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# EU Legal Culture and Translation

*Vilelmini Sosoni* and *Łucja Biel**

**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 legisla-

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tion, 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.

## 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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# The Role of EU Legal English in Shaping EU Legal Culture

*Martina Bajčić**

**Abstract**
There is no denying that a change in the languages and cultures of European law is taking place. Indeed, many scholars speak of a hybridization of legal languages in the EU under the influence of EU legislation (e.g. Koskinen, 2000; Mori, 2011) and the emergence of a new European legal culture due to the Europeanisation of law (Graziadei, 2015). Exploring the interfaces of law, language and culture in the EU, this paper places emphasis on the role of English as a *lingua franca* in the EU in conceptualizing a common EU legal culture. The alleged neutrality of English and the importance of neutral terminology in EU legal drafting are examined against the backdrop of autonomous concepts of multilingual EU law. Arguing that the relationship of EU and national legal culture should not be framed in terms of opposites, but rest on the ideas of integration and synthesis, the author draws an analogy between the concepts of EU legal culture – construed as "law in action" – and EU citizenship, underlining the important role of the Court of Justice of the EU in shaping EU law and developing autonomous concepts.

**Keywords**
EU law and language, legal culture, neutral terms, EU legal English as a lingua franca

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# 1. Introduction: Interfaces of Law, Language and Culture in the EU

While it is true that both law and language may be viewed as universal symbols of a community, each language as well as each legal system bears the local stamp of a particular culture and tradition.[1] This paradox forbears special ramifications for the functioning of multilingual EU law. For one thing, EU law can be viewed both as community law and as a particular legal system which happens to be expressed in 24 different, locally coloured languages. Can the latter be treated as community-type languages though?

Let us consider a hypothetical example. Does a German *Rechtsanwalt* "read" a paragraph of the German civil code concerning the transfer of property by means of a valid will in German and the EU Succession Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession[2] – also in German – in the same way? Does the fact that the two texts are seemingly embedded in different legal systems (namely, one in local German national law and the other in supranational EU law) manifest in distinct legal conceptualizations? And does a French *avocat* reading the same EU regulation in French conceptualize it in the same way as the German lawyer? In other words, is there a community-type of language (in all 24 official languages and not just English) that furthers what can be described as a shared and collective EU conceptualization? Both legal and linguistic considerations come into play in this context.

If we endorse the view that discourse communities are communities of people who link up in order to pursue common objectives (Kjær, 2015: 97), then the German and the French lawyer speaking about the same EU law may be said to belong to the same discourse community. However, to what extent this imagined community of lawyers shares a common, transnational legal culture in the sense of "values, judicial knowledge, practices etc." (Michaels, forthcoming) is debatable.

Although the notion of legal culture has long been scrutinized by legal scholars, there is no agreement as to what exactly the term means. For some authors, legal culture refers to a simple extension of the law as living law; others equate the term with legal tradition or legal family, whereas some find it includes legal ideology, and legal terminology *inter alia*.[3] Generally, the term legal culture refers to factors that go beyond

[1] The symbiosis of language and community rests on the idea that the community makes us what we are through language, and through language we make the community what it is (Berman, 2015: 47).

[2] EU Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, p. 10–34. Available at data.europa.eu/eli/reg/2012/650/oj.

[3] For a critical account of legal culture see Michaels (forthcoming).

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legal rules, such as values, standards, judicial knowledge or living law, and is often studied in close connection to language. For Robertson (2015: 35), the shared culture of the EU is founded on the primary treaty texts which are negotiated and signed by the Member States.[4] In what follows I will try to explore the link between legal culture (in a narrow sense of "law in action") and language by applying both legal and linguistic approaches. Conceptualizing a shared European legal culture as "law in action", sheds light on the role of language, and EU legal English in particular, in shaping EU law.

Reflecting on the relationship between law, language and culture in the EU, the following section outlines the two main schools to the modern study of law and language. Emphasis is put on a cognitive linguistics view of legal language. The second section shifts the focus to the phenomenon of legal English as a community-type of language and the repercussions of its present unprecedented use on the global level. Special attention is devoted to EU legal English as a new genre and to the notion of neutrality. The third section attempts to provide answers to the questions posed in the introduction of this paper by drawing a parallel between the concepts of EU citizenship and EU legal culture, while highlighting the important role of the Court of Justice of the EU (hereinafter: CJEU).

## 1.1. Contemporary Law and Language Schools

Investigating the intricacies of EU legal language and legal culture, one cannot rely on linguistic analysis alone, although the latter provides valuable explanations as to identifying differences in syntax, text type and genre or terminology of EU legislative texts, in contrast to national law texts. Fascinating work has been done in this regard by corpus linguistics and translation scholars (see Biel, 2014) generating useful findings. Providing an understanding of the nature of EU law and its give-and-take with national laws of Member States also requires a consideration of the ways the special features of EU law influence language.

In addition to the typical account of legal language scrutinizing formal features such as style and syntax, the categories of concept, conceptual structure of a domain, and the use of language in a particular domain merit attention as well. This appears especially important for the study of English in transnational use in the EU context. To study legal language as a silo-like notion in contrast to general language implies that national legal languages are "individually unique entities" (Kjær, 2015: 99), but legal language and culture cannot be neatly separated. Arguing for an integrated approach to law and language,[5] we do not support the view that specialized languages are only

[4] "They have a double function since they are rooted in the legal culture and language of international law, but they create the legal system and culture of EU law" (Robertson, 2015: 35).

[5] Note that Goźdź-Roszkowski (2011: 3) points out how the term "legal language" has been often used as a convenient label for a generalized functional variety or register of modern English, ignoring the great variety of

varieties of general languages. To remind ourselves, cognitive linguistics considers language in relation to other cognitive capacities of human beings, emphasizing that language, thought and experience are deeply intertwined. Placing the focus on meaning and conceptualization as the process of understanding concepts as parts of wider conceptual structures is important from the perspective of this paper which concentrates on the issues of legal culture, language and community in the multilingual EU context. With this in mind, it is essential to study the use of language in a domain by taking into account the domain's specific features and extralinguistic information conveyed by concepts and terms. This extralinguistic information is couched in legal knowledge and streamlines the process of legal conceptualization. To that extent, it is instrumental for the understanding of "legal culture" and legal language.

Lawyers have also underlined the need for a holistic approach to the study of law relying on other disciplines. In the 1960s, American jurists turned to the methods and insights of other disciplines not only to enhance their legal formulations, but also to

> "refigure the roots and routes of legal analysis, to render more holistic and realistic our appreciation of law in community, in context, in concert with politics, social sciences, and other disciplines" (Witte & Manzer, 2015: 15).

It is interesting to note that since the birthing process of an interdisciplinary approach to the modern study of law and language, two main schools were developed: the rhetorical-humanistic and the linguistic. According to Witte & Manzer (2015: 27–32), exemplary of the rhetorical-humanistic school, which has no foundations in linguistics, are James Boyd White and Milner Ball. On the other hand, Lawrence Solan and Peter Tiersma are some of the representatives of the linguistic school. While some scholars have questioned the merit of the former school of the law and language movements, White's work deserves credit for emphasizing the role of language and dialogue in making community.[6] The 1984 conference on hermeneutics and law at the University of Southern California and its hefty Southern California Law Review issue marked an important early start of the rhetorical-humanistic school of the law and language movement (Witte & Manzer, 2015: 27). Following in these footsteps, White's *The Legal Imagination* as a collection of literary excerpts, legal texts and exercises was designed to

> "help students understand the rhetorical aspects of legal practice and the moral and humane motives that should inform a humanistic practice of the law" (Witte & Manzer, 2015: 28).

legal language and its constant evolution. Despite the fact that the nature of legal language has been recognized as heterogeneous, comprehensive and empirically-grounded studies of variation in legal language remain scarce (Goźdź-Roszkowski, 2011: 5). Preference is here given to the term "law and language studies", rather than *legal language*, *legal linguistics*. *Linguistique juridique*, also known as *jurilinguistique*, designates research into legal language based on modern linguistics, while the corresponding German term, Rechtslinguistik is sometimes associated with research involving philosophy of language (see Mattila, 2006: 8).

[6] In Justice as Translation (1990: 267), White posited that law is a place for reciprocal exchange and engagement: "Human community and language lives through this process of reciprocal interaction, response, and translation."

The representatives of the second school of law and language tried to show the contemporary relevance of linguistics to legal scholarship. Much research within the linguistic school has been devoted to improve the conduct of trials before juries (see the work of Stygall, 2016, for instance) or to offer linguistic analyses of judicial reasoning and the importance of language in law in general (see the work of Tiersma & Solan, e.g. *The Oxford Handbook of Language and Law*, 2016; Gibbons, 1994; Bhatia, 1993; Bowers, 1989). Legal studies can benefit from linguistic analysis in that studying the use of language within a domain offers insight into the domain's conceptual structure (see Bajčić, 2017: 29), which reinforces the argument that language cannot be divorced from extralinguistic knowledge, i.e., the conceptual knowledge activated by it. In the parlance of cognitive linguistics, meaning is construed as conceptual structures. Therefore, understanding a legal concept presupposes understanding the extralinguistic legal knowledge activated by the concept in question. For the purpose of this paper we may refer to the latter process as legal conceptualization.

