two language versions of the texts.⁸¹

There is no centralised terminology work at the level of the Federal Government. Translators develop their own terminology databases and translation memories mainly on an ad-hoc basis at the legal departments of public services. A well-planned synergy between these services is merely sporadic at present.⁸² However, the Council of State developed its own in-house terminology database.

5.2. Malta⁸³

Malta is a bilingual country with Maltese and English as its official languages. Article 5 of the Constitution of Malta regulates the status of these languages. According to paragraph (1) of this Article, the national language of Malta is Maltese. However, paragraph (2) specifies that Maltese and English (and any other language prescribed by the Parliament by not less than two-thirds of its members) are official languages of Malta and the Administration may, for all official purposes, use any of them. According to paragraph (3) of the same Article, the language of the courts shall be Maltese but the Parliament may provide for the use of English language in such cases and under such conditions as it may prescribe. Paragraph (4) confers the right upon the House of Representatives (Parliament) to determine the language and languages that shall be used in parliamentary proceedings and records. Exercising its right under the Constitution, the House of Representatives stated in Standing Order 90 that *“Every law shall be enacted in both the English and Maltese language and if there is a conflict between English and Maltese texts of any law, the Maltese text shall prevail”*.

However, the Maltese linguistic system of lawmaking is peculiar in that bills are most often drafted in English and then translated into Maltese. This specificity is due to the fact that Maltese legislation is based on the British system and most legal concepts are best expressed on the basis of English texts. It must be added that up to the 1940's, legislation was produced in English and Italian only and it was only with the codification of the laws of Malta in 1942 that Italian was finally dropped and laws were produced in English and Maltese for the first

⁸¹ Interview with Anne-Marie Roseleer, Council of State

⁸² Kockaert—Vanallemeersch—Steurs, p. 2

⁸³ This part was prepared on the basis of the background material provided by the Attorney General's Office of Malta.

time ever. Due to this shift, the vocabulary of English and Romance origin was gradually squeezed out by an emerging Maltese lexicon. Hitherto untranslatable words and concepts soon found themselves being replaced with contrived Maltese terms. Single words in English or Italian were translated into complex phrases, which tended to overrule any law of brevity. (For this reason, any legal text in Maltese, since the fifties, has achieved some 10 to 20 percent more in paper-length than its original English equivalent.) It should, however, be pointed out here that Maltese is unique among European languages as it is a Semitic language derived from a North-African Arabic dialect, although strongly influenced by Italian and English. It means that it cannot rely on choices of related languages like, for example, the Scandinavian languages.

Drafting and translating bills is entrusted to a single authority in Malta, which is the Attorney General's Office. One of the functions of the Attorney General—appointed by the President and acting on the advice of the Prime Minister—is to advise the Government on proposed legislation, to draft the necessary Bills, and to attend the meetings of the House of Representatives during the passing of such Bills, in order to advise the Ministers concerned and draft any amendments which might be deemed necessary. In view of the bilingual edition of all legal enactments, the Attorney General's Office is also responsible for the translation of all laws.

Preliminary drafts are prepared by the relevant Ministries, subject to their being vetted by the Attorney General's Office. Drafting or occasionally rewriting of drafts is usually done after further consultation with Ministry/Department officers.⁸⁴ The translation phase follows at the final stage, which the Office either does itself or vets the work of other Ministry/external translators. As such, the drafting and translating phases are separated and done by different persons.

All subsidiary legislation is translated and published under the supervision of the Attorney General's Office. About 35 Acts are passed through Parliament and 350 Legal Notices are published in the Government Gazette each year. Moreover, some 40 Bills are drafted or vetted and published in the Gazette, besides several other Bills and Legal Notices which are drafted or vetted and published in subsequent years.⁸⁵

As regards drafting and translating the legislation, the Interpretation Act of 1975 (as last amended in 2009)⁸⁶ is of crucial importance, especially Articles 3 and 4 thereof, which provide definitions for basic legal expressions and regulate the use of grammatical variations, genders and numbers. The Office's translation policy is based on a word-by-word translation approach aiming to follow the source text to the largest extent possible. Translators stick to the order of phrases as found in the text to be translated. When changing a word, translators must pay attention to the fact that, in Maltese, there are prefixes and suffixes that are different in the masculine and in the feminine, in singular and in plural. For this reason the use of automatic translation tools is avoided by the Office.

⁸⁴ Interview with Francesca Scerri, Attorney General's Office

⁸⁵ <http://www.mjha.gov.mt/justice/attorneygeneral.html>

⁸⁶ http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt249.pdf

Another specificity of the legal Maltese language is that in certain areas there are no linguistic equivalents in Maltese for certain concepts. This concerns mainly sectors like environment, health or laws relating to aircraft or technical standards. In such cases, the commonly used English terms are not translated but left in their original form written in italics.

As regards the national legislation implementing certain EU measures, the impact of the Maltese version of the relevant EU act is apparent. Because of the rush work to be done, the wording is often influenced by the text (syntax, terminology) of the EU act, even if it is not in line with traditional Maltese legal linguistic rules.

Translations are not subjected to any revision. However, the practice shows that a meticulous comparison between the English and Maltese texts is made by both sides in the House of Representatives when debating the Bill, and the Office is often asked to explain the rendering of certain phrases or words. However, these amendments relate to words or phrases in one language only, thereby improving the translation quality.

The Office does not run a legal terminology database for English/Maltese terminology. Nevertheless, it relies on the principle of referring to past texts, thus retaining words used by previous translations. For this reason is the whole legislative corpus at the Ministry of Justice website is used as reference database.

A new element in the development of Maltese language is the creation of a National Council of the Maltese Language. Following a motion presented to the Parliament in 2003 and adopted unanimously in 2004 as the Maltese Language Act, a National Council of the Maltese Language (Kunsill Nazzjonali ta' l-Ilsien Malti)⁸⁷ was established in 2005 in order to promote the national language by means of the adoption of a language policy which will further its use in education, the media, the courts and the political, administrative, economic, social and cultural life of the country. The Council has also the responsibility of bringing up-to-date the spelling of the language, if necessary, and of establishing how borrowings should be spelled.⁸⁵ According to Article 5(2) of the Maltese Language Act, the National Council for Maltese Language is the sole linguistic authority for interpreting or changing orthographical rules. The tasks of the Council became even more important in the light of Malta's accession to the European Union in 2004, with Maltese declared one of the official languages of the Union. Setting clear language standards to be respected by translators working on EU texts became imperative.

5.3. Switzerland

The Constitution of Switzerland (Article 70(1)) basically provides for three official languages: German, French and Italian. However, the next sentence of this paragraph states that Romansh is also official with regard to Romansh language persons; and accordingly, the federal administration has to reply in Romansh to a Romansh language request. Therefore, the Swiss Federation has four official languages.

⁸⁷ <http://www.kunsilltalmalti.gov.mt>

⁸⁸ Badia, p. 5

Under Article 7 of Act on the organisation of the government and public administration, the procedure for the preparation of legal acts is launched by the federal government (*Bundesrat*). For constitutional and statutory legal acts, the preparatory phase is closed when the *Bundesrat* accepts the justification of the bill and it is submitted to the federal assembly, which consists of the two chambers of the Parliament. Preparatory work is done by the administration or it is commissioned to an expert, an ad hoc (not permanent) working group or a standing committee. Usually it is up to a Ministry of the *Bundesrat* to choose.

During the legislative procedure, the *Bundesrat* has to take several decisions and therefore continuous consultations are held within the public administration. At the time of the official consultation, texts should be ready both in French and German. The Federal Chancery (*Bundeskanzlei*), which has a legal and linguistic service, should be consulted during every preparatory procedure.

A key phase of the legislation process is the parliamentary procedure. Swiss legislation has two chambers. The work of the Parliament is assisted by parliamentary services, including the Italian language secretariat and the translation service. Motions of the *Bundesrat* and proposals of administrative bodies are translated into German and French. The draft text is then discussed in plenary session. After both chambers made their decisions, a final voting is held. Prior the final voting, the drafting committee scrutinises the text and determines its final version. They also ensure that the texts of the three official languages conform with each other.

Translation is regulated by a special decree (*Verordnung vom 19. Juni 1995 über das Übersetzungswesen in der allgemeinen Bundesverwaltung*; SR 172.081). Most texts continue to be drafted in German, and so these have to be translated into the other official languages. Such a translation obligation applies to cases when the original language is French or Italian. On the whole, the legislation process always implies translation. Translation is often done by translation agencies not involved in the conceptual work of the project and the translator is not part of the actual legislative process. It is therefore important to involve persons of different native languages in the legislative project under the principle of co-drafting or parallel drafting. In such a way it can be ensured that a legislative act is created in parallel in more than one language. During the elaboration of the legal acts, it is important to know which text should be translated into which language(s) and the corresponding procedures. Reports of expert or scientific committees are occasionally translated, subject to their content and the expected public interest. Reports of administrative working groups are usually not translated. In general, draft legislative documents should be available in all three official languages prior to their adoption by the *Bundesrat*, together with related documents.

Certain public bodies have their own translation services which provide translation into French. If the translation service is not able to translate the text, it should cooperate with the Ministry or external experts in order to provide the translation. Agencies without their own translation service often have their in-house administration staff translate the texts into French, however, it should be avoided that French-speaking administrators be involved in the translation. It is much more practical to resort to parallel drafting and involve German- and French-speaking administrators in the drafting of legal acts as early as the preparatory phase onwards.

Italian translations are provided by the translation service of the Ministries or the Italian section of the central language services of *Bundeskanzlei*. Central language services are responsible for the Italian version of texts which are proposed by the *Bundesrat* and are to be published in the Swiss Official Gazette (justifications, reports, constitutional amendments, federal acts, federal resolutions, decrees). Ministry decrees should be translated by the Ministries and in such cases, the Italian section of ZSD provides for the revision and publication of the final Italian text. Texts should be sent to ZSD in due time so that it may comment on the draft texts prior to the adoption by the *Bundesrat*. German translation of French or Italian texts is provided by the government agencies themselves, through their administrative staff. However, some of the agencies employ German translators, too.

The Public Administration Drafting Committee (*Verwaltungsinterne Redaktionskommission, ViRK*) is in charge of the drafting of all draft legal acts of the Federation during the legislative procedure. Apart from the *Verwaltungsinterne Redaktionskommission*, there is a *Parlamentarische Redaktionskommission (PRK)* in charge of drafting aspects of the parliamentary procedure. This latter organises editing tasks prior to the final voting for the legal acts of the *Bundesversammlung*. ViRK representatives attend the meetings of PRK. ViRK is an interdisciplinary body of several ministries consisting of the linguists of the central linguistic services of the *Bundeskanzlei* and the lawyers of the legislative departments of the *Bundesamt für Justiz*. The Committee ensures the clarity of legislation, including the logical structure of legal acts, a simple and clear style, reasonable conciseness, consistency of content and terminology and resolves orthography and language use issues.

The *Verwaltungsinterne Redaktionskommission* checks and changes the German and French language versions of constitutional amendments, federal acts and key decree drafts (co-drafting, *Koredaktion*). Draft decrees are usually edited in the language of the original version (monolingual drafting), that is, only one of the two subcommittees has to participate with two members. Comprehensive proposals for amendment or major errors are communicated to the agency in charge by the *Redaktionskommission*. In the case of a monolingual drafting, the agency transmits amendments agreed with the commission by the agency and ensures that adjustments are made in the other language too.

Before the co-reporting procedure of an act to be published officially (including draft legal acts of the *Bundesrat*, justifications, reports, positions), the text is scrutinised by the legal service and the linguistic service in the framework of what is called the *circuit* working process, which includes checking legislative technique and linguistic aspects and also the amendments. In the *circuit* process, the Chancery's linguistic services revise drafts which were not subject to the drafting or co-drafting process of the *Verwaltungsinterne Redaktionskommission*. Corrections made during the *circuit* process are sent back to the agency in charge which, based on the corrected text, launches the co-reporting procedure. Italian texts are revised during the co-reporting process coordinated by the Italian section of ZSD. The *Bundeskanzlei* has prepared guidelines which might be useful for legal drafting for all the three official languages and which are available at the website of the *Bundeskanzlei*.

Terminology work is inseparable from the preparation of legislative projects. The terminology section of *Bundestkanzlei* maintains the terminology database of the federal administration, called TERMDAT. This database is an important tool for professional communication, including translation. The database was created as a result of cooperation with the language services of the EU and has been in use since 1988. TERMDAT is a comprehensive multilingual dictionary with more than 1.5 million entries in one to eleven languages, including the four official languages of Switzerland, and English and further official languages of the EU. TERMDAT covers the terminology of the widest possible range of special areas in which the federal administration is engaged. It is continuously updated and developed and several entries were added to it from the former terminology database of the European Commission, Eurodicautom.

It is beyond doubt that multilingual lawmaking requires more effort in terms of staff, financing and time than a monolingual system. However, the federal state and the cantons are bound by the Constitution of Switzerland to provide for this extra expenditure, which they basically comply with. Multilingual lawmaking is not only a practical issue but also a constitutional matter. A multilingual legal order is based on the legal need for the unity of legal order. Legal security would be significantly reduced by omitting revision and feedback from the translation process, since divergences of legal relevance would emerge.

“We will draft your legislation in a manner that is legally sound, clear, comprehensive and responsive to your needs and, in particular, we will propose solutions to any legal and drafting problems that may arise in the course of drafting.

We will draft your legislation in a manner that is respectful of the rules and spirit of each Official Language and of the Common Law and Civil Law systems.”

(Legislation Deskbook of Canada)

On the whole, the quality assurance in language issues in the Swiss legislation is of high quality and there is extensive communication between those concerned. However, Italian language versions are prepared independent of the usual drafting process on the federal level, usually by the Italian section of the Chancery, so the actual ‘democratic’ control is lacking in these language versions. This may give rise to constitutional concerns, since this version is not scrutinised sufficiently in the parliamentary procedure either. This would lead one to the conclusion that the Swiss federal legislative process is in practice a bilingual one.

5.4. Canada

Canada has a special status as far as multilingual legal drafting is concerned. This specialty is due to the fact that Canada is not only a bilingual but also a bijural country, meaning that two legal systems co-exist in it. The legal duality of the Canadian system is due to the different private law traditions in the country: civil law in Quebec and common law in all other parts of Canada. The federal legislation therefore needs to take into account the provincial private law

rules, concepts and institutions linked to the two different legal systems when expressing federal legal rules in the field of private law in both official languages.⁸⁹

As such, the only field affected both by bijuralism and bilingualism is private law at federal level in Canada. Other fields of law regulated at federal level are bilingual but without the effects of bijuralism. In addition, the provinces of Canada are not all bilingual, some being bilingual, some others monolingual. Bilingual provinces follow various drafting approaches, while drafting at federal level is centralised.

Quebec, Manitoba, New Brunswick, and the Northwest Territories are bilingual jurisdictions, and statutes and regulations are published in both official languages. The Yukon is not fully bilingual, but statutes and regulations are published in both official languages. Nunavut is a bilingual jurisdiction and, in addition, Inuktitut translations of bills are produced for the House of Representatives. In Ontario, all bills and selected regulations are produced in both official languages. In Saskatchewan, approximately 10 % of the acts are in bilingual format, with the rest available in English only. Nova Scotia is a monolingual English jurisdiction. Alberta, British Columbia, Newfoundland and Labrador are monolingual; legislation in these provinces is available in English only.⁹⁰

As regards federal statutes and regulations, all these must be published in both official languages, and both language versions are equally authoritative. In most bilingual jurisdictions, a text is prepared in one language, namely English, except for Quebec, where the original version is drafted in French, and translated into English. Exceptions are New Brunswick, where the two versions are co-drafted by two legislative solicitors (draftspersons), the Yukon, where the drafting of the French text often begins before the English text is completed, and Ottawa, which has a special co-drafting system.

At federal level, it is the Department of Justice that is responsible for drafting. According to the Statutory Instruments Act of 1970, all proposed federal regulations shall be scrutinised by the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice. Regulations drafted in various departments in charge of them are examined by the Legislative Services Branch. Many regulations are not only examined, but also drafted by the Branch.⁹¹ For this reason the examination function was extended to include complete drafting services.⁹²

The Legislative Services Branch is headed by the Chief Legislative Counsel, and its responsibilities include drafting all government bills and amendments, reviewing and drafting regulations, harmonising federal legislation with the civil law of Quebec, and updating, consolidating and publishing federal statutes and regulations and related tables.

In the Legislative Services Branch of the federal Department of Justice, co-drafting is the standard with some exceptions. Occasionally, depending on the subject and the particular individual's expertise, a draftsperson in the Regulations Sections may prepare both language versions with the assistance of the linguistic revisers, who are professional translators. In the

⁸⁹ *Bilingual and Bijural Legislative Drafting of Federal Legislation*, p. 2

⁹⁰ *National Survey of Legislative Drafting Services*, p. 59

⁹¹ *Bilingual and Bijural Legislative Drafting of Federal Legislation*, p. 1

⁹² MacCormick—Keyes, p. 4

Headquarters Legislation Section, both language versions are prepared independently by pairs of legislative draftspersons who are responsible *in persona* for their respective versions. The two versions are often prepared simultaneously, but a variety of methods may be employed, depending on the draftspersons' working styles and respective workload. The same is true for the Regulations Sections, although simultaneous co-drafting is not so common. In both cases, the two language versions must correspond to each other in substance and legal effect, and they are therefore closely compared. Comparison is generally made at the end of the drafting process in the case of bills, and occasionally throughout the process, in the case of regulations.

Bills and regulations drafted by the Branch in both official languages should reflect both the civil law and the common law systems. Each of the two draftspersons ultimately has their own responsibility for the version of the bill or regulation in the language of their expertise. Texts are edited and submitted to 'jurilinguistic' revisers for linguistic review of both language versions of the bills and regulations (monolingual revision), and for comparison of the two versions for consistency (comparative revision). Bills, but not the regulations, are also reviewed by a senior draftsperson. In addition, bills and regulations are reviewed by specialists to ensure that bijuralism issues, if any, have been properly resolved.⁹³ The involvement of jurilinguists is considered to be the key factor of the system through the support they give to the draftspersons in terms of terminology, style and drafting generally, in the case of each legislative and regulatory document.⁹⁴ They have to ensure that the meanings and effects of the two versions of the text correspond. Although the drafting system is based on individual co-drafting, where each draftsperson drafts in their own language, efforts are made to enhance the bilingual capacity of the draftspersons so that both are able to compare the two versions.

A special feature of legislative drafting in Canada is that texts are not drafted by departments responsible for the question but by professional draftspersons, who work on the basis of instructions received from the project officers of these departments. Such instructions are ordinarily the products of numerous consultations with groups of the public affected by the legislative proposal. When project officers are briefed on the policy and prepare draft instructions, they have the support of their department's legal services and experts. Draftspersons therefore expect to receive clear and precise instructions so that they are able to draft a legislation that will convey the department's objectives.⁹⁵ Moreover, this practice shows that when drafting from instructions, draftspersons generally have a much greater control over the wording of the legislation. They also tend to play a more significant role in the fine-tuning, if not the development of the policy underlying the legislation. Offices whose role is to review the legislation already drafted generally face major resistance in suggesting legislative language choices and play a role that is more akin to editing than drafting.⁹⁶

The Legislative Services Branch has made major efforts to accomplish its responsibilities for the harmonisation of federal legislation with the civil law of Quebec. In its *Policy for*

⁹³ *National Survey of Legislative Drafting Services*, p. 51

⁹⁴ *Status Report 2002–2003*

⁹⁵ Roy, p. 3

⁹⁶ MacCormick—Keyes, p. 10

Applying the Civil Code of Quebec to federal government activities of 1993, it expressed its commitment to the adaptation of the federal legislation to the new Civil Code of Quebec of 1994. The Department of Justice reinforced this commitment in 1995 in a new policy document called *Policy on Legislative Bijuralism*, which makes it clear that statutes and regulations involving private law shall be drafted using the bijural system.

Federal public law is bilingual but not bijural in Canada. According to the Canadian Constitution, regulations and orders of a legislative nature that are made by or with the approval of government must be passed, printed and published in both official languages. This requirement was also included in the Official Languages Act of 1988.

In its Status Report 2002-2003 (Implementation of Section 41 of the Official Languages Act), the Legislative Services Branch lists the principal measures and outputs of the above-mentioned period. Among the objectives, we can find measures aiming at rationalising the drafting system by providing greater support for legislative and regulatory draftspersons by offering them the necessary resources and by expanding and rationalising the jurilinguistic services (monolingual jurilinguistic revision and comparative revision) made available to them. Efforts were made to strengthen French since it was considered the weaker language at the level of federal legislation. Initiatives for simplification were introduced on the French side by developing formulae and simple, concise and authentically French models that later led to a number of innovations on the English side. Another well-defined objective of the Branch was to involve jurilinguists in the concrete drafting process at the earliest phase possible by integrating them into the team responsible for implementing the programme to harmonise federal legislation with the civil law of the province of Quebec. Thus, the jurilinguist service made a key contribution to the development in both official languages of bijural federal legislation that is harmonised with the private law of the provinces. It is consulted regularly by the harmonisation teams on jurilinguistic problems raised by the juxtaposition of concepts from Canada's two legal cultures. Together with the comparative law team, it examines ways to ensure that the solutions applied to problems of harmonisation are of the highest possible quality in terms of law and language. Its participation in the Bijural Drafting Committees of legislative and regulatory draftspersons from the four audiences for federal legislation ensures that it is informed of the results of the research underway and can intervene upstream, often even before a proposal is drafted.⁹⁷

Adequate training of drafting officers is also a key element of the efficient functioning of a drafting system, especially if it is bilingual and partly bijural. At the Legislative Services Branch, initial training is provided by way of an orientation programme, covering not only the Branch but the Department as a whole. The Branch also provides more specialised training to draftspersons and, as part of an outreach programme, training on legislative process to those involved in the process elsewhere in the Department or in other Departments.⁹⁸

Another precondition of good quality drafts is to have fixed drafting standards and policies in order to bring coherence and consistency to the legislative system. In Canada, there are several drafting manuals and guides. The Legislative Drafting Conventions developed by the

⁹⁷ *Status Report 2002-2003*

⁹⁸ MacCormick—Keyes, p. 7

Uniform Law Conference of Canada are notable examples of such kind of manuals. There are other general instructions to draftspersons which are often consolidated.⁹⁹ They might be given a greater force by being adopted by the Government, as with the general Directive on lawmaking issued by the Canadian Cabinet in 1999.

Drafting bills at government level differs from drafting bills introduced by senators or MPs. The former are drafted by the parliamentary counsel in the Office of the Law Clerk and Parliamentary Counsel of the Senate or the Office of the Law Clerk and Parliamentary Counsel of the House of Commons.¹⁰⁰ Bills drafted at the Senate and House of Commons are requested by MPs or senators. The documents (request and instructions) submitted are generally provided in one official language only, according to the choice of the person making the request. The level of detail given in the instructions varies. Some instructions are very detailed, some are rather vague. The parliamentary counsel drafts the bill on the basis of the instructions and, in case further clarifications are needed, he contacts the MP or senator or their assistants.¹⁰¹ Unlike government bills, such bills are not co-drafted, and the version of the bill is submitted in the official language chosen by the senator or MP. The original version is then translated by a team of legal translators.¹⁰²

Problems linked to bijuralism are twofold. First, they are due to the fact that common law was established in English, while civil law uses French. Secondly, the two legal systems have a different approach to private law, and they operate under diverging concepts, traditions and institutions which are sometimes difficult or even impossible to reflect in the other language.

This interaction between systems and languages can be spotted in three respects in Canada, one being to produce in French common law originally drafted in English, the other to produce in English civil law originally drafted in French, and the third to produce federal legislation in both languages.

Expressing common law concepts in French and civil law concepts in English, or expressing concepts in federal legislation which must be read together with provincial legislation of both legal systems, cannot be achieved successfully without a conscious standardisation of terminology, i.e., finding or creating French equivalents for common law concepts and English equivalents for civil law concepts. The Department of Justice launched a programme called *PAJLO*¹⁰³ in 1981 which devoted an important part of its resources to the standardisation of common law terminology in French.¹⁰⁴ The standardisation process was led by a technical group of legal experts: jurilinguists, representatives of federal and provincial authorities, researchers and law professors who decided on each term following an in-depth analysis and discussion in order to find the most adequate equivalent. As a result of their work, some 700 legal terms were finalised.¹⁰⁵ Standardisation was based on two principles, legal legitimacy and linguistic legitimacy. The former means that the integrity of the classification and notional

⁹⁹ MacCormick — Keyes, p. 8

¹⁰⁰ Roy, p. 2

¹⁰¹ Roy, p. 3

¹⁰² Roy, p. 7

¹⁰³ *Programme national de l'administration de la justice dans les deux langues officielles*

¹⁰⁴ Blais, p. 2

¹⁰⁵ Blais, p. 2

system of the common law must be respected: concepts of the common law system should not find a functional equivalent in the civil law system, but should have an equivalent in French which reflects their specific common law nature. Concepts of common law should only be interpreted within the net of concepts of this system.¹⁰⁶ Linguistic legitimacy means that the terms must fit the general syntactic and stylistic rules of French language. As a result of this work, the *Vocabulaire de la Common Law* has been published since the end of the 70's in six volumes. In the 90's, the axis of the terminology work shifted to academic centres. The Moncton Center of Legal Translation and Terminology (*Centre de traduction et de terminologie juridiques de Moncton, CTTJ*), the Ottawa Centre of Legal Translation and Documentation (*Centre de traduction et de documentation juridiques d'Ottawa, CTDJ*) and the Institut Joseph-Dubuc de Winnipeg continued the work started under the auspices of *PAJLO*.

The CTTJ made major efforts in developing the so-called *C.L.E.F. (Common Law en Français)*. C.L.E.F. is a system-linked terminology which can only be assessed in the context of common law. The aim of the creators of the *C.L.E.F.* was to ensure that common law is readable in French and in English alike. Approved terms are uploaded into a database called *JURITERM*¹⁰⁷ which has a free version and an integrated version for subscribers. The terminology databank comprises some 13 000 entries today.¹⁰⁸ The Centre also created a legal dictionary of more than 2300 pages, the *Juridictionnaire—Recueil des difficultés et des ressources du français juridique*. *JURITERM* is a database containing the results of the ongoing research of the Centre in developing French vocabulary for Canadian common law, particularly in the fields of private law (property, contracts, torts, trusts, corporate law, mortgages, wills, leases, family law) and adjective (procedural) law (civil procedure, evidence, judicature). A great many of the recommendations it contains in the areas of private law stem from collaborative efforts on a national scale to standardise the French vocabulary of the common law. However, as most matters of private law fall mainly under provincial jurisdiction under the Canadian Constitution and little legislation at the federal level deals with private law, the impact of *JURITERM* and the work undertaken by the CTTJ on federal legislation is much less than on provincial legislation and municipal by-laws.¹⁰⁹ Although the use of *JURITERM* is not recommended officially either at provincial or at federal level, draftspersons at both levels do consult *JURITERM* constantly.

The work of the CTTJ is supported and its results are utilised by the Department of Justice. In 2003, the Department of Justice launched a new programme in order to continue along the line established by *PAJLO* and the subsequent terminology work done by the above university centres. The Department of Justice, at the same time, enhanced its involvement in the standardisation of terminology

¹⁰⁶ Snow, p. 187

¹⁰⁷ <http://sabik.umcm.ca/cttj/juriterm.dll/EXEC>

¹⁰⁸ Snow, p. 188

¹⁰⁹ Interview with Gerard Snow, Director of the CTTJ

5.5. Multilingual countries—The lessons

Multilingual drafting is a well-established practice in countries which, for reasons of having several official languages, are bound to legislate in these languages by producing equally authentic texts. Although these countries are mainly bi- and trilingual and thus just have to manage drafting in two or three languages only in comparison to the European Union, which has to produce official texts in 23 languages, the methods, practices, and institutional solutions these countries gradually introduced might serve as a basis for further consideration for the EU when it comes to adjust or reform its multilingual drafting system.

It must be noted that the multilingual lawmaking systems in the countries studied (Belgium, Malta, Switzerland, Canada) are all in constant evolution and are altered when needed on the basis of experiences. As these countries work with a limited number of languages, their endeavour to achieve real co-drafting or at least co-editing of texts is an objective that might be efficiently achieved in practice with two or three languages but would not necessarily be manageable with 23 languages.¹¹⁰ It would hence be impossible to transplant certain aspects of multilingual drafting systems directly into the drafting system of the EU. In line with the previous statement, the requirement that those in charge of drafting should be able to draft or at least revise legal texts in all official languages concerned, which might be (but is still not always) the case in a bilingual country, is not practicable in the EU context, either.

However, all of the systems studied have institutional solutions or working methods that might be (even if not entirely) seen as an inspiration source for the European model. Some of these elements can already be found in the current European system, but they might be offered a more dominant role.

The conclusions learnt from the study of the above multilingual legal systems are the following.

a) No unnecessary interaction between the languages

All multilingual lawmaking systems recognised the importance of producing legal texts which are free from any detrimental linguistic effects of the other language version, mainly the language version which was historically the dominant legal and administrative language (French in Belgium, English at federal level in Canada and German in Switzerland). Nowadays, all these systems have an express wish to have drafting rules ensuring the observation of the linguistic and structural specificities of all official languages and the avoidance of a word-by-word translation. That objective is followed by the European legislator, too, but a large number of comments received from various actors highlighted difficulties that some languages face because of the syntactic and overall linguistic impact of the original language or of standard text formats to be followed.

¹¹⁰ Gallas, p. 123

b) A central body with advisory and control functions

In Belgium, the Council of State is entrusted with checking the readability of draft laws with the purpose of eliminating the complexity and obscurity of legal texts in both drafting languages and to ensure compliance between language versions. The Council of State is also responsible for issuing manuals on drafting techniques. A similar centralisation for reviewing the drafting quality of texts is already present in the EU system as the Legal Service of the Commission is commenting on all drafts. Its review, however, concerns the original text only. Other official language versions are checked, in the case of acts to be adopted, by the Commission itself only. Legislative proposals (COM documents) are not legally revised; only the original text is examined. It is true that these proposals still undergo complex changes during the legislative procedure and are to be legally revised by the two legislating institutions, but a legal revision of draft proposal would certainly enhance the quality of the draft text also in versions other than the original language version. It must, however, be noted that, at present, the Legal Service is definitely lacking staff to be able to examine all proposals in all language versions.

c) Separating policy questions and drafting

A special feature of drafting legislation in Canada is that texts are not drafted by departments responsible for the subject matter but by professional draftspersons who work on the basis of instructions received from the project officers of these departments. Drafting takes place either at the relevant Ministry or, and this happens to be a mainstream tendency, at the Legislative Services Branch of the Justice Department. The practice of Canada shows that draftspersons generally have a much greater control over the wording of legislation when following drafting instructions than when they are just reviewing them. Under the current system at the European Commission, drafting remains the competence of the Directorate General responsible for the subject area. Drafters are not professional draftspersons but policy officers who are experts in the field concerned and, in the majority of the cases, they are not native speakers of the drafting language, either. Several comments received in the research phase of this study suggested intervention in the drafting phase of proposals by involving translators in the drafting/editing process or by providing a more detailed in-depth formation to the staff of the DG's. The Canadian practice of separating policy issues and drafting work could be considered at a European level, too. Setting up a team of professional draftspersons and entrusting them with the drafting of legal texts and limiting the role of experts to providing these draftspersons with instructions only might contribute to quality lawmaking. This approach can be combined with the Swiss model of having a drafting team which, in the European context, could be translated into a team consisting of, for example, a professional draftsperson, a draftsperson who is a native speaker of the original language, and the expert responsible for the field concerned and giving drafting instructions.

d) Terminology

Ensuring consistent and consequent legal and technical terminology at European level is an objective which is pursued by all European institutions. Merging their respective databases into a single common terminology database was a major step by the European institutions in

further enhancing the linguistic consistency of legal texts at a European level. As far as terminology issues are concerned, the only multilingual country that can offer a possible model is Canada, as this is the only country that has to legislate at federal level in a state where not only two languages but two legal systems cohabit in the field of private law. Legal terminology of federal legislation must be read in combination with both systems and their legal languages. The challenges the EU is facing now are similar, even if European law must coexist not with two but with 27 legal systems, and 27 legal languages expressed through 23 natural languages. And it concerns not only the field of private law but all fields of law over which the EU has competence to legislate. The method, however, with which the *C.L.E.F.* was established might be worth being studied. The systematic development of *C.L.E.F.* was facilitated by universities and research institutions of Canada, with the support of the Justice Department. Numerous legal dictionaries were also compiled by academics. A similar attempt was made by the European Commission in the field of contract law by endorsing the setting up of a Common Frame of Reference by academics and by supporting research projects like the Legal Taxonomy Syllabus for private law. The Commission could consider to make further use of these academic works when tabling new proposals and to further enhance research in this field.

6. Implications affecting EU languages

6.1. Legal translation vs multilingual drafting

The interplay between the EU and the underlying national languages and cultures and thus the contribution of the latter to the former and, vice versa, the impact the former bears on the latter, is well reflected by the process of translation.

Legal translation is a special form of translation where linguistic signs are closely related to the legal systems to which they originally belong. Similar legal institutions of legal systems might undergo a different evolution under different cultural influences and therefore do not always fully correspond to each other.¹¹¹ Such kind of legal concepts might be false friends for translators. Some academics assume that the relationship between concepts and terms in legal languages is so intimate that translation of legal texts is practically impossible.¹¹² However, the translation of legal texts or the drafting of legal texts in several languages is an everyday reality for translators and draftspersons who have to cope with the difficulties of legal translation. Translators of legal texts have to find such functional equivalents of concepts of the source language in the target language that would prevent readers of the target language from being misled by the meaning of the text. It means that the translations should also reflect that equivalence between the concepts concerned is not absolute or that there may be no equivalent phrase in the target language at all. Translation of legal texts is not a mere translation from one language into another but also that of one legal system into another.¹¹³ Translation of legal texts therefore requires the interpretation of the legal systems concerned.

“The specific problems of the translation of legal terminology are caused by the system-specificity of the legal language. This system-specificity has as a consequence that within a single language there is not only one legal language, as, for instance, there is a single chemical, economic or medical language within a certain language. A language has as many legal languages as there are systems using this language as a legal language.”

