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EU Legal Culture and Translation

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Abstract
This article introduces the special issue of JLL on EU legal culture and translation. The introduction gives an overview of the papers comprised in the special issue and provides the theoretical background to set the scene for the discussion in the papers. The special issue is a follow-up on the panel organised at the *Language and Law in a World of Media, Globalisation and Social Conflicts* conference at the University of Freiburg. We argue that the EU legal culture is a perfect case in point for the study of the intersection between law and language. Due to the extreme degree of mediation and filtering of law through the EU's official languages, the EU legal culture emerges through translation as a hybrid supranational pan-European construct with mutual dependencies on national legal cultures. The contributions to the special issues address various aspects of the law and language intersection in the EU context: the role of English as the EU's *lingua franca*, the impact of national legal cultures on legal translation, strategic ambiguity and its interpretation by the Court of Justice of the European Union (CJEU), the impact of EU integration on legal languages, and finally, framing and ideology in EU legal translation. Overall, by approaching the EU legal culture from various perspectives, this special issue refines our understanding of how the EU legal culture is affected by multilingual translation.

Keywords
EU legal culture, multilingualism, EU translation, EU law, legal translation, EU terminology, language and law, hybridity

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1. Introduction

This special issue of the *International Journal of Language & Law* is devoted to the European Union (EU)'s legal culture and translation. It is based on the panel organised by the authors at the *Language and Law in a World of Media, Globalisation and Social Conflicts* conference (7–9 September 2017, University of Freiburg, Germany), which relaunched the International Law and Language Association (ILLA). The starting point for the panel was the assumption that with 24 official languages and as a supranational organisation, the EU is a perfect case in point for the study of the intersection between law and language. Since culture can be viewed as "the collective programming of the mind" and "the software of the mind" (Hofstede, 1994: 4), we want to approach this topic through the concept of EU legal culture shaped by multilingual translation.

The objective of this paper is to introduce the special issue. We will first present some theoretical considerations related to EU legal culture, presenting main topics and paradoxes. Against this background, we will next present five contributions to the issue.

2. EU Legal Culture and Translation

The intersection of law and language in the EU context is marked by an extreme COMPLEXITY at the theoretical, methodological, procedural, political and practical level. It is also a breeding ground of paradoxes, compromises and tensions, in particular concerning the interplay between supranational and national elements.

One of the reasons for this state of affairs is an inevitable presence of TRANSLATION and translators, which involves an extreme degree of mediation and filtering of law through the EU's official languages, as well as national legal cultures linked to them. This extreme multistage mediation and filtering through the official languages and cultures has led to an emergence of a hybrid supranational EU legal culture. Since EU legal culture has emerged through translation, it is legal translation, as an enabling and constraining factor, which is our point of departure for this special issue and its underlying theme.

Thus, it is MULTILINGUALISM which may be regarded as a defining feature behind EU legal culture. The EU has currently 24 official languages which are declared and presumed to enjoy an equal status. However, due to budgetary constraints, the multilingualism policy is inconsistent with practice (cf. Seidlhofer, 2010: 360; Baaij, 2012), where it is often limited to the legal validity and authenticity of the EU-wide legislation (known as the principle of equal authenticity (Šarčević, 1997: 64) or the single meaning approach (Derlén, 2015)). A large number of documents exist only in the main procedural language — English, which replaced French in this role. In the case of legislation,

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it also means that English is the main drafting language and the language of legislative proposals and working parties. Thus, English has become a *de facto lingua franca* of the European Union (Seidlhofer, 2010; Pozzo, 2012a; 2012b; Baaij, 2012), which has been shifting towards "unilingualism" (Mattila 2013: 33; see also Bajčić in this special issue). A different approach and procedures are applied by the Court of Justice of the European Union (CJEU), where, exceptionally, French is the main procedural language and judgments are deliberated in French even though only a judgement in the language of the case is deemed to be authentic as a *de jure* original (Derlén, 2015). Overall, it can be assumed that EU texts are filtered predominantly through hybrid variants of EU English and EU French, in addition to being filtered through national languages and legal systems during the multistage drafting stage (cf. Doczekalska, 2009: 360).