## 1.2. Conceptualizing EU Legal Culture

Observed from this perspective, to speak of a hybrid pan-European culture grounded in EU law and *ius commune* of Europe implies that the former is conceptualized as a supranational legal culture common to all EU citizens. Accepting the importance of this extralinguistic context for the perception of EU legal culture in line with cognitive linguistics, a common EU legal culture does not necessarily suppress the elements of national Member States cultures. If the common European legal system can be observed as a subsidiary system that does not render the existing national legal systems obsolete (Weigand, 2008: 250), then we can speak of a co-existence of national and EU legal cultures. As will be elaborated in subsequent sections, it is possible to pursue an analogy to EU citizenship in this context – as an important concept of EU law and a means for strengthening common bonds within the EU. Just like EU citizenship does not replace national citizenship, but rather complements it, EU legal culture is seen as additional to the national legal cultures of Member States.

Studying EU legal culture in connection to the issue of legal conceptualization might benefit from an integrated approach to law and language following the broad trajectory of the rhetorical-humanistic movement, but, at the same time, applying state-of-the-art linguistics tools to the study of law and language in the EU. The following section shifts the focus to legal English examining the consequences of an increased use of international legal English and EU legal English in particular.

## 2. United in English

With 24 official languages, EU multilingualism is challenging in many ways. Looking through the legal lens, multilingualism in the EU falls into three different categories: the original (authentic) languages of the Treaties, the official languages of the EU and the working languages of the EU (Mańko, 2017: 1). And although each EU institution lays down its own rules on multilingualism, English is not only the "unofficial working language for drafting and for political negotiations", but also "the pseudo-source language for most of the Union's translations" (Felici, 2015: 124). While in the past French and English were used to the same extent as drafting languages, a publication of the Directorate-General for Translation shows that 72.5 percent of legislative texts in 2008 were drafted in English (see European Commission 2009). What is more, English clearly dominates as the second language among Europeans, since 38 per cent know English as a second language.[7] Not only is English today the most widely learned foreign language, but it has a dominant position in science, technology, research, diplomacy and international organisations, in mass media entertainment, among others. An increased use of English in the education systems has become a reality at European higher-learning institutions which offer courses in English to Erasmus students.[8] Philippson (1992: 6) is right in saying that the variety of domains in which English has a dominant position is indicative of its functional load.

In the words of a former judge at the Court of First Instance of the European Communities (renamed into the General Court with the Treaty of Lisbon in 2009)[9]: "Fortunately or unfortunately, 'international English' is a fact of life." (Bellamy, 1998: XIX). The reasons that have resulted in the to date unparalleled role of English are multifold. According to Rossini (1998: xxi), English became the language of business and finance as a result of the UK's traditional role in banking and commerce and later owing to the rise of the US in capital and commodities' markets. Eventually, English emerged as the preferred foreign language for cross-cultural situations because it was the most commonly known language (Rossini 1998: xxi). International English is used for cross-cultural communication by native speakers of English and bilingual users (see McKay, 2002: 132) and can be defined as:

> "the English language, usually in its standard form, either when used, taught, and studied as a lingua franca throughout the world, or when taken as a whole and used in contrast with American English, British English, South African English etc." (McArthur, 1998: 301 cited in Forche, 2012: 461–462).

[7] English is followed by French (12 percent), German (11 percent), Spanish (7 percent) and Russian (5 percent) (Mańko, 2017: 2). There seems to be an increasing number of people becoming English-bilingual in the younger generation (Forche, 2012: 451).

[8] Investigating the emergence of Euro-English, Forche (2012: 473) suggests that young mobile Europeans may influence future institutionalization of English as a decontextualized *lingua franca*, while Baaij (2018) proposes formalizing the primacy of English in the EU by recognizing English as institutional *lingua franca*.

[9] See the Treaty on the Functioning of the EU, Official Journal C 115/47 of 9 May 2008.

In the EU context, an ever increasing role of English as a transnational lingua franca can be brought into correlation with a growing need of the enlarged, fragmented Union for a common means of communication.

With respect to English as a legal language, a distinction is usually made between English of the principles of law in the UK, English of the principles of law in the US as well as English used in other English-speaking legal cultures. As Berman (2015: 115)[10] aptly observes, although English and American law have a historical relationship of parent and offspring, there are striking differences between them, despite their use of identical words. Even if legal systems have common features including parallel legal terms and concepts, these do not comprise a (shared) legal history.

Since the shift from Latin to Law French at around 1300, French was used as a legal language in England until the 17th century (see Tiersma, 2016: 21). Observed from the viewpoint of today's hyperpresence of English in legal settings, it is intriguing that the rise of English as a legal language in England was not appreciated by all. Some feared that, if the law were expressed in English, ordinary people might try to act as their own lawyers, and failing to properly understand the law, would "fall into destruction" (Tiersma, 1999: 28–29).

## 2.1. International Legal English in Lieu of Translation

While people do not necessarily try to act as their own lawyers, many do try to use English to the end of avoiding translation, "a necessary and expensive evil" (Way, 2016: 1016). This is not inconceivable for, as we have seen, English is spoken as a second language by most Europeans. Consequently, on many occasions today, parties to a contract, for example, choose English as the contract language, even though it's not the mother tongue of either of the parties. In this context, Schippel (2018: 14) stresses that the intentionally conventionalized discourse within which the communication occurs is in fact what renders the use of a shared *lingua franca* easy, and not a shared background of a particular discursive structure of knowledge.

Not only is English today the dominant language on the global level;[11] its use may also represent a partial substitution for translation (cf. Várady, 2015: 179), despite sensible warnings as the one sounded by Way (2016: 1016):

> "Although it is true that in non-English-speaking countries the passive level of English among professionals in most fields has evolved sufficiently for most of them to consider reading texts in English without a translator's help, rarely are they proficient enough to produce a text in English."

[10] By way of illustration Berman points to different conceptualizations of the term *crime*. Though defined similarly in English and American legal dictionaries, what actually constitutes a crime is different in the two countries; the procedure for investigating and trying crimes are different, as are the punishments and attitudes of society toward crime (Berman 2015: 115).

[11] For a critical overview of traditional stances on "world English" and "global English" as a kind of general English used in cross-cultural communication see Felici (2015: 123).

Needless to say, the quality of drafting may be questionable and the cost-saving factor due to avoided translation may backfire in the form of later disputes arising in connection to vague, unclear wording of the contract at hand. Difficulties may arise because the drafters i.e., parties who are non-native speakers of English, are actually thinking in terms of their own language. In the EU context, Felici (2015: 124) points to the fact that EU English remains a vehicular language drafted by non-native speakers. Because of this, syntax, stylistic features and drafting conventions of one's own language may be imported into the EU English (Felici 2015: 124). On that point Várady (2015: 180) speaks of an anchor language as the deeper, invisible layer. While the anchor language remains hidden, the original is in fact a translation. For instance, one contract drafted in English included the following wording: "put the contract to peace" (to borrow Várady's example, 2015: 180). However, what was actually meant in the hidden anchor language is "to suspend". To resolve such ambiguities one must resort to the anchor language. In the cited example the anchor language was Bosnian in which one may say *staviti u mirovanje* for "suspending a contract". The wording in question led to a dispute, since one party interpreted the phrase to mean "suspend" and the other "terminate".

As we have seen, the widespread use of international legal English in business transactions and day-to-day legal affairs, which has become a fact of life, may lead to problems because of the drafters' lack of proficiency in English and in legal English respectively. A corollary of poor knowledge of legal English is the presence of anchor language in a legal text, which makes the original in fact a translation.

We shall now take a closer look at the use of legal English in the EU, highlighting some of the reasons which led to its rise. Special attention is devoted to what will be called the neutrality phenomenon as a salient feature of EU legal English.

## 2.2. EU Legal English and Neutral Terms

The EU legal drafting preference for neutral terms, whenever possible, rather than national law terms, is well known. Sometimes, neutral terms can be the result of the use of English borrowings (e.g. *franchising*, *factoring*) or of loan translations in other languages. Neologisms are also often created in English first and then rendered in other languages as lexical equivalents or borrowings (Mattila, 2016: 36). The increased use of English in continental legal contexts makes it necessary to create English neologisms to express new EU institutions or to consolidate English equivalents of terms designating old institutions, wherefore Mattila (2016: 36) concludes that

> "a new variant of legal English is being created which includes a number of terms which do not exist in common law English, along with a number of common law terms which are used with a more or less distinctive Continental meaning".

Robertson (2012: 1233) likewise regards EU legal English as a new genre. Often described as "a new legal order of international law" (see Čavoški in this volume), EU law

was in need of its own (deculturalized) terminology to describe new legal concepts. Efforts to create new and uniform terminology to achieve greater harmonization have to some extent led to a new variety of a neutralized English. The latter is increasingly taking on the role of a *lingua franca* in the EU (see Felici, 2015). Nevertheless, Felici (2015: 129) thinks that EU legal English cannot be regarded as norm developing, because it has not evolved into a uniform drafting style. In fact, EU English style guides seem to base their instructions on the standard usage of Britain and Ireland (e.g. English Style Guide, 2017: 1).