(DE GROOT—VAN LAER:
The dubious quality of
legal dictionaries)

Translation studies (in French, *traductologie*) make a clear distinction between the translation of legal texts and the drafting of legal texts in several languages and would treat them in a

¹¹¹ Krajnc, p. 36

¹¹² Sacco, p. 171

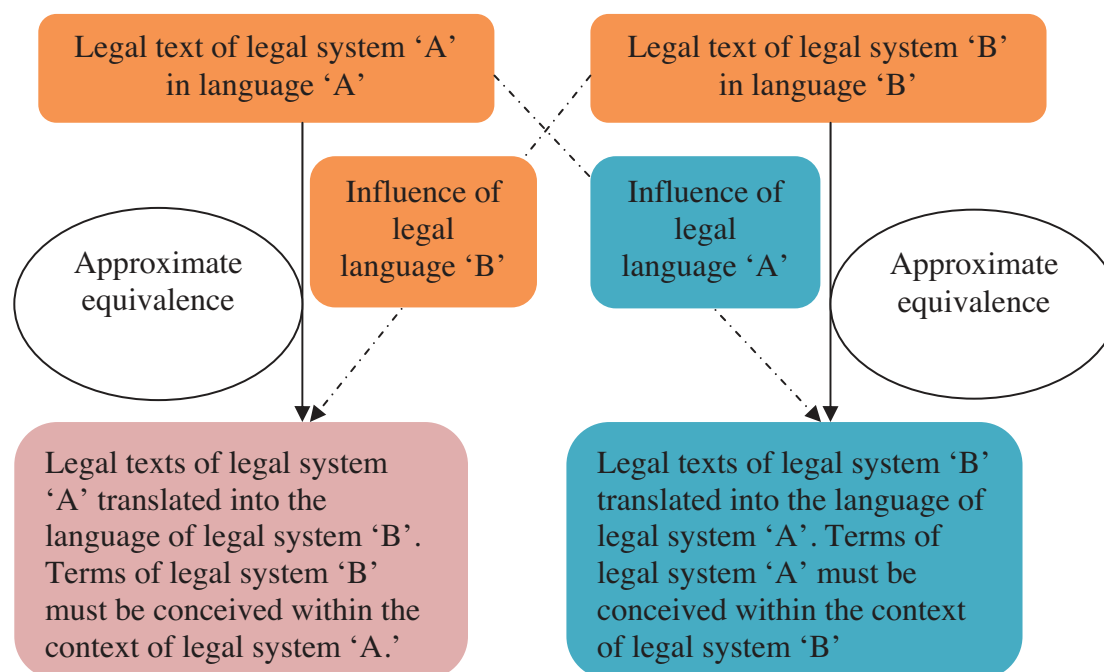
¹¹³ Gémar, p. 119

different way.¹¹⁴ However, the legal systems based on bi- or multilingual drafting must often resort to traditional methods of legal translation as there might be phases in the drafting process which consist of translation only.

For the purposes of this study, we are going to demonstrate the possible differences and similarities between the different forms of legal translation and multilingual drafting.

6.1.1. Two legal systems with different languages

Figure 13. Legal translation between two legal systems with different languages



Translating a legal text created in the framework of a given legal system into a language which is used by another legal system (or, eventually, by several other legal systems) is the typical case in legal translation. Its purpose is usually to disseminate information about a legal system in foreign languages or when contracts should be signed by individuals/entities of different nationalities. This kind of a legal translation is characterised by the legal terms of the target legal language being used to express concepts of the source legal system. In that context, the terms of the target legal language could lose their natural meaning, which is linked to the legal system in which they were originally used. Information contained in the terminology of the source language legal system must be represented by the terminology of the target language legal system. The problem is that even the most commonplace legal terms, like 'contract' or 'marriage', which are easy to translate at a vocabulary level, may convey a different content in another legal system due to the respective regulatory framework or the legal traditions of the other system (system-specificity of legal language).¹¹⁵ Translators of legal

¹¹⁴ Sacco, p. 164

¹¹⁵ De Groot—van Laer, p. 176

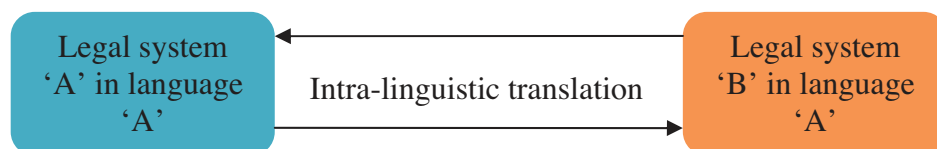
terminology should be experienced in comparative law. However, the influence of the legal system of the target language cannot be completely neglected even if the terms used must be conceived in a different context. The risk of potential distortions entails that only an approximate equivalence can be achieved in many cases.

A further subcategory of this kind of a translation is when the target language is used by several legal systems with a slightly different terminology. In such a case, one target-language legal system must be chosen¹¹⁶ in order to find the adequate point of orientation.

6.1.2. Several legal systems using the same language

It may occur that the same language is used by several legal systems, and thus different legal concepts are expressed by way of the same natural language (e.g., English is used by the English, Scottish, Irish and Maltese legal systems, French is used by the Belgian, the French and the Luxembourgish legal systems and German is used by the Austrian and the German legal systems in the EU). They might use different legal terms for the same concept or the same legal term used may convey a different meaning in the other system. In order to comprehend each other's legal system, a mere proficiency in the other language is not always enough, and the explication of the underlying content might be necessary. This kind of exercise is often called intra-linguistic translation.

Figure 14. Intra-linguistic translation

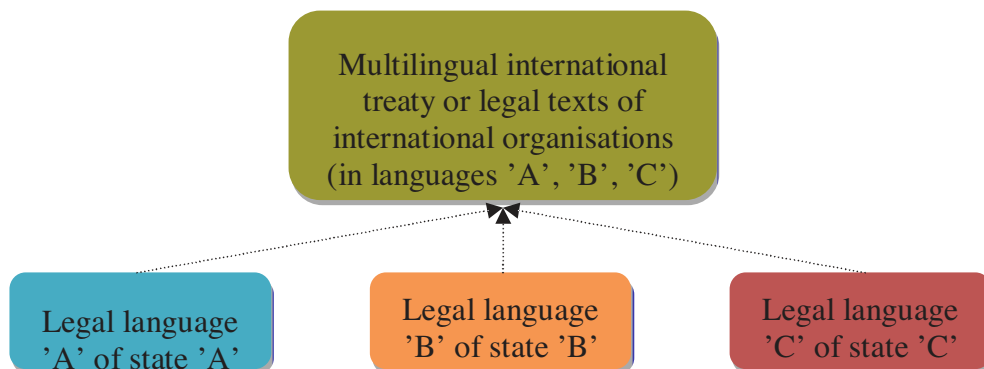


6.1.3. International treaties

The issue of translating legal texts in a multilingual context also arises in cases where international treaties are equally authentic in several languages or in the case of legal documents issued by international organisations which have more than one official language. In such cases, we do not speak about the translation of legal texts anymore but it is parallel drafting of equally authentic texts, even if drafting sometimes takes the form of translation.

¹¹⁶ De Groot—van Laer, p. 175

Figure 15. Drafting of international treaties



In the case of international treaties drafted in several equally authentic languages, a similar constraint occurs as in the case of the EU law: terms used in the legal text must bear the same meaning in each language version.¹¹⁷ However, it is hard to dissociate the original legal content of the terms from that used in the context of the international treaty.¹¹⁸ Thus, the original legal meaning has by its very nature a moderate influence on the intrinsic value of the terms. International treaties do take this influence into account when they often refer to the obligation to interpret the treaty provisions in an autonomous manner. The Vienna

Convention on the law of the treaties also lays down in its Article 31 that “*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*” However, the guidance given by the Vienna Convention might be problematic if the wording of treaties is the outcome of difficult compromises achieved through lengthy negotiations¹¹⁹. In addition, Article 33(3) clearly stipulates that the terms of the treaty are presumed to have the same meaning in each authentic text.

“Because the difficulty of expressing legal concepts in several languages simultaneously exists no less for a treaty than for any other type of multilingual instrument, differences in meaning between different authentic language versions of a treaty are not only possible, but inevitable.”

(KUNER: The Interpretation of Multilingual Treaties: Comparison of Texts versus the Presumption of Similar Meaning)

The difference between the multilingual nature of international treaties and EU acts is that the former are more self-contained at the level of national law, even if they are directly taken over into it or sometimes prevail over it, while EU law directly enters into the national legal systems in almost all fields of law.

¹¹⁷ Marletta, p. 229

¹¹⁸ The term *reasonable* used in the Vienna Convention on the Sale of Goods for deadlines was interpreted in a different way by German and Austrian judges according to their respective national practices (see Sándor—Vékás: *Nemzetközi adásvétel*, HVG-Orac, Budapest, 2005, p. 240)

¹¹⁹ Sacchetto, p. 208

Moreover, as EU law extends to cover almost all fields of law, albeit to a different extent, legal languages are duplicated whereby each legal language expressed by the same natural language must be construed respectively in its own context. Another specific aspect of EU law is that it cannot be separated from the national legal systems since, with regard to directly applicable regulations, it directly becomes part of the national law. This feature makes the interaction between the national legal languages and the EU language more complicated. As such, EU law actually takes over the attributes of domestic law and should be drafted as such and not like international treaties.¹²⁰

6.2. Special features of EU law

When translating EU law, one must take into account its special features. The main characteristics of EU law are explained below.

6.2.1. Growing technicality

Subsequent amendments of the founding treaties resulted in the continuous extension of the legislative competences of the EU. It means that EU law entered into the majority of legislative areas, including very technical ones like agriculture, medicine, technical specifications of products, etc. The technical terminology of such areas is very rigid and specific, e.g., the denominations of chemical substances or animal diseases should not differ in the national law and in the EU law. In such areas, technical terms may not be treated in the same way as legal terms even if their being used in legal texts confers a legal value on them.

6.2.2. Product of compromises

EU law is often the product of compromises which is usually reflected in its wording. It is sometimes due to the fact that those who participate in the legislative process have an interest in developing a wording which is rather motivated politically than linguistically.¹²¹ Some replies given to our questionnaires refer to the vague and rather generalising nature of EU law, which often leads to translation and, later, interpretation problems.

Some typical vague expressions which often do not have a concrete meaning, like *promote, foster, encourage, support, strengthen, facilitate, manage, take place, proceed to*, resulted in artificial constructions, and syntax and grammar problems in certain languages.

The fact that EU legal texts are often drafted as a result of political compromises leaves one helpless over the meaning of certain concepts which are sometimes expressed by slightly differing terms in a text without making clear distinction between them. In such cases, translators of EU texts are unaware why several words are used to denote one and the same

¹²⁰ Gallas, p. 122

¹²¹ Schilling, p. 50

concept in the original version and therefore do not know if these words should be translated in a different way.

One example is the context of emission trading under the Kyoto Protocol and under the EU European Trading System (ETS), respectively, where the same concept is called *deletion* [of assigned amount units] in the Kyoto system and *cancellation* [of allowances] in the ETS, or *retirement* in the Kyoto system and *surrender* in the ETS.

Similar difficulties arise when an EU concept is redefined for political reasons; it becomes larger or narrower than before and this semantic change is reflected in the choice of the terms. Translators who are not always informed about conceptual changes must realise and then reflect this change in wording. This might, however, cause difficulties in cases where the newly created term is somewhat artificial and is difficult to or cannot be properly translated into the target language.

Recently (COM(2008)49 final), the word *care* was proposed to be removed from the term *hair care product* so that a wider range of products be covered by the definition but it resulted in an artificially created phrase leading to translation problems or artificial translations.

6.2.3. Special EU terminology

The special EU terminology requires the creation of new terms in the official languages of the EU. Some of these new linguistic constructions would sound artificial but they are taken over by the respective language community as special EU vocabulary (e.g., *comitology*, *communitarisation*, *public undertaking advocate general*) in the course of time. Problems related to the perception of artificially created terms might be detected mainly with administrative concepts, institutions, and processes linked to the functioning of the EU.

Terms to express special EU vocabulary can be created by the following ways in national languages.

a) *Neologism*

Neologism is the artificial creation of a new term. It might be useful if the specific nature of an EU term should be reflected at the linguistic level. One can distinguish between two forms of neologisms: morphological neologism and semantic neologism.¹²² Morphological neologism is created according to word-formation patterns already existing in a language. Such words usually consist of familiar morphemes and are created through affixation, compounding or shortening. Semantic neologisms, on the other hand, try to reflect the meaning of the concept by using already existing words and thereby creating a new term.

¹²² Didier, p. 39

In Portuguese, the term *perceria registada* is a newly created EU specific term for 'registered partnership'. It was invented in order to distinguish it from the similar national concept expressed by the term *união de facto*.

b) Semantic innovation

In the case of semantic innovation, already existing words of the target language are given a new, additional meaning used in the EU context only. In such cases, it must be made clear that the new meaning is relevant in the EU context only and the content of the meaning (i.e., the difference as related to the original meaning of the term) must be reflected. Therefore semantic innovation can be used especially when the EU act itself provides a definition for the term.

In most languages, the term meaning 'notification' is used in the EU context in a much wider sense than at national level. Similarly, the terms *accessibility* or *transferability* and their equivalents in the official languages gained an additional, specific European meaning.

c) Calques

A calque is a word-by-word translation of certain terms or collocations (mirror translation) which might sound strange in the target language but is often capable of expressing subtle semantic nuances.

Autonomous concepts of EU law expressed by autonomous term (*conformity assessment, type approval*) are often calqued from the original language into the other official languages.

d) Transliteration of foreign words

When certain terms are not translatable or the translator decides to leave them in their original form for other reasons, he can choose to transliterate them in order to adapt them to the target language.¹²³ It is the task of the translators and legal revisers to find the most appropriate solution in each case: a solution that can be best integrated in the target language.

The Maltese language opted for the use of the transliterated version of the term *approximation* (*aprossimazzjoni*) in order to express 'approximation of laws' instead of using the term *tqarrib*, which is similar in meaning, because the former one was considered more adequate and identifiable in an EU context.

¹²³ E.g., the word *dumping* is taken over by the majority of EU languages according to their own spelling rules.

6.2.4. How to express EU concepts?

The translation of each term requires a different approach and the translator must find the most suitable solution in every case. There are, however, some general principles and rules worth being followed.

In order to be able to express EU concepts at the linguistic level, translators must be cautious in using national terms and sometimes even have to avoid using them. What the EU legislator usually has in mind is the legal system corresponding to their native country, and will revert to the terminology to which they are used without being aware of the difficulties this may give rise to in another normative context. This problem is particularly acute when EU law is applied by national judges using notions and procedures that belong to their respective judicial systems.¹²⁴ If a concept in the EU legislation should have an autonomous meaning, clearly distinct from the national concepts, this autonomous nature should be reflected at the level of language.

Greek for instance uses the term *προειδοποιητική επιστολή* ('warning letter') for *letter of formal notice* that the Commission may issue under Article 258 TFEU if it considers that a Member State infringed the EU law. Translators of the Commission could have opted to use the term *όχληση* ('reminder, demand letter, summoning, interpellation', *mise en demeure* in French), which refers to a formal notice in Greek legislation demanding that the addressee perform a legal obligation, such as rectifying a problem, paying a sum of money or honouring a contractual commitment, on specific terms and within a specified time, which is thus a similar concept but is still based on national law. The reason for creating an artificial term in Greek was to underline the specific EU nature of this kind of mechanism.

In the case of the Czech language, it was an express will to avoid confusion in state aid matters between the concept of 'public support', which had already been used before accession and 'state aid' under the EU law. For this reason, the latter is called *státní podpora* while the former remained *veřejná podpora*. The same approach was followed in the case of 'state aid' in Lithuanian for the purposes of making a clear distinction between public support in terms of former national legislation and state aid as defined under EU law. In EU documents, 'state aid' is translated as (*valstybės*) *pagalba*, whereas (*valstybės*) *parama* is used for the concept in the national legal context.

¹²⁴ Gallas, p. 127

The same can be seen in the case of other EU-specific concepts, including the concept of ‘undertaking’, where official languages try to systematically avoid the use of terms referring to legal forms of national law, like ‘firm’ or ‘company’.

The English term itself is a literal translation of the French (*entreprise*), German (*Unternehmen*), and Italian (*impresa*) versions, which used to be official languages when the term was created by the Treaty of Rome. Spanish and Portugal also chose literal translation (*empresa* in both cases) and languages that did not opt for literal translation tried to resort to new terms, too, see *vállalkozás* in Hungarian.

Sometimes terms created artificially for expressing specific EU concepts might have difficulties in gaining acceptance at the national level.

In Finnish, the term created for ‘female bovines’ (*naaraspuolinen nauta*) triggered criticism and mockery although the national term used for ‘cows’ (*lehmä*) would have been misleading as it covers cattle only while the EU term intend to embrace buffalos, too, and, eventually, the offspring of the two, beefalos.

Using national legal terms in EU legislation for expressing EU concepts differing from national concepts might have a twofold consequence: (1) the meaning of the term changes in the EU context (semantic innovation) or (2) the term must be corrected and replaced in EU legislative texts. This latter type of erroneous use of national terms could be witnessed, especially in Member States which acceded to the EU later and might have not been aware of the need for conscious use of EU-specific terms when drafting laws where the use of confusing national and EU concepts had to be avoided.

The term ‘sickness insurance’ used to be translated into Polish in EU acts literally (*ubezpieczenie chorobowe*). However, in the Polish social security system, *ubezpieczenie chorobowe* has a specific meaning and refers only to payments in cash. Given the fact that ‘sickness insurance’ also covers benefits in kind in the EU context, the correct term in this context should be *ubezpieczenie zdrowotne*, which embraces these benefits, too.

Changing or replacing erroneous terminology can happen in several ways. If the term is linked to a specific and quite recent act, a corrigendum can be adopted by the institution(s) that issued the act. If, however, the misleading or incorrect terminology was used subsequently, and it would affect several acts, it can only be changed when the acts concerned are codified or recast.

This is the way the Greek term *βίότοπος* used in older acts for the translation of the term *habitat* was replaced by the term *ενδιαίτημα*, or *οχήματα με κινητήρα* used in older acts for the translation of the term *motor vehicles* was substituted by the term *μηχανοκίνητα οχήματα*.

6.2.5. Regulations vs Directives

Secondary legislation of the EU produces different legal effects in a national law depending on the type of the act. And this legal effect has its linguistic consequences, too. Therefore, in what follows, we shall discuss legal effects and linguistic implications of Regulations and Directives, respectively, in detail.

According to Article 288 TFEU, regulations shall have general applicability and shall be binding in their entirety and directly applicable in all Member States. It means that regulations enter into the national legal systems in their own right, without the intervention of the national legislator. They are applied directly by national authorities and jurisdictions according to the wording in they were published in the *Official Journal of the European Union*. Thus, their terms are directly applied and often interpreted at national level. Furthermore, regulations must often be applied in conjunction with national laws and thus there is a close interaction between the wording of regulations and the supplementary or connecting national legislation.

With regard to regulations, Member States often insist on using their national terms in EU acts in order to avoid linguistic interference with the national legislation or the established practice of sectors using a specific terminology. In the case of regulations, the impact of national legal or technical terms on the vocabulary of the regulation is more significant than with directives because the national legislator does not have the possibility of remedying the incorrect terminology in the phase of transposition. Regulations either cohabit with the existing national legislation or, at least, with the legal, and technical terminology used in previously existing national law. This is especially true for technical areas, i.e. agriculture, food law, customs legislation or the technical standards for goods. Here, the use of incorrect (technical) terms might have serious economic or financial consequences.

For this reason the Hungarian version of *Regulation 1234/2007/EC establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products* had to be corrected. The terms *skimmed milk* (*sovány (főlözött) tej*) and *semi-skimmed milk* (*zsírszegény tej*) were translated in the Hungarian version of the Regulation using terms (*főlözött tej* and *félzsíros tej*) that did not correspond to the designations used by the producers and which are known by consumers for the same category of milk products. The use of the terms introduced by the Regulation would have caused an unnecessary extra financial burden for producers and confusion among consumers. Nevertheless, the use of terms differing from those used at the national level was not the intention of the legislator in this case.

Similar practical problems arose in the wine sector in Italy when the former Regulation 337/79/EEC on the common organisation of the wine market used the artificial term *vino (spumante) gassificato* for *aerated sparkling wine* and it was created most probably under the influence of the French drafting language. Wine producers resisted the use of the new name and continued to label their products with the traditionally used nomination, for which sanctions were imposed upon them by the competent authorities for the infringement of the Regulation (Capelli, p. 138). Finally, the term became part of the official EU terminology as it was not changed upon subsequent amendments or replacements of the Regulation (see Regulation 822/87/EEC or Regulation 1493/1999).

A special linguistic interference between national technical terminology and EU terminology used in regulations might occur when certain sectors which were earlier regulated by directives were later regulated by directly applicable regulations. Hence, if the national legislator deviated from the terminology of the directive when implementing it into the national law, and if the regulation follows the wording of the directive, those concerned by the sectoral rules might have difficulties in conforming to the new terminology of the regulation which, moreover, does not have any different or extra meaning with respect to that applied in the former national legislation transposing the repealed directive.¹²⁵

Similar problems could arise if the implementing measures of a directive adopted by the Commission take the form of a regulation. Here one can witness the same sort of interference as above: if the national legislation deviates from the terminology of the directive when implementing it but the regulation sticks to the wording of the directive, there might arise cases where the national implementing measure and the implementing regulation(s) cannot be applied in a parallel way because of the different wording of the acts. This might be even more problematic if the implementing regulations contain standard forms or other templates with fixed wording.¹²⁶

As regulations often apply in conjunction with national laws, the concepts of the regulations must be reflected by a wording that renders this application clear. This vigilance leads in some cases to a distortion of the ‘one word—one underlying concept’ approach, where a term is translated by several terms into one and the same target language.

The term ‘cutting plant’ in the Czech version of Regulation No 853/2004/EC had to be translated using two terms (*bourárna/porcovna*) in order to cover all establishments that fit the definition of the EU concept at the national level. Even technical terms (names of substances, varieties) can be affected by this necessity. Again, the Czech language opted to use two denominations for ‘cherries’ in Regulation No 948/2009/EC: *třešně* and *višně*.

¹²⁵ See, for instance, Regulation 648/2004/EC on detergents replacing Directive 73/404/EEC on detergents (and its amendments)

¹²⁶ See, for instance, Regulation 1564/2005/EC establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC

This constraint, however, might pose difficulties for languages used by more than one Member States, which might have several national equivalents varying according to the national systems. Here opting for using one equivalent would be erroneous, and therefore these languages often use more neutral terms in EU Regulations.

The term ‘long-term care’ in the French version of Regulations No 883/04/EC and Regulation 987/09/EC could not have been translated as *dépendance* because this word has different connotations and meanings in Belgium, Luxembourg and France, respectively. The autonomous nature of the concept therefore had to be reflected in the wording of the Regulation by an artificially created term: *soins de longue durée*.

As opposed to regulations, Article 258 TFEU requires that directives shall be binding regarding the result to be achieved upon each Member State to which they are addressed, but it leaves the choice of form and methods to the national authorities. Because of this, directives must be transposed by national implementing measures into national law. When adopting the national implementing measure, the national legislator has the possibility to transform not

only the legal substance but also the wording of the directive into legal and technical terms better adapted to the national law.

“Von der Richtlinie eingeführte Regelungsansatz erklärt sich nicht selbst. Eine Rekonstruktion des Sinnes der Gemeinschaftsweite Geltung beanspruchenden Regelungselemente erfordert eine europäische Begrifflichkeit, die sich von nationaler Traditionen unabhängig macht...”

(JOERGES: Die Europäisierung des Privatrechts als Rationalisierungsprozess und als Streit der Disziplinen)

Draftspersons and translators are also aware of these characteristics of directives: concepts used in directives are sometimes broader than their national equivalents and this is often reflected at the level of language by using terms different from the one the national legislator finally decides to use in the implementing measure, which is an attempt to refine the broader EU concept in the national context.¹²⁷ In that regard, the national legislator implementing the EU directive and thereby deviating sometimes from its wording proceeds to a sort of intra-linguistic translation.¹²⁸ This is, however, not true when directives use technical terms which must be uniform at the EU and national level. The European legislator must therefore make a conscious linguistic choice when drafting the directive and the national legislator another when implementing it. The advantage of being able to use broad concepts in the case of

directives might at the same time be a disadvantage.¹²⁹

¹²⁷ This is why some academics are of the view that directives, by their very nature, cannot be precise enough (see Campana, p. 13).

¹²⁸ De Groot, p. 156

¹²⁹ Timmermans, p. 45

A typical example of concretising EU concepts is the German implementation of Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises, where the national legislator chose the traditional term *Haustürgeschäft* instead of the one used in the Directive: *außerhalb von Geschäftsräumen geschlossene Verträge*.

In Polish, the term *certificate of conformity* in Directive 2007/46/EC is expressed by an EU-specific term (*świadcstwo zgodności*) which is different and broader than its national equivalent (*wyciąg ze świadectwa homologacji*).

6.3. Contribution to EU languages and cultures

European multilingualism is sometimes blamed for distorting the national languages affected. Distortion, however, could be avoided by a conscious language policy and European multilingualism can contribute in an active and innovative way to the development of national languages.

On the basis of the research undertaken, we can highlight the following factors as positive effects of multilingualism contributing to the development of national languages. Some of these were raised by the replies given to the questionnaires we prepared for the purposes of this study and some were established by us during our research.

6.3.1. Standardisation of technical terminology

A clear contribution of European multilingualism to the development of national languages is that it has triggered a strong trend of standardisation in the technical terminology of official languages. Technical terms of certain fields of law regulated by EU legislation had to be consolidated, sometimes for the first time, in order to ensure their consistent usage in EU legislative acts. This kind of standardisation offered an opportunity to reconcile differing views and approaches of experts on the usage of the appropriate term for a certain concept if several diverging terms were competing. In some languages, the technical terminology did not undergo or would have not undergone such kind of a consolidation without the EU legislation. This kind of standardisation was all the more important in areas where some terms or names (especially animal diseases, notions of aquaculture or fishing in landlocked countries) had to be created for the first time because they were missing from the national language since, in such cases, the very first term created in the technical jargon itself could immediately become the standard. Maltese can be mentioned as a special example benefiting from the EU multilingualism given the fact that part of the technical and legal terminology before Malta's accession to the EU existed in English only and had to be created in Maltese, which resulted in a move ahead from the common language in Maltese to a more specific technical language and thus to the use of new language mechanisms. Thus, a kind of 'corpus planning' started in Malta by developing vocabulary and creating terminology databases that had not existed before.¹³⁰

¹³⁰ Yves, p. 5

6.3.2. Creation of linguistic resources

Multilingual drafting or the translation process contributes to the creation of linguistic resources in national languages. These resources, including terminology databases, translation tools, formatting and drafting requirements in the official languages, are created by EU translators and interpreters in a systematic and comprehensive way. In some Member States, the setting up of such kind of linguistic tools at national level was inspired by the EU experience.

6.3.3. Enrichment of national languages

The most significant contribution of multilingualism to the development of national languages is that it enriches the vocabulary of national languages, especially if the effects of multilingualism are well perceived and integrated into the national language. There are several ways to enrich national languages and in what follows, we shall highlight some of these in the EU context.

a) New EU specific terms

New terms (neologisms) introduced to the national languages by EU legislation enrich the vocabulary of the official languages. Most of these terms intend to cover newly invented concepts of EU law, including names of institutions, mechanisms, procedures and documents. The terms *Advocate General*, *directive*, *ordinary legislative procedure* or the former *co-decision procedure*, *eurozone* and *combined nomenclature* are clear examples of such terms.

A recent example of an EU specific term which actually led to neologism in a number of languages, is the term *flexicurity*. As this term was formed by contracting two existing English terms (*flexibility* and *security*) which is a very creative form of neologism, EU translators faced the challenge of inventing a similarly powerful term (*elastdrošība* in Latvian). However not all languages could find a one-word version to create from merging expressions like *prožna varnost* in Slovenian, *turvaline paidlikkus* in Estonian, or *rugalmas biztonság* in Hungarian, and some equivalents became lengthy translation of the meaning of the concepts (*model elastycznego rynku pracy i bezpieczeństwa socjalnego* in Polish).

Some of these new terms enriching national languages are linked to specific EU areas. In the field of the ‘area of freedom, security and justice’, the special form of judicial cooperation and the establishment of specific EU legal institutions resulted in the creation of new concepts and thus of new terms.

The equivalent of the term ‘expulsion’ in German was created artificially by introducing a new term into the German legal language (*Rückführung*), since the EU concept is broader than the corresponding national legal institution of *Ausweisung* and this difference had to be reflected at the level of language. For the same reasons, the term meaning ‘residence permit’ was not translated into German with the national equivalent of *Aufenthalterlaubniss* or into Hungarian as *tartózkodási engedély*, or into French as *authorisation de séjour* or into Italian as *titolo di soggiorno* but all these languages created new terms which are used only in EU context: *Aufenthaltstitel* in German, *titre de séjour* in French, *titolo di soggiorno* and *tartózkodási jogcím* in Hungarian (which are semantic calques of each other’s versions but not of the English term).

Areas which underwent a technical development recently or which were subject to a new regulatory approach at European level are also affected by the creation of new terms which when becoming part of them may enrich national languages. The introduction of the term *universal services* into national languages is also due to the relevant EU directives.

Official languages all tried to introduce new terms in order to express the specific EU relevance of the concept.¹³¹ The relevant term then became generally accepted and applied by official languages.

The terms *social inclusion*, *synergy*, *low carbon economy* are also examples of new phenomena that had to be regulated and thus named at EU level.

Enrichment of the national language by the gradual introduction of new terms might result in phasing out former functional equivalents in the national language.

This happened in the case of the German translation of the term *type approval* (*Typengenehmigung*) which replaced the national permit (*Betriebserlaubnis*) for vehicles not only at a functional level but at the level of terminology, too.

b) Existing terms gain an EU-specific meaning

Terms related to EU policies and politics may also enrich national languages. Terms like ‘subsidiarity’ existed in the history of almost all national languages but only as technical term generally unknown to the public. However, as the principle of subsidiarity became a central concept of EU policy and lawmaking at the beginning of the 90’s, these national equivalents became more widespread.

Not only terms but also traditional meanings of certain terms can be changed at the European level and the new meaning might become predominant or even exclusive in the course of time. The concept ‘consumer’ covers natural persons only in the European context, while

¹³¹ They are usually calques of the English term. Not an excellent example, in my opinion: "service universel" is an EU compromise on the French concept of "service public" (public utilities in English) (*service universel* (FR), *servizio universale* (IT), *servicio universal* (ES), *Universaldienst* (DE), *universele dienst* (NL), *serviço universal* (PT), *universaliosios paslaugos* (LT), *univerzálné služby* (SK), *egyetemes szolgáltatás* (HU)).

some national laws include legal persons within their ‘consumer’ concept if the latter are acting outside the scope of their respective professional activities. However, the new Directive on consumer rights would not be based on minimum harmonisation and therefore would not allow the extension of the concept at national level, at least not in areas regulated by EU directives. This will inevitably lead to a shift in meaning of the concept of ‘consumer’ at national level, too.

The same effect could be detected in the case of the concept of ‘personal data’ in the UK, where the national concept had a narrower scope than the European one and therefore a new meaning had to be assigned to the term.¹³²

However, languages are enriched only if the newly created terms or terms that received an additional meaning clearly add to the language concerned and do not affect the hardcore of the influenced language from a lexical, grammatical, syntactical or stylistic point of view. In that latter case, one could talk about distortion and not enrichment.

A good example of semantic enrichment can be seen with *citizenship*, introduced by the Treaty on the European Union in the context of ‘citizenship of the European Union’. With the creation of the term, the formerly exclusive link between the state and its citizens was breached by introducing an additional link to the EU. At the level of the official languages, we can find that those Member States which had a reference to the ‘state’ in their expression used for citizenship, would abandon that adjective when the term is used in the context of ‘citizenship of the European Union’. In Czech, for instance, the adjective *státní* (‘state’) is abandoned from the phrase *státní občanství* and the term used for ‘citizenship of the European Union’ is *občanství Evropské Unie*. The same can be seen in the case of the German and the Dutch versions where, instead of *Staatsbürgerschaft*, *Europäische Bürgerschaft* is used and *Europee burgerschap* is used instead of *staatsburgerschap*, respectively. The Danish version is *europaeisk medborgerskab* (and not *staatsborgerskab* which refers to the state). The Hungarian version also abandoned the constituent *állam* (meaning ‘state’) from the term *állampolgárság* and would use *európai polgárság*.

In other language versions, the term used for citizenship in national context and for European citizenship is the same (by adding, of course, the adjective ‘European’). In Estonian, for instance, *kodakondsus* and *Euroopa Liindu kodakondsus*, in Finnish *kansalaisuus* and *Euroopan unionin kansalaisuus*, in French *citoyenneté* and *citoyenneté européenne*, in Latvian *pilsonība* and *ES pilsonība*, in Lithuanian *pilietybė* and *Europos Sąjungos pilietybė*, in Portuguese *cidadania* and *cidadania da União*, in Romanian *cetățenia* and *cetățenia Uniunii*, in Spanish *ciudadanía* and *ciudadanía de la Unión*, in Swedish *medborgarskap* and *europiskt medborgarskap* are used.

¹³² Kilian, pp. 1–12

c) *Abandoned terms reintroduced*

In order to express European concepts, national languages sometimes reintroduce into their language already existing but abandoned terms with a slightly changed meaning. This re-conceptualisation of already existing terms is a useful method of language development because thus the national language is not forced to integrate a new word but is able to make use of one which is already integrated into it. Moreover, there would not be any major confusion as to the meaning of the term because its original meaning has already faded.

The terms *transposição* for ‘transposition’, *implementação* for ‘implementation’ or *parceria registada* for ‘partnership’ are examples in Portuguese of such a revival of old terms.

d) *Old-fashioned terms dismissed*

Drafting of EU texts might offer the opportunity to use a somewhat changed, modern terminology in cases where terms of the national language still reflect the old-fashioned terminology.

The civil law of Latvia, for instance, still uses terms dating from the adoption of the Civil Code of 1937. Some of these terms were not reproduced at EU level but were replaced by new equivalents instead, such as the term *kļūda* for ‘mistake’ at EU level instead of the former Latvian equivalent *maldība*. Some other examples of Latvian terms are *mājlopi* which is used in EU acts for ‘domestic animals’ instead of the Latvian equivalent *mājas kustoņi*, or *apkures sistēma* for ‘heating systems’ instead of *kurināmā ietaise* used by the Latvian national legislation.

6.3.4. Sensitivity towards linguistic issues

The ever growing volume of EU texts, the emergence of new technical terms and the specific linguistic style of these legal acts led in some countries to raise awareness concerning the linguistic quality of drafting in general, both at national and at EU level. Language policy programmes, often approved by the governments, explicitly aim at laying down standard linguistic and drafting rules to be followed when drafting the national legislation and to articulate recommendations for the draftspersons of the EU legislation for the purposes of taking into account some special elements and features of the national language.

6.4. Challenges raised by multilingualism

6.4.1. Words of foreign origin

The use of foreign words or words of foreign origin in EU acts is either due to the influence of the original drafting language or to the effect on the terminology of certain technical areas characterised by some degree of globalisation, which is evident at the level of the technical

jargon, too. Replies to our questionnaires show that almost every language tries to replace foreign words with national equivalents or at least this will be reflected in the language policy of the majority of official languages. However, such attempts are sometimes overruled by the self-evolution of the language, due to the acceptance of the foreign word by the representatives of the sector concerned.¹³³ In such cases, attempts to consolidate the national equivalent are generally of no use because the foreign term is already more recognisable for the target reader than the artificially created national term. Thus, using a native term which was not assimilated in areas where foreign equivalents are already assimilated could lead to confusion and sometimes to the use of an ‘artificial language’. Therefore, most languages allow the use of foreign terms if there are no adequate national equivalents or if the use of these equivalents could be misleading.

The use of the Finnish term *esittely* for ‘demonstration’ in a research context was rejected by the experts in the field, who were in favour of using the term *demonstrointi* which is a transliteration of the Latin term used in English texts. The same applies for the term *biologinen monimuotoisuus*, used until recently in Finnish for ‘biodiversity’ and subsequently replaced by the term *biodiversiteetti*.