This trend coincides with attempts at deculturalisation (van Els, 2001: 329), deterritorialisation (Craith, 2006: 50), neutralisation (Caliendo, 2004: 163) and cultural ambivalence (Sosoni, 2012: 87) to create a neutral common ground for the European Union's supranational law and to make multilingual translation easier. However, the EU legal system is not fully established and independent – there are strong mutual interdependencies between the national and the supranational systems. EU concepts are based on national conceptual systems (Šarčević, 2010: 27) and the case law is "still in fluctuation", making EU concepts unstable (Kjær, 2007: 81). As aptly explained by Kjær, the EU legal system requires the national legal systems to exist: "legal instruments are produced within the EU system, but applied in each of the 27 domestic legal systems" (2007: 79). Thus, the EU legal system and culture are a hybrid (cf. Cao, 2007: 150; McAuliffe, 2011; Mattila, 2013), synthesising constituent national cultures, based on the *acquis* (cf. Wagner, 2000: 3) and the common European legal culture of *ius commune* (Jopek-Bosiacka, 2010: 236), which was also strongly influenced by French and German law, and next by UK common law (Mattila, 2013: 138).

The hybridity is visible not only at the conceptual level of shared mental structures but also at the grammatical and stylistic level. The EU legal culture and various contextual factors lead to an emergence of distinct "Europeanised" variants of legal languages – eurolects. Most scholars agree that EU texts, which are marked by "the extreme visibility of the 'translatedness' of the texts" (Koskinen, 2000: 61), have developed a specific language or style departing from certain conventions of national languages (cf. Trosborg, 1997: 153; Koskinen, 2000: 53; Tosi, 2005: 385; Catenaccio, 2008: 259; Mori, 2011: 112; Biel, 2014), standardised to reflect the voice of EU institutions (cf. Koskinen, 2008: 22; Svoboda, 2017). The differences seem to be large enough to enable the perception of EU language as a new legal variant of the official languages which emerges through translation (cf. Koskinen, 2000: 53; Salmi-Tolonen, 2004: 1187; Mori, 2011).

To sum up, the mutual interdependences and tensions between the supranational and the national create a hybrid conceptual and linguistic space within which the EU legal culture has evolved through multilingual translation.

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3. Overview of the Contributions to the Special Issue

The special issue comprises five papers contributed both by lawyers and linguists who address the complexity and hybridity of EU legal culture and translation from a range of theoretical and methodological perspectives. This topic is viewed from a number of angles, triangulating quantitative and qualitative methods (comparative law, legal theory and logic, corpus linguistics and critical discourse analysis).

The issue opens with a paper by Martina Bajčić, a terminologist from the Faculty of Law of the University of Rijeka (Croatia), entitled "The Role of EU Legal English in Shaping EU Legal Culture". Bajčić applies legal and linguistic approaches to explore the link between language and legal culture, which she views in a narrow sense as "law in action". In addition, she highlights the paramount importance of the CJEU in shaping EU law and developing autonomous concepts. Starting with an overview of multilingualism in the EU and the subsequent dominance of English as a vehicular language drafted by non-native speakers, she underscores how a new neutralised variant of English is born to express EU law as a hybrid legal order, influenced significantly by the civil-law traditions of German and French law. In that framework, Bajčić argues, some EU law concepts are of indeterminate meaning, lacking statutory definitions and in such cases when a dispute arises it is the CJEU that establishes their meaning by applying teleological and systemic methods of interpretation rather than linguistic ones. She concludes by suggesting that the CJEU has, in fact, an important role to play by developing autonomous concepts and thus helping to achieve a unity in the diversity of EU legal culture.