EU law as a hybrid legal order *sui generis*, or "tertium comparationis juxtaposing and combining very different legal systems, cultures and styles" (Jopek-Bosiacka, 2011: 26), was influenced by the civil-law traditions of German and French law at least at the beginning of the European integration. Not only was French the main drafting language in the early days of the EU, but the first EU English texts were translations from French (Felici, 2015: 127), since the UK joined the European Economic Community in 1973, when English was introduced as an official language of the European Community. Felici (2015: 127) hence claims that the continental legal tradition and Romance languages shaped the drafting style and terminology in the EU. The latter was further strengthened by means of drafting guidelines issued by the EU institutions, most notably the Joint Practical Guide (European Union 2015). Among the goals promoted by the Guide, as already stated, is the avoidance of terms closely linked to the national legal systems of the Member States. Observed through the lens of legal history, English, as the language of common law, could be said to offer a neutral tool to frame the civil-law traditions of EU law. Likewise, some scholars claim its relatively neutral, indefinite semantics enables a level-playing field for ensuring the protection of national interests, while being politically correct (Felici, 2015: 128).

> "ELF seems to be the sort of English that best serves the Union's needs in terms of providing acultural neutral expressions, ensuring efficiency, promoting uniformity of all language versions, translation memories and facilitating political negotiations" (Felici, 2015: 138).[12]

However, in addition to the initial influences of French and German civil law, EU law was also influenced by UK common law (Mattila, 2006: 107). It is therefore questionable, first, to what extent English meets the needs of the Union for a flexible language without cultural connotations, and second, to what extent it furthers the goal of establishing a new European legal culture.

At first glance there appears to be a link between the use of neutral terms and uniform application of EU law in 24 official languages. In keeping with the Joint Practical Guide (European Union 2015: 19), country-specific legal terms should be avoided in EU legal drafting, as they may lead to translation problems. As Šarčević (1997: 255) asserted, neutral terms are usually broader in meaning than technical terms and, as such, frequently used in multilingual, multilateral instruments. Another advantage of neu-

[12] Felici (2015) uses the term *English as a Lingua Franca* (abbreviated as ELF) for English used in the EU.

tral terms is their potential for diplomatic leverage, insofar as the less specific words, the higher the chances for a compromise (Felici, 2015: 128). This is especially important for achieving conceptual autonomy of EU law. Having a peculiar terminology of its own is important for the functioning of the EU in view of the fact that "legal concepts do not necessarily have the same meaning in Community law and in the law of the various member states".[13] It is important to emphasize that the above independence of terms underscores the independence of the underlying concepts. For the EU to function as a supranational legal order, its concepts must also be interpreted at a supranational level (Engberg, 2015: 170), which renders EU concepts autonomous, as has been emphasized in CJEU's case law.

Some EU law concepts are of indeterminate meaning lacking statutory definitions. In this regard the Court of Justice of the EU plays an important role as it establishes the meaning of such indeterminate concepts in cases of disputes. It does so by balancing the purpose of a regulation at issue and EU's interests, while weighing the facts of the case at hand. The question remains if establishing the meaning of such indeterminate concepts is influenced or simplified by the fact that they are conveyed by neutral, new terms.

Indeed, there are many examples of new terms which denote new concepts of EU law. Some of them appear unusual to a native speaker's ear. Let us consider terms *account preservation order* or *enforcement order*. The European Account Preservation Order has been introduced by the EU Regulation 655/2014 in order to enable prompt action on behalf of the Member States to basically freeze the debtor's accounts within the banks on their territory and help protect a creditor's claim.[14] Greatly simplified, the European Account Preservation Order makes debt recovery easier. The procedure for issuing European Account Preservation Order represents an alternative to existing legal procedures in the Member States. Its key advantage is the surprise effect, for the procedure is not only quick, but operated without informing the debtor (*ex parte*). The application forms for the European Account Preservation Order are available online.

As far as the English term *preservation order* is concerned, we may indeed speak of an unmarked form devoid of cultural specificity, as Felici (2015: 127) puts it.[15] In contrast to a *freezing injunction*, which is used in the UK, or a *bank account seizure warrant* found in the US, a *preservation order* does not bear a local stamp. But there is another vital point to be considered here: how is this concept rendered in other EU languages? Do other

[13] Case 282/81 *Srl CLIFIT and Lanificio di Gavardo SpA v Ministry of Health* [1982] ECR 3415, para. 19.

[14] EU Regulation 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189/59, 27 June 2014. Available at data.europa.eu/eli/reg/2014/655/oj.

[15] Felici (2015: 127) names *internal market*, *pigmeat*, *sheepmeat*, and *planification* as examples of new terms devoid of cultural specificity. In her opinion, the use of EU legal English simplifies translation, as it is easily adapted to other EU languages and promotes uniformity of all language versions (Felici, 2015: 131–138). As the same time, the broad terms of ELF can be ambiguous and result in different translations and in turn different interpretations, as Felici (2015: 138) concludes.

languages follow the same practice of introducing new, neutral terms to denote such novel concepts of EU law, or resort to terms of national law?

*Account preservation order* is rendered in German by *Beschluss zur vorläufigen Kontenpfändung*.[16] Unlike account preservation, *Kontopfändung* is used in the German Civil Procedure Code (*Zivilprozessordnung*)[17]. If we take a look at other EU language versions of this Regulation, it is evident that some of them use national law terms as well.[18] Note that the abovementioned *enforcement order* from Regulation 805/2004 has been rendered in German by *Vollstreckungstitel*, again a national law term.[19] While the term *preservation order* or *enforcement order* may sound peculiar (in this context) to a UK lawyer, German or French terms are unlikely to bewilder German or French lawyers.

Observed in this light, it could be argued that the neutral English terms contribute to the goal of a distinct EU legal conceptualization more than national law terms in other languages. However, this brings into question the usefulness of the preference for neutral terminology in furthering uniform application and interpretation of EU law, if some languages do not resort to neutral terms to denote concepts of EU law.

Further understanding of the multilingualism implications and the role of language in the interpretation of EU law is gained by considering the important role of the CJEU. In case of interpretive doubt about a wording or term of a legislative provision, the CJEU establishes its meaning, without giving preference to one term over another. As pointed out by Mańko (2017: 7), a "correct interpretation of EU law requires it to be placed in context, in particular of other pieces of EU legislation, and with regard to the objectives of EU law." In other words, teleological and systemic methods of interpretation often take precedence over linguistic methods of interpretation. As previously discussed (Bajčić, 2017; 2014), in cases of interpretive doubt and divergences between the language versions, more weight is put not on the terminological level, but on the underlying conceptual level. This would imply that, in essence, it is irrelevant whether the German term is a national law term or a neutral term as long as it is conceptualized as EU law, i.e. interpreted autonomously at the supranational EU level.[20] For the purpose

[16] Available at data.europa.eu/eli/reg/2014/655/oj (accessed 1 September 2017).

[17] *Zivilprozessordnung*, *Abschnitt 6*. Available at www.gesetze-im-internet.de/zpo (accessed 1 September 2017).

[18] At least this appears to be the case for terms in French, Italian, Slovenian and Croatian: FR *d'ordonnance de saisie conservatoire des comptes bancaires;* IT *l'ordinanza di sequestro conservativo su conti bancari;* SL *nalog za zamrznitev bančnih računov;* HR *nalog za blokadu računa.* All available at data.europa.eu/eli/reg/2014/655/oj (accessed: 1 September 2017).

[19] The English term *enforcement order* which is a neutral term devoid of cultural specificity found in terms such as writ and execution has been translated into Croatian by *ovršni nalog*, and not *naslov* (see Bajčić, 2017: 133). The latter term corresponds to a broader concept known in German as *Titel*. The fact that German, French, Italian, Spanish, Dutch, Swedish *inter alia* use *Titel, titre, titolo, título, titel, titel*, brings into question the EU preference for neutral terms.

[20] Regarding EU law as a separate legal order which lives alongside national and international law, Robertson (2012: 50) speaks of a matrix in which terms are capable of undergoing a shift in meaning in each of the different legal orders. For him, however, the matrix is primarily legal.

of the above Regulation, both the English term *account preservation order* and the German term *Beschluss zur Kontopfändung* should denote the same EU concept.

## 3. From EU Citizenship to EU Legal Culture

EU law is practiced by lawyers coming from different Member States. Their different education and experience coloured by national laws will influence their conceptualization of EU law. To overcome this legicentrism, they would have to learn to think in neutral EU meta-categories grounded in EU legal culture and allowing for a uniform conceptualization of EU law. As Graziadei (2015: 25) concludes, having uniform legislation without a uniform referential system is bound to fail. How important is terminology for the achievement of this conceptual uniformity of EU law? It is worth dwelling on this point for a moment. We live in an era of heightened political correctness which sometimes ironically leads to the "euphemism treadmill" in Steven Pinker's words[21]. Many examples can be found of deliberate changes to terminology with a view to not only avoiding negative connotations of certain terms, but also changing the social attitudes. The rationale seems to be that, by changing the terminology, the perception of the underlying concepts changes accordingly. For instance, what used to be known as home relief, and later social welfare, is today called TANF, i.e., temporary assistance to needy families.[22] The introduction of gender-neutral terminology could also be observed in this light. Whether or not gender-neutral terms trigger a change in the perception of people, or whether TANF is less demeaning or pejorative than home relief or social welfare is another matter. Often, the trend of hyper politically correct terms is only camouflage, unless it fosters change in social perceptions, i.e. the attitudes of people toward the concept in question. Following the same line of argument, a change in legal terminology does not necessarily entail a change in the conceptualization of the law:

> "A change in the language used to frame the law does not *per se* entail a change in the law; it does only when it involves a change in the referential system" (Graziadei, 2015: 26).[23]

To draw a parallel to the EU context, changing EU terminology to effectuate changes to EU legislation should be accompanied by a modification to the "law in action".