The efforts of Polish to make a Polish term (*grona przedsiębiorczości*) accepted for ‘business cluster’ also failed because the loan word *klaster* was already widespread and integrated in the Polish language.

EU translators often seem to be more purist than draftspersons or writers within the national administration.

Within the Austrian and German administration, the terms *Monitoring*, *Governance*, *Follow-up* and *Implementierung* are more frequently used than the terms *Überwachung*, *Staatsführung*, *Folgemaßnahmen* and *Umsetzung* subsequently used by German translators at EU institutions for the same concepts.

The principle of using indigenous terms instead of foreign words was a prevailing practice of newly acceded Member States in the first years after their accession. However, this purist approach governing the drafting of EU texts was often criticised in these countries for being hypercorrect in cases where both indigenous and loan equivalents were used for a certain concept and the loan word was taken over by the everyday language.

This is why the indigenous equivalents of some terms were gradually phased out in Finnish, such as *yhteensovittaminen* for the term ‘coordination’, replaced by *koordinointi*, or the term *kertomus* for the term ‘report’, replaced by *raportti*.

¹³³ This is particularly true in the area of medicine.

The same phenomenon can be witnessed in the case of Latvian, where the general policy in the pre-accession period was to use Latvian equivalents instead of using foreign words with Latvian declination. For instance, the terms, *check*, *control*, *test*, *inspection* and *verification* were often all translated using the Latvian-origin equivalent *pārbaude*. Yet it became evident in the post-accession period that it is necessary to choose different equivalents in order to avoid confusion. Terms of foreign origin like *kontrole*, *tests*, *inspekcija* and *verifikācija* adapted to the rules of Latvian were therefore introduced where appropriate. Another example from Latvian is the term *import/export licence*. It was translated in the pre-accession *acquis* as *ievešanas/izvešanas atļauja* (literally meaning ‘bringing-in/bringing-out permit’), which caused problems when other types of permits, certificates, etc. were mentioned in the same text. Later the translation was changed to *importa/eksporta licence*. The terms ‘harmonisation’ and ‘innovations’ also underwent an adaptation process in Latvian in favour of using the foreign origin terms. ‘Harmonisation’ used to be translated as *saskaņošana* (which is not incorrect), yet it is now translated as *harmonisācija* when the harmonisation of standards is meant and is currently used in Latvian legislation. Another example is the term ‘innovations’ which used to be translated using a Latvian-origin word, *jauninājumi*, yet the general tendency is to use *inovācijas* instead.

There are also cases where the same foreign term is used as a loan word in a certain context and translated in another.

The term *transparency* in Czech is used as *transparentnost* when it covers the principle of transparency but is used as *průhlednost* in all other cases.

In Danish, the term *allocation* is normally used in its Danish version *tildeling*, while, in some technical areas, the transliterated term *allokering* is more widespread.

In Slovenian both *koordinacija* and *usklajevanje* are used for the term *coordination* and both *nadzor* and *kontrola* are used for ‘control’ depending on the context.

However, the use of two different equivalents can lead to inconsistencies, especially where the context of their use is not explicitly defined.

This is how the Dutch national equivalent (*overeenstemming*) of the term *conformity* disappeared in the course of time in favour of the term *conformiteit* which took its place in legal texts.

The gradual phasing out of certain terms can be seen in cases where several equivalents existing for a certain term alternate according to the subject area concerned and one of the equivalents is an assimilated foreign word which takes precedence over the other equivalents in most of the areas in the course of time.

In Latvian, the term ‘products’ had several equivalents in EU acts: *ražojumi* (with a general meaning), *produkti* (for agricultural or food products), *līdzekļi* (for cosmetic products) or *preces* (in relation to customs). Currently, the loan word *produkti* is more often used to refer to the EU relevance. In Latvian, there are other terms which are threatened with being phased out by foreign-born terms, since both have already been integrated into the national language and translators might be tempted to prefer the equivalent which is more similar to the foreign term in its form. The term ‘institution’ might be called as *institūcija* or as *iestāde* according to its synonym of Latvian origin. The term ‘risk’ might either be called *risks* or *apdraudējums*.

Another problem with the translation of some foreign terms is that some of these terms, especially newly created terms, are not easily translatable to other languages or that their translation becomes rather a circumscription, or an explanation much longer than the original word,¹³⁴ and so their being left in their original form often proves to be a wise choice.

There are several ways to integrate foreign words into a language. They might be used in their original form or assimilated to the target language.¹³⁵ Their integration might be total, when the foreign origin of the term disappears, or partial, when the term would keep its original form. In some cases, indigenous terms and foreign terms might co-exist, when one is used in the text and the other is put into brackets.¹³⁶ In other cases, where there are no national equivalents, the target language might keep the foreign word sometimes by putting it into italics.¹³⁷

Some specific EU initiatives and projects do keep their English name for policy reasons in other language versions, too. An example for such initiatives is the *Small Business Act for Europe*.

Monitoring is one of the terms where the potential to be used as a loan word is quite high. The term is used by the EU legislation in a number of areas from agriculture to medicine. It is, at the same time, a ‘new term’ created during the last decades. Here, the different official languages followed different approaches. Some languages offer several alternatives to be used but all of these are indigenous terms, and none of them is a transliteration of the term *monitoring* (ES, ET, HU, LV, SV). Some other languages offer several indigenous alternatives and a transliterated version of the loan word *monitoring* but this latter is only used

¹³⁴ See for instance the Polish translation of ‘flexicurity’ (*model elastycznego rynku pracy i bezpieczeństwa socjalnego*).

¹³⁵ This phenomenon is called *acculturation linguistique et technique* in French. (Krimpas—Bassias, p. 3)

¹³⁶ This is followed in Greek and Polish.

¹³⁷ The terms ‘dumping’, ‘roll-on’, and ‘check-out’ are used in Portuguese in their original form but in italics.

in a subsidiary manner in some well-defined areas, mainly medicine (DA, DE, FR, IT, NL, PT, SL). Another group of languages use the transliterated form of *monitoring* as a full-fledged equivalent of the indigenous term (CS, GA, LT, MT) and the fourth group of languages opted for using the loan word only (with the respective declination) (SK, PL, RO).

Table 1. The term monitoring in EU languages

Language	Term used
BG	<i>контрол, надзор, мониторинг</i>
CS	<i>monitoring, sledování</i>
DA	<i>overvågning, control, tilsyn (monitorering)</i>
DE	<i>Überwachung, Kontrolle, Beobachtung, Verfolgung (Monitoring)</i>
EL	<i>έλεγχος, επιτήρηση, παρακολούθηση</i>
EN	<i>monitoring</i>
ES	<i>control, supervisión, seguimiento, observación, vigilancia</i>
ET	<i>kontroll, uuring, järelevalve</i>
FI	<i>valvonta, tarkkailu</i>
FR	<i>suivi, contrôle, surveillance (monitorage)</i>
GA	<i>monatóireacht, faireachán</i>
HU	<i>figyelemmel kísérés, nyomon követés</i>
IT	<i>sorveglianza, controllo, supervisione (monitoraggio)</i>
LT	<i>monitoringas, kontrolė</i>
LV	<i>ustraudzība</i>
MT	<i>monitaraġġ, sorveljanza</i>
NL	<i>bewaking, toezicht, controle (monitoring)</i>
PL	<i>monitorowanie</i>
PT	<i>controlo, supervisão, vigilância contínua, monitorização</i>
RO	<i>monitorizare</i>
SK	<i>monitorovanie</i>
SL	<i>nadzorovanje, spremljanje, nadzor, monitoring</i>
SV	<i>kontroll, övervakning</i>

Another example of the use of foreign words is the term *subsidiarity*. This expression became part of the core EU terminology with the TEU. Most languages had used their specific term for ‘subsidiarity’ for a long time but in a different context and only rarely. The term was not part of up-to-date legal terminology. This situation changed with the emergence of the principle of subsidiarity in the EU. Most languages use the transliterated form of the term in order to bring it closer to the original version and make it easily recognisable.

The term *benchmark* is also one of the terms which many languages put into everyday use in its original form and most languages faced challenges to find their own equivalents on the one hand and make them accepted on the other hand.

The term was translated, for instance, into Swedish using several equivalents, like *riktmärke*, *riktmärka* or *jämföra*. Despite the efforts made, *benchmark* as a noun is however well established in Swedish. The term *benchmark* is assimilated in the Danish and Dutch language in its original form even if these languages have alternative indigenous equivalents. Other languages however, like the Portuguese, consider their equivalent for benchmark (*referência*) as a positive enrichment of the language.

6.4.2. The impact of the original language

As the EU’s multilingual drafting system is not based on co-drafting but on a system of drafting, translating and legal linguistic revision, the drafting language (source language) can have a significant influence on the vocabulary, terminology, syntax and grammar of other official languages in the translation phase. These effects can be the following:

- a) Difficulty in translating certain terms of the drafting language mainly because they do not have proper equivalents in the target language;
- b) Reciprocal translinguistic lexical attraction¹³⁸ concerning above all target languages belonging to the same language family as the original language;
- c) Syntactic elements, style and compulsory text format of the source language text being adapted to other official languages.

These are explored in detail later in this section.

The source language of legislative drafts of the Commission is usually English. The prominence of English emerged at the end of the 1990’s. Figures show that, while in 1987 the majority of legislative proposals was originally drafted in French (70 %), this fell to 40 % in favour of English at the end of the 1990’s which, at that time, was used as the drafting language in 47 % of the texts.¹³⁹ In 2008, one could already witness the overwhelming dominance of English which was used as the drafting language for 72 % of the documents to

¹³⁸ This expression was taken from Sacco.

¹³⁹ Heynold, p. 7

be translated (including texts other than legal drafts, too), and French became only a second drafting language with 12 % of the documents drafted in that language.¹⁴⁰

Table 2. Source languages at the Commission¹⁴¹

Source language for translation	1997	2004	2008
EN	45 %	62 %	72 %
FR	41 %	26 %	12 %
DE	5 %	3 %	3 %
Other	9 %	9 %	13 %

English as a drafting language of EU texts is however a neutral English, distinct from the common law systems and from the cultural constraints of countries using English as a national language.¹⁴² It is sometimes called a ‘contaminated’ English, bearing the traces of ‘foreign’ influence.¹⁴³ It is however, considered to be more capable of expressing creativity than other EU languages, and to be practical and flexible enough to be the *lingua franca* for the drafting EU texts.¹⁴⁴

One cannot, however, neglect the fact that, for some decades it was not English but French that dominated the drafting of EU texts. During these years, French had had an undeniable influence on all the other official languages,¹⁴⁵ including English. It must also be added that English became official only in 1973 so its Community vocabulary was established mainly on the basis of French texts. Some of the replies given to our questionnaires refer to the poorly formed nature of some EU terms in English which can seem to be the unsuccessful translation of the French version.¹⁴⁶ Thus, even the currently prevailing drafting language developed under the influence of the previous drafting language.

Nowadays, we can see that it is the current original language, English, influencing the former drafting language, French. Most of the new English terms, which are either products of emerging EU policies or of globalisation, do have a French equivalent but they are mainly transliterations or morphological calques.

¹⁴⁰ *Frequently asked questions in the Directorate-General for Translation*, February 2009, 3

¹⁴¹ Source: European Commission statistics

¹⁴² Moréteau, p. 144

¹⁴³ Gudgeis, p. 115, and replies given by the Irish Terminology Council to our questionnaire according to which English terminology of EU texts is uneven, often poorly formed, mistranslated and sometimes misspelled.

¹⁴⁴ Gudgeis, p. 115, Moréteau, p. 156

¹⁴⁵ Replies given by the Greek translators to our questionnaire highlight the influence of French as the former drafting language on the current Greek EU vocabulary.

¹⁴⁶ For instance, a linguistically incorrect term: *activity planification* was created under the influence of French (*planification d'activités*) while the correct translation would have been *activity planning*.

French language uses *genre* for ‘gender’, *éligible* for ‘eligible’, *empreinte écologique* for ‘ecological footprint’.

a) Difficulty of translating certain terms

Some answers to the questionnaires refer to the problem that, in some cases, certain terms which seem to be obvious in the drafting language(s) do not have equivalents in some of the target languages. These terms are often translated in a somewhat artificial way which, however, sometimes facilitates in convey the general concept hidden behind.

The term ‘measure’ covering a wide range of concepts (legal acts, administrative decisions, procedures, etc.) in EU law, was translated into Polish in an artificial way using the term *działanie*.

The same applies to some terms which were not created but taken over by EU law and which are historically the products of globalisation and, as such, were therefore originally created and often used in English even by other languages. However, when being used in EU texts, a necessity arose to find respective equivalents for these terms in the national languages.

An example for these terms is the term *sustainable*. Several languages face the challenge to translate it especially if it is part of a collocation (*sustainable energy*). Some languages translated the term literally (German, Hungarian), others have opted to use the foreign term (Romanian uses the loan word *sustenabil*), whereas other languages rather describe the concept by using long and clumsy expressions (in Polish, the term ‘sustainable energy’ is translated as *energia produkowana z poszanowaniem zasady zrównoważonego rozwoju*).

The term *gender mainstreaming* is also a product of globalisation, often referred to by national languages in the English form. When the term was taken up by EU law, it had to be translated into the official languages. Some languages, like German, used a long paraphrase for the term for a while until a shorter artificial new term was created (*Gleichstellungsansatz*). In such cases, the original expression might come after the translation in brackets if the English term still does not have a generally accepted or known translation. In the case of the term *lifetime achievement*, the Dutch version opted for this solution: it is translated as *levenswerk* (*lifetime achievement*).

New disciplines and areas of specialisation are also often used in their ‘internationalised’ English form (*victimology*) and when they are translated, it is often a transliterated form (in Spanish *victimología*, in French *victimologie*, in German *Viktimologie*) and seldom with an indigenous term (*iospairteolaíocht* in Irish).

Some ‘fashionable’ English terms, which are mainly linked to modern technologies, are still often used in their original form. The terms *on-line*, *website*, *newsletter*, and *voucher* became integrated into the national languages in their original form in many languages even when the languages also artificially created their own equivalents.

Effects of internationalisation and thus the spreading of English terminology or the impact on the national translations of the latter can be studied in the area of capital markets and finance terminology, which are strongly affected by internationalisation. These effects can be witnessed in the case of EU directives regulating these sectors.

One of the recent examples is *Directive 2004/39/EC on markets and financial instruments* (the MIFID Directive). Here, one can see that terms used in the French version of the Directive are often calques or semantic extensions of translated English terms. We can find calques based on the common linguistic roots of the two languages (*systematic internaliser*—*internalisateur systématique*) or semantic extensions of word-by-word translations of English terms (*Market Maker*—*Teneur de marché*). (Krimpas-Bassias, p. 4)

In some other areas, including that of cosmetic products or of soil classification, the predominance of the English language can result in replacing and thus abandoning national equivalents also in cases where there are commonly used national terms in the national language, partly for reasons of being the drafting language, partly from the effects of globalisation.¹⁴⁷

Another challenge linked to the difficulty of translation can be detected in the case of terms where the English language uses two different terms with slightly similar meanings and some other official languages do not originally have two equivalents but only one for both terms and therefore had to create an artificial new term to be able to distinguish between them.

'Safety' and 'security' have been both translated into Maltese by *sigurtà*. However, in EU context, the Maltese language has to differentiate between the two terms and uses *sikurezza* and *sigurtà*.

Similarly, the Slovak language faced difficulties in translating *effective* (delivering the desired outcome) and *efficient* (using resources to best effect) using different terms. Despite the efforts made to translate them differently, the terms are used as synonyms.

For many languages it is difficult to find creative terminology solutions for artificially created new, innovative English terms like *one-stop-shop* which might be used in different contexts (for instance in different procedures) but should be translated in a uniform way.

b) Reciprocal translinguistic lexical attraction

In some cases, the impact of the drafting language might be a language distortion. This phenomenon mainly concerns languages belonging to the same language family, where it

¹⁴⁷ Portuguese seems to be impacted here (see the use of *umbric fluvisols* instead of *fluvisolos úmbricos*).

might be easy to find formal equivalents for terms, but where these terms still convey a different meaning in the national languages concerned. If the equivalent is identified on a formal and not on a semantic basis, the term used by the target language can be distorted, because it is used in an unfamiliar context. This phenomenon is called ‘reciprocal translinguistic lexical attraction’ by academics.¹⁴⁸

The German equivalent of the term *Lisbon process* was translated under the influence of the English drafting language as *Lissabon-Prozess* using and thereby distorting the term *Prozess*, originally used in German language to mean a ‘judicial trial’ or ‘natural processes.’

The same effect can be seen in cases where the French drafting language has or used to have an influence on other languages belonging to the same language family. French words are sometimes italianised meaning that they are transformed into an Italian word and added an Italian declination producing thereby a new term which did not exist in Italian before.

The language of Italian EU texts contains some traces of the influence of French language. Article 11 of Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States refers to ‘tax avoidance’ as *evasione fiscale* in its Italian version (in French it is *évasion fiscale*) while the concept of *evasione fiscale* in Italian national legal language is closer to the English concept of *tax evasion*, the French equivalent of which is *fraude fiscale*. In order to avoid confusion, the correct term would have been in Italian *elusione fiscale* (Sacchetto, 211).

Portuguese was facing the linguistic influence of the French language too.

In some legal acts, the term ‘reception’ was erroneously translated into Portuguese as *recepção* as a result of a reciprocal translinguistic lexical attraction with the French term *réception*. The Portuguese version was later changed into a correct equivalent (*homologação*). The expression *retrait des navires* was also translated under reciprocal translinguistic attraction by *retirada de navios*, however, the correct term would have been *abate de navios*.

In the case of Portuguese, English as the present drafting language also generated false translations of certain terms, especially if related to terms which have common Greek, Latin or French origins but different meanings in Portuguese and English.

¹⁴⁸ Sacchetto, p. 215 (citing Sacco)

Translating the term ‘comprehensive’ as *compreensivo* instead of *abrangente*, the term ‘support’ as *suportar* instead of *apoiar*, the term ‘submit’ as *submeter* instead of *apresentar*, the term ‘casual’ as *casual* instead of *informal*, the term ‘anticipate’ as *antecipar* instead of *prever* leads to create ‘false friends’ in the language, a practice which, according to the information given by the Portuguese language unit of the Commission’s Translations Service, has so far been successfully avoided due to the special training the Portuguese Department offers to its translation staff.

Avoiding the use of ‘false friends’ is a preoccupation of several languages. Distortions due to false friends might occur if certain terms which exist both in the original language and the target language pick up the meaning they have in the original language ignoring thereby their traditional meaning in the target language. Recently published handbooks on how to write clearly enumerate several examples of frequently used false friends in all relevant languages.

The French term *actuel* cannot be translated by the English term *actual* because that latter means ‘real’ while the French term refers to something ‘current’ or ‘topical’. The same applies in the case of the French term *compléter*, the equivalent of which is not the English term *complete* (meaning ‘finish’) because *compléter* means ‘supplement’, which is the correct equivalent. On the other hand the term *definitely* is not equivalent to the French version *définitivement*, but its correct equivalent would be *complètement*. The English term *generate* cannot be translated by the French word *générer*, either, because its semantic equivalent is *produire*.

Similar impacts can be witnessed in case of new languages too.

Philosophy in EU texts is used in the sense of covering guidelines or an idea behind a certain policy, while *filozofija* in Latvian language originally means discipline and was not used in the meaning of ‘guidelines’. Neither should the Latvian term *formāls* be used in the sense of the English term *formal* meaning ‘official’, because the Latvian equivalent refers to formality, or the term *kapacitāte* for ‘capacity’ as this term in Latvian is used only in the context of physics, namely, referring to the storage of electricity, but it does not have any of the other meanings the word *capacity* has in English (capability to perform or produce, the amount that can be contained, a specified function, etc.) Other examples from the Latvian language where loan translations exist but should be avoided in favour of terms of Latvian origin are the following: ‘critical’ (*nozīmīgs*, *svarīgs* should be used instead of *kritisks* which does not have the additional meaning of ‘important’), ‘ambitious’ (where *vērienīgs* should be used instead of *ambiciozs*), ‘classified documents’ (where *slepeni dokumenti* should be used instead of *klasificēti dokumenti*).

The impact of the original language can also be examined in the case of fixed collocations where one constituent of the term is calqued from the original language in a way that the sense given to the morphological calque is not in line with the linguistic rules of the target language.

For example, in Lithuanian, the new concept of delegated acts of the Treaty of Lisbon were translated as *deleguotoji direktyva* in the case of *delegated directive* and *deleguotasis reglamentas* in the case of *delegated regulations*. However, these translations are not correct from a linguistic point of view. In the Lithuanian language, it is possible to delegate people but one cannot delegate documents, actions, functions, etc. In the standard language, such translations are treated as mistakes and the general public would not understand their meaning.

Not only drafting languages but also different cultural backgrounds of the draftspersons can influence the text and its translation into other languages. Such problems were detected in EU texts in the field of education when authors of the text used categories of their national systems (*grammar school, public school, college, baccalauréat*) without being aware of differences that exist between the education systems of Member States. These terms remain sometimes untranslated in the target languages with explanations in brackets.

c) Syntactic and stylistic impact

The drafting language might also have syntactic effects on the target languages. Target languages often follow the syntactic structures of English, even if it appears strange. Sometimes English punctuation rules (use of commas) overrule the orthography rules of national languages. The (abusive) use of the passive voice might also cause difficulties for languages which normally try to avoid using the passive voice. Because of the dominance of passive structures in sentences, the use of impersonal grammatical subjects, like *on* in French, disappeared from the wording of EU texts. The use of *however* at the beginning of a sentence¹⁴⁹ or the use of *whereas* in recitals might sound artificial in other languages. The excessive use of terms *shall* and *will* caused difficulties in a number of languages where they were translated using future tense although the languages concerned should and could have used the present tense in a prescribing sense. *Should* also caused translation difficulties for some languages, especially when it is used in preambles where target languages would rather use the subjunctive mood, because of normative aspects of provisions in preambles.

Some terms stemming from the drafting language and commonly used in EU texts do not have exact equivalents in the target languages and can only be translated in a descriptive way, losing the sense of unity of the English ('one word—one concept') and thereby sometimes destroying the rhythm of the text. The translation of *mainstreaming* and *empowerment* caused difficulties in some languages.

¹⁴⁹ In Polish, see the use of the term *jednakże* used as an equivalent for 'however'.

On the contrary, on other occasions the English text is found to be too verbose and some of the target languages find certain words of a compound expression as empty. The terms *geographic region* or *audit control* could be considered as such terms.

English is very innovative and flexible in creating new concepts by merging existing concepts and terms into one word and thus creating compound nouns (see for instance the term *flexicurity*). Some languages however, are less flexible to adopt such linguistic innovations and face difficulties in getting the newly and artificially created terms accepted.

Languages like Latvian face problems because of the wide usage of metaphors and figurative phrases in the original texts, as metaphors and images are not common to Latvian official texts and should therefore be rendered in a more neutral way. Image-based phrases and concepts like *predatory pricing behaviour*, *sunset clause*, *business angels*, *carbon footprint* or *open sky* are in most cases literally translated but still difficult to render in Latvian. The situation was deemed by Latvian translators especially difficult in cases where a whole document is based on one image or metaphor and when references to that image or metaphors recur throughout the text.

Formal requirements and standard multilingual text templates used by the institutions are shaped and drafted mainly under the inspiration of the original drafting languages. The syntactic features, the word order, and the sentence length of these templates can cause difficulties in reconciling them with the word order and the syntactic features of some languages.¹⁵⁰ Often the layout structure of the title of the translated legal act is not in line with the rules of the syntax of some, mainly Indo-European, languages. Complaints were expressed by translators that the duty to stick to the original text led in many cases to the abandoning the original logical structure and the grammatical rules of their language in favour of the logic and structure of the drafting language.

For the Estonian language, which belongs to the Finno-Ugric group of languages, for instance, the main problem lies in the difference between the grammatical structure of the Germanic and Roman languages (analytic—prepositions) and the Estonian language, which is classified as a synthetic language with practically no prepositions and where almost every word is derived and/or inflected. In practice, it means that it is rather difficult to translate long sentences composed of many different parts connected with prepositions. It is especially problematic for headings, where the structure of the original has to be maintained in order to comply with the technical requirements, and thus it often ends with an artificial solution, which would not have been used if the text had been drafted in Estonian.

Languages like Slovenian or Bulgarian were influenced by the English in using substantives which are more usual in their singular form in the plural because of literal translation from English.

¹⁵⁰ In Finnish, Lithuanian and Hungarian.

In Bulgarian texts, the plural form *износи* of the term *износ* is used erroneously, from a linguistic point of view, for the term ‘exports’ and for the term ‘competences’ *компетенности* is applied instead of the singular form *видове/компетенност*.

d) Lack of clarity in the source language

Some responses to the questionnaire suggest that lack of clarity in the source language version can have the effect of inconsistencies and drafting errors of the draft being spotted in the translation phase and therefore the translations will be of higher quality than the original. Respondents are sometimes of the view that a bi- or multilingual system makes the detection and correction of drafting errors easier than in a monolingual system, where it is more difficult to localise the interpretation and drafting problems which are detectable in the translation/co-drafting phase of bi- and multilingual systems.¹⁵¹ If the original version proves to be misleading and ambiguous, the translations might have a retro-active effect on the original and the latter can be corrected to dissolve ambiguity.¹⁵² Avoiding and handling distorting impacts of the drafting language can be assessed and treated by clear-writing initiatives.

¹⁵¹ Flückiger: *Les racines historiques de la légistique en Suisse*, p. 10

¹⁵² Gallas, p. 124. Gallas refers to the phrase *interests paid or credited to an account* which leaves it open whether the interests apart from being credited to an account may be solely paid into the account or may be paid in other ways, too, such as in cash. The German version (*bezahlt oder einem Konto gutgeschrieben*) made it clear they can also be paid in other ways. To make it clear in the English version as well, the draft text was adapted accordingly.

7. A closer look on the linguistic challenge

In the previous chapters, general aspects of multilingual lawmaking were analysed with a special focus on European lawmaking. Examples illustrating difficulties of certain languages in expressing certain terms or demonstrating various effects of multilingual lawmaking on languages were taken from several legal fields and different official languages.

This chapter aims to provide an analysis of the way the two selected legal areas have been affected by linguistic challenges. The selected areas are in a similar situation inasmuch as both are relatively new areas to be governed by the EU. Both consumer protection and environmental law find their regulatory roots in the late 1980's and have experienced a growing and ever-expanding regulatory realm ever since.

However, they are different as far as linguistic and translation problems linked to their respective terminology are concerned. European consumer protection is deeply rooted in

"What does one understand by the terms 'contrat', 'contract' or 'Vertrag'? It is doubtful whether this term is identical in the different systems of European law. Failing precise concordance, it may even be that the term is misleading."

(BEALE—HARTKAMP—KÖTZ—TALLON: Contract Law)

traditional contract law, through which it enters the core of national private laws. The meanings of the traditional concepts of private law, expressed by traditional terms, are rigid. Even a slight shift in these meanings at EU level might cause difficulties in accepting the new meaning of a term or in expressing the new meaning through another term. By contrast, the field of environmental law is characterised by the constant emergence of new phenomena to be regulated and thereby expressed by a newly-created terminology.

Both subchapters will cover general and specific terminology issues, too.

7.1. Consumer protection

Terminology-related problems of European law linked to differences between national laws are the most striking in the field of private law. Most

authors underline that even such basic terms as *contract*, *damage*, *withdrawal*, for which it might be easy to find an equivalent from the linguistic point of view, do not correspond to each other because of the differences in the legal mechanisms underlying the respective concepts.¹⁵³

¹⁵³ For instance, there must be a valid *cause* in the French law for a contract to be valid, while, in the English law, *consideration* is needed as a necessary element. (Fabre—Magnan—Green, p. 406, Beale—Hartkamp—Kötz—Tallon, p. 128) The same applies to the term *offer*, where the legal consequences of an offer are different in the case of an *offre* in the French law or in the case of an *Angebot* in the German law. (Chatillon, p. 692)

Harmonisation in the field of private law focussed on the area of consumer protection, including certain aspects of contract law. Since the end of the 1980's, a number of directives have been adopted which approximated only some elements of contract law and did so in a rather fragmented way, laying down rather general principles and building upon the existing national laws.¹⁵⁴ In addition to this, the directives followed different approaches and the intensity of their harmonisation or unification is also different. In some cases, a certain extent of inconsistency is to be spotted at the level of terminology, either within one and the same directive or between several directives.

7.1.1. Horizontal terminology

It must be noted, that although directives avoided a definition of the term 'contract', they systematically use it. The new Proposal for a Directive on Consumer Rights would not provide a definition of the concept of 'contract' either, only of different categories of contracts, like 'sales contract', 'service contract' and 'distance contract', all referring to the general category of contract as 'any contract that...'. The Draft Common Frame of Reference (DCFR), developed by senior legal academics from across Europe and published at the end of 2009, attempted to define the term 'contract' broadly and in a general way. According to Article II-1-101 of the DCFR, "*A contract is an agreement which is intended to give rise to a binding legal relationship or to have some other legal effect. It is a bilateral or multilateral juridical act.*"

Another core term of the directives is the concept of the 'consumer'. It was defined in all relevant directives in a similar although not identical manner. The concept covers, in every relevant directive, natural persons only but definitions are not consistent as to the person concerned must be acting outside or in a way not related to their income-earning activity and whether this activity should be just their trade and profession, or business should explicitly be mentioned, too. The Proposal for a Directive on Consumer Rights provides a new, and comprehensive definition in relation to the four directives to be redrafted and merged into a single instrument (see below). The DCFR proposed a slightly modified, broader definition of the term also encompassing those who are pursuing an economic activity if they are acting primarily for purposes not related to their business, trade or profession. That idea was not followed by the Commission in its proposal.

Table 3. The definition of the term consumer in the directives

Directive	Definition
85/577/EEC	'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as <i>outside his trade or profession</i>
87/102/EEC	'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as <i>outside his</i>

¹⁵⁴ Weatherill, p. 639

Directive	Definition
	<i>trade or profession</i>
93/13/EEC	‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are <i>outside his trade, business or profession</i>
97/7/EC	‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are <i>outside his trade, business or profession</i>
99/44/EC	consumer: shall mean any natural person who, in the contracts covered by this Directive, is acting for purposes which are <i>not related to his trade, business or profession</i>
90/314/EEC	‘consumer’ means the person who takes or agrees to take the package (‘the principal contractor’), or any person on whose behalf the principal contractor agrees to purchase the package (‘the other beneficiaries’) or any person to whom the principal contractor or any of the other beneficiaries transfers the package (‘the transferee’)
Proposal for a Directive on Consumer Rights	‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are <i>outside his trade, business, craft or profession</i>
Draft Common Framework of Reference (DCFR)	consumer: a natural person who is acting <i>primarily</i> for purposes which are not <i>related to his or her trade, business or profession</i>

The concept of ‘consumer’ was problematic not only because of the slightly different but basically identical definitions of the term at EU level but also because of the minimum harmonisation approach of the directives concerned, which made it possible for Member States to extend the concept to legal persons as well, thereby altering (broadening) the original EU concept and causing a fragmentation in the concept at EU level and at national level.

The European Court of Justice, which interpreted and thus clarified the meaning of the concept in EU context several times, made it clear what the limits of acting for the purposes of a business activity are and that the EU legislator did not intend to include legal persons within the concept of ‘consumer’.

In Case C-361/89, *Di Pinto*,¹⁵⁵ the ECJ had to clarify the concept of the consumer in relation to Article 2 of Council Directive 85/577/EEC, which defined the consumer as a natural person who, in transactions covered by the directive, is acting for purposes which can be regarded as outside his trade or profession. The question raised by the *Cour d’Appel de Paris* was whether

¹⁵⁵ [1999] ECR I-1189

a trader who is canvassed at home for the purposes of concluding an advertising contract concerning the sale of his business must be regarded as a consumer entitled to protection under the Directive. The ECJ found that a trader canvassed at home for such purposes is not to be regarded as a consumer protected by the Directive, given that acts which precede a sale, such as the conclusion of a contract for the publication of an advertisement in a periodical, are connected with the professional activity of the trader and do not fall outside his trade or profession.

In Case C-541/99 *and* C-542/99, *Cape*,¹⁵⁶ the concept of the consumer was further elaborated, this time in relation to Directive 93/13/EEC on unfair terms in consumer contracts. In this case, the ECJ was asked whether the term ‘consumer’, as defined in Article 2(b) of the Directive, should be interpreted as referring solely to natural persons. The ECJ found that the Directive defined the concept of ‘consumer’ as any natural person who fulfils the necessary conditions, whereas the definition of the terms ‘supplier’ or ‘seller’ referred to both natural and legal persons, and therefore a person other than a natural person who concludes a contract with a seller or supplier cannot be regarded as a consumer within the meaning of the Directive.

In Case C-269/95, *Benincasa*,¹⁵⁷ the ECJ held that, in the context of Convention of 27 September 1968 on jurisdiction and the enforcement of judgments and civil and commercial matters, the special protection granted to consumers is unwarranted in the case of contracts for the purpose of trade or professional activity, even if that activity is planned for the future only, since the fact that an activity is a future activity does not divest it in any way of its trade or professional character. The ECJ held that, in order to determine whether a person acts in the capacity of a consumer (a concept which must be strictly construed), reference must be made to the position of the person concerned in a particular contract, having regard to the nature and aim of that contract, and not to the personal situation of the person concerned. The ECJ excluded the possibility, not unknown, however, to certain legal orders, of future professionals to be regarded as consumers for the purposes of certain contracts that are concluded precisely with a view to a future professional activity.

Thus, the ECJ fine-tuned the EU concept of ‘consumer’. This interpretation, however, does not exclude the adoption by Member States of more stringent provisions and, as such, the inclusion of natural but legal persons, too, within the concept of consumer in the light of the still prevailing minimum harmonisation approach. The concept of consumer is an example of terms which are expressed by the same word but might have different meanings under EU law and under national law. The Proposal for a Directive on Consumer Rights would put an end to this dilemma if the full harmonisation approach of the directive, excluding diverging, more stringent national rules, was adopted.

7.1.2. Terminology of the relevant directives

In this section, we shall analyse illustrative examples of terminology- and translation-related challenges in relevant directives in the field of consumer protection. The list of directives

¹⁵⁶ [2001] ECR I-9049

¹⁵⁷ [1997] ECR I-3767

analysed embraces almost all legal acts, or at least the most important ones, adopted in the field of consumer protection. Moreover, the Proposal for a Directive on Consumer Rights, merging four directives in force, is worth analysing since it could have made use of the criticism and experiences concerning the directives in question.