The next paper by Sofiya Kartalova from the Faculty of Law at Eberhard Karls Universität Tübingen (Germany), entitled "The Scales of Justice in Equilibrium: The ECJ's Strategic Resolution of Ambiguity in *Stefano Melloni v Ministerio Fiscal* 2013", also highlights the importance of the CJEU. In particular, the author discusses the complexity of legal interpretation in the EU context from the perspective of strategic ambiguity and its resolution by the CJEU. The paper involves a study of one of the leading judgements in European constitution law (*Melloni*) concerning possible interpretations of Article 53 of the Charter of Fundamental Rights of the EU in the context of the European Arrest Warrant, raising fundamental questions as to the principle of primacy of EU law. The article in question contains an ambiguity which allows for two contrasting but possible interpretations of the principle. Kartalova approaches the ambiguity from the linguistic and legal perspective. Analysing the use of conjunctions, plural, "collective-distributive ambiguity", the subordinate clause, she offers a close reading of Article 53 and points to various layers of ambiguity. She next explores how the ECJ resolved the ambiguity in line with its preferred approach of system-building through concepts and safeguarding "the primacy, effectiveness and unity of EU law".

The next contribution by Anna Jopek-Bosiacka from the University of Warsaw (Poland), a translation scholar with a legal background, which is entitled "Theoretical and

Logical Prerequisites for Legal Translation", approaches legal translation through the methodological lens of legal theory and logic, attempting to establish the relationship between the translation of legislative texts and legal cultures. Understanding a legal system as built on logic, a kind of a meta-language, and a theory of law as the authoritative system of norms and knowledge, Jopek-Bosiacka argues that it constitutes "the most important part of the context – institutionalized context – for legal translation". This institutionalized legal context is often prescribed in legislative drafting guidelines designed to ensure quality legislation. One of Jopek-Bosiacka's goals is to compare the Polish legislative guidelines with the European Union and other guidelines to understand how legal cultures affect the processing of legislative texts in translation and the interpretation of translated texts. Her analysis of legal definitions, conjunctions, negation, aspect, mood and tense points to areas which tend to be universal across cultures and those which tend to be culture-specific, arguing that the differences make it necessary to deem the national perspective of a legal system and culture as an uncontested qualitative requirement of legislative translation. As Jopek-Bosiacka observes, "[a] good legal translation is supposed to reproduce normative patterns vested in national legal culture and system".

In her paper entitled "Legal Language and EU Integration – The Case of the Western Balkans", Aleksandra Čavoški, who is a legal scholar from the University of Birmingham (UK), addresses the impact of EU integration and enlargement on legal languages and cultures of four countries of the former Yugoslavia (Croatia, Servia, Bosnia and Herzegovina, and Montenegro). Referring to the neo-functionalist model derived from political science, Čavoški argues that, after the countries gained independence following the break-up of Yugoslavia, legal languages and cultures of these countries remained still largely similar, which was further reinforced through legal translation (i.e. translation of the *acquis*) within the accession process. As Čavoški observes, "for the purposes of EU accession these four countries can be viewed as a legally coherent region"; however, she warns that this potentially contentious idea requires further interdisciplinary legal and linguistic research. One of the main claims behind the paper is that the coherence of legal languages and cultures in Western Balkans can have implications for EU multilingualism in the future and offer a possibility to 'rethink' the EU's approach to legal translation by, for example, establishing joint translation teams in EU institutions. To sum up, Čavoški raises an important but under-researched topic of affinities between languages in the EU context and opportunities to capitalise on such affinities.

Last but not least, Elpida Loupaki, a translation scholar from the Aristotle University of Thessaloniki (Greece), in her paper entitled "EU Legal Language and Translation – Dehumanizing the Refugee Crisis", focuses on ideology in EU legal texts. In particular, adopting Hodge and Kress's posit that ideology involves "a systematically organized presentation of the reality" (1993: 15) and accepting that linguistic choices may hide different ideological structures, she employs Critical Discourse Analysis (CDA) and inves-

tigates "framing" and "detachment techniques" in original texts and their translations. The author uses a unidirectional parallel corpus consisting of 10 English EU legislative texts and their Greek translations in order to study the lexical choices which could contribute to dehumanizing the "refugee crisis" and compare them with the choices made by Greek translators. She understands dehumanizing "as a process of undermining the pain, the human nature, of a group of people, for instance refugees and migrants, while magnifying the trouble, the problems this group is causing to another – usually ruling group – i.e. EU Member States". The results of the analysis are particularly interesting since they verify the use of dehumanizing techniques, such as the extensive use of terms for naming refugees, the preference for formal, impersonal words and the framing techniques that perpetuate polarization – not only in the English texts but also in their Greek translations.

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