One of the advantages of having a new variant of legal English to express EU law is that it does not disguise preconceptions of a legal system and is hence a useful tool for

[21] Steven Pinker introduced this term in his 2003 published book *The Blank Slate* to refer to the process whereby words introduced to replace offensive terms over time become offensive themselves.

[22] See acf.hhs.gov/ofa/programs/tanf (accessed 4 September 2017).

[23] Graziadei (2015: 26) gives the example of the French abandoning Latin in favour of French to draft their civil code. The change in the language didn't change the law at first simply because a new linguistic sign, namely *faute*, was introduced for *culpa*.

furthering EU legal culture and uniform interpretation of EU law. However, as we have seen, this by itself is no safeguard of uniform interpretation, for sometimes other languages do not use system-neutral terms, or the CJEU must intervene to determine the meaning of a concept, even if it is couched in a neutral term (see case law on the meaning of "undertaking" in EU competition law).[24] Instead, what is needed is a shift in the "law in action" as well as in the awareness of European lawyers about the importance of a common discourse which can contribute to a common EU legal culture. This requires a common set of concepts shared by all those involved in the application of EU law (Graziadei, 2015: 28).

In our opinion, the CJEU has an important role to play in this respect, most notably by developing autonomous concepts. The idea of EU law as a supranational legal order with autonomous concepts has a central character in the argumentation of the CJEU (Engberg, 2015: 171). The potential role that the CJEU may play in the creation of "a discourse community of legal specialists communicating across differences in languages" (Engberg, 2016: 181) is illustrated on the example of EU citizenship. Although Robert Menasse, author of the "first EU novel", once said he could conceive a Europe without nations,[25] the novel concept of EU citizenship sheds a new light on the notions of nation, nationality and identity. EU citizenship was first introduced into EU law in 1992 by the Treaty on European Union.[26] By virtue of Article 20 of the Treaty on the Functioning of the European Union, EU citizens enjoy the rights and are subject to the duties provided for in the Treaties. It is important to emphasize that EU citizenship does not replace national citizenship, but is additional to it as a "common bond transcending Member State nationality".[27]

Legal scholarship has been tackling the question whether Union citizenship could assume the primary role in determining the rights and legal status of nationals of Member States.[28] CJEU's settled case law shows that the notion of EU citizenship is gaining currency, especially in connection to social benefits.[29] The interaction of the principle of non-discrimination, on the one hand, and citizenship and fundamental economic freedoms on the other, is also likely to further develop this concept, and

[24] Here are some cases in which the CJEU discussed the concept of undertaking: C-159/91 Poucet v. Assurances Generales de France and Pistre; C-160/91(17/02/1993) FENIN v. Commission c-205/03 (1s1/07/2006) ECR I-6295; Höfner and Elser v. Macrotron GmbH C-41/90 (23/04/1991) ECR I-1979.

[25] "Ich kann mir ein Europa ohne Nationen vorstellen." His novel *Die Hauptstadt*, 2017, has been labelled as the first EU novel, and awarded the German book prize for 2017 ("*Deutscher Buchpreis* 2017").

[26] Treaty on European Union, signed at Maastricht on 7 February 1992, Official Journal of the European Communities, C 191 of 29 July 1992.

[27] Opinion of Advocate General Jacobs delivered on 19 March 1998, Case C-274/96, *Criminal proceedings against Horst Otto Bickel and Ulrich Franz*, EU:C:1998:115, para 23.

[28] See, for example, Tryfonidou (2016), Shaw (2011), Kosakopoulou (2009).

[29] See for example, case C-140/12, *Pensionsversicherungsanstalt v Peter Brey*, EU:C:2013:565; case C-313/13, *Elisabeta Dano and Florin Dano v Jobcenter Leipzig* EU:C:2014:2358; case C-67/14, *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others*, EU:C:2015:597; case C-299/14, *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others*, EU:C:2016:114.

more recently, its repercussions on the right to use minority languages (see Bajčić & Martinović, 2017). Serving as a catalyst for change in the evolution of EU law, the CJEU can stretch the meaning of this concept in different directions reaffirming its role in shaping EU law and developing conceptual autonomy. In other words, through its case law the concept "grows" into "law in action".

The citizenship/nationality relationship could be extrapolated to the one between the EU and Member State legal culture. Just as EU citizenship does not supress or replace Member State nationality, neither does EU legal culture suppress national legal cultures. The relationship of EU and national legal culture should not be framed in terms of opposites, exclusion and otherness, but rest on the ideas of integration and synthesis; a coexistence of EU and national legal culture. To a certain extent, this is enabled by the autonomy of EU law and its autonomous concepts. However, this is not to say that one common language and uniform terminology denoting autonomous concepts are prerequisites for the existence of a shared European legal culture. As already pointed out, in the EU context, another factor, among others, plays an important part in building community and, needless to say, a common discourse, namely, the CJEU. For, without the CJEU's case law in which the concept of EU citizenship has often been used to further free movement and non-discrimination, it would remain "law in books". Owing to the CJEU, the concept grows in substance and scope and is turned into "law in action", or broadly speaking, EU legal culture. Whether or not the CJEU's case law will trigger a growing awareness of the benefits of EU citizenship and make people feel as EU citizens more and more, in addition to being nationals of their Member States, remains to be seen.

At the same time, achieving a common conceptualization of EU legal concepts will depend on the willingness of EU legal practitioners to work together towards a shared culture grounded in the ideas of integration, synthesis and not dualism, or opposites. As Clifford Geertz (2001: 224) keenly put it, "What is a culture if it is not a consensus", rendering the functioning of a community of EU legal practitioners hence contingent on a consensus among its members (cf. Weigand, 2008; Kjær, 2003). By developing autonomous concepts, the CJEU has marked an important first step into this direction.

## 4. Concluding Remarks

This paper has explored the notion of EU legal culture in connection to EU legal English and neutral terminology. Special attention has been devoted to the conceptualization and meaning of concepts observed from the dual perspective of law and language, as well as to the role played by the CJEU in shaping EU law and developing autonomous concepts. By applying cognitive linguistics tools, the notion of EU legal culture has been portrayed as "law in action" emerging through the described interpretive ac-

tivity of the CJEU, assuming that autonomous concepts allow for a distinct conceptualization of EU law and national law and similarly, a co-existence of national and EU legal culture.

Despite the ever increasing role of English on the global and the EU level, upholding the cognitive linguistics view that language cannot be divorced from extralinguistic knowledge brings the idea of an acultural, neutralized variety of English in the EU into question. Albeit from the perspective of its historical development, English is seemingly more detached from the continental civil law systems (than German or French), EU law has been influenced by common law as well. In consequence, this undermines the claim that English, as the language of common law, offers a neutral tool for framing EU legal order as a predominantly civil legal system. What is more, the role of EU legal English should be observed in light of the consideration that the EU's preference for neutral terms in legal drafting is not always followed by all EU languages.

In conclusion, building unity in the diversity of EU legal culture remains dependent on the interactive forces of law and language on the one hand, and "law in action" on the other.

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# The Scales of Justice in Equilibrium

## — The ECJ's Strategic Resolution of Ambiguity in *Stefano Melloni v Ministerio Fiscal* 2013 (Case C-399/11)

*Sofiya Kartalova**

**Abstract**

The *Melloni* preliminary reference demands that the European Court of Justice (ECJ) weighs considerations of fundamental rights and those of mutual trust directly against each other, while deciding whether the principle of primacy of EU law is to be understood in absolute or in conditional terms in this legal context. At the same time, the textual analysis of Article 53 CFREU supports two contrasting, but *equally compelling*, lines of interpretation of the principle of primacy of EU law. Thus, the scales of justice are left in equilibrium. My study will attempt to establish the symmetry between the legal and linguistic aspects of the interpretation of Article 53 CFREU in *Melloni*, in the hope of demonstrating how ambiguity might have shaped the setup for the ECJ's decision-making process. The issuance of the *Melloni* preliminary ruling is understood as an act of ambiguity resolution by the ECJ that effectively tips the scales of justice in the direction which the ECJ views as strategically more advantageous for the implementation of the authority of EU law. Furthermore, my analysis will show how the ultimate resolution of this binary choice reveals the ECJ's favoured approach in the implementation of the authority of EU law, namely system-building through concepts (Leczykiewicz, 2008), rather than system-maintenance through acceptability (Paunio, 2013).

**Keywords**

European constitutional law, pragmatics, strategic ambiguity resolution, authority of EU law, European Court of Justice, national constitutional court

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# 1. Introduction

The *Melloni* preliminary ruling is widely regarded as a leading judgment in European constitutional law, along with another ECJ seminal preliminary ruling, *Åkerberg Fransson*, by virtue of their shared date of issuance and their joint impact on the relationship between national fundamental rights protection and fundamental rights protection at EU level (Reestman & Besselink, 2013). However, in comparison to its counterpart, *Melloni* has attracted relatively less criticism, despite its more interventionist approach (Schima, 2015: 1105–1106). The close proximity between the two preliminary rulings and the highly contentious nature of *Åkerberg Fransson* might have therefore made it challenging to gauge the full extent of the individual contribution of *Melloni* in designing "the blueprint for the fundamental rights architecture in the European Union ('EU') for years to come" (Schima 2015: 1098). The following piece will put forward a suggestion to this end, based on an interdisciplinary analytical framework on pragmatics and legal interpretation.