Our case study distinguished four types of challenges:

- a) translation issues or mistranslations (T);
- b) a failure to define certain concepts used by the directives (D);
- c) a difference in the meaning of concepts used at European and at national level (M);
- d) the difficulty of national legal systems in adopting certain EU concepts (N).¹⁵⁸

This latter category may include cases where the terms used to express the concepts at EU and national level differ from each other. Of course, not every directive displayed all categories of challenges.

a) Directive 93/13/EEC on unfair terms in consumer contracts

Category (T) challenges in the Directive are linked to the core concept thereof. *Unfair contract term* was translated into Italian as *clausole abusive* under the influence of the French language, which uses the term *clauses abusives*. However, the correct Italian equivalent would have been *clausole vessatorie*¹⁵⁹ and not the transliterated form of the French term *abusive*, the use of which led to a reciprocal translinguistic attraction. Another interesting linguistic aspect with regard to the same term is that the English version uses the adjective *unfair* while the French equivalent *abusive* suggests a slightly different meaning. For the expressing of that term, some languages translated the English word (DA: *urimelige*, HU: *tisztességtelen*, MT: *in•usti*, NL: *oneerlijke*), while others followed the French version in using the equivalent of *abusive* (DE: *mißbräuchliche*, ES: *abusivas*, PT: *abusivas*, RO: *abusive*).

Category (D) is apparent in problems with the wording not be binding in this Directive. According to Article 6, “Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer.” The vague wording not be binding posed interpretation problems and led, with the course of time, to a well-established case law of the European Court of Justice.¹⁶⁰ The mere formulation of the provision would suggest that Member States are free to choose the legal instrument of their respective national laws to call the validity of the unfair term into question. However, the jurisprudence of the ECJ made it clear that the discretion Member States enjoy is rather limited because national courts must have the power

¹⁵⁸ The same letters are going to refer to the same category in the part on environmental protection, too.

¹⁵⁹ Benacchio, Giannantonio: *Az Európai Közösség magánjoga*. Osiris, Budapest, 2002, p. 50

¹⁶⁰ Case C-243/08, *Pannon GSM*, Case C-473/00, *Cofidis* and joined cases C-240/98 to C-244/98, *Oceano Grupo Editorial SA*.

to determine on their own whether a contractual term is unfair. Any legislative provision which limits this power by requiring the consumer to rely on the unfair nature of the contractual term violates the directive. Thus, the ECJ limited the broad wording of the directive by excluding national solutions which made the invalidity of the unfair term in question dependent on whether the consumer contested it or not (see former solution of Hungarian law (megtámadhatóság) or of the Dutch law (vernietigbaarheid)).

Contracts covered by the Directive are those concluded between a seller and a consumer on the sale of goods and services. The term *goods* in English law does not include 'land' while in other jurisdictions it may. However, English courts were asked to interpret this provision by deciding whether land could be covered by the term *goods*. Based on a purposive approach and the possibility of the terms used in other language versions to include immoveable property, the court in the case of *London Borough of Newham v Khatun*¹⁶¹ held that *goods* indeed included land. In this case, the English court successfully avoided interpreting the concept in the light of the national legislation by invoking the source provision of the Directive and made a comparative analysis of its linguistic versions before concluding the case. The judgment refers for instance to the fact that the French (*biens*), Italian (*beni*), Spanish (*bienes*) and Portuguese (*bens*) versions of the Directive all use terms which might refer to immovable property as well. In addition, it observes that the French version of the Directive would use in general the term *marchandises* if it intended to exclude immovable property from the category of goods. It underlines further that the wording of the Directive cannot be given a meaning English lawyers would in general assign to it. (Category M)

Regarding our category (N), Article 3 is one of the most important provisions of the Directive as it gives a definition of unfair contractual terms. According to paragraph (1) of this Article,

"A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer." Thus, the Directive makes reference to the principle of *good faith* which was originally a concept of civil law systems and not taken up by common law. The reference to the principle triggered a set of debates. Firstly, it was contested by several academics whether *good faith* is the adequate term to be used or if *good faith and fair dealing* should be used instead, because that latter phrase would be the right one to refer to the objective standard for conduct in contractual relationships whereas the former expresses a mental state. The DCFR for instance suggests the use of *good faith and fair dealing*¹⁶² for the above reasons while the Proposal for a Directive on Consumer Rights kept the old wording: *good faith*. Some languages make a clear distinction between an objective and a subjective 'good faith'. One of the most illustrative examples is the German language which uses *Treu und Glauben* for the former and *Guter Glaube* for the latter in a consistent manner.¹⁶³ Other languages provided for a clear distinction later. The Dutch Civil Code, for instance, introduced the equivalent for *good faith and fair dealing* (i.e., 'objective good faith') in 1992 by creating the artificial term *redelijkheid en billijkheid*. Thus, this dualistic linguistic approach could still not have been reflected in the Directive which uses in the Dutch version of Article 3 the calqued equivalent of 'good faith':

¹⁶¹ No [2004] EWCA Civ 55

¹⁶² Article III-1:103

¹⁶³ The German version of Article 3 uses the phrase *entgegen dem Gebot von Treu und Glauben*.

goede trouw. Neither did the Italian version of the directive expressed the objective standard nature of the provision since it uses the wording *buona fede*, referring to a mental state rather than a standard of conduct in contractual relationships.¹⁶⁴

On the basis of the above considerations, EU law is faced with the challenge of whether to make a clear distinction at the linguistic level between an objective and a subjective ‘good faith’ by considering the introduction of the term *good faith and fair dealing*.

The other problematic aspect of the currently used term *good faith* is that, as a principle of private law, it is alien to the common law system which is more accustomed to use *reasonableness* as a guiding principle in contractual relationships. However, the UK legislation had to cope with this undefined principle of the Directive when applying the implementing national regulation in question. The concept was implemented in the UK by the Unfair Terms in Consumer Contracts Regulation and the same term: *good faith* was used. In the Case of *Director General of Fair Trading v. First National Bank plc*,¹⁶⁵ the county court as the competent court at first instance stated that the principle of good faith taken over from the directive by the UK legislation is “*not to be construed in English law sense of absence of dishonesty but rather in the continental civil law sense*”. That consideration was later reaffirmed by the Court of Appeal.¹⁶⁶ Thus, in addition to the terminology problems it raises, *good faith* is an example of a concept of civil law becoming an autonomous EU concept that legal systems not using traditionally this principle had also to cope with.

b) Directive 99/44/EC on consumer sales and guarantees

Article 3(5) of the Directive states that “The consumer is not entitled to have the contract rescinded if the **lack of conformity is minor**.” The Italian version of this Article uses the wording in difetto di conformità di minore which is not in line with the Italian legal linguistic requirements, according to which the term di lieve should have been used. The Italian text was most probably drafted under the influence of the French language using the term mineur. (Category T)

The Directive regulates consumer sales and guarantees. One of its key concepts is therefore ‘guarantee’. This concept, however, traditionally has different legal meanings and implications in national legislations. Some Member States treat it originally as a compulsory legal institution while others as or non-compulsory one. Under the European legislation, the term ‘guarantee’ means a voluntary measure taken by the economic operator. In Romanian law, however, ‘guarantee’ (*garantiile*) is legally binding. This difference caused problems in Romania during the transposition of the Directive and for consumers to understand that it is not compulsory for an economic operator to offer a guarantee. (Category M)

In the English version of the Directive, the word *rescind* is apparently used to mean ‘bring a contract to an end’, whereas in English law it has a different, specific meaning of ‘terminate a

¹⁶⁴ Földi, p. 232

¹⁶⁵ (2001) 3 WLR 1297

¹⁶⁶ McKendrick, p. 97

contract *ab initio*'. This potential for misunderstanding was later avoided in the Timeshare Directive by the more appropriate use of the term 'terminate'. (Category M)

The Directive uses both *reasonable* and *reasonably* as a standard for conduct. Given the fact that this concept is used mainly by common law systems, some legal systems had problems with interpreting the concept and avoided the use of the calqued form of the term used by the respective linguistic version of the Directive. The Italian version of the Directive, for instance, used the term *ragionevolmente* while the Italian *Codice Civile* implemented it by using a wording closer to the traditional Italian terminology of civil law: *con l'ordinaria diligenza*.¹⁶⁷ The Hungarian implementing law does not use the wording of the Directive *ésszerűen eljárva*, either, but follows the traditional Hungarian terminology: *az adott helyzetben általában elvárható*. Romanian law also had some difficulties with interpreting and admitting the concept. (Category N)

It was the same reason for that the Italian implementing law did not use the Italian equivalent of the Directive of the term *disproportionate* (*sproporzionato*) but opted to use the national expression (*eccessivamente oneroso*) instead. (Category N)

When implementing the Directive, the Dutch legislator chose to deviate from the wording of the Directive as far as its material scope is concerned. *Consumer goods* are identified by the Dutch version of the Directive as *consumptiegoederen* while the implementing legislation wanted to avoid the use *goederen* in favour of the use *zaak* which—according to the national legislator—covers the scope of the Directive better. It uses therefore *een op grond van consumentenkoop afgeleverde zaak*. (Category N)

c) Directive 85/577/EEC on contracts negotiated away from business premises

We identified two category N challenges here. As suggested by its title, the Directive regulates *contracts negotiated away from business premises*. The German version of the Directive refers to such contracts as *ausserhalb von Geschäftsräumen geschlossene Verträge*. However, the implementing German act did not follow the lengthy phrase in the European legislation but identified the concept of the Directive with the traditional German concept of *Haustürgeschäft* and uses this term instead.¹⁶⁸ Similarly to the German model, the Hungarian national implementing measure used to apply the traditional Hungarian indigenous term *házaló kereskedés* (which is, in turn, a calque of the German term *Haustürgeschäft*) until 2004 but changed the terminology of the implementing measure later to *üzleten kívüli kereskedés* in order to bring it closer to the wording of the directive.

The Dutch implementing legislation also changed certain crucial terms of the Directive into terms inherent in the national legislation. The term *supplies*, for which *leverantie* is used in the Directive, is referred to as *levering* in the implementing measure. For the term *contractual offer* (*contractuele aanbieding* in the Directive), the Dutch legislator decided to use the traditional national term for 'offer': *aanbod*. Similarly, the German implementing provisions

¹⁶⁷ Ferreri, p. 6

¹⁶⁸ Gesetz über den Widerruf von Haustürgeschäften und ähnlichen Geschäften vom 16/01/1986, Bundesgesetzblatt Teil I vom 22/01/1986 Seite 122

use the traditional term of the German Civil Code (BGB) for offer (*Antrag*) instead of the term used by the Directive (*Angebot*). Again, in the Dutch version the concept of the ‘right of renunciation’ is expressed by *recht van afstand* in the Directive. It has also been aligned to the national legal terminology by using *recht van ontbinding* in the implementing measure.

d) Directive 85/374/EEC on liability for defective products

The concept of ‘defect’ was expressed by the same term by the Directive and by the implementing legislation in Germany (*Fehler*) and in the United Kingdom (*defect*). However, German and English national courts interpreting the concept arrived at completely different conclusions. According to the jurisprudence of German courts, any product which causes injury while being used in an ordinary manner during the use for which it was intended is presumed to be defective.¹⁶⁹ English courts, however, followed a different line or argumentation, considering that a claimant/consumer cannot rely on the failure of a product alone to prove that it was defective when manufactured. The burden of proof would not be shifted.¹⁷⁰ (Category D)

e) Directive 86/653/EEC on self-employed commercial agents

The Directive uses both the terms indemnified and compensated. According to Article 17 of the Directive, “Member States shall take the measures necessary measures to ensure that the commercial agent is, after termination of the agency contract, indemnified or compensated for damage.” The concept of ‘indemnification’ stems from German law, while the concept of ‘compensation’ from the French legal system. Member States were free to choose either ‘indemnification’ or ‘compensation’ in their national legislation. The UK chose both without, however, defining them. UK national courts faced the problem whether they should interpret ‘compensation’ in the light of the French legal system from which the term originated or in an autonomous manner.¹⁷¹ Following the contradictory jurisprudence of lower courts, the Court of Appeal¹⁷² made it clear that the concept of ‘compensation’ cannot be interpreted in the light of French law, and, instead, an autonomous meaning must be given to the concept. (Category N)

f) Directive 2008/48/EC on credit agreements for consumers (and repealing Directive 87/102/EEC)

Hungarian uses a different term for *consumer credit* in the text of the Directive (*fogyasztói hitel*) and in the implementing legislation (*fogyasztási kölcsön*), since the Hungarian legislator tried to bring the latter closer to the national legal terminology without changing the meaning thereof. The same approach was followed by the German legislator when it phased out the term *Kreditgeber* (equivalent of the term ‘creditor’) from its national legislation by an Act of 2002 and used the term *Darlehensgeber* when implementing the Directive, too.¹⁷³ (Category N)

¹⁶⁹ Lundmark, p. 145

¹⁷⁰ Lundmark, p. 146

¹⁷¹ Blair—Brent, p. 11

¹⁷² Case *Lonsdale Asencies v. Howard and Hallam Ltd.* {2006} EWCA Civ. 63.

¹⁷³ Legal Taxonomy Syllabus

g) Directive 90/314/EEC on package travel, package holidays and package tours

The concept of *damage* is a core concept of the Directive. In addition, this concept is one of those private law concepts which can easily be expressed in languages while its meaning in national laws can be diverging. This dilemma of the exact meaning of the concept in European context was referred to the ECJ. In Case C-168/00, *Simone Leitner*, the ECJ had to decide whether the concept embraces non-material damage as well.

The applicant in the main proceedings sought compensation for material and non-material damages suffered in connection with the provision of travel services. The question submitted to the ECJ was whether the provisions of the Directive had to be interpreted as conferring a right for compensation for non-material damages on the consumers, as well. In course of the proceedings, some governments put forward arguments claiming that, in view of the minimum harmonisation approach of the Directive, the notion of damage applicable in this field should be determined by the Member States. The ECJ held, however, that the purpose of the Directive was to eliminate the disparities between the national laws and practices of the various Member States in the area of package holidays, and that the existence in some but not all Member States of an obligation to provide compensation for non-material damage would cause significant distortions in competition. According to the ECJ, although the first subparagraph of Article 5(2) of the Directive refers to the concept of damage in a general manner only, the fact that the fourth subparagraph of Article 5(2) provides that Member States may, in the case of damage other than personal injury, allow compensation to be limited under the contract provided that such limitation is not unreasonable, means that the Directive implicitly recognises the existence of a right to compensation for damage other than personal injury, including non-material damage.

The cited case reveals that, if the EU legislator has failed to define the content and the scope of a given concept clearly, including cases where the original intent was to grant Member States a certain margin of discretion to make use of their own ‘parallel’ concepts, the ECJ may give an interpretation of the concept used that ‘fills up the blanks’ and excludes any diverging interpretation, at least in the context of the same EU legislative act. As a consequence, if the EU legislator’s intention is to let national legal concepts prevail in a certain context, this intent should be explicitly formulated in the EU legal act in question. (Category D)

h) Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market

The Directive introduced new concepts, e.g., *average consumer*, *professional diligence* and *invitation to purchase*. These concepts are novel to the laws of all Member States. It will be for the courts, and ultimately the European Court of Justice, to interpret the meaning of these expressions. In order to reduce uncertainty for business, the executive and consumers, some Member States like the UK produced guidance on how it believes these expressions should be interpreted. (Category N)

i) Proposal for a Directive on Consumer Rights COM (2008) 614 final

The Proposal aims at revising Directive 85/577/EEC on contracts negotiated away from business premises, Directive 93/13/EEC on unfair terms in consumer contracts, Directive 97/7/EC on distance contracts, and Directive 1999/44/EC on consumer sales and guarantees. These four Directives provide for contractual consumer rights. The proposal merges these four Directives into a single horizontal instrument, regulating the common aspects in a systematic fashion, simplifying and updating the existing rules, removing inconsistencies and closing gaps. The Proposal moves away from the minimum harmonisation approach followed in the four existing Directives (i.e. Member States may maintain or adopt stricter national rules than those laid down in the Directive) in order to seek a full harmonisation approach (i.e., Member States cannot maintain or adopt provisions diverging from those laid down in the Directive).¹⁷⁴ The adoption of the Proposal will lead to the repeal of existing legislation.

The Hungarian version of the Proposal contains a typical and frequent translation error. The term *delivery* in Article 22 in Hungarian should be *teljesítés* and not *szállítás* as it happened to appear in the text of the Proposal. That latter means rather ‘transport’ than ‘delivery’ in civil law. (Category T)

Regarding ‘non-conformity’, Article 24 of the Proposal repeats the text of Consumer Sales Directive with minor changes only. Criteria listed in the Directive are cumulative, however, the Proposal uses *or* at the end of paragraph (2)(c). This might be a drafting error: the mere fact that the goods are fit for their normal purpose does not mean that they are in conformity with the contract.¹⁷⁵ Regarding ‘presumption of non-conformity’, Article 28(5) reproduces the text of Article 5(3) of the Consumer Sales Directive. The presumption does not apply if it is “*incompatible with the nature of the goods and the nature of the lack of conformity.*” The exceptions provided for in the Directive in force are alternatives and do not need to be fulfilled cumulatively. The same wording is repeated in the French version but not in the Dutch, German and Spanish versions, where *or* is used.¹⁷⁶ (Category D)

Although the jurisprudence of the ECJ and of national courts made it clear that some concepts of the relevant directives could be better interpreted and their uniform application could be more effectively ensured, had they a concrete definition at EU level, the concept of ‘damage’, and ‘damages’ remained undefined in the text of the Proposal. (Category D)

It is not spelled out, either, what unfair contract terms not being binding actually means. According to recital (54) of the Proposal, “*The Member States may use any concept of national contract law which fulfils the required objective that unfair contract terms should not be binding on the consumer.*” However, the case law of the ECJ has already made it clear what one should understand *not binding* to comprise, and that not all the forms of national mechanisms are able to fulfil these criteria. For instance, the Dutch concept of *vermittigbaarheid* or the Hungarian concept of *megtámadhatóság* does not seem to fulfil the

¹⁷⁴ See the explanatory memorandum, p. 4

¹⁷⁵ Loos, p. 26

¹⁷⁶ Loos, p. 31

conditions laid down by the Court. As such, the wording of the Proposal could have been more precise on this point. (Category D)

The Proposal puts forward a new, comprehensive, and slightly modified definition of ‘consumer’. The novelty of the definition is, on the one hand, that it is a general definition, and that it could alter and influence national laws if the proposed full harmonisation approach of the Proposal is supported, on the other. In such a case, Member States could not derogate from it by including, for instance, the category of legal persons in the concept of ‘consumer’. The Proposal aims to harmonise the exercise of the right of withdrawal (*cooling off period*) in a general manner, allowing the consumer a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason (Article 12). The full harmonisation approach again would play a dominant role in this respect by unifying the concept of ‘cooling off periods’ across the EU. (Category M)

Instead of *seller*, *trader*, *supplier* (terms used by the relevant directives for identifying the counterparty of the consumer), the Proposal uses the term *trader* comprehensively and provides a definition for it. In some languages, the term used for ‘trader’ has different connotations than the definition foreseen by the Proposal. The Dutch term (*handelaar*) conveys a smaller enterprise and not really a major firm. (Category N)

As one can see from the above analysis, the directives adopted in the field of consumer protection have presented illustrative examples of different types of terminology-related problems and challenges. A minority of these problems are due to mistranslations, while the majority of the problems are linked either to the sometimes broad, sometimes specific wording of EU directives which must be concretised at the level of national legislation by specific national legal terminology. The lack of an EU-wide definition of some concepts made the intervention of the ECJ necessary in order to give an autonomous interpretation of them, clarifying thereby their meaning.

7.1.3. Consistent terminology

The European Commission issued several communications on creating a more coherent contract law at European level. This endeavour resulted, in the medium term, in a rather restrictive approach, focusing solely on consumer protection law and on consumer contracts by adopting the Proposal for a Directive on Consumer Rights. However, it is worth analysing how the Commission communications dealt with the terminology-related aspects of harmonising contract law.

The Communication on European contract law (COM(2001) 398 final) handles the problem linked to abstract terms in its Chapter 3.3 entitled *Uniform application of Community law*. The Commission recalls the European legislator of its duty of to ensure consistency in the drafting of EC legislation as well as in its implementation and application in the Member States. It further underlines that measures adopted by the European Community must be consistent with each other, interpreted in the same manner and produce the same effects in all Member States. In point 36, the Commission draws the attention to the risks linked to the use of abstract terms when stating “*using abstract terms in EC law can also cause problems for implementing and applying EC law and national measures in a non-uniform way*.”

Abstract terms may represent a legal concept for which there are different rules in each national body of law". The Commission recognises that some differences in terms and concepts can be explained by the differences of problems to be addressed by the respective directives. However, it points out that differences in terms and concepts that cannot be explained by differences in the problems should be eliminated.

The second Commission Communication, adopting an Action Plan on a more coherent European contract law (COM(2003) 68 final), offers more room to linguistic aspects by handling them throughout several paragraphs. The Commission refers to the criticism formulated in the context of the use of abstract legal terms in the Directives. It further refers to some fundamental terms such as *contract* and *damage*, and more specific terms like *equitable remuneration*, *fraudulent use* or *durable medium*, which all lack an EU-level definition.

As early as at this stage, the Commission envisaged the drafting of a common frame of reference which should provide for best solutions in terms of common terminology and rules, i.e., the definition of fundamental concepts and abstract terms like *contract* or *damage* and of rules applicable, for example, in the case of non-performance of contracts. A review of the European contract law *acquis* should remedy the identified inconsistencies, increase the quality of drafting, simplify and clarify existing provisions, adapt existing legislation to economic and commercial developments which were not foreseen at the time of the adoption and fill the gaps in EC legislation which led to problems in its application. Chapter 4.1.1. is devoted to the Common Frame of Reference. According to point 59, the Common Frame of Reference (CFR) should establish common principles and terminology in the area of European contract law. The underlying intention was to achieve that the European contract law *acquis* be based on common basic rules and terminology and be as coherent as possible.

European contract law and the revision of the acquis: the way forward (COM(2004) 651 final), the third Communication from the Commission on the subject, dates from 2004. The Communication outlines how the CFR would be developed to improve the coherence of the existing and future *acquis*, and sets out specific plans for the parts of the *acquis* relevant to consumer protection. According to the Commission's view, the CFR should provide clear definitions of legal terms, fundamental principles and coherent model rules of contract law, drawing on the EC *acquis* and on best solutions found in Member States' legal orders. It engages itself to use the CFR as a toolbox when presenting proposals. For the development of the CFR, researchers and academics were given the task of preparing a draft version by 2007. The adoption of the CFR was foreseen for 2009.

The Draft CFR (DCFR) focuses on contract law in general and as a comprehensive area including consumer law. It covers principles, definitions and model rules of contract law, including not only contract law but tort law, too. Its first interim version was made available at the end of 2007,¹⁷⁷ and its final version was published in 2009.¹⁷⁸ The DCFR entails various

¹⁷⁷ V. Bar, Christian—Clive, Hans—Schulte-Nölke, Eric (eds.): *Principles, Definitions and Model Rules of European Private Law*. Sellier, Munich, 2008 ¹⁷⁸ V. Bar, Christian—Clive, Hans—Schulte-Nölke, Eric (eds.): *Principles, Definitions and Model Rules of European Private Law*. Sellier, Munich, 2009

provisions which may be of relevance for consumer transactions (general provisions, definitions, contracts and other judicial acts, obligations and corresponding rights). The Proposal for a Directive on Consumer Rights, however, did not make use of the DCFR. It does not make reference to it, nor does it use its terminology or definitions. The DCFR made an attempt to define some crucial core concepts which remained undefined in the *acquis* so far. It gives a general definition of the term *contract* (a term which is easy to translate but may have rather diverging meanings in the Member States).

At present, it seems that the work done within the framework of the DCFR will be transformed to a CFR no longer serving merely as a toolbox about a sort of European Contract Law as an optional instrument. In July 2010, the European Commission issued a Green Paper on policy options for progress towards a European Contract Law for consumers and businesses (COM 2010(348) final). According to the Commission, the creation of European Contract Law as an optional instrument could fill or reduce the existing gaps in contract law, which create obstacles for transnational business transactions, and it could serve as a set of model rules for other international organisations as well. The European Commission therefore set up an expert group whose task is to study the feasibility of a user-friendly instrument of European Contract Law, capable of benefiting consumers and businesses which, at the same time, would provide for legal certainty. The Group will assist the Commission in selecting those parts of the DCFR which are directly or indirectly related to contract law, and in restructuring, revising and supplementing the selected provisions.¹⁷⁹ European Contract Law as an optional instrument could be integrated into individual commercial contracts (business to business and business to consumer), thereby providing greater reassurance for businesses engaged in cross-border trade, who might quickly familiarise themselves with such a system by using it in all dealings with businesses in other Member States. This would be made possible by the accessibility of the instrument in all official languages. Therefore, the linguistic aspects of European Contract Law are of crucial importance. It must use adequate legal terms in each language and it must give clear definitions of the concepts used in cases where the divergence of certain national concepts of private law might lead to confusion or diverging jurisprudence EU-wide. According to the Commission, the instrument should be comprehensive and self-standing, in the sense that references to national laws or international instruments should be reduced as much as possible.¹⁸⁰ As a recommended instrument for Member States, the European Contract Law and the concepts defined therein could influence national laws in the long term. However, the European Contract Law will not be able to disregard concepts and terms of the current European measures in force or pending proposals as it will definitely not replace them.

It has already been long recognised that harmonisation measures in the field of contract law (consumer contract law) go deep into the heart of private law and thus are able to reformulate traditional concepts of national laws. Divergence between concepts of national laws is most striking in the field of private law. In addition, these concepts of national laws often have traditional, historical roots Member States often insist on sticking to, or which would be

¹⁷⁹ See p. 5 of the Green Paper

¹⁸⁰ See p. 8 of the Green Paper

difficult to reframe. The project to set up a legal taxonomy syllabus on consumer law, initiated by the University of Turin (IT)¹⁸¹ and supported by the European Commission, aimed to demonstrate the importance of the inter-relation between European and national legal terminology with regard to the directives on consumer protection in force. The programme was entitled *Uniform terminology for European private law (2002-2006)*. The Legal Taxonomy Syllabus, set up within the framework and as a practical result of this programme and which is available online, provides a minimum of background information through short commentary notes by national scholars, thereby reflecting the architecture of existing legal terms and concepts in every Member State considered.¹⁸² It aims to assist legal practitioners, as well as translators, by providing an interpretative guide on European legal terms and to contribute through lending a methodological support to the development of the DCFR. It also aims to highlight existing terminology variants, translation errors and material inconsistencies. The cross-reference features enable lawyers to search for the relevant case law and allow first insights into doctrinal questions from one Member States to another. Unlike a dictionary, the Syllabus goes further than merely providing translators with a suggestion, and it also highlights the respective legislative context of each concept.¹⁸³ The Syllabus is able to provide information in and in relation to five languages (English, French, German, Italian and Spanish).

The research work followed a two-step approach: first, mapping the occurrence of the selected terms in EU law and identifying terminology variants and then extending the research into the law of the Member States, including national case law and jurisprudence. The results of the research are integrated into a database available at the following address: <http://www.eulawtaxonomy.org>.

7.2. Environmental law

7.2.1. General concepts and principles

General concepts and principles of European environmental law often originate from international environmental law. United Nations¹⁸⁴ (UN) institutions and agreements play an important role in the enrichment of the European environmental law terminology. As the European Union ratified almost all the important international agreements on the environment, the terms of such agreements became part of the EU jargon. Environmental law concepts usually gain a specific technical meaning in addition to their everyday meaning. A large number of EU acts adopted in the field of environmental law employ these new terms and concepts. Through the implementation of these measures, EU vocabulary is able to enrich national languages. In this chapter, the linguistic forms of some important general concepts and principles of European environmental law will be analysed in order to provide examples regarding the positive contribution of the EU concepts to national languages. The basic

¹⁸¹ Other universities involved in the research program were the University of Barcelona (ES), the University of Lyon (FR), the University of Munster (DE), the University of Nijmegen (NL), the University of Oxford (UK) and University of Warsaw (PL).

¹⁸² Ajani: Introducing the Legal Taxonomy Syllabus on Consumer Law, www.eulawtaxonomy.org

¹⁸³ Idem.

¹⁸⁴ Find more: <http://www.un.org/depts/dhl/resguide/specenv.htm>

concepts of EU environmental law are those of *environment* and *sustainable development*. In what follows, we shall provide a short background to these.

The concept of *environment* might be an example for those terms which do not cause difficulties in translation but, as an already existing term in their language, gain a new technical meaning. However, this meaning of *environment* has not been clarified for quite a long-time. The concept itself derives from the international law. The UN considered environmental issues in 1968 for the first time when it recommended in a resolution¹⁸⁵ that the General Assembly should consider convening a UN conference on “*problems of the human environment*”.¹⁸⁶ The primary legislation of the EU does not provide any definition for *environment*. However it follows from Treaty provisions¹⁸⁷ that environment includes human beings, natural resources, land use, town and country planning, waste and water.¹⁸⁸ The secondary legislation¹⁸⁹ further refined the notion: “*human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage; the interaction between the factors mentioned in the first, second and third indents.*”

The concept of *sustainable development* is very often used in everyday life. However, its content is quite mysterious. Almost everybody uses it and not just in environmental science. Besides the anomalies of the content of its definition, the use of a new compound term is a real sign of the application of the integration principle and the positive contribution of the EU jargon to the development of European national languages. Most languages translated the newly invented concept word-by-word. It was the Treaty of Amsterdam that introduced the concept of *sustainable development* into EU legislation in 1999 but without defining it.¹⁹⁰ The concept has international origins since it goes back to a report which an *ad hoc* World Commission on Environment and Development had made in 1987 for the United Nations and which was entitled *Our Common Future*. In that report, sustainable development was described as a “*development which meets the needs of the present without compromising the ability of future generations to meet their own needs*”. However, after 20 years of discussions, the precise meaning of the notion is still unclear.¹⁹¹ “*It cannot usefully be defined. It seems clear, though, that a policy of economic growth which disregards environmental considerations will not meet the criterion of sustainable development.*”¹⁹² Some criticism was also formulated regarding the ever-growing use of the concept. As Ludwig Krämer put it forward in his rather negative conclusion: “*The notion is more and more used as a substitute for ‘positive, favourable development’, thereby losing all its environmental content*”.¹⁹³

In environmental law, several comprehensive or specific principles exist, the linguistic forms of which in EU languages might be of interest here. As to the general principles, *subsidiarity* and *proportionality* are general EU principles which we are not going to examine here.

¹⁸⁵ 45th session of the Economic and Social Council (ECOSOC), Resolution 1346 (XLV) of 30 July 1968

¹⁸⁶ Stockholm Conference of 1972 which established the United Nations Environment Programme, UNEP

¹⁸⁷ Articles 174(1) and 175(2) TEC (Articles 191(1) and 192(2) TFEU)

¹⁸⁸ Krämer: *EC Environmental Law*, pp. 1-4

¹⁸⁹ Article 3 of Council Directive 85/337/EEC

¹⁹⁰ Article 2 of the Treaty of Amsterdam and Articles 2 and 6 TEC (Article 3(3) TFEU and Article 11 TFEU)

¹⁹¹ Krämer: *EC Environmental Law*, p. 9

¹⁹² Birnie—Boyle, p. 45

¹⁹³ Krämer: *EC Environmental Law*, p. 11

However, all the principles referred to below—except for *self-sufficiency* and *proximity*—are regulated in the primary legislation of the EU.¹⁹⁴

The precautionary and prevention principle is one of the core principles of European environmental law. According to Krämer, “it is unclear to what extent the prevention principle’s content is independent from the precautionary principle, since both principles are, in practice, almost always used together and there is no definition of either of them in the EC Treaty.”¹⁹⁵ Language versions of the judgments in cases C-157/96 and C-180/96¹⁹⁶ are good examples to underline the above statement and the fragility of the unity of the two concepts, given the fact that the English version of the judgments refers to the prevention principle only, and does not make distinctions between the two notions, while the German (Grundsätzen der Vorsorge und Vorbeugung), and other languages (ES: principios de cautela y de acción preventiva, DA: forsigtighedsprincippet og princippet om forebyggende indsats, FR: principes de précaution et d’action préventive), use a phrase meaning ‘precautionary and prevention principle’. Other authors assert that the principle of prevention requires preliminary action against known and expected impacts, while, together with the idea of precaution, it warns that, with due care, the unexpected consequences can and should also be avoided.¹⁹⁷ The terms acquire their concrete meaning through their implementation in certain environmental sub-sectors (for example, in the field of waste policy, the principle of prevention of generation of waste¹⁹⁸ was further elaborated through the rulings of the ECJ¹⁹⁹).

The *polluter-pays principle*²⁰⁰ was first defined by the OECD in 1972.²⁰¹ This principle is applied by Directive 2004/35/EC on environmental liability. Problems in the context of its implementation²⁰² prove the lack of a clear definition and a single approach to the principle. From a linguistic point of view, the special challenge here is that English, being the source language, uses a noun + verb phrase structure in an adjectival position to denote an abstract notion, which is quite unusual and challenging especially for agglutinating languages where it is hard to place such a structure into such a position. Table 3 enumerates all the language versions for this expression. As we can see, solutions range from mirror translation (most

¹⁹⁴ Article 191(2) of the TFEU (ex Article 174(2) TEC)

¹⁹⁵ Krämer: *EC Environmental Law*, p. 25

¹⁹⁶ Case C-157/96, *R. v Minister of Agriculture*, [1998] ECR, 2211, 63–64; Case C-180/96, *United Kingdom v Commission*, [1998] ECR 2265, 99–100

¹⁹⁷ Bándi—Csapó—Kovács-Végh—Stágel—Szilágyi, p. 102

¹⁹⁸ Article 4 of Directive 2008/98/EC on waste

¹⁹⁹ Case 418/97 and 419/97, *ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer* (C-418/97) and *Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt and Vereniging Stedelijk Leefmilieu Nijmegen v Directeur van de dienst Milieu en Water van de provincie Gelderland* (C-419/97), [2000] ECR, 4475, 39; Case C-6/03, *Deponiezweckverband Eiterköpfe v Land Rheinland-Pfalz* [2005] ECR, 2753, 28–30; Case C-194/05, *Commission of the European Communities v Italian Republic* [2007] ECR, 11661, 33 20

²⁰⁰ Case C-293/97, *The Queen v Secretary of State for the Environment and Ministry of Agriculture, Fisheries and Food, ex parte H.A. Standley and Others and D.G.D. Metson and Others* [1999] ECR, 2603, 43–44, 51–53; Case C-378/08, Reference for a preliminary ruling by the *Tribunale amministrativo regionale della Sicilia* [2010] ECR, 0000 20

²⁰¹ *Guiding principles concerning international economic aspects of environmental policies*, C (72) 128

²⁰² <http://ec.europa.eu/environment/legal/liability/index.htm>;

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/157&format=HTML&aged=1&language=EN&guiLanguage=en>

languages, e.g., SV, MT, LV, BG, etc.), through a form which could be translated back into English as ‘polluter-payer’, that is, two nouns are put into adjectival position (e.g., FR, PT), to the German version which, instead of sticking to the original grammatical form, expresses the concept as the ‘principle of causation’ (*Verursacherprinzip*).

Table 4. The term polluter-pays principle in EU languages

Language	Term used
BG	<i>замърсителят плаща принцип</i>
CS	<i>zásadě znečišťovatel platí</i>
DA	<i>princippet om, at forureneren betaler</i>
DE	<i>Verursacherprinzip</i>
EL	<i>αρχή ο ρυπαίνων πληρώνει</i>
EN	<i>polluter should pay principle</i>
ES	<i>principio de quien contamina paga</i>
ET	<i>saastaja peab aga maksma põhimõte</i>
FI	<i>saastuttajan olisi maksettava periaate</i>
FR	<i>principe du pollueur-payeur</i>
GA	<i>údar an truaillithe a íocfaidh as prionsabal na</i>
HU	<i>a szennyező fizet elve</i>
IT	<i>principio chi inquina paga</i>
LT	<i>atlygina teršėjas principas</i>
LV	<i>maksā piesārņotājs principu</i>
MT	<i>inigiġeż għandu jhallas prinċipju</i>
NL	<i>beginsel dat de vervuiler betaalt</i>
PL	<i>zasadzie zanieczyszczający płaci</i>
PT	<i>poluidor-pagador princípio</i>
RO	<i>principiul poluatorul plătește</i>
SK	<i>náhradu škody hradi znečišťovateľ princíp</i>
SL	<i>plačati povzročitelj obremenitve načelo</i>
SV	<i>förorenaren ska betala princip</i>

The principle of the *rectification of damage at source* was included in the Treaty in 1987. About half of the language versions of the Treaty use a word meaning ‘damage’ (for example SV, SL, SK, CS, DE, RO, HU, IT) and the other half ‘impairment’ (for example FR, BG). In addition to that ambiguity, it is not clearly settled what *rectification* means.²⁰³ The ECJ tried to clarify the concepts on a case-by-case basis.²⁰⁴ *Self sufficiency* and *proximity* are mainly waste-specific principles. The actual meaning of the concepts is clearer on the basis of the relevant EU measures using them.²⁰⁵ From a linguistic point of view, it is remarkable that such terms already part of the common vocabulary gain a meaning specific to the EU and waste law.

The environmental law principles of the Treaty are undefined in the primary legislation of the EU. “Their substantive meaning has been the subject of considerable academic discussion, mostly concluding that they are incapable of clear definition.”²⁰⁶ The application of these in specific environmental directives and their interpretation by the ECJ contributed to the further clarification of their meaning. In spite of the ambiguities in their content, general concepts and principles of European environmental law provided a positive contribution to the development of European languages and cultures by giving rise to academic and social debates and enforcement measures with their new terminology.

7.2.2. Terminology of the relevant directives

a) *Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive)*

The two below examples are related to the lack of definitions of certain projects in Annexes I and II of the EIA Directive (Category D). This phenomenon causes uncertainty in the enforcement of the directive by the Member States, and so the ECJ defines the disputed terms on a case-by-case basis. The interpretation of the concepts by the ECJ involves a comparison of the language versions. Such categories are important as they determine the scope of the

²⁰³ Krämer, pp. 26

²⁰⁴ C-2/90, *Commission of the European Communities v Kingdom of Belgium*, [1992] ECR, 4431, 34; C-293/97, 44, 52, footnote 16

²⁰⁵ Directive 2008/98/EC on waste; Regulation (EC) 1013/2006; Case C-203/96, *Chemische Afvalstoffen Dusseldorp BV v Minister van Volkshuisvesting*, [1998] ECR, 4075, 48–50; Case C-2/90 34, fn 21; Case C-324/99, Reference for a preliminary ruling from the *Bundesverwaltungsgericht: DaimlerChrysler AG v Land Baden-Württemberg* [1999] ECR

²⁰⁶ Scotford: Mapping the Article 174 (2) EC Case law: a first step to analysing Community Environmental Law principles in *The yearbook of European environmental law* (Oxford University Press, 2008), p. 3. Cf. de Sadeleer: *Environmental principles: From Political Slogans to Legal Rules* (Oxford University Press, 2002), pp. 2, 37–44, 60, 72–79, 92; Krämer: The Genesis of EC Environmental Principles in Macrory—Havercroft—Purdy (eds.): *Principles of European environmental law* (Europa Law Publishing, Groningen, 2004), pp. 31–47, 47; Krämer: *EC Environmental law* (Thomson, Sweet&Maxwell, London, 2007), pp. 25–27; Lee: *EU Environmental law: Challenges, change and decision making* (Hart Publishing, Oxford, 2005), pp. 97–98. Cf. Scott: The Precautionary Principle before the European Courts in Macrory—Havercroft—Purdy (eds.): *Principles of European environmental law* (Europa Law Publishing, Groningen, 2004), pp. 51–72, 54; Tromans: High Talk and Low Cunning: Putting Environmental Principles into Practice in *Journal of Planning and Environmental Law*, 1995, pp. 779 and 790; and for a general overview, cf. Epiney: Environmental Principles in Macrory (ed.): *Reflections on 30 Years of EU Environmental Law* (Europa Law Publishing, Groningen, 2006), pp. 19–39, 30–31.; Tridimas: *The General Principles of EU Law* (Oxford University Press, 2006), pp. 25–35

directive. If a project falls under the scope of the directive, the developer shall make a highly costly environmental impact assessment before consent is given to proceed with the project. This assessment is obligatory in the case of Annex I projects. Should the projects be listed in Annex II, the Member States shall determine through a case-by-case examination, or thresholds or criteria set by them, whether there is a need of environmental impact assessment, “*where the project is likely to have significant effects on the environment by virtue, in particular, of its nature, size or location*” (Article 2 of the Directive).

In Case C-72/95, the Nederlandse Raad van State asked the ECJ whether the expression *canalization and flood-relief works* in point 10(e) of Annex II to the directive is to be interpreted as including certain types of work on a dyke running alongside waterways. The Dutch legislation interpreted the term quite narrowly, referring just to certain types of dykes. As a consequence of that, the Dutch authorities have virtually never applied the directive in the case of the construction of dykes as the national threshold was set so high that nearly all the projects were excluded from the scope of the Dutch law implementing the Directive. In the light of the wording of the English version of the Directive, the national court considered that projects falling under that heading in Annex II involve activities likely to have significant effects on the environment, so that the expression is able to encompass certain works relating to a dyke. Examination of the various language versions of point 10(e) of Annex II showed that these fall into two categories according to whether the terms employed denote the idea of flooding. The English (*canalization and flood-relief works*) and Finnish (*kanavointi- ja tulvasuojeluhankkeet*) versions are similar, whereas the German, Greek, Spanish, French, Italian, Dutch and Portuguese versions refer to ‘canalization and regulation of watercourses’, and the Greek version includes the French term *canalisation* in brackets after the Greek term. The Danish and the Swedish versions contain only a single expression reflecting the idea of regulating watercourses (*anlaeg til regulering af vandløb*; *anläggningar för reglering av vattenflöden*). Given that divergence, one must examine the purpose and general scheme of the directive. The wording of the Directive indicates that it has a wide scope and a broad purpose. That observation alone should suffice to interpret point 10(e) of Annex II as encompassing all works for retaining water and preventing floods and therefore dyke works, even if not all the linguistic versions are so precise.²⁰⁷

The ECJ interpreted the notions of *construction of motorways and express roads* (Annex I, 7(b)(c)) and *construction of roads* (Annex II, 10(d)) in Case C-142/02.²⁰⁸ According to the Ayuntamiento de Madrid, the ring road concerned in the main proceedings is an ‘urban road’. The amended directive does not refer to that type of road in Annexes I and II which mention only motorways, express roads and roads. Furthermore, those terms are not defined, except, with respect to the notion of express roads, by reference to the definition given by the agreement. According to the defendant in the main proceedings, in the absence of a clarification of those terms, the Spanish law transposing the amended Directive simply repeated its wording. Since urban roads are not mentioned there, it was entitled to take the view that projects for the alteration of such a road were not covered by the amended Directive

²⁰⁷ Case C-72/95, Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland. [1996] ECR, 5403, 21–22, 29–31

²⁰⁸ Case C-142/07 *Ecologistas en Acción-CODA v Ayuntamiento de Madrid*, [2008] ECR, 6097, 27, 29, 30–31, 36. See in particular paragraphs (29) and (30)

and, consequently, did not have to be made subject to an environmental impact assessment. As the Directive did not define the notions, except for express roads, the ECJ emphasized their significance by stating that “*first, as the Commission of the European Communities rightly submits, that the concepts in those annexes are Community law concepts which must be interpreted independently and, second, that it is conceivable that the types of road which are mentioned therein are sited both in and outside built-up areas. (...) Unless roads in built-up areas are expressly excluded, the words ‘express roads’ cover urban roads which have the characteristics set out in that Annex.*” To conclude, the construction, enlargement and renovation of every type of roads falls under the scope of Annex II of the Directive.

According to Article 2(2), “*development consent*” means the decision of the competent authority or authorities which entitles the developer to proceed with the project. This term gave rise to a category N challenge. A huge number of EC environmental norms require the Member States to approve a given project, behaviour or activity before it be carried out by individuals and firms. The terminology used by EC Law is varied and somewhat confusing: *authorisation*, *permit*, and *written consent*²⁰⁹ and *development consent* are used without a clear-cut conceptual pattern. It is not clear but it is supposed that a single category is meant under this concept in spite of their variety. However, if this terminology diversity is multiplied by the number of official languages and put in the context of so many different legal traditions, the possibility for problems to arise is fairly high. The term *development consent* is a good example of the above problem. The newly invented autonomous EU concept²¹⁰ had to be expressed by a new term in order to be able to cover a wide range of actions. *Development consent* is used very rarely in European environmental law, and it is mainly directives referring to the EIA Directive which use this concept.²¹¹ Some language versions of the Directive do not stick to a word-by-word translation of the term but invented or used another expression instead. For example, in Hungarian *fejlesztési hozzájárulás* would be the word-by-word translation of the term but the text of the Directive uses ‘*engedély*’ (which is closer to ‘authorisation’), in German *Development Zustimmung* would be the word-by-word translation and still ‘*Genehmigung*’ (also meaning ‘authorisation’) is used in the text of the Directive. *Development consent* is a term difficult to transpose into national law due to the fact that it relates to various types of legal acts. The term certainly poses problems for the Member States (for example in French law, or see the case law referred to), but not necessarily due to a translation problem. The difficulties lie in the identification of the act to be considered as ‘development consent’. Before the adoption of the Directive, a procedure was in place for the adoption of a formal act by French authorities called *déclaration d’utilité publique*. This act is generally considered as ‘development consent’ in French law, but the ‘development consent’ used by EU law has a broader meaning. The French version of the Directive uses ‘*autorisation*’. In the Hungarian legislation, there is no definition for ‘development consent’. The Hungarian Environmental Act enumerates several types of environmental licences (*környezetvédelmi engedély* ‘environmental license’, *egységes környezethasználati engedély* ‘consolidated environmental use permit’, *környezetvédelmi működési engedély* ‘environmental operating permit’ and *más hatóság által kiadott határozat* ‘resolution issued

²⁰⁹ Moreno, pp. 319 and 334

²¹⁰ Case C-290/03, *The Queen, on the application of: Diane Barker v London Borough of Bromley*, [2006] ECR, 3949, 40

²¹¹ Directive 2003/35/EC; Directive 2001/42/EC

by another authority’). The definition in the Directive is misleading as it is not always clear which authority authorises the developer to proceed with the project. The ECJ interpreted the notion in several judgements.²¹²

b) European Parliament and of the Council Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (ELD Directive)

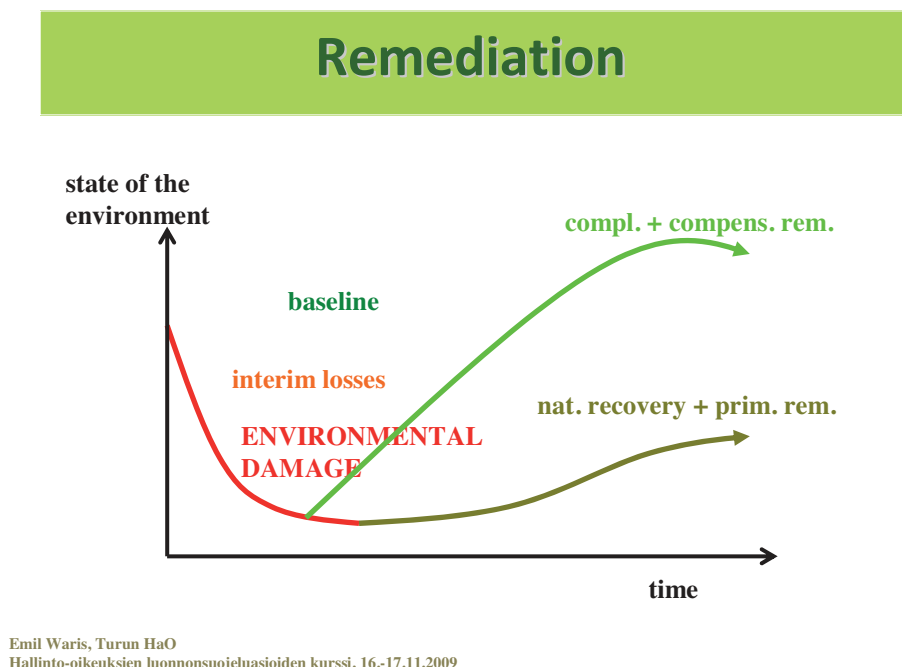
The ELD Directive refreshes several concepts of EU environmental law and therefore national laws as well, as it adopts new EU-specific terms, and gives a new EU-specific meaning to existing terms. However, this new terminology caused several interpretation and language-related problems in the Member States, as the examples below prove.²¹³

According to the English version of the ELD Directive (definition in section 1.1.3), “**compensatory remediation** shall be undertaken to compensate the interim loss of natural resources and services **pending recovery**.” It remains unclear whether pending recovery refers to a case when there are losses or when the remediation is going to be undertaken. The Swedish version follows the English one: “kompenserande hjälpåtgärder skall vidtas för att kompensera för tillfälliga förluster av naturresurser och funktioner i avvaktan på återhämtning”, although it actually tilts a bit towards what is pointed out about the Finnish version. The Finnish language version: “Korvaavalla korjaamisella korvataan luonnonvarojen ja palvelujen väliaikaiset menetykset ennen palautumista” is also ambiguous, but it tilts towards the meaning that it is the remediation that takes place pending the recovery. Translating this interpretation back into English, it would read: ‘Through compensatory remediation, the interim loss of natural resources and services is compensated prior to recovery.’ Because of this confusion, an earlier draft of the Finnish ELD legislation used the term väliaikaiset toimet (‘interim/temporary measures’) instead of compensatory remediation. In the final version, the ambiguous version was preferred instead. The German version seems to be the most in line with the aim of the legislator: “Die Ausgleichssanierung erfolgt zum Ausgleich der zwischenzeitlichen Verluste von natürlichen Ressourcen und von deren Funktionen, die bis zur Wiederherstellung entstehen”. According to this text, it is the damage that arises from ‘pending restoration’, while the section does not provide for anything about when the remediation should be undertaken. If compensatory remediation is limited to the time before recovery, it means that once the environment has recovered—either by itself or due to human activity—the restoration is finished. On the other hand, in line with the German version, all the temporary losses (the ones that could not have been compensated in the meantime, for example the losses suffered by fishermen during the pollution of a river) still have to be compensated even after the environment has recovered, like paying ecological compensation afterwards. (Category T)

²¹² Case C-290/03, *The Queen, on the application of: Diane Barker v London Borough of Bromley*, [2006] ECR, 3949, 40–41, 45, 49; Case C-201/02, *The Queen, on the application of Delena Wells v Secretary of State for Transport, Local Government and the Regions*, [2004] ECR, 723, 53; Case C-508/03, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, [2006] ECR, 3969, 104

²¹³ There is no case law on the notions analysed so far.

Figure 17. Compensatory remediation



Waris's figure shows the interpretation of *compensatory remediation* in line with the Directive. It illustrates how remediation after recovery is supposed to eventually compensate the interim losses. If compensatory remediation is restricted until recovery, it can be seen what would be left out. The ELD Directive uses the term *complementary remediation* in addition to *compensatory remediation*. The only real difference is that compensatory remediation can take place after the recovery, too. So, if compensatory remediation were limited to precede recovery, there would not be any real difference between the two concepts. Any compensation done before recovery could just as well be defined as complementary remediation. To conclude, the English and Swedish language versions, as well as the Finnish one, are a bit ambiguous, while the German version takes into consideration the purpose of the Directive and the relevant guidance documents much more.²¹⁴

In Annex II, section 1.1.2, the phrase *interests of the affected population* was translated into Finnish as *vahingoittuneen populaation edut* (i.e. 'benefits of the damaged population'), which refers to a population of a certain species, not human inhabitants (*ihmisen asukas*). Other language versions, such as the Swedish one (*den berörda befolkningens intressen*) or the German one (*die Interessen der betroffenen Bevölkerung*), clearly indicate that the provision refers to the human population.

Significant adverse effect (Article 2(1) of Annex II) is not defined in the Directive, although Annex I provides guidelines and criteria for assessing the significance. (A category D

²¹⁴ http://www.envliability.eu/docs/D13MainToolkit_and_Annexes/REMEDE_D13_Toolkit_310708.pdf;
<http://www.envliability.eu/pages/about.htm>

challenge.) The concept is central to the threshold set for the application of the Directive and therefore the equivalent term of ‘significant’ in other language versions becomes very important with a view to the application of the whole liability regime. In Finland, the Finnish equivalent, *merkittävä haitallinen vaikutus* was construed as ‘a very high threshold’. The same is applicable in Danish (*betydelig negativ påvirkning*). As emphasised above, the concept is highly important as it determines the scope of the Directive. As the Directive does not precisely define the concept, it could happen that almost all kinds of damage occurring to the environment can be excluded from the scope of the ELD Directive. Together with the wide range of exceptions under Article 4, the scope of the Directive is too narrow, contrary to the intention of the legislators. The same was concluded by Waris²¹⁵ who cited the Report of the Environmental Committee of the Finnish Parliament in which support was given to adopt the Government’s legislative proposal implementing the ELD Directive. According to the Committee, the ELD set the damage threshold high, and the proposed liability regime “*will apply very rarely, in cases of exceptionally severe damaging incidents*”. Waris concludes by noting “*that the difficulties encountered in the subsequent correction of inconsistencies with regard to Community level thresholds stress the need for expressly defined legal concepts—where uniform application is intended. This requirement is further highlighted by the multilingual nature of the thresholds. On the reverse side, where discretion to set a threshold is intended to be left for the Member States, even this needs to be clearly expressed.*”

According to Article 2(9), *imminent threat of damage* means a sufficient likelihood that environmental damage will occur in the near future. It is up to the jurisprudence to define the level and the meaning of ‘sufficient likelihood’ in the definition. The lack of a concrete meaning of the concept causes insecurity in its implementation and application.

The word *imminent* does not have an exact equivalent in Lithuanian. That is why two words are used in the translation of the definition: *neišvengiama (reali)*, ‘inevitable (real)’. The meaning of the two words also differs. The definition of *imminent threat of damage* (that is, environmental damage) was not transposed into the national legislation, but a term meaning ‘real threat of damage’ (*reali grėsmė*) is used—which is rather vague, too.

According to Article 2(13), *services* and *natural resources services* mean functions performed by a natural resource for the benefit of another natural resource or the public. The ambiguity of this term is not so much the product of language versions than of the broadness of the definition itself. It is left open what services are covered by the concept which leaves its relation to the more commonly used (although not in legal contexts) concept of ecosystem services vague. The term *services* in the Lithuanian translation is translated by the terms *savybės (funkcijos)* meaning ‘characteristics (functions)’.

c) Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control (IPPC Directive)

According to Article 2(3), “‘*installation*’” means a stationary technical unit where one or more activities listed in Annex I are carried out, and any other directly associated activities

²¹⁵ Waris, pp. 4–20

which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution”. In some languages, the term ‘installation’ bears a different meaning than the concept of ‘plant’ while in other languages the term ‘plant’ is part of the definition of ‘installation’. In EU environmental law, the two concepts have a different meaning and so the measures based on them are different, too. *Installation* is widely used in the field of pollution prevention and control, see, e.g., activities of Annex I of the IPPC Directive. Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants uses the term *plant*. In French, *large combustion plant* is translated as *grandes installations de combustion*. This caused difficulty when the European legislator tried to refer to all the installations and plants. In English, the two terms could be referred to as “Member States shall take the necessary measures to ensure that no **installation or plant** is operated without a permit”, but, in French, this approach could not have been followed because of the above mentioned translation problem. The legislator solved the problem by referring to ‘installation, combustion plant, waste incineration plant or waste co-incineration plant’ (*installation, ou d’une installation de combustion, d’une installation d’incinération des déchets ou d’une installation de coïncinération des déchets*)²¹⁶ to cover all the types of installations and plants. However, this solution made the text of the Directive complicated. In Finnish, ‘plant’ means the same as the ‘installation’ (*laitoksen, tai polttolaitoksen, jätteenpolttolaitoksen, tai jätettä käyttävän rinnakkaispolttolaitoksen*).²¹⁷ The term ‘installation’ is transposed into the Latvian legislation just exactly as it is stated by the Directive. In the context of IPPC Directive and the relevant Latvian legislation, it is clear what the term ‘installation’ means. ‘Installation’ is rather linked with the terms ‘facility’ and ‘site’, than with ‘plant’. The term ‘plant’ translated into Latvian means and is often used as *rūpnīca* or *fabrika* (‘factory’). The term *combustion plant* was translated into Latvian as *sadedzināšanas iekārta* (‘combustion installation’). The reason for such a translation was the same as mentioned and explained above. Unfortunately, there are no Latvian proposals as to what other and more appropriate terminology could be used for *sadedzināšanas iekārta*. The same approach is used for the translation of the term *incineration plant* (*sadedzināšanas iekārta*) in Directive 2000/76/EC on the incineration of waste. In Lithuanian, ‘plant’ and ‘installation’ both have their own equivalents. ‘Plant’ (*įrenginys*) might be considered as a part of the definition of ‘installation’ (*gamykla*). The term ‘object of economic activity’ (*ūkinės veiklos objektas*) is also used. (Category T)

d) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (Birds Directive)

In Article 6(4) of the Habitats Directive,²¹⁸ the Lithuanian version of the phrase *imperative reasons of overriding public interest, including those of a social or economic nature* (*dėl įpareigojančių priežasčių, tarp jų ir socialinio ar ekonominio pobūdžio, neatsižvelgti į visuomenės interesus*) has a meaning quite opposite to other language versions, since it talks about a need to ignore public interest. (Category T)

²¹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0844:FIN:FR:PDF>

²¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0844:FIN:FI:PDF>

²¹⁸ See Krämer: *The European Commission’s Opinions under Article 6(4) of the Habitats Directive*

Both Directives use the terms *serious damage*, *livestock* and *fisheries*. Article 16(1)(b) of the Habitats Directive uses the following phrase: “To prevent **serious damage**, in particular to crops, **livestock**, forests, fisheries and water and other types of property.” Into Finnish it was translated as “**erityisen merkittävien vahinkojen** ehkäisemiseksi, jotka koskevat viljelmiä, **karjankasvatusta**, metsiä, **kalataloutta** sekä vesistöjä ja muuta omaisuutta” meaning ‘to prevent **serious damage** to crops, **livestock**, forests, **fisheries** and water. Nevertheless, in Article 9.1(a) of the Birds Directive, the Finnish version used the following phrase: “viljelmille, **kotieläimille**, metsille, **kalavesille** ja vesistöille koituvan **vakavan vahingon** estämiseksi”. It means that different terms were used for the very same English terms in the two Directives. This may generate problems as far as the threshold of ‘serious damage’ is concerned which now appears to be different in the Finnish version of the two Directives (i.e. Birds Directive: ‘serious damage’ vs. Habitats Directive: ‘especially significant damage’). The protected economic interests also differ in the Finnish version: ‘livestock’ is ‘domestic animals’ in the Birds Directive and ‘cattle raising’ in the Habitats Directive; while the term ‘fisheries’ means ‘fishing waters’ in the Birds Directive and ‘fishing industry’ in the Habitats Directive.

Regarding the phrase *likely to have a significant effect* (Article 6(3) of the Habitats Directive), the concept of ‘significant effect’ is not defined in the Directive, and therefore its transposition can lead to interpretation problems. The French law first used the wording of the national legislation: *dont la réalisation est de nature à affecter de façon notable un site Natura 2000* (Article L.414-4 of the Environment Code). However, a recent law (2008) modified this by taking over the wording of the Directive: *susceptibles d’affecter de manière significative*. This illustrates the difficulties when deviating from the original text of the Directive: a small modification in the wording might lead to a shift of concepts. Most concepts used by Directives have to be understood in the context of those Directives. The UK law transposed the concept using the term of the Directive²¹⁹ With respect to the Finnish version (*merkittävä vaikutus*), the same can be stated as regarding ‘significant adverse effect’ in the ELD. During the transposition of the Habitats Directive, the Environmental Committee of the Finnish Parliament referred to the assessment threshold imposed by the Directive using the term *merkityksellinen vaikutus*. This interpretation suggests a lower threshold than the one implemented, i.e. the term used in the Finnish language version of the Directive. Suspicion arises as to the coherence between different language versions of the threshold, e.g. is **significant effect** interpreted in English as entailing the same level of effect as **merkittävä vaikutus** in Finnish? The Swedish version of the concept in the Habitats Directive, *kan påverka området på ett betydande* (‘considerable’ or ‘substantial’) *sätt*, implies a higher threshold to be considered compared to the English version (‘have a significant effect’). The Swedish national legislation, Chapter 7, 28a§ of the Environmental Code, uses the same wording as the Directive. The setting of the applicable level caused some trouble in practice but the relatively large number of decisions from the Environmental Court of Appeal defined a trend.²²⁰ The uncertainty of the term was further emphasised by Advocate General Kokott in

²¹⁹ <http://eur-lex.europa.eu/n-lex/exec.html>; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:71992L0043:EN:NOT#FIELD_UK

²²⁰ The same question was raised in a construction permit procedure for a power station and a railway tunnel. In both referred cases was the question whether the obligation to apply for a permit was excluded if the operator voluntarily promised to undertake precautionary measures, in order to avoid environmental effects in the

her opinion in Case C-127/02²²¹ about the *probability of significant adverse effect*: “As regards the degree of probability of significant adverse effect, the wording of various language versions is not unequivocal. The German version appears to be the broadest since it uses the subjunctive ‘könnte’ (could). This indicates that the relevant criterion is the mere possibility of an adverse effect. On the other hand, the English version uses what is probably the narrowest term, namely ‘likely’, which would suggest a strong possibility. The other language versions appear to lie somewhere between these two poles. Therefore, according to the wording, it is not necessary that an adverse effect will certainly occur but the necessary degree of probability remains unclear.” (Category D)

The concept of *appropriate assessment* in Article 6(3) of the Habitats Directive, is not transposed directly into the French law. Appropriate assessment is *évaluation de leurs incidences au regard des objectifs de conservation du site*²²². If there is any doubt, one should refer to the objective of the *appropriate assessment* as stated in the Directive (*évaluation appropriée de ses incidences sur le site eu égard aux objectifs de conservation de ce site*). The term was shortened in the Lithuanian version to ‘assessment’ (*poveikio teritorijai įvertinimas*). The term ‘appropriate’ in Lithuanian is quite vague itself (*tinkamas*). In the national legislation, it might be easily mixed up with the ‘environmental impact assessment’, because both assessments are being carried out in accordance with the Lithuanian Law on Environmental Impact Assessment of the Proposed Economic Activity. (Category M)

Regarding derogations from Article 9 of the Birds Directive and Article 16 of the Habitats Directive, the Finnish Nature Conservation Act refers directly to the Directives. Bearing in mind the above-mentioned translation issues, the correct application of the provisions requires not only a comparison between the two Finnish language versions but also reference to other languages. If unaware of the inconsistencies, the reader may construe the provisions incorrectly. In addition to the above-mentioned linguistic problems, the different language versions of the Habitats Directive were evaluated in two cases by the Supreme Administrative Court of Finland. In the first case, the Court concluded that, according to the Finnish language version, the list mentioned in Article 4(1) should include “*all the sites that had natural habitat types mentioned in Annex I and species mentioned in Annex II*”. However, upon comparing the different language versions, it turned out that the requirement to list the natural habitat types and species only referred to the sites included in the national proposal in stage 1. In the second case, it was concluded that, by comparing the different language versions of Article 12 of the Habitats Directive, it was somewhat ambiguous how large are the areas that *breeding sites and resting places* could include. (Category N)

protected area. The Court found that it didn’t exclude the obligation and put the precautionary measures as conditions to the permit.

²²¹ Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, [2004] ECR, 7405, 69

²²² Article L.414-4 of the Environment Code.

e) Waste Directives²²³

In the field of waste law, many definitions, mainly those regulated in Article 3 of Directive 2008/98/EC (*waste, recovery, by-product*), had posed problems some of which were later clarified by the case law of the ECJ.

*Waste*²²⁴ is defined in the English version of Directive 75/442/EEC (1975 version) as “any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force”. The French version, using the term *déchet*, refers to “toute substance ou tout objet dont le détenteur se défait ou a l’obligation de se défaire en vertu des dispositions nationales en vigueur” and the German version defines *Abfälle* as “Alle Stoffe oder Gegenstände, deren sich der Besitzer entledigt oder gemäß den geltenden einzelstaatlichen Vorschriften zu entledigen hat.” In the French and German versions of the definition, the terms *défaire* and *entledigen* relate rather to the action to ‘discard’ and not to ‘dispose of’ waste as suggested by the English version of the text. This ambiguity led to difficulties in the interpretation of the concept of ‘waste’²²⁵. The concept was clarified in the English version of the Directive (1991) which substituted the term *dispose of* with the term *discard*. The term *discard*²²⁶ was translated into Lithuanian as *atsikratyti* in the Directive.²²⁷ However, there were three problems with this word in Lithuanian: it is not used for objects (only for people or animals);²²⁸ it is not neutral (it has some negative connotations); and it is used in the spoken and not in the written language. There are four different possible translations of the term *discard* into Lithuanian: *atsikratyti*, *šalinti*, *pašalinti*, and *išmesti*. Despite the fact that the term *se défaire* remained unchanged in all Waste Directives (1975, 1991, 2006 and 2008), the translations of these directives into Lithuanian reveals that the four different above-mentioned Lithuanian terms all are used as an equivalent of the term *discard*. The best equivalent for the term *discard* is *išmesti*, however it was used only in the old version of Lithuanian Law on Waste Management. In English, the term *waste* may be either

²²³ Directive 2008/98/EC on waste and repealing certain Directives (2008/98/EC) and its former versions: 75/442/EEC; 2006/12/EC; Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (PWD); Regulation 1013/2006/EC of the on shipments of waste (1013/2006/EC); Directive 1999/31/EC on the landfill of waste (1999/31/EC); Directive 2002/96/EC on waste electrical and electronic equipment (2002/96/EC)

²²⁴ Joined cases C-206/88 and C-207/88 *Criminal proceedings against G. Vessoso and G. Zanetti*, [1990] ECR, 1461, 9–12; Cases 418/97 and 419/97 *ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer* (C-418/97) and *Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt+ and Vereniging Stedelijk Leefmilieu Nijmegen v Directeur van de dienst Milieu en Water van de provincie Gelderland* (C-419/97), [2000] ECR, 4475, 65–66; Case C-9/00, *Palin Granit Oy and Vehmassalon kansanterveysystön kuntayhtymän hallitus*, [2002] ECR, 3533; Case C-114/01 *AvestaPolarit Chrome Oy*, [2003] ECR, 8725

²²⁵ Case C-422/92 *Commission of the European Communities v Federal Republic of Germany*, ECR [1995], 1097, 22–23

²²⁶ Case C-263/05, *Commission of the European Communities v Italian Republic*, [2007] ECR, 11745, 33; Case C-129/96, *Inter-Environnement Wallonie ASBL v Région wallonne*, [1997] ECR, 7411, 26; Case C-9/00, 22, fn 22; Case C-1/03 *Criminal proceedings against Paul Van de Walle, Daniel Laurent, Thierry Mersch and Texaco Belgium SA.*, [2004] ECR, 7613; Case C-422/92 *Commission of the European Communities v Federal Republic of Germany*, ECR [1995], 1097, 22–23

²²⁷ The challenges mentioned here for Lithuanian are discussed by Vasiliauskas (under publication).

²²⁸ Explanation taken from the *Dictionary of Contemporary Lithuanian* and from the *Grand Lithuanian Dictionary*

singular or plural, since there are some acts where one can find the term *wastes* used instead of the term *waste*. However, this difference is not reflected in the Lithuanian translation, since the use of the term ‘waste’ in the singular is not possible in Lithuanian. The term ‘waste’ in Lithuanian is plural (*atliekos*), and the singular form is non-existent. However, in the ECJ case law²²⁹, Lithuanian translations sometimes use the term ‘waste’ in the singular form (*atlieka* and not *atliekos*), which is truly a mistake.

It is rather complicated to find an actual difference between *recovery*, *reuse*, and *recycling*, however, very different measures and obligations are assigned to them in the Waste Directives (those concerning specific waste streams, for example, the PWD and in the framework Directive as well²³⁰). It is therefore important to have equivalents for each of them in the national languages (see Table 2 below). Some languages tend to use a term in English (see German and Dutch where ‘recycling’ is *Recycling*) or invented a new, transliterated form of the term (e.g., see the FR, PL, RO, MT, SK, SL versions in the Table). No difference is made in Lithuanian between ‘recovery’ and ‘use’. The term used officially for *recovery* in Lithuanian is *naudojimas*. *Naudojimas* actually means ‘use’ in Lithuanian. The term *use* is also translated as *naudojimas*, and therefore, there are two different concepts that are translated into Lithuanian using the same term, i. e. both *recovery* and *use* are translated into Lithuanian as *naudojimas*. On the basis of the Lithuanian text, and without checking other language versions, it would not be possible to say whether the term *naudojimas* stands for ‘recovery’ or for ‘use’. The phrase *use of recovered materials* (Recital 8 of Directive 2008/98/EC) is translated as *atgautų medžiagų naudojimas*, where *naudojimas* stands for ‘use’ and *atgautų* for ‘recovered’. However, *recovered* is translated as *panaudotas* in Recital 23. In the Annex, the term *reuses* is translated as *naudojimas*, however, in other articles, the term *reuse* is translated as *pakartotinis naudojimas* (which should be considered a correct translation). In Annex II, the term *recovery* is also translated as *naudojimas*. We should also refer to Hungarian here where *anyagában történő hasznosítás* (‘utilisation using its material’) does not express exactly the same meaning as in the English version). (Category T)

Table 5. The term *recovery/reuse/recycling* in EU languages

Language	Term used
BG	оползотворяване/повторна употреба/рециклиране
CS	využitím/opětovným použitím/recyklací
DA	nyttiggørelse/genbrug/genanvendelse
DE	Verwertung/Wiederverwendung/Recycling
EL	ανάκτηση/επαναχρησιμοποίηση/ανακύκλωση
EN	recovery/reuse/recycling

²²⁹ Lithuanian language version of C-188/07, *Commune de Mesquer*

²³⁰ The most important difference between the notions can be seen in their different positions in the waste hierarchy, see Article 4 of 2008/98/EC.