The impact of *Melloni* extends far beyond the confines of the fundamental rights narrative, as it has been subjected to academic scrutiny as a prime example of judicial dialogue where "as the story unfolded, the actors grew more entrenched and quite one-sided" (Torres Perez, 2014: 309). Arguably, the ruling at hand signalled the reawakening of constitutional conflict between the ECJ and a national constitutional court for the first time since the Treaty of Lisbon (Besselink, 2014: 1169). The potential conflict addresses squarely the issue of primacy of EU law – an essential ingredient to the survival of the authority of EU law (Kumm, 2005: 285). With the exception of a few isolated contributions (Chalmers, Davies & Monti, 2010: 184–227; see generally Walker, 2005, and more recently Alter, Helfer & Madsen, 2016), the authority of EU law is a largely underdeveloped concept, lacking a universally recognised and clear-cut definition. However, for the purposes of my study, I define the authority of EU law as: the capacity of the European Court of Justice to regulate and shape the national legal orders in the EU within the scope of its competences.

The third question of the *Melloni* reference poses a direct challenge to the authority of EU law by suggesting that there might be an exception to the principle of primacy of EU law. More specifically, the Spanish Constitutional Court enquired whether Article 53 CFREU allows for a national standard of protection of fundamental rights, higher than the EU standard, to be applicable. An affirmative response would authorize the Member State of Spain to review the execution of a European Arrest Warrant.

This unusual scenario requires the ECJ to balance concerns for fundamental rights protection against those for the promotion of mutual trust. In the EU legal order, mutual trust (mutual confidence) between the Member States is essential to the construction of the Area of Freedom, Security and Justice (Bot, 2012: para. 115–116). In this sense, the effective execution of the European Arrest Warrant is the cornerstone of ECJ's approach to pursuing this aspiration (Bot, 2012: para. 119).

The balancing act between fundamental rights and mutual trust is by no means a foreign concept to the ECJ (Montaldo, 2016: 966, 984). The ECJ has traditionally showed preference for ruling in favour of the effectiveness of EU law, as manifested by mutual trust in the context of the European Arrest Warrant, most notably in *Jeremy F. (2013, C-168/13 PPU)* and *Radu (2013,* Case C-396/11) (*ibid.*: 966–967, 976). In a more recent strand of case-law, culminating in the case of *Aranyosi (2016,* Joined Cases C-404/15 and C-659/15 PPU), the ECJ has adopted a conflict avoidance approach (*ibid.*: 980–983). Seeing as the clash between concerns for fundamental rights protection and for mutual trust is framed in *Melloni* in terms of the principle of primacy of EU law, *Melloni* stands out as one with particularly high constitutional stakes among its peers in the former category.

The situation is rendered even more complicated by the presence of the linguistic phenomenon of ambiguity in Article 53 CFREU. Typically, ambiguity arises where there is an expression, which carries "two or more distinct denotations" (Wasow *et. al.* cited in Winkler, 2015: 1). Moreover, the same ambiguous utterance "can be judged true of one situation and false of another, or the other way around, depending on how it is interpreted" (Kennedy cited in Winkler, 2015: 1). Moreover, as Maduro points out, "[t]he textual ambiguity of EU law is also a function of a deeper normative ambiguity" (2007: 143). To my mind, Maduro's statement implies a certain congruity between law and pragmatics. Smolka & Pirker (2016: 28) have advocated the establishment of parallels between cognitive pragmatics and legal interpretation in international law. Ambiguity-based linguistic analysis has also prominently featured in the decision-making process of the US courts (Solan, 1993: 64–92). Solan explains this peculiar interdisciplinary approach in the following manner: "Ambiguity results any time that our knowledge of language, in the sense of our internalized system of rules and principles […], fails to limit to one the possible interpretations of a sentence" (*ibid.*: 64). To sum up, in the case of *Melloni*, ambiguity allows for two parallel autonomous interpretations of the text of Article 53 CFREU to emerge, which cannot be true at the same time. To my mind, the ECJ's decision in *Melloni* constitutes an act of strategic ambiguity resolution. I adopt the terms "ambiguity resolution" (Winter-Froemel & Zirker, 2015: 315, 317, 321, 332) and "strategic ambiguity" (*ibid.*: 313) in the sense used by Winter-Froemel and Zirker.

As a result, the ECJ is given the singular opportunity of decision-making on a point of law where the scales of justice are effectively left in equilibrium by the legislator in drafting Article 53 CFREU. Such a setup leaves the ECJ to seek resolution of the legal conundrum of the third question in the *Melloni* reference in the total absence of clear or conclusive guidance on the nature of the principle of primacy by the legislator. Seeing as here the ECJ is left unencumbered by statutory guidance, some might view these circumstances as conducive to the ECJ's notorious tendency for judicial activism.

Judicial activism is typically seen as an undesirable foray into the realm of politics, a crude interference with national sovereignty or simply an expression of judicial

willfulness, to be contrasted with the legitimate act of judicial interpretation (Pollicino, 2004: 285–286). Pollicino (*ibid.*: 286) rejects the stark distinction between the two as "being based on an old and reductive concept of judicial function, whereby the judge is seen as an inanimate, robot-like spokesman of the law". Instead, the creative aspect of judicial interpretation finds expression in an innovative interpretative method, labelled as a "revolt against formalism" (*ibid.*: 286). It is defined by a distinct emphasis on systemic interpretation and the importance of choice in judicial reasoning (*ibid.*: 286–287).

Furthermore, moving beyond the conventional discourse of *judicial activism versus judicial restraint* might be advisable. As Horsley points out, scholars such as Conway, Hartley, Neill, and Rasmussen have consistently doubted the legitimacy of the ECJ's preferred approach to interpretation, because of the Court's dismissal of the importance of legal tradition and textual evidence in favour of systemic argumentation (Horsley, 2013: 938). In particular, Horsley (2013: 939) expresses disagreement with their overreliance on abstract legal reasoning and lack of attention paid to the concrete constitutional context of the ECJ's adjudicative activity.

It would seem that the rigid perception of judicial activism mainly stems from an assumption that an EU law provision is effective in laying down a clear and workable norm, which the ECJ simply chooses to intentionally disregard or misinterpret, so as to gain the upper hand in a power play with the 'masters of the treaty'. However, it is widely known that EU treaty provisions are usually characterised by a high level of abstraction and uncertainty, which invites a more creative approach to judicial lawmaking (Pollicino, 2004: 288).

Thus, the case of *Melloni* serves as a rare example of how it is possible for ambiguity in a treaty provision to leave the ECJ completely unsupported by deficient statutory wording. In the absence of any indication of statutory intent and through no fault of its own, the ECJ is left with no other option but to resort to engaging in an extreme mode of *meta-teleological interpretation* (Maduro, 2007: 140), in order to adjudicate effectively. Therefore, the *Melloni* case proves that the traditional discourse on judicial activism, with its reliance on the exhaustiveness and clarity of EU treaty provisions as the ultimate source of legitimacy, might rest on shaky foundations in practice.

Additionally, I view the *Melloni* preliminary ruling as an act of ambiguity resolution of the ambiguity found in Article 53 CFREU with strategic implications. Thus, the ECJ effectively tipped the scales of justice in the direction that was the most beneficial for the implementation of EU law on a systemic scale. The systemic understanding of the EU legal order demands that a legal provision is assessed against a combination between its "constitutional telos" and its legal context (Maduro, 2007: 140). The implication behind this contention is that the EU legal order has an "independent normative claim" or a "claim of completeness", which serve as the basis for the authority of EU law (Maduro, 2007: 140).

From a systemic point of view, the ECJ's binary choice is a matter of showing preference for one of two visions for the implementation of EU law – either system-building through *concepts* (Leczykiewicz, 2008: 782–785) or system-maintenance through *acceptability* (Paunio, 2013: 157, 191, 176). Although these two strategies typically complement each other, the case of *Melloni* exemplifies a clash with grave constitutional ramifications. Favouring fundamental rights protection over mutual trust and the conditional model of primacy over the absolute one, would mean giving priority to *system-maintenance through acceptability*. Conversely, opting for mutual trust instead of fundamental rights protection and the absolute model of primacy over a conditional one is tantamount to giving preference to *system-building through concepts*.

The main aim of the dialogue between the ECJ and the national courts may be seen as gradually moulding "a shared legal paradigm through judicial reasoning" (Paunio, 2013: 192), which increases the stability within the system (Paunio, 2013: 157, 175–176). According to Paunio's (*ibid.*: 157, 191, 176) discursive model of legal certainty, the process is aimed at increasing acceptability, and thus, at implementing the authority of EU law. Acceptability enhances authority by securing the voluntary obedience of the addressee of a judgment, in the absence of coercive methods (Weiler, 1970: 14), which is particularly relevant to the limited coercive powers conferred to the ECJ (Leczykiewicz, 2008: 784).

Alternatively, the authority of EU law could be upheld through judicial activity aimed at "system-building" (Leczykiewicz, 2008: 782–784). Through this method, the authority of EU law is derived from the observance of the rule of law and the coherence within the system (*ibid.*: 784), which is heavily reliant on the creation and usage of legal concepts in the judicial reasoning of the ECJ (*ibid.*: 785, 782).

Finally, my analysis aims to establish the congruity between the linguistic and legal aspects of the relevant sample of ambiguity. In this sense, ambiguity allows us to gain a clearer and fuller appreciation of the ECJ's range of strategic options, along with their corresponding systemic implications.