Language	Term used
ES	<i>valorización/reutilización/reciclado</i>
ET	<i>taaskasutamine/korduskasutamine/ringlussevõtt</i>
FI	<i>hyödyntämisellä/uudelleenkäytöllä/kierrätyksellä</i>
FR	<i>valorisation/reemploi/recyclage</i>
GA	<i>ghnóthú/athúsáid/athchúrsála</i>
HU	<i>hasznosítás/újrahasználat/újrafeldolgozás</i>
IT	<i>recupero/riutilizzo/riciclaggio</i>
LT	<i>naudojimas/pakartotinis naudojimas/perdirbimas</i>
LV	<i>reģenerācija/atkārtota izmantošana/pārstrāde</i>
MT	<i>irkupru/użu mill-ġdid/riċiklaġġ</i>
NL	<i>nuttige toepassing/hergebruik/recycling</i>
PL	<i>odzysk/ponowne użycie/recykling</i>
PT	<i>valorização/reutilização/reciclagem</i>
RO	<i>valorificare/reutilizare/reciclar</i>
SK	<i>zhodnocovanie/opätovné použitie/recyklácia</i>
SL	<i>predelava/ponovna uporaba/recikliranje</i>
SV	<i>återvinning/återanvändning/materialåtervinning</i>

In Lithuanian, no difference is made between the terms ‘material’ and ‘substance’. Both of them are translated into Lithuanian as *medžiaga*. Article 18(1) provides that “*Member States shall [...] ensure that hazardous waste is not mixed with [...] other waste, **substances or materials**.*” In Lithuanian this runs as “*Valstybės narės imasi [...] priemonių užtikrinti, kad pavojingos atliekos nebūtų maišomos su [...] kitomis atliekomis ar **medžiagomis**.*” Here *medžiagos* stands either for both *substances* and *materials* or one of these terms is left out from the text. (Category T)

As the Member States are in the process of transposing Directive 2008/98/EC, they face difficulties with the term *treatment*, since it is assigned to different meanings in certain legal acts (see, e.g., Article 2(h) of Directive 1999/31/EC or Article 3(h) of Directive 2002/96/EC). In Lithuanian, the term is translated as *apdorojimas*. However, *apdorojimas* means ‘preparation for some further action’. Therefore there is an ambiguity: in Lithuanian, the term *apdorojimas* means *preparation prior to recovery or disposal* only but now it also encompasses *recovery or disposal operations*, although, logically, these operations should be excluded from the meaning of *apdorojimas*. (Category M)

*Disposal*²³¹ is translated into Lithuanian as *šalinimas*. However, this term in Lithuanian refers to an action that has not ended yet. If *šalinimas* is used, it is understood that the disposal is never-ending. Instead, the term *pašalinimas* should be used. This term does refer to an act that has an end. (Category T)

In Directive 2008/98/EC, *object* is translated as *objektas* into Lithuanian, however, *object* was translated as *daiktas* in all earlier directives. There is only a slight difference: instead of the national term (*daiktas*), an international one (*objektas*) is used. However, the change in the use of the terms implies that some changes were made to the definition, i. e., waste was defined earlier as *medžiagos ar daiktai*, and now as *medžiagos ar objektai*, though no changes to the terms in other languages were made. (Category M)

Waste from households is translated into Lithuanian as *namų ūkių atliekos* in the Directives. However, the Lithuanian Law on Waste Management does not use the term *namų ūkių atliekos* with the only exception in Annex I (waste categories, taken from the 2008/98/EC). Instead, the term *komunalinės atliekos* is used which covers not only the domestic waste coming from private households but all other waste similar to domestic waste (waste from legal persons, waste from public bins, etc.). (Category M)

In the Hungarian translation of Regulation (EC) 1013/2006, *engedély* ('authorisation') is used for the term 'consent'. The most appropriate term should have been *hozzájárulás* (meaning 'consent'), because the activity in question is not submitted for authorisation. (Category M)

f) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (WFD)

As regards (water) pollution and contamination, Article 2(33) provides the following definition: "‘Pollution’ means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems, which result in damage to material property, or which impair or interfere with amenities and other legitimate uses of the environment". Article 16(2)(b), second indent states the following: "evidence from monitoring of widespread environmental contamination, and other proven factors which may indicate the possibility of widespread environmental contamination, such as production or use volume of the substance concerned, and use patterns." The absence of a definition to contamination in the WFD led to diverging translations of the term in the different language versions. Thus, the admittance of the new EU-specific term actually enriched those languages which used a new term for both concepts. In certain languages, different terms are used for the two concepts (EN, FI, FR, IT, DA, ET,

²³¹ Case C-6/00, *Abfall Service AG (ASA) v Bundesminister für Umwelt, Jugend und Familie*, [2002] ECR, 1961, 58; Case C-116/01 *SITA EcoService Nederland BV, formerly Verol Recycling Limburg BV v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer*, [2003] ECR, 2969; Case C-458/00, *Commission of the European Communities v Grand Duchy of Luxembourg* [2003] ECR, 1553; Case C-113/02, *Commission of the European Communities v Kingdom of the Netherlands* [2004] ECR, 9707; Cases C-10/02, *Anna Fascicolo and Others v Regione Puglia and Others*, and C-11/02, *Grazia Berardi and Others v Azienda Unità Sanitaria Locale BA/4 and Others*, [2004] ECR, 11107

GA, LT, MT, NL, PL, PT, RO, SK, SL, SV). In others, the same term is used for both concepts (DE, HU, ES, LV, BG, CS, EL). In the Finnish legislation in force, the concept of ‘pollution’ superseded the concept of ‘contamination’ to a large extent. In everyday language, ‘contamination’ is normally understood as a more severe change to quality than ‘pollution’, whereas in scientific terminology, ‘contamination’ seems to refer to a change in the composition of a substance, i.e. the concept itself is neutral, and not negative. (Category D)

Table 6. The term pollution/contamination in EU languages (according to the WFD)

Language	Term used
BG	<i>замърсяване/замърсяване</i>
CS	<i>znečišťování/kontaminace</i>
DA	<i>forurening/forekomst i miljøet</i>
DE	<i>Verschmutzung/Verschmutzung</i>
EL	<i>ρύπανση/ περιβαλλοντικής μόλυνσης</i>
EN	<i>pollution/contamination</i>
ES	<i>contaminación del agua/contaminación del agua</i>
ET	<i>reostus/saastumise</i>
FI	<i>vesien pilaantumisen/saastumisen</i>
FR	<i>pollution de l’eau/contamination de l’eau</i>
GA	<i>truailithe/éillín</i>
HU	<i>(környezet)szennyezés/(környezet)szennyezés</i>
IT	<i>inquinamento dell’acqua/contaminazione delle acque</i>
LT	<i>tarša/užterštumą</i>
LV	<i>piesārņojums/piesārņojums</i>
MT	<i>tniġġiż/ kontaminazzjoni</i>
NL	<i>verontreiniging/milieuverontreiniging wijzen</i>
PL	<i>zanieczyszczenie/skażenia środowiska</i>
PT	<i>poluição/contaminação</i>
RO	<i>poluare/contaminări</i>
SK	<i>znečišťovanie/znečistenia životného prostredia</i>
SL	<i>onesnaževanje/ onesnaženosti okolja</i>
SV	<i>förorening/kontaminering</i>

According to Article 2(2) of the Directive, “‘**Groundwater**’ means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.” Some languages and national laws make a difference between ‘groundwater’ and ‘subsoil water’, some others do not. According to the Finnish Supreme Court, ‘groundwater’ (*pohjavesi*) seems to be a general legal concept covering all water in the soil or bedrock, while ‘subsoil water’ (*maavesi*) is not a legal concept in Finnish legislation. However, in Hungary, the two terms refer to two different concepts and are translated differently: *felszín alatti víz* for ‘groundwater’ and *talajvíz* for ‘subsoil water’. The term ‘groundwater’ was wrongly translated into Latvian as *gruntsūdens* and not as *pazemes ūdens*, causing thereby a significant narrowing of the scope of the Directive. However, the term was not changed or corrected since *gruntsūdens* was already used in the text of a number of Directives. (The above mentioned problem emerged concerning Directive 2006/118/EC on the protection of groundwater against pollution and deterioration.) The two concepts have different meanings in Lithuanian and both terms are used by the national legislation (‘groundwater’ as *suprantamas kaip gruntinis vanduo*, and ‘subsoil water’ as *požeminis vanduo*). (Category N)

It is easy to find information about the concept of *water policy* in legislative acts, or policy papers, while this is not the case with the term *water governance*.²³² *Water governance* is a new concept: it is still not used in legislative acts and is not really widespread among environmental experts. The English predominance is well represented by the usage of the term ‘governance’ which is a ‘fancy’ word used abundantly in current EU documents.²³³ It reflects a notion which can be perfectly described in the rest of the national languages using their own words. Instead, some languages use the English word *governance* (DE), while some others employed strange, anglicised words such as *gouvernance* (FR) and *gobernanza* (ES).²³⁴ According to the opinion of the Finnish Supreme Court “*water policy* (vesipolitiikka) can be seen as a wider concept than *water governance* (vesien hallinta), which could be understood as the totality of measures taken by different actors.” In Lithuanian, the term used for ‘water policy’ (*reiškia vandens politika*) has a wider meaning than the one used for ‘water governance’ (*vandens valdyma*). The new term *water governance* is already being used by international policy documents, see Transparency International’s policy position paper on *Building Integrity to Ensure Effective Water Governance* or the *Global Corruption Report* in 2008 on corruption in the water sector.²³⁵

g) *European Parliament and of the Council Directive 2007/60/EC of 23 October 2007 on the assessment and management of flood risks (Flood Directive)*

The term *floodplain* appears in the Hungarian implementing legislation as *ártér* and not as *árterület* (see the text of the Directive). The problem is that the former is an old, and traditional but still the correct expression in Hungarian for ‘floodplain’.

²³² http://glossary.eea.europa.eu/terminology/terminology/concept_html?term=water%20policy;

http://glossary.eea.europa.eu/terminology/terminology/terminology/concept_html?term=water%20governance

²³³ Cf. the Commission White Paper on European governance, COM (2001) 428 final

²³⁴ Moreno, pp. 334, 335

²³⁵ http://www.transparency.org/global_priorities/other_thematic_issues/corruption_in_water/ti_publications

h) European Parliament and of the Council Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (ETS Directive)

Article 16(3) of the Directive states that “*Member States shall ensure that any operator who does not surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall be held liable for the payment of an **excess emissions penalty**. [...] Payment of the excess emissions penalty shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.*” The Finnish Supreme Administrative Court concluded that the *excess emissions penalty* referred to in Article 16 of the ETS Directive was not related to the fact whether the operator had allowances on 30 April that would cover the emissions of the previous year, but that it was decisive whether the allowances had been surrendered in time or not. It was also concluded that different language versions of the above-mentioned directive did not give way to any other interpretation. (Category N)

According to Article 3(a), “‘*allowance*’ means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of this Directive and shall be transferable in accordance with the provisions of this Directive”; while Article 3(d) states that “‘*greenhouse gas emissions permit*’ means the permit issued in accordance with Articles 5 and 6.” It is rather hard to find the linguistic difference between the two notions as both of them contain the usual elements of authorisation. This is also proven by the meaning of the English verb *to allow*. The French version for allowance is *quota*. That term could have been used in the English version in order to avoid ambiguities in the legal dogma.

i) Other challenging terms from the field of climate change

The terminology realm of the climate change legislation is full of translation challenges. English, which is usually the source of these terms, benefits from its ‘simple’ grammatical and word-formation patterns (just putting words besides each other which most of the European languages are unable to follow just as simply) and its inclination to assign a technical meaning to commonplace or metaphoric words. From among widespread climate change terms, we should mention *cap and trade*, which raises the same problem as was presented in the case of *polluter pays* earlier: a verb phrase is used in a nominal position. There are languages which chose the simplest way and use the English term itself (MT, DA, IT, FR, DE, FI). Others use a description (i.e., lengthy phrases) instead (CS: *obchodní systém stanovující stropy emisí*, FR: *système de plafonnement et d’échange des droits d’émission*, HU: *fix összkvótás kereskedési rendszer*, LT: *didžiausio leidžiamo išmetamųjų teršalų kiekio nustatymo ir leidimų prekybos sistema*, SV: *system med utsläppstak och handel med utsläppsrätter*).

Carbon is a shortcut keyword often used in EU language these days. *Carbon footprint* is another newly created metaphoric concept in the field of environmental law. Some language versions of the concept are calques of the English version (RO: *amprenta de carbon*; SL:

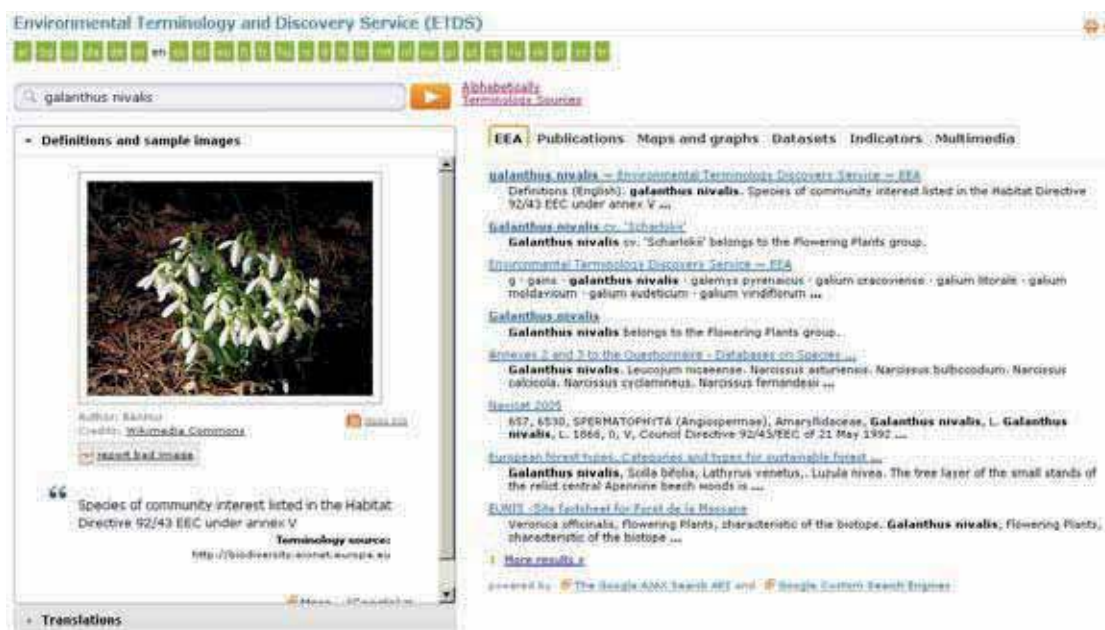
ogljikov odtis; FR: *l’empreinte en carbone*; PT: *pegada de carbono*; PL: *ślad węglowy*; GR: *ίχνοσ άνθρακα*). Another trend is to do away with the need for a metaphorical term and use phrases meaning ‘CO2 emission’ (DE: *CO2-Fußabdruck*; HU: *szén-dioxid-kibocsátás*). The Latvian version: *CO2 pēda* means ‘CO2 footprint’. (Category T)

Both the above examples show that two trends prevail regarding the translation of the most challenging English phrases, which are challenging due to their simple and still, highly expressive, forms: either a direct uptake of the English word/phrase itself, or descriptions which sometimes might be, in turn, quite long because it only rarely happens that a term just as expressive and short as the English one can be found in another language. Here we would like to refer back to Chapter 4.2 discussing English as a predominant drafting language of the EU.

7.2.3. Terminology resources

In the field of the European environmental law, linguistic resources (terminology databases, translation tools etc.) are highly important because of the necessity of the standardization of the new technical terminology. The Environmental Terminology and Discovery Service (ETDS) of the EU’s European Environment Agency (EEA) (<http://glossary.eea.europa.eu/>) contains around 10,000 environment-related terms, most of them translated into up to 28 languages, including Arabic. The terminology database is created by aggregating and merging various glossaries and thesauri created by the EEA and its networks members (e.g., Eionet). The contents of ETDS come from various sources. Some originate from the contributions of the Member States or via the Translation Centre, which provides translation services for the Agency. A minor part of the terms comes from visitors’ feedback and in-house experts.

Figure 18. ETDS



8. The legal implications

8.1. The definition of EU concepts

This part discusses the ECJ's case law on defining EU concepts which were not comprehensively defined or were not defined at all at legislative level, and the legal consequences of such judge-made definitions.

EU law is characterised by the fact that the interpretation of the legal concepts it uses are necessarily influenced by the concepts existing in parallel in different legal systems within the Member States. These parallel national concepts are either commonly known concepts used in a legal context, too, or these are concepts originating in law, but both are continuously developed and interpreted within the legal systems concerned. At EU level, the contents and interpretation of such concepts are further transformed by the European legislator, or, as the case may be, the ECJ.

The process of the transformation of such concepts entails that the original national legal concept and the European legal concept will differ in their content but not necessarily in their linguistic forms. Furthermore, legal concepts appearing in the legal systems of the Member States depart from their original meaning in different ways and to a different extent: the European legislator may prefer the legal concept of one legal system to that of others, with the result that the concept used in the EU legal act may differ considerably more from certain national legal concepts than from others. As a result of this process, legal concepts deviate from the original legal content they have in the national system, and this is all the more true for concepts used especially by law. As it will be seen below, EU legal concepts may, as a result of the conceptual autonomy of EU law, partly or fully secede from their original content in the various legal systems, resulting in the complexity of the relationship between the national and European concepts, which is further complicated by the fact that the concepts used by EU law may sometimes have a different content in different EU legal acts.

As the ECJ has pointed out in its famous judgment in Case 283/81, *CILFIT*,²³⁶ “*It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.*”

National legal concepts are bound by national legal and cultural traditions, which makes the interpretation of these concepts difficult outside their own legal system. These difficulties are multiplied when legal concepts appear in a multinational context and when such concepts are intended to create a common reference point for the actors of different legal systems. The case is further complicated with the EU legislation since these common legal concepts are reflected by a series of equally authentic language versions of the legal acts.

²³⁶ Case 283/81, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, [1982] ECR, 03415

The autonomy of EU law must therefore be reflected at the level of languages, too. *“The terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the relevant regulations.”*²³⁷

Under Article 19 TEU, the ECJ ensures that in the interpretation and application of the Treaties the law be observed. This prerogative for interpretation is exclusive; no other EU institution or Member State has the power to give an authoritative and binding interpretation of EU legal acts. The ECJ is called upon to interpret provisions of EU law in particular when the meaning of concepts or terms used by the legislator gives rise to doubts. The multilingual character of EU law adds another dimension to the necessity of the interpretation of legal concepts due to possible discrepancies in the different language versions of legal acts, a phenomenon discussed in the following part.

The foundation of the interpretation given by the ECJ is the conceptual autonomy of EU law, which the ECJ considers as the cornerstone of the uniform application of EU law. In order to assure a uniform interpretation of EU legal provisions, the ECJ gradually adopted an approach which gives preference to a systematic and teleological interpretation over a textual one. The autonomous meaning of an EU legal concept will always be discerned having regard to the context of and the objectives pursued by the provision in question.

The in-depth examination of the case law relating to cases where the ECJ had been asked to clarify or define EU legal concepts in the absence of clear definitions or any definition at all may also give an insight into the methods of interpretation used by the ECJ and the consequences of such interpretation. The analysis shows that the ECJ may give an autonomous interpretation to legal concepts within the EU context that goes beyond the original intent of the legislator. At the same time, judge-made law may catalyse future lawmaking, which gives the EU legislator an opportunity to confirm or alter the definition previously given by the ECJ or to further develop the legal concept in question.

The need for a definition by the ECJ arises in connection with several concepts of private law. One of these is the notion of the ‘consumer’, a concept that had existed in most Member States before harmonisation measures were adopted at EU level, and therefore had been a well-established legal concept in most of the legal orders.²³⁸ However, once the concept appeared in EU legislation, the original national legal concepts gradually transformed into an autonomous EU concept that needed further clarification by the ECJ.

The case law on the notion of the consumer demonstrates that the ECJ determines the content of a legal concept based on a systematic and teleological interpretation, rather than by simply referring to the content of the concept in the legal system(s) of the Member State(s) concerned. The latter solution might not be satisfactory in some fields of law, as this may lead

²³⁷ Case 327/82 *Ekro*, [1984] ECR, 107

²³⁸ The case law relating to the concept of the consumer is discussed in the chapter on consumer protection in detail.

to the fragmentation of the interpretation of a given EU law concept. It is to be noted that the content of the concept as established by the ECJ may be more or less different from that already in use in some national legal systems, therefore these legal systems may need to adapt their notions to the autonomous EU law concept as defined by the ECJ, at least in fields which fall within the scope of EU law.

A further question arises in relation to the fact that a given concept may appear in different pieces of EU legislation that may or may not contain a precise definition of the given concept. Situations where a given concept is defined in a different way in different legal acts entail difficulties of interpretation, and the legislator should be aware that the lack of a precise definition or the discrepancies between definitions may lead to the necessity of interpretation by the ECJ. It should be noted that such interpretation given by the ECJ influences the content of the concept horizontally (i.e., as regards other EU legislative acts in which the concept appears), not only in relation to the legal act directly concerned by the case at hand. A given concept may nevertheless have, and should have, a different scope in different areas of EU law, which may lead to a different kind of conceptual fragmentation than the existence of parallel national legal concepts.

Another concept of private law that usually has clear-cut boundaries in the national legal systems is the concept of ‘damage’. The notion of damage appears in several EU legislative acts as well. Although the core content of this concept may be similar in the Member States’ legal systems, the EU law notion of damage might be different from those of these national legal concepts, due to the autonomous definition given by the ECJ.²³⁹ Moreover, the concept might have slightly different variants even on an EU level, in accordance with the differences prevailing in areas of EU law where that concept is used.

The case law reveals that, if the EU legislator has been remiss in clearly defining the content and the scope of a given concept (including cases where the original intent was to grant Member States a certain margin of discretion to make use of their own national legal concepts), the ECJ may give an interpretation of the concept that ‘fills up the blanks’ and excludes any diverging future interpretation, at least in the context of the same EU legislative act. As a consequence, if the EU legislator’s intention is to let national legal concepts prevail in a certain context, this intent should preferably be explicitly formulated in the EU legal act in question.

In Case C-449/93, *Rockfon*,²⁴⁰ the ECJ was asked to interpret the concept of ‘establishment’ in Directive 75/129/EEC. The Danish legislator, when implementing the Directive, gave a special meaning to the term ‘establishment’ at national level. The Directive itself did not define the term ‘establishment’ at all. The question was whether the national law might use its own definition for a term which remained undefined at EU level. The ECJ made it clear that any definition that would allow certain categories of undertakings to escape the obligations of the Directive would be incompatible with the aim of the Directive.

²³⁹ The case law relating to the concept of the consumer is dealt with in the chapter on consumer protection in detail.

²⁴⁰ [1995] ECR I-4291

The case law also shows that, in the absence of clearly defined concepts and failing a well-structured conceptual architecture of a given field, the ECJ may be compelled to make use of the existing set of concepts in a way not anticipated by the EU legislator.

In cases related to the interpretation of the on-call duty of doctors and firemen in the context of the Working Time Directive, the ECJ was asked to interpret the concepts of ‘working time’ and ‘rest period’. In Case C-303/98, *SIMAP*,²⁴¹ the ECJ found that the time spent on-call by doctors in primary health care teams must be regarded in its entirety as working time, and, where appropriate, as overtime within the meaning of the Directive, if they are required to be present at the health centre. If they must merely be contactable at all times when being on-call, only the time linked to the actual provision of health care services must be regarded as working time. The ECJ had to clarify the nature of on-call duty that was neither defined, nor mentioned in the Directive. The lack of definition of on-call duty made it necessary for the ECJ to use the given set of concepts of the Directive, with the consequence of defining on-call duty as working time when carried out within the premises of the employer. This interpretation was later confirmed in Case C-151/02, *Jäger*²⁴² and in Case C-14/04, *Dellas*.²⁴³ The EU legislator subsequently made attempts to clearly define the concept of on-call duty by revising the Directive with a view to overcome the practical difficulties associated with the interpretation given by the ECJ, although these efforts have not succeeded yet.

The concept used by EU legislation is occasionally somewhat unclear or undefined even in national legal systems. These concepts may be general rules or principles that evolve constantly within the legal orders of the Member States. The notion of ‘public policy’ may be cited as such a concept appearing in several EU legal instruments.

‘Public policy’ is one of the possible grounds of justification in relation to the derogation from the free movement of goods, services, establishment or persons. As a result, the ECJ had many occasions to examine public policy exceptions put forward by the Member States and the concept of public policy. In Case 41/74, *Van Duyn*,²⁴⁴ the ECJ held that, while the concept of public policy varies from state to state, its scope may not be unilaterally determined by the Member States without control of the EU institutions. In Case 36/75, *Rutili*,²⁴⁵ the ECJ further clarified that a worker’s right to enter the territory of a Member State, to reside there and move freely cannot be restricted unless his presence constituted a genuine and sufficiently serious threat to public policy, and the restriction may not go beyond what is necessary to protect national security or public safety ‘in a democratic society’. In Case 30/77, *Boucherau*,²⁴⁶ the ECJ held that the provisions of Directive 64/221, according to which previous criminal convictions do not in themselves constitute grounds for the imposition of the restrictions on free movement, must be interpreted in a way to mean that previous criminal convictions are relevant only insofar as the circumstances which gave rise to them are evidence of personal conduct constituting a present threat to the requirements of public policy.

²⁴¹ [2000] ECR I-7963

²⁴² [2003] ECR I-8389

²⁴³ [2005] ECR I-10253

²⁴⁴ [1974] ECR 1337

²⁴⁵ [1975] ECR 1219

²⁴⁶ [1977] ECR 1999

The case law cited above restricted the possibility of the Member States to invoke their own concept of public policy in order to justify restrictions on the fundamental freedoms of EU law. The ECJ narrowed the concept of public policy and, while it did not give a definition of the notion, the proportionality test applied by the ECJ clarified the boundaries of the concept on a case-by-case basis. On the other hand, the ECJ did not exclude that Member States may apply different approaches as regards the level of protection of the fundamental interests of society.

In Case C-36/02, *Omega*,²⁴⁷ the ECJ found that the need for and the proportionality of provisions adopted on grounds of public policy are not excluded merely because one Member State chose a system of protection different from that adopted by another State. In this case, the ECJ held that the EU law does not preclude an economic activity, consisting of the commercial exploitation of games simulating acts of homicide, from being made subject to a national prohibition measure adopted on the grounds of protecting public policy by reason of the fact that the activity is an affront to human dignity.

Shaping EU law by clarifying certain concepts in judgments of the ECJ became common practice and one of the ways of developing EU law. However, the European legislator bears a severe responsibility in taking a decision on defining or not defining a concept of a legal act. In the first case, the meaning of the concept is definitely determined at European level. There might be cases, however, where the European legislator does not intend to give a solid definition to a certain concept but tolerates the diverging intrinsic values the national legal systems attach to the concept. Thus, the European law can have, on the one hand, legal concepts which have their own real autonomous meaning and, on the other, legal concepts which have a flexible content changing from one Member State to another or from one region to another. This feature of the European legal system is fully in line with the objectives of European law: laying down uniform rules where necessary but, in the light of the subsidiarity principle, tolerating national legal systems where possible. This approach is also reflected at the level of concepts and terms.

In Case 327/81, *Ekro*, the meaning of ‘thin flank’ had to be settled by the ECJ in order to make sure whether it is entitled for export refund under the relevant EU regulation. In its judgment, the ECJ recognized that, as regards the cutting and boning of bovine carcasses, there are many customs and practices which may vary not only from Member State to Member State but even from region to region. The meaning of the term used in the various language versions may therefore vary depending on the method habitually used to cut and bone bovine carcasses. It further stated that, as the relevant regulation did not intend to harmonise these methods, the precise definition of ‘thin flank’ requires that a reference should be made to the cutting method normally used in the Member State or region concerned.

In Case T-85/91, *Khoury*²⁴⁸ the Court of First Instance went further. It had to interpret the concept of ‘legal responsibility to maintain’ a dependent child used by the Staff Regulations. The Court invoked the national legal system to which the official in question was subject to assign the meaning to the term in the given case. It stated that, in the absence of an express

²⁴⁷ [2004] ECR I-9609

²⁴⁸ [1992] ECR II-2637

reference to the laws of the Member States, the application of Community law may sometimes necessitate a reference to the laws of the Member States where the Community court cannot identify in Community law or in the general principles of Community law criteria enabling it to define the meaning and scope of such a provision by way of independent interpretation.

In other cases, however, the ECJ expressly avoided to follow this approach of assigning a meaning to a concept of EU law which might alternate from Member State to Member State, and opted for a ‘common denominator’ approach instead, when fixing the meaning of the given term.

In Case 59/85, *Reed*,²⁴⁹ the ECJ had to decide whether the term ‘spouse’ of Regulation 1612/68/EEC could be interpreted in the light of legal and social developments as referring to unmarried companions, too. The ECJ recalled that the interpretation of directly applicable regulations has effects in all the Member States and therefore any interpretation of a legal term on the basis of social developments must take into account the situation in the whole Community and not only in a single Member State. In the absence of any indication of general social developments which would justify a broad construction, it must be held that the term spouse refers to marital relationships only.

“Or vous le savez, les quatre langues font foi, ce qui revient très exactement à dire qu’aucune d’elles ne fait foi...”

(Opinion of Advocate-General Legrange in Case 13/61, *Bosch*)

The ECJ’s role in respect of defining concepts of EU law is therefore multifold. It can provide a clear definition to concepts which are not adequately defined (in the case of concepts which do have a definition in the legal act but that definition is not clear enough) and it can also define concepts which have no express definition (in the case of concepts used but not defined by the legal act concerned). This latter function of the

ECJ might be useful in cases where the European legislator simply ‘forgot’ to define the concept which, by its very nature and purpose, needs to be defined at the European level. However, this phenomenon can run counter to the original purpose of the legislator in cases where the lack of a European-wide definition and thereby tolerance towards Member States’ solutions was the true objective of the legislator. In such cases, the conceptual evolution of EU law might be detached from the written law, a possibility that the EU legislator has to bear in mind when confronted with the necessity of defining legal concepts.

8.2. Diverging language versions

The multilingual character of EU law made it necessary for the ECJ to deal with questions of interpretation that were raised in connection with the inevitable differences between the different language versions of legal acts applicable in disputes brought before it. Although the language of the procedure before the ECJ bears major implications on the procedure itself and

²⁴⁹ [1986] ECR 1283

determines which is the authentic language version of the judgment given, the fact that the procedure is pursued in a certain language does not mean that the EU legal acts that need to be applied are taken into account by the ECJ only in the language version corresponding to the language of the procedure. On the contrary, the ECJ has been frequently asked to resolve questions relating to conflicting language versions of EU law provisions. As will be seen, the ECJ took an approach that corresponds, as far as possible, to the concept of the equal authenticity of the language versions of the EU legal acts, completed by the application of a teleological rather than a grammatical interpretation. The case law is, however, not always consistent in that regard, and the ECJ applies different interpretation techniques in certain cases, leaving a considerable margin of uncertainty for national authorities and private parties applying EU legal acts.

In Case 19/67, *van der Vecht*,²⁵⁰ the ECJ received a question relating to the Dutch version of a regulation which differed from the then three other language versions. The ECJ stated that *“the need for a uniform interpretation of Community regulations necessitates that this passage should not be considered in isolation, but that in cases of doubt, it should be interpreted and applied in the light of the versions existing in the other three languages.”*

In Case 29/69, *Stauder*,²⁵¹ also known for being the first judgment in which the ECJ declared that human rights form part of the general principles of EU law, the ECJ had to deal with the difference in the wording in certain languages of a Commission decision, addressed to all Member States, relating to the sale of butter at reduced prices to beneficiaries under certain social welfare schemes. The decision authorised Member States to make butter available at a lower price than normal to certain categories of consumers who are in receipt of a certain social benefit. Two language versions of the decision stated that Member States were to take all the necessary measures to ensure that the beneficiaries be allowed to purchase the product in question only on presenting a ‘coupon indicating their names’, whilst the other versions mentioned a ‘coupon referring to the person concerned’. The ECJ stated that *“when a single decision is addressed to all the Member States 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, in the light in particular of the versions in all four languages.”* Having considered the objectives of the decision and the intent of the legislator, the ECJ came to the conclusion that the provision in question had to be interpreted, in all Member States, in a way that it did not require the identification of the beneficiaries by their names.

Although the ECJ did not address the question any further, it is to be noted that, in the cited case, the interpretation given was in fact contrary to the text of the decision in certain language versions. As it will be seen further on, the ECJ made considerable efforts in subsequent judgments to avoid the recognition of such a textual contradiction, by trying to give interpretations reconcilable with all language versions, save for obvious errors of translation or edition.

²⁵⁰ [1967] ECR 345

²⁵¹ [1969-1970] ECR 157

In Case 80/76, *North Kerry Milk Products*,²⁵² the ECJ stated that “*the elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty, inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words. Consequently, it is preferable to explore the possibilities of solving the points at issue without giving preference to any one of the texts involved.*” In this case, the ECJ was asked to interpret the provisions of a regulation relating to the conversion rate to be applied between the currency in which the Community aid for the production of casein was fixed and the Irish pound in which the aid was to be paid to the applicant. According to the regulation, sums owed in national currency by a Member State for transactions under the Common Agricultural Policy and representing amounts fixed in units of account were to be paid on the basis of the relationship between the unit of account and the national currency prevailing at the time when the transaction was carried out. The notion ‘the time when the transaction was carried out’ was further defined in the regulation in order to be considered the date on which the event by which ‘the amount involved in the transaction becomes due and payable’ occurs. The applicant argued that the decisive event was marketing, whereas the Commission counterargued that these rules were to be understood to mean that the relevant event was processing. The ECJ noted that there was an apparent discrepancy between the English wording of the provision and the wording of other official languages. The phrase in English “*the event ...in which the amount ... becomes due and payable*” were rendered in French with the phrase “*le fait générateur de la créance*” and with the equivalent expressions in the other languages. The Commission argued that the English version of the provision was to be interpreted in the light of the other language versions.

The ECJ came to the conclusion that it was preferable to explore the possibilities of solving the point raised by such discrepancies without giving preference to any one of the texts involved. According to the ECJ, the reading of the relevant texts led to the conclusion that the event by which the manufacturer became entitled to aid was marketing, and that marketing was “*le fait générateur de la créance*” within the meaning of the French text and the other corresponding texts and also “*the event by which the amount became due and payable*” within the meaning of the English text of the regulation. The ECJ stated that any discrepancy between the versions in different languages of the regulation was irrelevant in the present context. The ECJ reached the above conclusion by considering the general context of the provision at issue and by discerning a meaning of the relevant provision that could be reconciled with all language versions and that corresponded to the legislator’s intent regarding the provision in question.

In Case C-310/95, *Road Air*,²⁵³ both the Advocate General and the ECJ came to the conclusion that the provisions of the then Article 133(1) of the Treaty permitted three different ways of interpretation. The ECJ held that the interpretation the provision should be assigned to was the one favored by most language versions, and that the German version, “*even if it were ambiguous [...] must be interpreted in a manner conforming with the other language versions.*”

²⁵² [1977] ECR 149

²⁵³ [1997] ECR I-2229

The above case might be seen as another example of the willingness of the ECJ to reconcile diverging language versions, although, in that case, the ambiguity of the wording made this possible without having to consider clearly conflicting texts. Although such a solution is possible in cases where the notion used by the legal act in question gives way to such an interpretation that would not contradict other language versions, in other cases, however (and more so, when the divergence manifests itself in purely grammatical forms), such an interpretation might not be satisfactory.

One of the most explicit examples of how one of the language versions might be clearly irreconcilable with other versions is perhaps Case C-219/95, *Ferriere Nord*²⁵⁴ where the ECJ held that “[the Italian] version cannot prevail on its own over all the other language versions which, through the use of the word ‘or’, show that the condition in question is alternative and not cumulative in nature. The uniform interpretation of Community provisions requires that they be interpreted and applied in the light of the versions established in the other Community languages.” The question whether conditions need to be fulfilled alternatively or cumulatively is obviously one that cannot be decided by upholding both possibilities, which clearly demonstrates that the ECJ’s ability to reconcile diverging language versions may be in fact limited.

In Case C-63/06, *UAB Profisa*,²⁵⁵ the Lithuanian language version of a regulation relating to excise duties on alcohol and alcoholic beverages clearly differed from all other language version of the relevant provision. The ECJ confined itself to citing its previous case law on the need for an interpretation of the provision in question based on the purpose and general scheme of the rules of which provision forms part. The ECJ finally gave an interpretation of the relevant provision that corresponded to all the other language versions, without explicitly stating that the Lithuanian version was obviously incorrectly worded.

In the judgment in Case C-347/08, *Vorarlberger Gebietskrankenkasse*,²⁵⁶ the ECJ noted that there were differences between the different language versions of the provisions at issue: “The French version uses the term ‘victime’, which, on a semantic interpretation, refers to the person who directly suffered the damage. On the other hand, the version in German, which is the language of the case, uses the term ‘der Geschädigte’, which means the ‘injured party’. Accordingly, that term may refer not only to persons who directly suffered the damage, but also to persons who suffered it indirectly.” The ECJ considered that other language versions of the relevant provision used terms similar to the German version, and that the ECJ had already given an interpretation in a previous judgment that determined the scope of the concept. These two elements led to the conclusion that, regardless of the French term that suggested a narrower scope of the concept, the provision in question had to be interpreted in accordance with the scope suggested by the German and many other language versions.

The above examples from the case law of the ECJ reveal that the ECJ is compelled to apply different interpretation techniques that correspond to the nature of the actual discrepancy between the language versions of EU legal acts that it is called upon to interpret. The notion

²⁵⁴ [1997] ECR I-4411

²⁵⁵ [2007] ECR I-3239

²⁵⁶ Not yet published

of the equal authenticity of all language versions is incompatible with cases that result in an interpretation that gives precedence to one version over the other, an undesirable process that can only be remedied by a continuous effort of strengthening the quality of the drafting and the translation of the multilingual EU law.

8.3. *Inadequate drafting*

Under Article 268 TFEU, the ECJ has jurisdiction in disputes relating to compensation for damage under non-contractual liability. According to Article 340 TFEU, the Union shall, in accordance with the general principles common to the law of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The case law of the ECJ dealing with the non-contractual liability of the Union may provide for indications on the possibility for individuals to claim compensation for damages due to translation errors or even differences in the language versions of a given legal act. No such cases have been dealt with by the ECJ yet, whereas a body of case law relating to the damages caused by illegal acts of the institutions can be identified. Even in such cases, the illegality of the act in question does not necessary imply that the claim will be well-founded.

In *Case 5/71, Schöppenstedt*,²⁵⁷ the ECJ held that, where legislative action involving economic policy measures is concerned, the Community does not incur non-contractual liability for damages suffered by individuals, unless the sufficiently flagrant violation of a superior rule of law on the protection of the individual occurred. The so-called *Schöppenstedt test* continues to be valid for legislative acts which involve a certain degree of discretion, while the concept of sufficiently flagrant violation was further clarified by the ECJ, later bringing it in line with the concept underlying state responsibility in damages for breach of EU law. In *Case C-46/93 and C-48/93, Brasserie du Pêcheur and Factortame*,²⁵⁸ the ECJ found that, in legislative acts not involving an element of discretion on behalf of the legislator, the case law suggests that the mere infringement of EU law may suffice for liability. Evidently, apart from the above elements, the claimant has to establish the causal link between the Union's action and the loss, as well as the damage itself.

It is beyond doubt that the correct translation and publication of the multilingual *acquis* is to be regarded as one of the duties of the institutions of the Union. In theory, non-contractual liability may therefore occur on behalf of the Union, and individuals may claim compensation for damages which are due to a translation error or a poor choice of terms in one of the language versions of a given legislative act. As it can be derived from the case law of the ECJ relating to the non-contractual liability of the Union, such a failure in itself may not necessarily imply that the action for damages would be well founded. The claimant would have to establish that the discrepancy amounts to a (sufficiently serious) breach of law, and prove the existence of a causal link between the discrepancy and the harm caused, as well as the damage suffered.

²⁵⁷ [1971] ECR 95

²⁵⁸ [1996] ECR I-1029

Possible scenarios of non-contractual liability for inadequate multilingual drafting and publication of legal acts can be identified with a view of defining the exact scope of non-contractual liability in such cases and the legal consequences for individuals seeking compensation for such errors or omissions. Although the liability of the EU legislator has not been raised yet in relation to inadequate drafting or publication of EU legislation, some cases have already been brought before the ECJ in connection with the consequences of incorrect or missing translations of legal act.

In Case C-161/06, *Skoma-Lux*,²⁵⁹ the ECJ was interrogated on the enforceability against individuals by the authorities of a Member State of EU legislation not published in the official language of that Member State. The ECJ held that obligations contained in such legislation may not be imposed on individuals in that Member State, even though those persons could have learned about that legislation by other means. The ECJ based its solution on the principle of legal certainty, that required that EU legislation allow those concerned to acquaint themselves with the precise extent of the obligations it imposes on them, which may only be granted by the proper publication of that legislation in the official language of those to whom it applies.

It may be discerned from the cited case that the incorrect publication of EU legislation may not only entail the lack of enforceability of the legal act in question against individuals, but may also be a ground for compensation in the event of losses caused by the application of such legislation. In most cases, the individuals that incur financial losses or damage in connection with the application by their authorities of EU legislation that is flawed with errors relating to the redaction or publication will naturally seek compensation in national courts, and may be satisfied with the lack of enforceability and the recovery of the eventual financial burdens imposed on them. However, it cannot be excluded that these individuals may bring an action against the EU before the General Court under Article 268 TFEU. Therefore, the quality of drafting EU legislation remains to be of outmost importance, not only as a means to exclude undesirable consequences at the national level, but also to prevent private litigants from appearing before the EU courts with actions that undermine the trustworthiness of EU legal instruments.

8.4. Corrigenda

Drafting of texts and translation of texts are human activities and, as such, they can occasionally lead to errors. The increase in the number of official languages of the EU automatically generates an increase in the risks of errors occurring in the translated texts. All institutions adopting legal acts—whether legislative or non-legislative acts—had to find their ways to correct errors in the texts of the acts. In this part, we are going to examine the rules and practices followed by the Commission, on the one hand, and the Council and the European Parliament, on the other, for correcting errors in the authentic versions of the texts by adopting corrigenda.

Errors occurring in the official versions of the legal acts might be various. There might be drafting errors—not being in line with the will of the legislator—contained in the original text

²⁵⁹ [2007] ECR I-10841

and then repeated in other linguistic versions and there might be errors which occur during the translation phase and concern one or more language versions other than that of the original text. Some of these errors are easily recognisable to the reader while others not, because they fit into the overall structure of the text by conferring a meaning which would not give rise to doubts. The adoption of corrigenda is justified only when the error might lead to serious legal consequences.

Corrigenda adopted by the institution(s) concerned are published accordingly in the Official Journal of the European Union in the same OJ series as that in which the initial document was previously published. They do not contain any provisions on the validity or entry into force, and their authority derives from the text they rectify.²⁶⁰

8.4.1. At the Commission

As far as acts adopted by the Commission are concerned, the procedure applied depends on whether the error is in the original text or it concerns only one or more language versions other than the original. If the error occurred in the original version and it is an ‘obvious error’, the procedure laid down in a Commission instrument of 1977²⁶¹ would apply. It sets forth that the Secretary General is granted powers to adopt a correction to legal acts. An error is ‘obvious’ if it is easily recognisable in the text (spelling mistake, typing error, printing error, error in calculation). On the other hand, if the error occurs in a language version other than the original and is considered a translation error, including ‘minor errors’ (missing text, meaningless text), a correction procedure based on an instrument adopted in 2008²⁶² will apply.

The correction procedure of 2008 is subject to the following three cumulative conditions:²⁶³

- a) the error concerns language version(s) other than the original version
- b) the error is easily recognisable in the text concerned or there is no doubt concerning it when a comparison is made with the version in the original language
- c) the error is caused by mistranslation or the omission of one or more elements of the text without, however, affecting the substance of the text as a whole.

The correction procedure may be initiated by the DGT.²⁶⁴ Within the DGT, it is the central system—TELLUS—which is competent to respond to questions on quality issues that require corrigenda under the rules of empowerment, while the language departments are to keep and handle language-specific correction requests at their level.²⁶⁵ However, the procedure cannot

²⁶⁰ Cf. Bobek

²⁶¹ COM(77) PV 438

²⁶² SEC(2008) 2397, Memorandum to the Commission from the President in Agreement with Mr. Orban: Empowerment to correct errors, including minor errors, in translation of acts adopted by the Commission

²⁶³ See point 3 "Framework for the empowerment" of the Memorandum (SEC(2008)2397).

²⁶⁴ This power was delegated to the Commissioner responsible for multilingualism and further subdelegated to the Director-General for Translation by a Decision of the Commission of 5 May 2010.

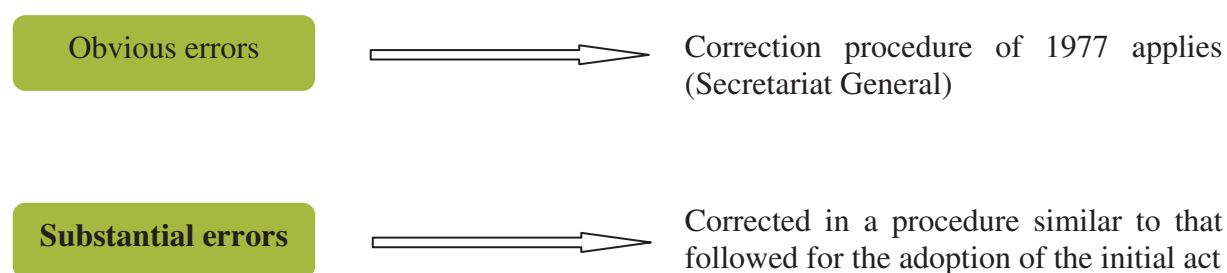
²⁶⁵ See the *Programme for Quality Management in Translation*, DGT of the European Commission, 2009

be finalised unless the Legal Service has given a favourable opinion and the associated departments (the department which drafted the original version) are in agreement regarding the draft decision.

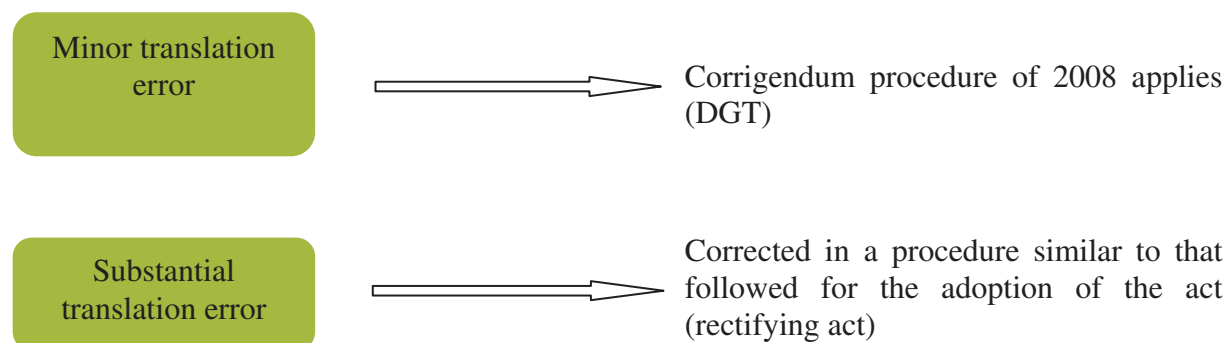
However, neither of these procedures (the procedure of 1977 and the one of 2008) cover cases where the error is substantive, and affects the overall conclusion of the act or relates to a key word in the act, repeated throughout the text. In such cases, a procedure similar to that followed for the purposes of the adoption of the text containing errors should be launched and a rectifying act is adopted.²⁶⁶

Figure 19. Correction at the Commission

Errors in the original language version



Errors in a language version other than the original



8.4.2. At the Council and at the European Parliament

The *Manual of precedents for acts established within the Council of the European Union*²⁶⁷ describes the mechanism of adopting corrigenda and the standard forms used for such purposes. It distinguishes between corrigenda issued before adoption and corrigenda issued

²⁶⁶ See footnote No 5 of the Memorandum (SEC(2008)2397).

²⁶⁷ SN 1315/08

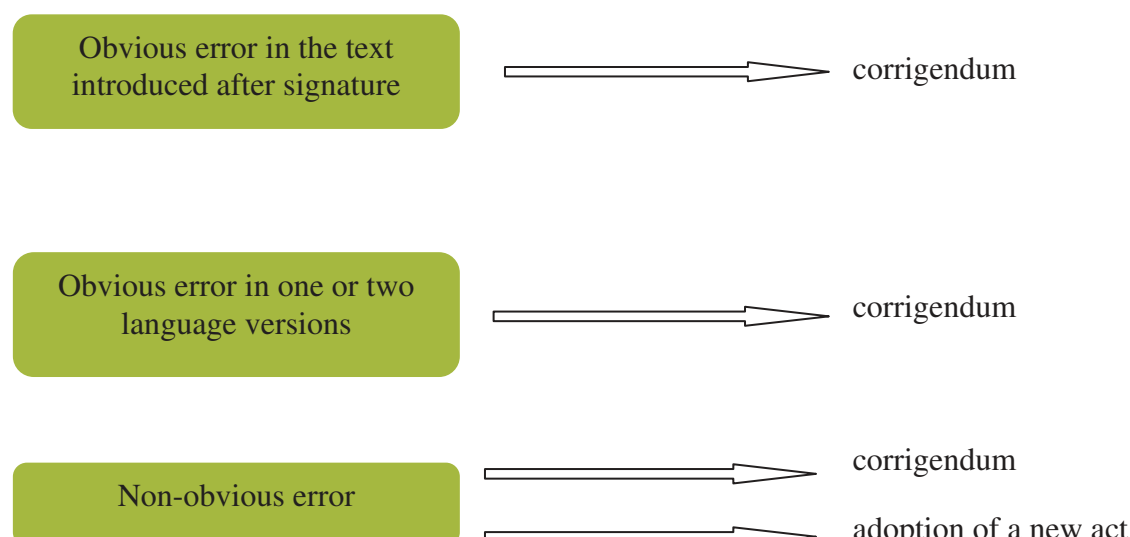
after adoption.²⁶⁸ In its Annex II, the Manual lays down the procedure for adopting corrigenda (after adoption). Under point 1, it deals with corrigenda issued to Council acts and, under point 2, it treats acts adopted under the co-decision procedure.

As regards Council acts, the Manual refers to the Statement entered in the Council minutes of December 1975. That latter document specifies that “*where an obvious error occurs after the signing of the original text of the Council act by the President of the Council, the correction will be made by means of a corrigendum, whatever the number of Community languages in which the error occurs.*” The correction is made with the President’s approval and subject to any comments which may be received by the Secretariat General within 15 days. The same procedure applies also if the obvious error occurs in the original text of the acts signed and when it exists in one or two of the official languages.

In cases where the error is not obvious, the General Secretariat makes suggestions to the delegations as to the procedure followed in each case. The General Secretariat might suggest that the correction be done by way of a corrigendum or the adoption of a new act. It should also be decided whether the corrigendum would have retroactive effect. According to the Comments of the Manual, a corrigendum is necessary if the legal act in question is so faulty regarding its format as to be incomprehensible, or when the errors are liable to produce undesired legal effects. However, obvious typing or language errors that are unimportant should not be corrected by a corrigendum.

If an obvious error was committed by the Council itself, the corrigendum must be submitted for adoption as an item ‘A’ at a Council meeting.

Figure 20. Correction at the Council



²⁶⁸ English does not make any distinction between the two types of corrigenda, while French uses the term *corrigenda* for the former and *réctificatif* for the latter.

In cases of acts adopted under the co-decision procedure,²⁶⁹ the European Parliament conducts its own procedure simultaneously the Council's General Secretariat and the publication of a corrigendum is always subject to agreement by the European Parliament.

In a case where the error is introduced after signature of the text, the Council's legal linguistic experts prepare the corrigendum and the agreement of the European Parliament is requested before publication.

Regarding errors in one or two languages, the Council's legal linguistic experts would prepare a corrigendum and the agreement of the European Parliament is needed. The text is, at the same time, circulated in the form of a Council document to which observations may be made under a silent procedure. The agreement of the Presidency is also needed.

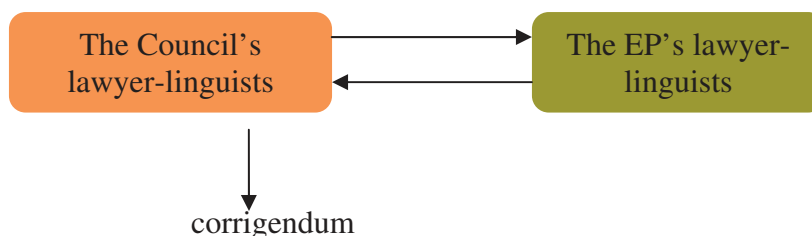
Where the error occurs in three or more languages, either the above procedure applies or a formal procedure must be initiated, wherein the Council formally adopts the corrigendum which is simultaneously submitted to the European Parliament.

As to the procedure to be followed by the European Parliament in the case of corrigenda, the Rules of Procedure of the European Parliament lays down the applicable rules among the miscellaneous provisions in Rule 216. For co-decision acts, the President of the Parliament must first seek an agreement on the necessary corrections with the Council. After the agreement is sought, the President refers the draft corrigendum to the committee responsible. The committee responsible shall examine the draft corrigendum and submit it to the Parliament if it is satisfied that an error occurred which can be corrected in the proposed manner. The corrigendum is then announced before the plenary and shall be deemed approved unless a request is made by a political group or at least 40 Members that it be put to vote. If the corrigendum is not approved, it shall be referred back to the committee responsible which may propose an amended corrigendum or close the procedure.

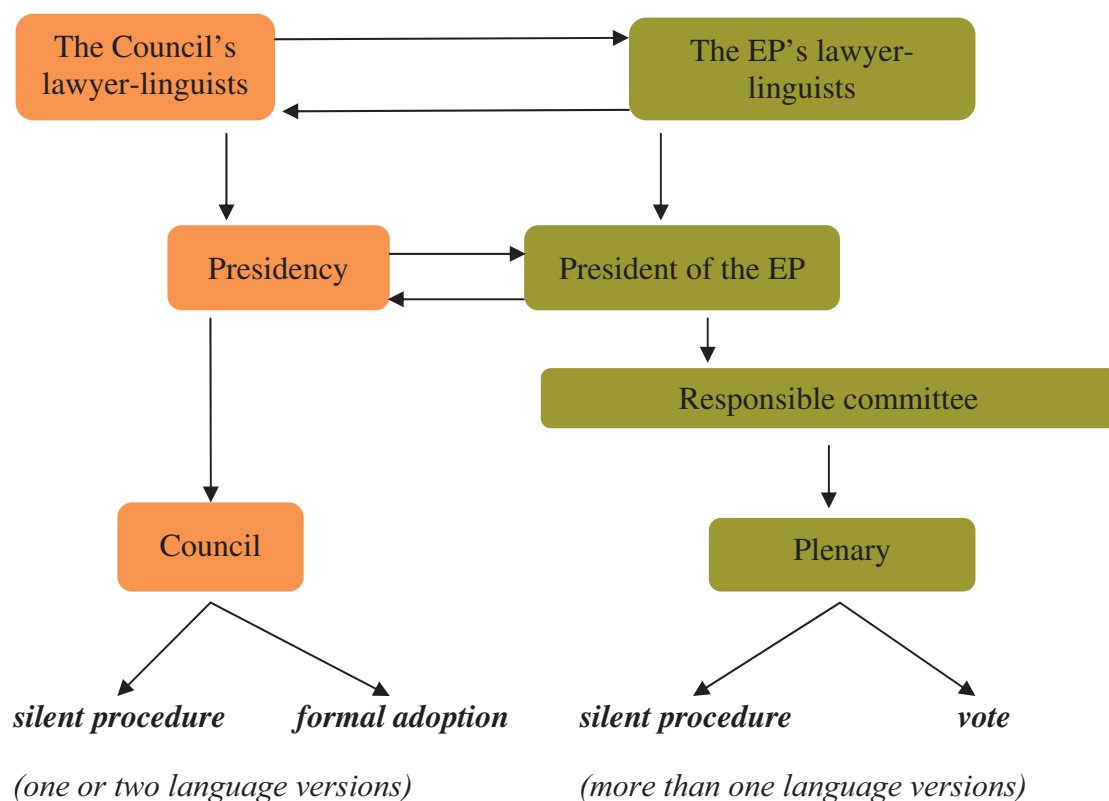
²⁶⁹ Ordinary legislative procedure under the new Treaty provisions

Figure 21. Correction at the Parliament

Error occurred after the signature of the text



Errors in one, two or more language versions



The correction procedures at the institutions are launched by the responsible entities. However anyone detecting an error, or being affected by an error through the application of the legal act concerned, can send a request to such an effect to the institutions concerned. Requests for corrigenda on behalf of Member States are sent by the Permanent Representations to the relevant services of the institutions. Where translation errors may lead to serious legal consequences, Member States often urge the responsible institution to issue the corrigendum in question as early as possible; however, the Member States do not have a more privileged role here than any natural or legal person requesting the corrigendum and they cannot follow or influence the correction procedure.

8.4.3. Legal effects of corrigenda

A corrigendum has a retroactive effect, which means that the corrected legal text is official from the date of the initial act.

Errors not corrected in due time may lead to serious legal consequences, especially in the case of the directly applicable provisions. This might concern for instance denominations defined by a Regulation which must be indicated on the label of certain products if these terms are not in line with traditional expressions of the sector concerned, or the use of erroneous technical terminology.

For this reason a set of regulations (Regulation 1331/2008/EC establishing a common authorisation procedure for food additives, food enzymes and food flavourings, Regulation 1332/2008/EC on food enzymes, Regulation 1333/2008/EC on food additives and Regulation 1334/2008/EC on flavourings and certain food ingredients with flavouring properties for use in and on foods) had to be corrected in the Czech version where the term ‘flavourings’ was first translated by a long descriptive equivalent (*látka určená k aromatizaci*), meaning ‘substance designed for flavouring’. Practically, it would have meant that producers should have labelled their products with this equally correct but somewhat complicated designation different from the labelling requirements of the national legislation in force before the adoption of the regulation which allowed labelling under an equally name (*aroma*). For practical reasons, i.e., in order to avoid the re-labelling of the products, the corrigendum issued replaced the term with the shorter term *aroma*.

Another important legal consequence might be if the error narrows or broadens the scope of the legal provision.

In the Hungarian version of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, the expression *on behalf of* was translated meaning ‘in the name of’ (*nevében*), in line with the general meaning of that expression. However, according to the Customs Code, a representative acts in his own name but on behalf of another person. This distinction was not taken into account by the Hungarian version, according to which a person represented indirectly is not a debtor. Thus, instead of *nevében* the term *részéről* should be used. Until the adoption of the corrigendum, solely on the basis of the Hungarian text, the authorities are impeded in collecting customs receipts from persons represented indirectly.

Significant legal implications might occur in cases where the error cannot be easily detected and the incorrect version of the text concerned suggests quite the opposite meaning of what was meant by the legislator.

Article 2(c) of Commission Regulation (EC) No 349/2005 laying down rules on the Community financing of emergency measures and of the campaign to combat certain animal diseases under Council Decision 90/424/EEC defines ‘reasonable expenditure’ as costs incurred in purchasing equipment or services at prices that are disproportionate to the market value before diagnosis of the disease. The corrigendum issued in April 2010 makes it nevertheless clear that what was originally meant by the legislator is ‘prices that are **not** disproportionate’.

A similar problem can be detected if the error concerns numbers, figures or references.

Council Regulation (EC) No 1226/2009 fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2010 sets out in the published text in all linguistic versions a 5 594 tonnes catch limit for Atlantic salmon for Lithuania. A corrigendum issued in February 2010 corrected this figure by significantly reducing the catchable quantity to 4 559 tonnes.

8.4.4. Other rectification means

There are certain cases where the terminology used in a linguistic version of a text is not erroneous or misleading (that is, it does not lead to the distortion of the content of the text) but, still, it is not correct. A term can be incorrect, for example, because it is outdated, awkward, not precise enough or because it is not the one used by the special technical vocabulary of a specific field of law. In such cases, sometimes there is no legitimate reason to adopt a corrigendum or, where the incorrect terminology is already used in a substantial number of acts, it is not even feasible to do it. However, it is a general tendency that the Member States’ administrations try to ask for such terminology to be changed when it comes to the amendment of the legal act in question. Such changes cannot be realised if only some paragraphs of the legal act are concerned by the current amendment, because it would lead to major incoherence if different terms were used for the same concept in the basic act and in the amending act.

This is why the German term *Genehmigung für das Inverkehrbringen* (meaning ‘market authorisation’) in a Regulation on medical products could not have been replaced by *Zulassung*, the usual German term for such a kind of authorisation in the medical sector, when amending the relevant Regulation. For completely new acts, however, the correct term *Zulassung* is used.

Where it is not possible to replace incorrect terms by amending acts because of a possible terminology inconsistency, the term can be changed later when it comes to the recasting of the full version of the legal acts concerned. It is more difficult to replace terms when the acts

concerned are codified, since, in the case of codification, no new amendments are allowed and it is restricted to a mere compilation of the legal act and its amendments without touching their wording. Nevertheless, it is not prohibited for incorrect terms to be changed during the codification process.

In the Polish version of the customs legislation, the term ‘specific duty’ was translated imprecisely as *clo specjalne*. However, the adoption of the modernised Customs Code provided an opportunity to introduce the correct term: *clo specyficzne*.

9. Overall conclusions

What we undertook with this study was to have a detailed examination of the lawmaking of the EU in its multilingual context. A key issue which we wished to explore was the value multilingualism adds to policy-making. With 23 languages and cultures to contribute to its Member States' development, the EU is in a very special position in several respects. In this context, it is an important question whether multilingualism contributes to innovation in EU legislation and policy making. If we consider innovation to be something original and valuable, the answer to this question is definitely positive. At the dawn of European integration, there were four languages (DE, FR, IT, NL) of six countries of equal status to manage. Actually, the challenge was not so special at that time since no great difference was made as compared to the situation of multilingual countries. We saw Canada and Malta cope with two official languages and Belgium and Switzerland with three, although, the systems prevailing in these countries still hold solutions worth considering for the EU. However, subsequent enlargements created a situation which became increasingly unparalleled as more states acceded. Innovation in institutional and legislative procedures was a practical necessity, on the one hand, since new approaches and tools had to be found in order to manage policy-making in the context of a growing number of official languages. On the other, this ever-expanding linguistic and cultural diversity was inevitably reflected in the adoption and internalisation of new attitudes at an EU level.

An examination of the drafting process in the context of EU lawmaking, and especially in the ordinary legislative procedure, reveals that certain elements are built into the system in order to ensure, in formal and informal ways, that the legal text finally adopted is of an appropriate linguistic quality to ensure the same legal effect in all official languages. It is a task which is more and more difficult to achieve with the growing number of languages. Legal acts in the EU are not co-drafted in the usual sense of the term, neither are they merely translated from one language version into 22 target languages. Multilingual lawmaking is based, instead, on a mixed system where drafting, and translating activities and those ensuring the legal-linguistic consistency alternate and where each phase is supported by procedural guarantees in order to achieve high-quality legal texts. Practices aiming at improving the quality of the original text received much attention within the institutions recently. Mechanisms and techniques introduced in order to enhance the linguistic quality of the original text are based on the presumption that high-quality original texts further the production of high quality translations. The consistent and coherent use of legal and technical terminology being a key element of good quality multilingual legal texts is ensured by the use of a common interinstitutional terminology database instead of each institution having a database of its own. The production of a high-quality legislation is also facilitated by the publication of drafting guides, which set out common rules to be followed by the institutions.

Even if drafting, translation, and legal revision of the texts is the sole responsibility of the European institutions, Member States may and have to find their formal or informal roles and points of intervention where they might channel their legal-linguistic and terminology-related remarks during the process. Most Member States recognised the need for setting up a well-functioning coordination system for receiving and answering terminology requests or reaching the competent institutions with linguistic remarks.

The fact that multilingualism is something very beneficial is well shown by the institutional processes and the legal linguistic data we managed to explore and study during our research. We saw that the EU institutions do succeed in managing the task that, by the end of the legislative procedures, each EU act be produced in 23 language versions. Although there is always room for some improvement, the mainstreaming of 23 languages in the process definitely functions well at all the EU institutions. The quality of the source texts has been considered by the respondents to our questionnaire as average leading to translation problems occasionally only. It was comforting to see that, according to the replies to, it is more than just a formal obligation on EU institutions to provide every possible means for the production of legislative texts of adequate quality in every language. Those involved in the process (that is, translators and lawyer-linguists) also make informal efforts to ensure compliance with the EU framework, just as with the linguistic and legal traditions of their own language communities.

Language is a vehicle not only for the transmission of concepts (including legal and policy concepts) but also a medium in which concepts are negotiated. This is where the autonomy of EU acts is grounded even if this autonomy involves a long, and complex interaction with national law and languages, which sometimes might even result in the duplication of a vocabulary in the same language or demanding intralinguistic translation. This is the reason why we showed that translation in the EU is part of a complex process of legal drafting in the 23 official languages. Even if it is not about co-drafting, it still bears a likeness to practices in bi- or tri-lingual countries regarding translation and legal linguistic revision at several stages of the interinstitutional process. Some elements of the drafting mechanism of such countries can be considered by any multilingual legal system. Among these elements one can refer to the express wish to have drafting rules ensuring the observation of the linguistic and structural specificities of all official languages and the avoidance of a word-by-word translation and the unnecessary and sometimes harmful interference of the drafting languages. Entrusting a central body with checking the readability of draft laws with the purpose of eliminating the complexity and obscurity of legal texts in the drafting languages and to ensure compliance between language versions is also a feature worth to be studied such as the endeavour to separate policy questions and drafting.

As to legal linguistic data, it is evident that the conceptual system of the EU law evolved on the basis of the legal systems of its Member States. As such, the concepts, and the words and phrases in which such concepts assume shape, come from the diversity emanating from these states. For historical reasons, this or that Member State (or language or culture) might have happened to be in a more dominant position than others in a certain respect, however, what we can definitely state is that, without this diversity, the legal system of the EU would not be what it is now.

However, EU law has its own characteristics sometimes difficult to render in all official languages. The fact that EU law is often the product of compromises is usually reflected in its wording sometimes being too vague, open to several ways of interpretation. Artificially created special EU terms might also cause difficulties for certain official languages. Several techniques are employed by languages in order to translate these terms like artificially creating new terms or assigning a new meaning to old terms, or translating them word by word or leaving them in their original form. Translators and lawyer-linguists are responsible for choosing the right method in each case.

What we studied here is a two-way process and we should not forget about the opposite way, either. The various traditions and backgrounds the Member States brought with themselves into the Union indelibly left their imprint on it. And this will be true for future Member States as well. However, belonging to this huge political and economic constellation of states means for the Member States that the EU and, consequently, the other Member States, leave their respective imprints on them, too. In the context studied, such repercussions are most evident in the fact that the new notions conceived by the EU have to be expressed with the means the languages affected have at their disposal. It means conscious linguistic choices by those who first meet the challenge of transposing such notions into their respective languages. There is no time to wait until a language produces an equivalent by way of natural evolution and therefore such notions get their form, whether by using something that existed before in that language, by creating a new phrase or by borrowing a foreign one. Moreover, the notions themselves had to be adopted and integrated by the legal systems of the Member States. Such processes may be hard and complicated, but definitely enrich both the languages and the legal systems affected.

The responsibility of the European legislator for adequate linguistic and terminological choices is the more underlined by the fact that, with regard to undefined or unclear concepts or diverging linguistic versions of an act, it is ultimately the European Court of Justice to decide on the EU meaning of the concept or to conciliate between diverging language versions. The jurisprudence of the Court is quite clear on this point and its approach prefers a systematic and teleological interpretation over a textual one.

European multilingualism is sometimes blamed for distorting the national languages affected. Distortion, however, could be avoided by a conscious language policy and European multilingualism can contribute in an active and innovative way to the development of national languages. A clear contribution of European multilingualism to the development of national languages is that it triggered a strong trend of standardisation in the technical terminology of official languages. At the same time, multilingual drafting or translation contributes to the creation of linguistic resources (terminology databases) in national languages. The most significant contribution of multilingualism to the development of national languages is that it enriches the vocabulary of national languages, especially if the effects of multilingualism are well perceived and integrated into the national language.

The problems that arise from the multilingualism of the EU should not be neglected, either. On the one hand, it seems that not all EU languages are able to participate equally in the lawmaking processes of EU institutions. It is quite improbable that a Directive or a Regulation would be drafted in a language other than English, French or German and translated into the others afterwards, or drafted in all the 23 languages simultaneously. Although the legal requirements regarding the official languages of the EU can be considered as met, those regarding the working languages, which, in theory, are all the official EU languages, cannot. Translation is a good and highly practical solution to handle the task imposed on the EU by the Treaties and Regulation No. 1 but, still, it is not quite what the legislators had in mind when imposing those requirements. Now everything points towards English: usually this is the source language of legislation and the dominant language for the institutional and external communication of the EU (as is apparent from most EU-produced websites), although French has not lost its former privileged role yet. On the other hand, the

relevant case law of the European Court of Justice, the study of the corrigenda procedure and some replies to our study demonstrate that sometimes the effects of EU multilingualism (and EU English) are not beneficial at all. Phrases alien to languages are created or adopted in those languages, quality problems may emerge or errors may be found in the translations which might lead to applicability issues and, finally, judicial proceedings. Experience shows that legal/linguistic issues not solved in the EU lawmaking process, for example, when minimal harmonisation is retained by the lawmaker, recur later when the EU judge has to restore the consistency. Any step to make language an in-built step of the lawmaking process is a step for increased effectiveness and better implementation.

Still, the required equilibrium among the EU languages cannot be reached by means other than a reasonable limitation of the use of all the official languages during the legislative process. This approach is called ‘controlled multilingualism’ in respect of the European Parliament’s procedures. We do not believe that the concept behind the present system should be changed. This is why the authors of this study cannot but suggest that the focus of the process be put on high quality translations and the legal linguistic verification of all texts in every official language before adoption because, in our opinion, this is the only point in the process where there is room for improvement.

What the current system of the multilingual lawmaking of the EU tries to achieve, and does successfully, is a balance between the practical constraints and the requirement of legal certainty. What the future may hold in the light of subsequent enlargements is not yet clear, but it will surely be very illuminating and exciting to see this already diverse and complex universe of languages and cultures become further enriched.