## 2. Case Summary of *Stefano Melloni v Ministerio Fiscal* (Case C-399/11) of 2013

### 2.1. The Dispute in the Main Proceedings

Mr Melloni was convicted of bankruptcy fraud *in absentia* by the Bologna Appeal Court in Italy, which was followed by the issuance of a European Arrest Warrant by the same court for the execution of its sentence (Case C-399/11: para. 14). Subsequently, Mr Melloni was arrested by the Spanish police (Case C-399/11: para. 15). However, he resisted

surrender to the Italian authorities on grounds of (a) the fact that his wish to appoint another lawyer at the appeal stage was disregarded, and (b) being deprived of his right to appeal against a conviction *in absentia* under Italian procedural law (Case C-399/11: para. 16). The first argument failed and the First Section of the *Sala de lo Penal of the Audiencia Nacional* proceeded with granting permission for the surrender of Mr Melloni to the Italian court (Case C-399/11: para. 17). In response, Mr Melloni filed a petition for constitutional protection ('recurso de amparo') with the Spanish Constitutional Court (*Tribunal Constitucional*). He contended that the right to fair trial, enshrined in Art. 24(2) of the Spanish Constitution, was encroached upon in such a way that his human dignity was undermined by virtue of the fact that he would be surrendered to a country where he would be unable to appeal against a conviction *in absentia* (Case C-399/11: para. 18).

## 2.2. The Third Question in the Preliminary Reference

In my analysis, I shall concentrate on the third question referred to the European Court of Justice, as it bears the greatest significance for the authority of EU law. In essence, the Spanish Constitutional Court asked the European Court of Justice to issue an interpretation of Article 53 CFREU:

> "Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law […] and by the Member States' constitutions".

The Spanish Constitutional Court was interested in establishing whether the provision could be interpreted, so as to allow a Member State to review the obligation to execute a European Arrest Warrant, for the purposes of avoiding restricting or adversely affecting a fundamental right recognised by the said Member State's constitution. The Spanish Constitutional Court explicitly stressed the point that this would result in granting a level of protection to that right, which is greater than the one available under EU law (Case C-399/11: para. 26).

The European Court of Justice responded by affirming the Member State's obligation to execute the European Arrest Warrant, regardless of any review of the conviction under its national standard of protection of fundamental rights (Case C-399/11: para. 56, 57). It further reasoned that any interpretation of Article 53 CFREU that allows the Member State to apply its higher national standard would "undermine the principle of the primacy of EU law inasmuch as it would allow a Member State to disapply EU legal rules which are fully in compliance with the Charter where they infringe the fundamental rights guaranteed by that State's constitution" (Case C-399/11: para. 58). Furthermore, the European Court of Justice maintained that the interpretation envisioned

by the Spanish Constitutional Court would "undermine the effectiveness of EU law on the territory of [the] State" (Case C-399/11: para. 59).

Moreover, the European Court of Justice contended that such a misguided interpretation of Article 53 CFREU would result in "casting doubt on the uniformity of the standard of protection of fundamental rights as defined in [Framework Decision 2009/29]", which in turn "would undermine the principles of mutual trust and recognition which that decision purports to uphold…" (Case C-399/11: para. 63). The European Court of Justice also made the role of Framework Decision 2009/29 and Framework Decision 2002/584 clear, namely the promotion of mutual confidence in the area of freedom, security and justice through facilitation of judicial co-operation and harmonisation of national regulations in relation to convictions rendered *in absentia* (Case C-399/11: para. 62, 37).

Lastly, in a succinct summary of its position, the European Court of Justice maintained that the national courts are at liberty to apply their national standard as long as "the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised" (Case C-399/11: para. 60). Such a formulation stands as evidence of a steadfast connection between the primacy, unity and effectiveness of EU law.

# 3. Prerequisites to the Emergence of Ambiguity in the Case of *Melloni*

## 3.1. Article 53 CFREU as the Potential Source of Ambiguity

The third question referred to by the Spanish Constitutional Court in the preliminary reference of *Melloni* invites the ECJ to adjudicate on the possibility of a national standard of protection of fundamental rights, higher than the EU standard, to be applied instead of the EU standard, specifically with respect to the European Arrest Warrant. The legislative source of this possibility is identified explicitly by the Spanish Constitutional Court as Article 53 CFREU. By adopting the language of the treaty provision, the Spanish Constitutional Courts further clarifies that such a course of action is intended "…to avoid an interpretation which restricts or adversely affects a fundamental right recognised by [its constitution]" (Case C-399/11: para. 26). In response, the ECJ firmly rejects any such possible interpretation (Case C-399/11: para. 57) and instead rules on the correct interpretation of Article 53 CFREU (Case C-399/11: para. 64), thus unequivocally confirming that its primary point of reference for judicial interpretation remains Article 53 CFREU. Given the shared focus of these two actors on Article 53 CFREU, one can identify in it the source of any potential ambiguity in the case of *Melloni* with rea-

sonable certainty. Therefore, it might be useful to consider if there is anything at all in the drafting history of Article 53 CFREU that might allow for the possible emergence of ambiguity.

In terms of its general function, Article 53 CFREU seems to fit the profile of the so-called "savings clause", which is intended to ensure that the protection conferred on the individual by the legal instrument at hand will not impede the protection provided by similar preceding pieces of legislation (Widmann, 2002: 349). This would indicate that the underlying concept and function of the provision are largely considered part of the ordinary practice of international law. However, Article 53 CFREU seems to stand out among its peers as a provision operating on a supranational level by virtue of belonging to the EU legal order. In response to these special circumstances, the provision was equipped with the subordinate clause "in their respective fields of application", which was arguably intended to prevent a clash between the fields of application of EU law and that of the Member States in cases of an overlap (Widmann, 2002: 349). Further, the phrase may have been included in the hopes of safeguarding the principle of supremacy intact, precluding any valid exceptions (Bot, 2012: para. 100).

It is interesting to note that Article 53 CFREU lends itself to multiple interpretations, shared by those who focus plainly on the text of the provision and by those who read it in the specific context of *Melloni*. To illustrate this, Widmann suggests three categories, each offering a different level of protection: (1) "the local standard" – EU law offers a minimum floor of protection, capable of being overridden by a higher national standard, (2) "uniform fixed standard" – a minimum or maximum standard of protection set exclusively on EU law, and (3) "uniform moveable standard" – a maximum level of protection by the national constitutional courts (Widmann, 2002: 346–348). It is evident that these options are indicative of the lack of clarity as to the mode of hierarchical interaction between EU law and the national constitutions when it comes to setting the level of fundamental rights protection. The analysis of Advocate General Bot on the case of *Melloni* partially confirms this account (Bot, 2012: para. 91, 92), but also proposes a substantive extension - the idea that the standard set by the Charter applies only within the areas of application of EU law, while outside of them, the Member State constitutions remain free to regulate matters concerning the protection of fundamental rights (Bot, 2012: para. 93, 94). Given the unusually broad spectrum of interpretations Article 53 CFREU seems to attract, the presence of ambiguity in the legislative text becomes a matter that doubtlessly merits further investigation.

Perhaps a brief exploration of the provision's legislative history might reveal the motivation behind this peculiarity of drafting. Having been initially charged with the responsibility of governing the relationship between the levels of protection provided by the Charter and the ECHR (Liisberg, 2001: 1172), Article 53 CFREU was intended to mirror Article 53 ECHR (Liisberg, 2001: 1174). Following private consultations between the Secretariat and the Commission and amendments from Convention members, Article 53 CFREU emerged re-conceptualised (Liisberg, 2001: 1174–1181).

Nevertheless, Liisberg found no conclusive indication as to why exactly the phrase "in their respective fields of application" was inserted in the text of the provision, but:

> "[a]ccording to officials closely involved in the drafting process, [… t]he intention was to foreclose any doubt about the supremacy of Community law over national constitutions. The understanding of [the Convention Secretatiat, i.e. the Legal Service of the Council, and the Legal Service of the Commission] was that the revised wording would make it clear that national constitutions could prevail only in the sphere of exclusive national competence" (Liisberg, 2001: 1175–1176).

The issue of supremacy appears to have been dealt with at the drafting stage by transforming the phrase "national law" into the "Member states' constitutions" and through the subordinate clause "in their respective fields of application" (Liisberg, 2001: 1190). Perhaps that is why the problem of supremacy seems to have been ignored during the discussions at the Convention (Liisberg, 2001:1190).

This at first glance puzzling acquiescence might be deemed entirely logical, if one considers that the drafting process may have already provided a satisfactory solution for all parties concerned. Besselink offers a plausible explanation as to how this might have come about:

> "the state of affairs as to the intention of art. 53 was entirely open and left ambiguous, perhaps consciously. Form the EU perspective, one was perhaps able to say primacy was not given up, from the national constitutional perspective, the prevailing national standard of protection was not given up either" (Besselink, 2014: 1181).

Such a formulation might also have the added effect of promoting constitutional dialogue on the issue of primacy, since the ECJ would then be forced to articulate its reasons for setting a particular level of fundamental rights protection (Azoulai cited in Lenaerts, 2012: 398).

Nevertheless, such claims are contested by de Witte's steadfast conviction that "the wording of Article 53 must […] be taken at face value" (de Witte, 2013: 213), since in his view there was nothing in the preparatory work preceding the Charter to suggest that the legislator intended to address the issue of the primacy of EU law (*ibid.*: 213). Had that been the case, de Witte continues, the legislator would have drafted the provision "in less ambiguous terms" (*ibid.*: 213). In response, Besselink (2014: 1181) dismisses de Witte's logic by asserting that a) at the time of drafting the Charter was intended as a non-binding instrument, leaving the drafters with significant leeway as to its contents, and that b) in any case, the drafters would have been reluctant to incorporate the doctrine of absolute primacy in a legally binding document.

Ultimately, both Besselink (explicitly) and de Witte (implicitly) seem to agree that the drafting of Article 53 CFREU, leaves room for ambiguity, whether this is beneficial to the agenda of the primacy of EU law or not. Therefore, there is reason to suspect that the unorthodox drafting of Article 53 CFREU might entail employing ambiguous language to a strategic end.

If that be the case, the evidence presented so far seems to indicate that there are two pre-conditions for recognising a sample of ambiguity in Article 53 CFREU as relevant

to the authority of EU law, as framed by the third referred question in *Melloni*. These are as follows: a) the ambiguity must regulate the interaction between Union law and the Member States' constitutions, and b) the analysis of any such ambiguity must address the impact of the phrase *"in their respective fields of application"* in some capacity. These are the parameters that will necessarily constrain and direct my analysis.

## 3.2. The Style of Judicial Reasoning Adopted by the ECJ

Taking the unusually contentious drafting of Article 53 CFREU into account, it should come as no surprise to the reader of the *Melloni* preliminary ruling that the ECJ dispenses almost entirely with direct references to the wording of Article 53 CFREU in its reasoning. However, given the great significance of the clause and the fact that this was the first opportunity for clarification presented thus far, it might be argued that the matter deserved more extensive articulation by the ECJ (Torres-Perez, 2014: 318). Instead, the ECJ's argumentation could be characterized as "short and cursory and extremely self-referential" (Rauchegger, 2015: 114). This could be seen as a missed opportunity by the ECJ, as the acceptability of its approach in *Melloni* could have been increased, had it engaged with the reasoning of the Spanish national constitutional court and elaborated on the conceptual basis of its choice to give priority to the EU level of protection (*ibid*.: 114). Disregarding the possible benefits of this approach, the ECJ instead grounds its argumentation in principles of EU law and their implications for the systemic characteristics of the EU legal order.

The ECJ's preference for meta-teleological interpretation (Maduro, 2007: 140) is exhibited in the extreme here, in the absence in the typical accompanying and mitigating techniques of syllogistic, comparative, historical or even linguistic analysis (*ibid.*: 145). Nevertheless, the ECJ relies on two references to precedent – *Internationale Handelsgesellschaft* 1970 (Case 11–70) and *Winner Wetten* 2010 (Case C-409/06) – as well as to a mention of Opinion 1/91 (ECR I-6079: para. 21) and Opinion 1/09 (ECR I-1137: para. 65), all concerning the connection between the principle of primacy and the effectiveness of EU law (Case C-399/11: para. 59). Paragraph 59 of *Melloni* summarises the core issue informing the ECJ's reasoning – the inextricable link between the primacy and the effectiveness of EU law.

This connection was perhaps the reason why the ECJ thought it necessary to conceptually re-frame the divergence of standards of fundamental rights protection in terms of the principle of primacy of EU law. Rauchegger (2015: 113) considers this to be the correct approach in ECJ's balancing exercise between the right to fair trial and the effectiveness of the European Arrest Warrant in the case at hand. She further argues that seeing as this is a systemic issue, endemic to the EU legal order, it must ideally find its solution at EU level (*ibid.*: 113). This view is supported by Itzcovich (2012: 365), who elaborates further to the effect that in general, the resolution of conflicts emerg-

ing from within the legal order must be exclusively done according to criteria set up by the legal order itself, in order to preserve its autonomy and guarantee that such decisions are legally grounded.

In any case, although the ECJ's assertions go to the heart of its main systemic dilemma, they do little to explain the connection between Article 53 CFREU and the ultimate choice of ruling by the ECJ. More importantly, what is particularly striking about the case of *Melloni* is that both of the judicial actors – the ECJ and the Spanish Constitutional Court - considered the exact same text, namely Article 53 CFREU, but reached conclusions which are diametrically opposed to each other. My linguistic analysis of the ambiguity in Article 53 CFREU below will show how this curiosity might have occurred.

# 4. Linguistic Analysis of Ambiguity in the Case of *Melloni*

## 4.1. The Relevant Sample of Ambiguity in Article 53 CFREU, in the Context of *Melloni*

It may be argued that the ECJ and the Spanish Constitutional Court may experience ambiguity perception, each in their own right, with respect to their understanding of the text of Article 53 CFREU. That being said, let us turn our attention to the text of Article 53 CFREU:

> "Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law […] and by the Member States' constitutions" (Case C-399/11: para. 6).

I argue that the relevant sample of ambiguity is located in the entire construction "recognised by … and by …" (i.e. "as recognised […] by Union law […] and by the Member States' constitutions"). This bit of ambiguous language may give rise to two mutually exclusive interpretations. On the one hand, it is possible to read the construction as "as considered together and jointly" (Paraphrase 1). On the other hand, the construction could be given the reading "as considered together and separately" (Paraphrase 2). This assertion is made by virtue of two linguistic rules, resulting in roughly the same readings, with negligible differences.

The first applicable linguistic rule pertains to the usage of the conjunction *and* in relation to Union law and Member States' constitutions. Adams and Kaye argue that ambiguity may arise out of nouns or adjectives linked by *and*, since "[a]nd can convey that the members of a group are to be considered together, but it can also convey that they are to be considered together and separately" (Adams & Kaye, 2006: 1172).

The second applicable linguistic rule concerns Gillon's (1996: 443–444) idea that:

> "[I]n English, plural noun phrases in subject position give rise to so-called collective and distributive construals. An example of this is found in the sentence given below which is, in fact, true on both a distributive and a collective construal: (1.0) Whitehead and Russell wrote a book. (1.1) Whitehead and Russell wrote a book together. (1.2) Whitehead and Russell wrote a book each".

Gillon (1987: 199, 215–216) recognised the collective and distributive construals of plural noun phrases as a form of ambiguity, while adopting the following definition of ambiguity: "A sentence is ambiguous iff, with respect to a given state of affairs, the sentence can be both truly affirmed and truly denied" (*ibid.*: 202). According to this account, Paraphrase 1 of the relevant sample of ambiguity in *Melloni* would be seen as the collective construal, while Paraphrase 2 would be viewed as the distributive construal.

It is also important to note that Gillon argues that the relationship between the plural noun phrase and the verb phrase is of great importance when assessing the contrast between collective and distributive construal (Gillon, 1996: 449–450). The verb *to recognise* is not named in the categories of verbs that enhance the contrast between the two construals (Gillon, 1996: 449–450), which means its usage might leave room for the two construals to co-exist, side by side. Additionally, in Gillon's view, the change from active to passive voice, along with the accompanying *by*-phrase, of the agentive verb has no effect on the generation of collective and distributive construals (*ibid.*: 450). This means that the use of passive voice is unlikely to undermine the case for ambiguity.

Furthermore, the recognition of "collective-distributive ambiguity" is affirmed by Aone (1991: 32–33), under Gillon's aforementioned definition of ambiguity (Aone, 1991: 33). A similar phenomenon to collective-distributive ambiguity is discussed by Schwarzschild (1996: 6) in terms of "sets theory" and "union theory" of plural noun phrases united by term conjunction, but only when the sentences "contain a conjoined noun phrase one of whose conjuncts is itself a plural (formed by conjunction or common noun pluralization)" (*ibid.*: 8), which is the case with the plural form of "the Member States' constitutions".

Finally, Lasersohn's contribution to the debate on plurality and conjunction might be particularly helpful in shedding light on the issue of situating the ambiguity within the structure of the relevant sentence model. Lasersohn (1995: 81–82) presents four main possibilities as to the location of ambiguity within the sentence (and any combinations thereof): 1) the noun phrase; 2) the verb phrase; 3) the combination between the noun phrase and the verb phrase, and 4) the role of quantifier scope. Lasersohn (*ibid.*: 83) establishes that the collective-distributive parallel arises wholly out of the predicate with which the noun phrase is paired. In other words, unlike Gillon, who argues for noun phrase ambiguity, Lasersohn (*ibid.*: 124) favours verb phrase ambiguity. The main argument against noun phrase ambiguity, relevant to my example is that noun phrase ambiguity fails the so-called *zeugma test* (Lasersohn, 1995: 104, 97–98), which means it is considered non-specific, and not truly ambiguous (*ibid.*: 93). In his earlier work, Lasersohn (1989: 133) affirms the same, specifically with reference to Dowty's example of "John and Mary met in the bar and had a beer" (Dowty cited in La-

sersohn, 1989: 133). In response, Gillon (1990: 482) later demonstrates that such criticism may be unfounded.

Furthermore, one inevitably needs to consider a third option - whether ambiguity might be most comfortably situated in the combination between the verb phrase and the noun phrase. However, Lasersohn (1995: 115–116) also identifies problems with ambiguity arising out of the interaction between the noun phrase and the verb phrase; after considering examples containing conjoined predicates subject to collective and distributive readings, he concludes that the distinction actually originates solely from the predicate itself.

To return to the example at hand, if Lasersohn is indeed correct, the verb *to recognise* should be capable of serving as the basis for verb phrase ambiguity, at least at a rudimentary level. According to Dowty's (1987: 98) classification of predicates between collective, distributive and ambiguous, it would seem that the verb *to recognise* could fit in the category of ambiguous verbs, thus giving rise to both a distributive and a collective reading. In other words, it appears that the act of recognition could very well be performed either by actors, acting in parallel to each other but separately, or by the same actors, acting in collaboration with each other.