10. Appendices

Appendix A. Glossary¹

adoption an act of an institution mandated to adopt legal acts whereby a proposed/draft document becomes valid and applicable

amendment in the general sense, a change to the contents/wording of an act

authentic language a language in which the text of a legal act is valid (in EU context, all official languages by default or those enumerated in the legal act)

co-decision a special EU legislative procedure, now called ‘ordinary legislative procedure’, during which a proposed act submitted by the Commission is finally adopted jointly by the European Parliament and the Council

codification a procedure whereby all amendments to a given act adopted at different times are brought into a single text which is then adopted through a legislative procedure and replaces the acts being codified

co-drafting a procedure whereby a text is drafted in more than one language versions at the same time, in close cooperation between those in charge of drafting

comitology a special EU procedure in the framework of which the Commission is assisted by specialised committees during the adoption of its act

consolidation a procedure similar to codification which brings together a basic legislative act and all its amending acts in a single text, however, the resulting consolidated text is not subject to formal decision-making and, lacking a legal status, serves information purposes only

COREPER the Committee of Permanent Representatives consisting of the permanent EU representatives of Member States preparing the work of the Council, being a forum for dialogue and a means of political control in the EU decision-making system; COREPER I consists of deputy permanent representatives in charge of technical matters and COREPER II of ambassadors engaged in political, commercial, economic or institutional matters

delegated act a non-legislative legal act of general application adopted by the Commission to supplement or amend certain non-essential elements of the legislative act

draft act the text of an act before adoption, that is, in the EU context, the text before adoption in the case of acts adopted by the Commission or the Commission proposal together with the proposed amendments in the case of legislative acts

draft proposal the text of a legislative proposal, that is, in the EU context, the so-called ‘COM final’ document before its adoption by the Commission

drafting the drawing up of the text of a legal act with a wording fit for the objectives pursued thereby

¹ This Glossary contains terms key for the understanding of the technical details of EU legislative procedures only. It would not define EU-related terms which are well-known to the public or easy to get information about (e.g., EU institutions, types of EU legal acts, founding Treaties, etc.), nor those that are defined in the study or which are self-explanatory.

drafting language the language in which the original text of a proposed/draft act was drawn up

finalisation the verification of the text of a legal act for legal linguistic purposes by lawyer-linguists before its adoption

implementing act a non-legislative act adopted by the Commission where uniform conditions for implementing legally binding EU acts are needed

Interinstitutional Style Guide a reference tool developed by the Publications Office of the EU for the preparation of EU documents (whether legal or not)

lawyer-linguist a lawyer with special linguistic skills working at the legal service of an EU institution in charge of the legal-linguistic verification of texts drawn up in their first language

legal act in the EU context, acts enumerated in Article 288 TFEU: regulations, directives, decisions, recommendations, and opinions

legislation **1.** a procedure through which legislative acts are drafted and adopted; **2.** a legislative act or several legislative acts being the product of such a procedure

legislative act a legal act adopted by an ordinary or a special legislative procedure

legislative procedure a procedure through which legislative acts are drafted and adopted

legislator an institution with a mandate for producing legal acts through legislative procedures

Legiswrite a computer tool developed by EU institutions for the standardised production of official documents

linguistic reservation a reservation put forward in Council working groups, in the Mertens Group, or in the COREPER concerning the wording or the terminology of a draft act in the language of the Member State lodging the linguistic reservation which would freeze the adoption of the act until waived

Member State expert a specialist representing an EU Member State in a working group of the Council

Mertens Group a special group assisting the activities of the meetings of the COREPER I consisting of the deputy permanent representatives' assistants, a senior member of the Council of Ministers' secretariat and a member of the Council's legal service

Official Journal (OJ) the authoritative source of the EU legislation published every working day in all official languages of the European Union both online and in a printed format; upon the accession of new Member States, earlier EU legislation in their language versions is published in Special Editions

official language a language which is given a special legal status in a particular state or international organisation and is used for legislative, judicial and administrative purposes; in the EU context, all EU languages are official which are defined as such in Regulation No. 1 of 1958 of the Council (as amended)

ordinary legislative procedure a special EU legislative procedure, formerly called 'co-decision procedure', in which the proposed act submitted by the Commission is finally adopted jointly by the European Parliament and the Council

original text the text of a draft proposal/act drawn up in the drafting language submitted for translation into the other official languages

parliamentary committee specialised committees of the European Parliament consisting of its Members producing reports during the legislative procedure

policy officer at EU institutions, a staff member who is, among other tasks, in charge of preparing draft legal acts of the EU within their field of expertise (in this respect, also referred to as ‘draftsperson’)

proposal a legislative text adopted by the Commission proposed for adoption by the European Parliament and the Council (‘COM final’ document)

reading (first, second, third) a procedure whereby the European Parliament and the Council examine a legislative text submitted by the Commission

recasting a legislative technique aiming at the simplification of the legislation whereby existing legislation is modified. It consists of the adoption of a new legal act, which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act, the new act thus replacing and repealing the earlier

regulatory procedure with scrutiny a former EU legislative procedure which allows the legislator to oppose the adoption of draft measures where it indicates that the draft exceeds the implementing powers provided for in the basic instrument, or that the draft is incompatible with the aim or the content of that instrument or fails to respect the principles of subsidiarity or proportionality (Council Decision 2006/512/EC)

revision the examination of a (translated) text for a given purpose; e.g., a linguistic revision, usually done by linguists or editors, would include general language issues, terminology, lexical choices, style, layout, grammar, punctuation, syntax and spelling; while a legal linguistic revision (by lawyer-linguists in the EU context) would cover general legal issues, and, in particular, language-specific legal terminology

source language the language in which the original text was drawn up in a process involving translation

target language the language into which a text drawn up in an original language is translated

terminology (term) a word or phrase used in a specific context; in EU documents, special EU terminology, legal terminology and the technical terminology of special fields are used

translation a process whereby the text of a document drawn up in a source language is rendered into another language, keeping the original content, style and terminology to the greatest extent possible

working group in the EU context, a specialised group consisting of Member State experts assisting the work of the Council

working language a language used by an international organisation or institution for its internal procedures; in the EU context, all EU languages are working languages which are defined as such in Regulation No. 1 of 1958 of the Council (as amended), however, EU institutions seem to confine their actual internal communication to English, French, and German for practical considerations

Appendix B. List of persons interviewed, and meetings and workshops attended

Mr László Balásházy, Ministry of Environment and Water, Hungary (e-mail)

Mr Gábor Baranyai, Office of the Parliamentary Commissioner for Future Generations, Hungary, April 2010

Mr John Beaven, Quality Controller, Translation Department, Secretariat General of the Council (e-mail)

Mr Anders Bengtsson, Judge at the Växjö District Court, Sweden (e-mail)

Mr Victor Cauchi, Attorney General's Office, Malta (phone, e-mail)

Mr Péter Darák, Supreme Court, Hungary (e-mail)

Ms Rossitsa Draganova, Judge, Administrative Court of Sofia, Bulgaria (e-mail)

Ms Andrea Elek, Ministry of Foreign Affairs, Hungary (e-mail)

Ms Darja Erbic, Department for EU Law and Language Regime, Government Office for Development and European Affairs, Slovenia, March 2010 (e-mail)

Ms Ildikó Faber, DGT, European Commission (phone)

Ms Katalin Gara, Permanent Representation of Hungary (e-mail)

Mr Endre Gáspár, DGT, European Commission (e-mail)

Mr Gábor Hasznos, Ministry of Environment and Water, Hungary (e-mail)

Mr Werner Heermann, Vice-President of the Verwaltungsgericht Würzburg, Bavaria, Germany (e-mail)

Ms Zoltán Jemenár, Ministry of Environment and Water, Hungary (e-mail)

Mr Andrej Mechl, Judge at the Administrative Court of Ljubljana, Slovenia (e-mail)

Mr Kristian Nudsen, European Parliament, Legislative Planning and Coordination Unit, Brussels, Belgium, 24 February 2010

Mr Klaus Lernhart, Presiding Judge at the Administrative Court of Appeal, Baden-Württemberg, Germany (e-mail)

Ms Anne-Marie Roseleer, senior linguistic advisor, Coordination Service, Council of State, Brussels, Belgium, 30 April 2010

Mr Csaba Markó, Ministry of Environment and Water, Hungary (e-mail)

Ms Francesca Scerri, Attorney General's Office, Malta (phone, e-mail)

Ms Bettina Schiffer, Legal Service, European Commission, Brussels, Belgium, 23 February 2010

Ms Irena Smetonienė, Chairperson, State Commission of the Lithuanian Language (e-mail)

Mr Gerard Snow, Director, Centre de traduction et de terminologie juridiques (CTTJ), Faculty of Law, University of Moncton, Canada (e-mail)

Mr Patrik Stenback, Judge at the Administrative Court of Helsinki, Finland (e-mail)

Mr Ingemar Strandvik, Quality Manager, ELISE Tool Manager, DGT, European Commission, Brussels, Belgium, 30 April 2010

Mr Paul Strickland, Head of the Editing Service, DGT, European Commission (e-mail)

Mr Daren Timson-Hunt, Cabinet Office Legal Adviser, European Division, United Kingdom (e-mail)

Mr Peter Vajda, European Commission (e-mail)

Ms Anett Vincze, Ministry of Environment and Water, Hungary (e-mail)

Mr Emil Waris, Assistant Judge, Administrative Court of Turku, Finland (e-mail)

Ms Inga Wynands-Szentmáry, European Parliament, Legislative Planning and Coordination Unit, Brussels, Belgium, 24 February 2010

Presentation by Ms Geneviève Tuts, Director, Secretariat-General of the Council of the European Union, Séminaire interne SGC—Direction Qualité de la législation, Brussels, Belgium, 23 February 2010

Round table with the lawyer-linguists of the European Parliament, Brussels, Belgium, 24 February 2010

Workshop on waste management, Ljubljana, Slovenia, 8 to 10 March 2010

Workshop on nature protection, London, United Kingdom, 29 to 31 March 2010

Appendix C. Questionnaires

Questionnaire #1 on EU environmental concepts²

1. Please indicate your country (plus your state of a federal state, if any) below.

2. *Some concepts defined by the EU Directives concerning environmental law caused interpretation problems in their implementation and application by the Member States due to the wording and the drafting style of the EU Directive. Please underline and explain those definitions cited in the questionnaire that caused or could have caused interpretation problems in your country. If you are not familiar with the cited Directives, leave the question out and use your own examples (Question 2. 9).*

2.1.1. Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment. *Please underline one or more terms from this Directive below that caused problems.*

a) *development consent* (Article 2.3)

b) *developer* (Article 2.2)

c) any other definition from the Directive (*Please specify below.*)

2.1.2. What were the language problems with the above definitions *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

2. 2.1. European Parliament and of the Council Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. *Please underline one or more terms from this Directive below that caused problems.*

a) *allowance* (Article 3.a)

b) *greenhouse gas emissions permit* (Article 3.d)

c) *operator* (Article 3.f)

d) any other definition from the Directive (*Please specify below.*)

2.2.2. What were the language problems with the above definitions *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

2.3.1. European Parliament and of the Council Directive 2007/60/EC of 23 October 2007 on the assessment and management of flood risks. *Please underline one or more terms from this Directive below that caused problems.*

² To be sent to Member States' administrations via Permanent Representations

- a) *flood* (Article 2.1)
- b) *risk assessment* (Article 4.2)
- c) *floodplain* (Article 4.2. d)
- d) any other definition from the Directive (*Please specify below.*)

2.3.2. What were the language problems with the above definitions *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

2.4.1. European Parliament and of the Council Directive 2004/35/CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. *Please underline one or more terms from this Directive below that caused problems.*

- a) *imminent threat of damage* (Article 2.9.)
- b) *services* (Article 2.13)
- c) *financial guarantees* (Article 8.2.; 14.1)
- d) any other definition from the Directive (*Please specify below.*)

2.4.2. What were the language problems with the above definitions *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

2.5.1. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. *Please underline one or more terms from this Directive below that caused problems.*

- a) *likely to have a significant effect* (Article 6.3)
- b) *appropriate assessment* (Article 6.3)
- c) *imperative reasons of overriding public interest* (Article 6.4)
- d) any other definition from the Directive (*Please specify below.*)

2.5.2. What were the language problems with the above definitions *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

2.6.1. Directives from the field of European waste law (e.g., European Parliament and of the Council Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives). *Please underline one or more terms from this Directive below that caused problems.*

- a) *waste*
- b) *disposal/recovery*
- c) *(preparing) for re-use/recycling*
- d) *treatment*

e) *(by)-product/component/material/substance*

d) any other definition from the Directive *(Please specify below.)*

2.6.2. What were the language problems with the above definitions *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

2.7.1. Directives from the field of European water law (e.g., European Parliament and of the Council Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy.). Can you differentiate the below pairs of legal terms in your language *Please underline those pair of concepts where you do.*

a) *water pollution/contamination*

b) *groundwater/subsoil water*

c) *water policy/water governance*

d) any other terms of the water Directives *(Please specify below.)*

2.7.2. If your answer to the previous question is affirmative, please describe the difference between the concepts concerned. *(Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.)*

2.8. Does the definition of *installation* in Directive 2008/1/EC of 15 January 2008 of the European Parliament and of the Council concerning integrated pollution prevention and control bear a different meaning than the concept of *plant* in your national legislation or is a *plant* part of the definition of *installation* *(Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.)*

2.9. Please add any other Directives from the field of environmental law to the list where you had problems with their language, terms or definitions. *(Please give your reply below, referring to the title of the Directive and giving the term that caused problems in your own language plus English if possible, together with an explanation.)*

3. Have you ever made linguistic reservations concerning any term in the field of environmental law during the legislative process of EU institutions *If yes, please specify it below (giving the term in your own language plus English if possible).*

4. In your opinion, does the new proposal on a Directive on establishing a framework for the protection of soil define new concepts or does it redefine some old ones in a way which enhances the quality of EU legislation at EU and national level *If your answer is yes, which are these concepts (Please give your reply below.)*

5. Which terms do you think should further be defined in the proposal *(Please give your reply below.)*

6. Do the EU acts in force concerning climate change contain terms which were unfamiliar to your national legal system (like *geological storage of CO₂* and *carbon leakage*) before *In what way were these terms implemented at national level and how were these received (Please give your reply below.)*

Please add any comment or suggestion here that you think we may find useful either with regard to the above questions or to the subject of the study in general.

Thank you very much for your contribution.

Questionnaire #2 on consumer protection³

1. At the meetings of Council working groups, is the proposal at any drafting stage available in your language *Please underline your choice.*

- a) es, almost always
- b) es, in the majority of cases, but not always
- c) Only the COM final document is available; the working group amendments are not reflected in my language version

2. At the meeting of Council working groups, are you using/following your language version *Please underline your choice.*

- a) es, always
- b) I check the original COM document in my language version only
- c) No, I check the text submitted for COREPER/Council only

3. Do you give feedback or make suggestions to lawyer-linguists who finalise the text in your language *Please underline your choice.*

- a) es, systematically
- b) es, but only in cases where it is really necessary to improve/change the text
- c) Seldom
- d) No

4. If your answer to question 3 was positive, which is the stage of the drafting process where you contact the lawyer-linguists *Please underline your choice.*

- a) Already at the beginning, when the working group starts to work on the text
- b) Before a political agreement is reached on the text
- c) When the document is officially circulated via U32 for submitting observations

5. As far as the consumer protection *acquis* is concerned are there concepts in the directives in force which were implemented in your national legislation by using a different term than the one used in the text of the particular directive in your language If yes, please indicate the concept/terms (in English and in your respective language and indicate the reason behind if there is any)

6. Could you give examples of cases where the same term was used in EU directives and in your relevant national legislation, in a way that the concept/meaning designated by the term within the meaning of EU directives was significantly different than the concept/meaning traditionally used in your legislation (for example: warranty, guarantee, defect, consumer,

³ This questionnaire is intended for Members of Council working groups and, without the questions concerning the functioning of the working group itself, will be sent to university researchers as well.

advertisement) and if this should be the case, did it cause problems when implementing the directive, if yes what type of problems have occurred, and what type of solution you have chosen in your national legislation

7. If your answer to the previous question is affirmative, did the EU meaning of the term concerned influenced/changed the meaning of the same term at national level in general or only with regard to the legislation/legal area within the scope of the directive

8. If your answer to question 6 is affirmative, did it made a difference whether the term concerned was defined in the relevant EU directive or only used in a sense that could be deducted from the context of the directive or EU law.

9. Are there any cases where the terms defined in [a specific directive]/[a directive regulating a specific aspect of consumer protection/consumer law] are used in either other horizontal or specific directives in the field of consumer protection or EU acts under other EU policies

- a) without being defined in the latter (e.g. retail, advertisement, marketing, consumer in several EU acts in different sectors)
- b) being defined as meaning a (partly) different concept (e.g. advertising in Directive 2001/83/EC, *final consumer* in Regulation (EC) No 178/2002)

Have any such cases cause problems when implementing any of the relevant EU acts, if yes what type of problems have occurred, and what type of solution you have chosen in your national legislation

10. As far as the interpretation of terms used in EU Directives or other EU acts is concerned, is it a practice during the process of implementation of considering several other language versions of the EU acts concerned

11. As far as the application of the implementing legislation is concerned, have there been any terms the interpretation of which caused problems before national courts (please specify the reasons if possible)

12. Do the directives in force contain terms which were foreign to your national legal system (like *good faith* for common law system) and how were they implemented and received at national level

13. Does the new proposal on a directive on consumer rights to your view define new concepts or redefine some old ones in a way which enhances quality of EU legislation at EU and at national level Which are these

14. Which terms do you think should still be defined in the proposal

15. Please add any comment or suggestion here that you think we may find useful either with regard to the above questions or to the subject of the study in general.

Thank you very much for your contribution.

Questionnaire #3 for Member State coordinators

1. How is cooperation with translators and lawyer-linguists at EU institutions coordinated in your county *Please underline your choice.*

- a) There is no special co-ordination, ministries are involved directly
- b) Co-ordination is limited, queries are simply transmitted to the relevant ministry
- c) There is institutionalised co-operation (if this is the case, please outline the working of the system below)

2. Do translators and lawyer-linguists at EU institutions contact experts in national ministries directly or via the coordinating body *Please underline your choice.*

- a) Directly
- b) Through the coordinating body only
- c) Both

3. Can your coordination system effectively mainstream the national level linguistic/terminology remarks vis- -vis the EU institutions *Please give your reply below.*

4. At what stage of the drafting of a legislative act do you send linguistic/terminology feedback to translators/lawyer-linguists at EU institutions *Please underline your choice.*

- a) As early as during the translation of the COM document by Commission services
- b) After the COM document has been published
- c) After the Council working group has started to work on the text
- d) Only when the text is officially sent for making linguistic comments (after a political agreement is reached)

5. Are you following the drafting of acts adopted in comitology procedure and can you comment on them before adoption *Please give your reply below.*

6. How often do you request corrigenda to already published legislation *Please give your reply below.*

7. Could you refer to typical cases and terms where a corrigendum was needed *Please give your reply below.*

8. Could you refer to a practical example where the mistranslation or incorrect translation of a term into your respective language has or would have caused difficulties in the application of law *Please give your reply below.*

9. Please add any comment or suggestion here that you think we may find useful either with regard to the above questions or to the subject of the study in general.

Thank you very much for your contribution.

Questionnaire #4 for translation departments

Notes: *If your language is the official language of more than one EU Member States, please indicate the Member State affected in some way for the answers where relevant. (Example: if your language is French, you may answer Question #6 by underlining b) and indicating BE for Belgium and LUX for Luxembourg in brackets and underlining c), too, indicating FR for France, should the case be like this.) Please ignore Question #7 if your language belongs to a single Member State only.*

1. What is your overall impression of the linguistic quality (e.g., accuracy and clarity of expression, appropriate style and register, consistent terminology usage [within the text and in the context of related legal acts], no influence of other languages is experienced, proper orthography and punctuation) of source texts your Department has been requested to translate for the last 5 years *Please underline your choice.*

- a) Excellent or good, related translation problems are rare
- b) Average, occasionally leading to translation problems
- c) Not sufficient, leading to frequent translation problems

2. Are you in contact with experts of the Member State(s) of your language with whom you are able to clarify certain terms *Please underline your choice.*

- a) es, systematically
- b) es, on a case-by-case basis when needed
- c) Rarely
- d) No

3. Do you contact the Commission expert responsible for the draft text in the case of any uncertain terminology *Please underline your choice.*

- a) es, systematically
- b) es, on a case-by-case basis when needed
- c) Rarely
- d) No

4. For the further improvement of the linguistic quality of EU texts, which factor of the drafting system should be strengthened in your opinion *Please underline your choice(s).*

- a) More systematised contact with Member States' experts at an earlier stage (during the translation process)
- b) More institutionalised cooperation with the Member States' experts (i.e., via a database/electronic forum)
- c) More institutionalised cooperation with the Commission's draftsperson concerned

- d) More institutionalised cooperation with lawyer-linguists working at EU institutions
- e) Other (please specify below)
- f) I do not know

5. To what extent are you able to involve freelance translators into the translation process (E.g., what are the resources and translation aids that you make available for them ; are reference documents, translation memory exports and relevant information sent to them with an order systematically ; to what extent are they able to put terminology questions and requests for reference documents ; to what extent can you take into consideration their comments attached to their translation / sent by them following your feedback, if any) *Please give your reply below.*

6. Do the terminologists and translators of your Department contact the staff of the corresponding language department of the other two institutions (Parliament / Council / Commission) in terminology matters *Please underline your choice.*

- a) es, systematically
- b) es, on a case-by-case basis when needed
- c) Rarely
- d) No

7. Do you involve in the solving of language/terminology problems all the Member States (experts, EU coordinators) where your language is official *Please underline your choice. If your choice is c), we would appreciate if you could provide details below.*

- a) No
- b) es, occasionally we do
- c) es, there is institutionalised (regular and systematic) cooperation with all the Member States concerned

8. Please refer to practical examples from your experience where you decided to choose a different term for an EU concept than the one used in the national technical language for a similar concept because you realised that the EU concept is used in a wider or narrower sense than the national one and you considered it important to express this difference with linguistic means. *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

9. What is the generally accepted approach at your Department regarding incorrect (outdated) translation and terminology solutions encountered with in former EU legal acts Please also refer to examples from your experience where you chose a different term than the one formerly used in a related EU act because you realised that the term previously used in your language was not correct. *Please give your reply below, giving examples in your own language plus English if possible, together with an explanation.*

10. What is the generally accepted approach in your language concerning the translation of foreign (Latin, Greek, English, French) words (i.e., *allocation*, *monitoring*, etc.) Do they have a proper equivalent in your language or are they just ‘loan words’ more or less keeping their original form and pronunciation *Please give your reply below, giving examples in your own language (including the explication of the meaning) plus English if possible.*

11. Could you please give us examples where you felt that either the fact that certain concepts (so far unfamiliar in your language) have to be expressed in your language or that the texts you translate were drafted by people with a different linguistic and cultural background and mindset result in the ‘distortion’ of your language (distortions on lexical/grammatical level; too many foreign-sounding words; examples of untranslatability; the contents/scope of concepts already existing in your language changed; the language used for EU translation diverged from that used by the language community; you are from one of the new Member States and the EU jargon is still perceived as too ‘artificial’ and forced in your language, etc.) In other words, can you enumerate examples for any negative effect on your language and culture by the multilingualism of the EU *Please give your reply below, giving examples in your own language plus English if possible.*

12. As opposed to question 8, could you enumerate examples proving that the multilingualism of the EU and the related translation process actually added to your language (on any linguistic level) in a way that you perceive as positive *Please give your reply below, giving examples in your own language plus English if possible.*

13. Please add any comment or suggestion here that you think we may find useful either with regard to the above questions or to the subject of the study in general.

Thank you very much for your contribution.

Questionnaire #5 for lawyer-linguists

Notes: *If your language is the official language of more than one EU Member States, please indicate the Member State affected in some way for each of your answers. (Example: if your language is French, you may answer Question #3 by underlining b) and indicating BE for Belgium in brackets and underlining c), too, indicating FR for France, should the case be like this.) Please ignore Question #5 if your language belongs to a single Member State only.*

1. How often do you receive comments from the administration of the Member State(s) concerning the language version you are working with *Please underline your choice.*

- a) For the majority of texts
- b) quite often
- c) Seldom
- d) Very seldom / never

2. Are you in contact with experts of the Member State(s) of your language with whom you are able to clarify certain terms *Please underline your choice.*

- a) yes, systematically
- b) yes, on a case-by-case basis when needed
- c) Rarely
- d) No

3. Do you contact the Commission expert responsible for the draft text in the case of any uncertain terminology *Please underline your choice.*

- a) yes, frequently
- b) yes, on a case-by-case basis when needed
- c) Rarely
- d) No

4. For the further improvement of the linguistic quality of EU texts, which factor of the drafting system should be strengthened in your opinion *Please underline your choice.*

- a) Linguistic feedback from Member States at an earlier stage (i.e., Member States could/should send their comments on the COM final document itself immediately after it has been published)
- b) More institutionalised cooperation with the Member States' experts (i.e., via a database/electronic forum available for both the experts and the lawyer-linguists)
- c) More institutionalised cooperation with lawyer-linguists working at the other EU institutions
- d) Other (please specify below)

5. Do you involve in the solving of language/terminology problems all the Member States (experts, EU coordinators) where your language is official *Please underline your choice. If your choice is c), we would appreciate if you could provide details below.*

- a) No
- b) es, occasionally we do
- c) es, there is institutionalised cooperation with all the Member States concerned

6. Please refer to practical examples from your experience where you decided to choose a different term for an EU concept than the one used in the national legal language for a similar concept because you realised that the EU concept is used in a wider or narrower sense than the national one and you considered it important to express this difference with linguistic means. *Please give your reply below, giving examples and in your own language plus English if possible, together with an explanation.*

7. Are you aware of cases where the national implementing measure chose to deviate from the term used in the directive when defining/implementing the same concept *Please give your reply below, giving examples in your own language plus English if possible.*

8. Are you aware of cases in your language where the use of a certain term in a directly applicable regulation caused problems at national level *Please give your reply below, giving examples in your own language plus English if possible.*

9. What is the generally accepted approach in your language concerning the translation of foreign (Latin, Greek, English) words (i.e., *allocation, monitoring*, etc.) Do they have a proper equivalent in your language or are they just 'loan words' more or less keeping their original form and pronunciation *Please give your reply below, giving examples in your own language plus English if possible.*

10. Do you think that, as far as definitions provided in EU legislative texts are concerned,

- a) more concepts should be clearly defined at EU level
- b) less concepts should be defined at EU level, and these should be refined by the Member States when transposing the measure concerned
- c) definitions in different EU legislative texts are not consistent enough with each other
- d) terms are usually sufficiently and consistently defined in EU texts.

(Please underline your choice.)

11. Please add any comment or suggestion here that you think we may find useful either with regard to the above questions or to the subject of the study in general.

Thank you very much for your contribution.

Appendix D. Breakdown of the questionnaire respondents⁴

<i>Language</i>	<i>Commission</i>		<i>Council</i>		<i>Parliament</i>		<i>Other</i>	<i>Total by language</i>
	<i>LL</i>	<i>TR</i>	<i>LL</i>	<i>TR</i>	<i>LL</i>	<i>TR</i>		
<i>BG</i>		1						1
<i>CS</i>		1			1	1		3
<i>DA</i>		1			1			2
<i>DE</i>		1		1	1			3
<i>EL</i>		1			1		1	3
<i>EN</i>					1		3	4
<i>ES</i>		1				1		2
<i>ET</i>		1						1
<i>FI</i>		1				1	6	8
<i>FR</i>		1			1	1	2	5
<i>GA</i>		1			1		1	3
<i>HU</i>		1			1	1	3	6
<i>IT</i>						1		1
<i>LT</i>		1				1	3	5
<i>LV</i>		1		1			2	4
<i>MT</i>		1				1	3	5
<i>NL</i>		1					1	2
<i>PL</i>		1				1		2
<i>PT</i>		1				1		2
<i>RO</i>		1					3	4
<i>SK</i>		1			1	1	1	4
<i>SL</i>		1		1			2	4
<i>SV</i>		1				1	2	4
<i>Total by source</i>	0	21	0	3	9	12	33	78

⁴ LL lawyer-linguist service, TR translation service, Other diverse (other than EU institutions)

Appendix E. The legislative corpus analysed

1. Founding Treaties

Treaty establishing the European Community

Treaty on the European Union

Treaty on European Union and the Treaty on the Functioning of the European Union
(consolidated version)

2. Directives concerning consumer protection

Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (as amended by 1999/34/EC)

Council Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises

Council Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents

Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (as amended by 90/88/EEC and 98/7/EC)

Council Directive 90/314/EEC on package travel, package holidays and package tours

Council Directive 93/13/EEC on unfair terms in consumer contracts

Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts (as amended by 2002/65/EC)

Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees

Council Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC

Proposal for a Directive on consumer rights, COM(2008) 614 final

3. Directives concerning environmental issues

Council Directive 79/409/EEC on the conservation of wild birds (Birds Directive)

Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive)

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)

Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (as amended by 2004/12/EC and 2005/20/EC)

Council Directive 98/83/EC on the quality of water intended for human consumption

Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (ETS Directive)

Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (ELD Directive)

Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive 76/160/EEC

Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks (Flood Directive)

Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control (IPPC Directive)

New Proposal on a Directive on establishing a framework for the protection of soil

Legislation on climate change—Directives 2009/31/EC, 2009/29/EC, Commission Decision 2010/2/EU

Waste Directives—e.g., Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives

Water Directives—e.g., 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy

4. Case law of the European Court of Justice

Case 13/61, *Iedingerkoopbedrijf de Geus en Uitdenbogerd v. Robert Bosch GmbH et Maatschappij tot voortzetting van de zaken der Firma Willem van Rijn* (ECR 1962, 89)

Case 26/62, *N. V. Algemeine Transport- en Expeditie Onderneming van Gend Loos v. Dutch tax authorities* (ECR 1963, 3)

Case 6/64, *Flaminio Costa v. E.N.E.L.* (ECR 1964, 1141)

Case 19/67, *Bestuur der Sociale Verzekeringsbank kontra J. H. van der Vecht* (ECR 1968, 445)

Case 29/69, *Erich Stauder v. Stadt Ulm* (ECR 1969, 419)

- Case 25/71, Einfuhr- und Vorratsstelle f r Getreide und Futtermittel v. ster and Berodt Co. (ECR 1970, 1161)
- Case 49/71, Hagen OHG v. Einfuhr- und Vorratstelle (ECR 1972, 23)
- Case 50/71, W nsche v. Einfuhr- und Vorratstelle f r Getreide und Futtermittel (ECR 1972, 53)
- Case 5/71, Sch ppenstedt (ECR 1971, 95)
- Case 61/72, Mij PPW Internationaal NV v. Hoofdproduktschap voor Akkerbouwprodukten (ECR 1973, 301)
- Case 3/74, Einfuhr- und Vorratsstelle f r Getreide und Futtermittel v. Soci t Wilhelm Pf tzenreuter (ECR 1974, 589)
- Case 41/74, Van Duyn (ECR 1974, 1337)
- Case 36/75, Rutili (ECR 1975, 1219)
- Case 80/76, North erry Milk Products (ECR 1977, 149)
- Case 30/77, R gina v. Pierre Bouchereau (ECR 1977, 1999)
- Case 327/82, Ekro BV Vee- en Vieeshandel v. Produktschap voor Vee en Vies (ECR 1984, 107)
- Case 14/83, Sabine von Colson s Elisabeth amann v. Land Nordrhein-Westfalen (ECR 1984, 1891)
- Case 100/84, Commission v. United ingdom (ECR 1985, 1169)
- Case 59/85, Netherlands v. Ann Florence Reed (ECR 1986, 1283)
- Case T-41/89, Schwedler v. European Parliament (ECR 1990, II-279)
- Case T-43/90, D az Garcia v. European Parliament (ECR 1992, II-2619)
- Case T-85/91, houri v. Commission (ECR 1992, 2637)
- Case C-24/92, Corbeau v. Administration des contributions (ECR 1993, I-1277)
- Case C-124/92, An Bord Baine Co-operative Ltd. and Compagnie Interagra Board for Agricultural Produce (ECR 1993, I-5061)
- Case C-137/92, Commission v. BSAF AG (ECR 1994, I-2555)
- Case T-9/92, Peugeot v. Commission (ECR 1993, I-4767)
- Case C-449/93, Rockfon (ECR 1995, I-4291)
- Case C-46/93 and C-48/93, Brasserie du P cheur and Factortame (ECR 1996, I-1029)
- Case C-72/95, raaijeveld and others (ECR 1996, 15403)
- Case C-219/95, Ferriere Nord SPA (ECR 1997, I-4411)

- Case C-296/95, The Queen v. Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd, John Cunningham (ECR 1998, I-1605)
- Case C-310/95, Road Air BV v. Inspecteur der Invoerrechten en Accijnzen (ECR 1997, I-2229)
- Case C-45/96, Bayerische Hypotheken- und Wechselbank AG v. Edgar Dietzinger (ECR 1998, I-01199)
- Case C-7/98, Dieter Trombach v. Andr Bamberski (ECR 2000, I-1935)
- Case C-36/98, Spain v. Council of the European Union (ECR 2001, I-779)
- Case C-287/98, Luxembourg v. Berthe Linster, Aloyse L. s vonne L. (ECR 2000, I-6917)
- Case C-303/98, Sindicato de Médicos de Asistencia Pública (Simap) v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana (ECR 2000, I-7963)
- Case C-357/98, The Queen v. Secretary of State for the Home Department, ex parte Nana Ananadun (ECR 2000, I-9265)
- Case C-240/98, Oceano Grupo Editorial SA v. Roci Murciano Quintero (ECR 2000, I-4941),
- Case C-269/99, Francesco Benincasa v. Dentalkit Srl. (ECR 1997, I-03767)
- Joint Cases C-541/99 and C-542/99, Cape Snc v. Idealservice Srl. and Idealservice MN RE Sas v. OMAI Srl. (ECR 2001, I-09049)
- Case C-168/00, Simone Leitner v. TUI Deutschland GmbH Co. G. (ECR 2002, I-2631)
- Case C-245/00, Stichting ter Exploitatie van Naburgie Echten (SENA) v. Nederlanden Omroep (ECR 2003, I-1251)
- Case C-473/00, Cofidis SA v. Jean-Louis Fredout (ECR 2002, I-10875)
- Case C-373/00, Adolf Truelly GmbH., v. Bestattung Wien GmbH. (ECR 2003, I-1931)
- Case C-151/02, Landeshauptstadt Kiel v. Norbert Jäger (ECR 2003, I-8389)
- Case C-36/02, Omega (ECR 2004, I-9609)
- Case C-188/03, Irmtraud Junk v. Wolfgang Hanel (ECR 2005, I-00885)
- Case C-302/04, Inos ft. v. Varga János (ECR 2006, I-371)
- Case C-14/04, Dellas (ECR 2005, I-10253)
- Case C-63/06, UAB Profisa v. Muitines departamentas prie Lietuvos (ECR 2007, I-3239)
- Case C-161/06, Skoma-Lux (ECR 2007, I-10841)
- Case C-347/08, Vorarlberger Gebietskrankenkasse (Not yet published)

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