Ultimately, it seems to me that in the example at hand ambiguity arises out of the interaction between the verb phrase and the noun phrase in the construction: "as recognised […] by Union law and international law […] and by the Member States' constitutions". To my mind, the collectivity-distributivity ambiguity in practice appears to flow from the noun phrase, but is only made legally meaningful by virtue of the ambiguous verb *to recognise*. In this sense, there exists a mutual dependence between the two elements, since ambiguity is produced and resolved only on this particular linguistic and legal plain: *by whom the act of recognition is performed*.

## 4.2. The Subordinate Clause "in Their Respective Fields of Application"

Another fundamental element of the analysis is the opportunity to gain an understanding of the role that the subordinate clause *"in their respective fields of application"* plays with respect to the sample of ambiguity. The impact of this component of Article 53 CFREU is concentrated in a single linguistic feature – the adjective *respective*. As established earlier, the subordinate clause was possibly intended to address the issue of primacy by clarifying the nature of the relationship between the field of application of EU law and the national constitutions. Perhaps the intended effect of the subordinate clause, and specifically of the adjective *respective*, could be illustrated by Gillon's example of "Jill and Ben visited their uncles" (1996: 452–453). This formulation gives rise to two alternative interpretations: "Jill visited her uncles and Ben's uncles, and Ben visited his uncles and Jill's uncles" and "Jill visited her uncles, and Ben visited his uncles" (*ibid.*: 452–453). Gillon further remarks that the latter interpretation of the example

sentence can be "forced" though the use of the adjective *respective* (*ibid.*: 452). In essence, this constitutes one instance of collective and distributive construal applied to a plural noun phrase, in which the adjective *respective* successfully disambiguates the construction in favour of the latter. My analysis in this section will attempt to evaluate to what extent the attempt at disambiguation through the subordinate clause "in their respective fields of application" was successful in the case of Article 53 CFREU.

To begin with, it is important to avoid assuming equivalence between the effect of the adjective *respective* and the adverb *respectively*. The latter is typically perceived as a modifier with strong disambiguating properties. A reading based on the adverb *respectively* is a form of plural predication (Gawron & Kehler, 2002: 87), which stands in stark opposition to a collective reading, much like a distributive reading (Fast, 2005: 17–18).

One point of semantic differentiation between these modifiers can be found in respect of the independent linear ranking of two plural or conjoined constituents (Kay, 1989: 182–183). Moreover, these two categories can be contrasted by virtue of their different semantic functions:

> "Respective is an attributive adjective whose scope of modification is restricted to the noun phrase in which it is embedded, and respectively is an adverb that directly affects the semantics of the predicate of a sentence" (Okada, 1999: 872).

Additionally, clause-level respective readings attach only optionally to *respective* and compulsory to *respectively* (Gawron & Kehler, 2002: 88). Naturally, this means that for the purposes of the analysis at hand, any arguments stemming by means of association from the disambiguating effect of *respectively* shall be dismissed as irrelevant. More importantly, these comments emphasise that the scope of the *respective* modifier is much more limited than that of the *respectively* modifier. Evidently, this means that however strong the potential disambiguating effect of the adjective *respective*, it needs to be targeted at a specific part of the sentence, in order to fulfill its strategic purpose in any meaningful and linguistically accurate sense.

A closer reading of Article 53 CFREU might assist us in appreciating the actual scope of the modifier used: "human rights and fundamental freedoms…as recognised, in their respective fields of application, by Union law and international law […] and by the Member States' constitutions". Thus, one notices that the adjective *respective* is placed in a subordinate clause, which provides a direct answer to the question "Where do the Member States' constitutions and Union law recognise human rights and fundamental freedoms?" By this account, it becomes clear that the scope of the adjective *respective* is meaningfully limited to forcing a distributive reading of the relationship between the Member States' constitutions and Union law and their respective fields of application (i.e. Member States' constitutions and their own field(s) of application; Union law and its own field of application). Thus, the linguistic analysis reveals that the effect of the adjective *respective* reaches *no further* than the subordinate clause, leaving the possibility for ambiguity in the main sentence open.

The construction "to be recognised […] by Union law […] and by the Member States' constitutions" is left untouched by the disambiguating effect of the adjective respective in the subordinate clause. To illustrate that the connection between the two is left intact, one simply needs to formulate the question: "By whom are human rights and fundamental freedoms recognised?" This immediately demands the answer of "by Union law […] and by the Member States' constitutions". In this case, it still remains a matter of ambiguity whether these actors commit the act of recognition together and separately (distributive construal) or together and jointly (collective construal). Finally, Okada has disproved the traditional view that *respective* can successfully function as a predicate distributive operator, which means its scope is limited solely to that of a nominal distributive operator (Okada, 1999: 877–879).

In the face of the evidence presented here, it seems that the controversy surrounding the primacy of EU law in Article 53 CFREU was *not* effectively eliminated with the introduction of the phrase "in their respective fields of application". The disambiguating effect of the respective modifier was solely employed to address issues of scope of application, thus leaving unresolved ambiguity as to the source of authority, inherent in the construction "to be recognised […] by Union law […] and by the Member States' constitutions".

# 5. ECJ's Strategic Resolution of Ambiguity in the Case of *Melloni* and Its Significance for the Authority of EU Law

## 5.1. The Normative Implications of the Sample of Ambiguity

Through the preliminary reference by the Spanish Constitutional Court, the ECJ is invited to interpret Article 53 CFREU. To my mind, this constitutes an offer for ambiguity resolution, which the ECJ chooses to accept in the case at hand. In issuing the preliminary ruling, the ECJ essentially commits the act of ambiguity resolution. More importantly, the case of *Melloni* presents an opportunity for the ECJ to engage in strategic ambiguity resolution. Due to the ambiguous language arguably contained in Article 53 CFREU, there exist two equally legitimate paraphrases of the relevant sample of ambiguity, enabling the ECJ to plausibly and convincingly argue in either direction. Nevertheless, the ECJ selects the option that is more favourable for the EU legal order from a systemic point of view, even at the expense of foregoing the grounding effect of more traditional forms of legal reasoning nearly altogether.

To reiterate, in the preliminary reference of *Melloni*, the Spanish Constitutional Court (SCC) essentially sought answer to the following question (paraphrased): "May a national standard of fundamental rights protection in the area of the European Arrest

Warrant, which is higher than the EU standard, be applied instead of the EU standard?" Paraphrase 1 ("as considered together and jointly") implies that the Charter provides a homogenous level of protection, which leads to the negative answer favoured by the ECJ. In contrast, Paraphrase 2 ("as considered together and separately") implies that the Charter provides a heterogenous level of protection, which allows for the affirmative answer favoured by the SCC. The European Court of Justice held that the only standard of protection of fundamental rights it finds acceptable to implement is the one prescribed by EU law, which resulted in the rejection of the application of a higher standard enshrined in the Member State's constitution. Paraphrase 1 was preferred over Paraphrase 2 in the outcome of the *Melloni* preliminary ruling, implying a homogenous level of protection was ultimately established.

Let us examine the legal implications flowing from this linguistic phenomenon in further detail. I argue that even if one accepts that the fields of application of the two sources of law are distinctly separate, as the modifier *respective* suggests, the provision leaves the matter of the prevailing authority in cases of overlap ambiguous. The text provides for only two plausible interpretations as to the interaction between the EU standard and the national standard of protection (i.e. *together and separately* or *together and jointly*). However, the provision does nothing to resolve this ambiguity, thus resulting in a peculiar manifestation of pluralism (Walker, Maduro, Kumm & Komarek cited in Lenaerts, 2012: 398), whereby the legal text suggests the same "human rights and fundamental freedoms" are recognised by two sources simultaneously, with each source being supreme in its own domain. In other words, the sources of law need not actually overstep the boundaries of their respective field of application to come into conflict. In the area of overlap, they remain two separate, but parallel planes. In this sense, the *Melloni* preliminary ruling is a particularly apt illustration of the lack of hierarchy between parallel sources of authority, with the resulting overlap between the existing and the succeeding regimes often left unregulated in treaties – a trend identified by Alter, Helfer & Madsen (2016: 4–5) in their recent work on the authority of international courts.

Let us consider the notion of an overlap in relation to the goals Article 53 CFREU was set to achieve. De Boer contends that not only is an overlap between the scope of application of the Charter and that of the Member States' constitutions already existent in the case-law of the national constitutional courts, but also that without even the mere theoretical possibility of an overlap, Article 53 CFREU would be obsolete (de Boer, 2013: 1092–1093). More importantly, after expressing his agreement with the views of Liisberg and of Advocate General Bot in relation to the underlying purpose of Article 53 CFREU, he states any reliance on the subordinate clause found therein, instead of on the principle of the primacy of EU law, to be "confusing" (de Boer, 2013: 1093). Therefore, one may conclude that the issue of the primacy of EU law is unlikely to be unequivocally resolved by the subordinate clause of Article 53 CFREU, since its obligatory distributive reading "would deprive Article 53 of the Charter of its *effet utile*" (Lenaerts,

2012: 398). Logically, the primacy of EU law must be dealt with elsewhere in the contents of the provision, to allow for the Spanish Constitutional Court and the European Court of Justice to speculate on the problem on the basis of Article 53 CFREU. The construction "to be recognised […] by Union law […] and by the Member States' constitutions" seems to be an appropriate contender, as it reflects the interaction between the two different standards in a legally and linguistically faithful manner.

## 5.2. The ECJ's Strategic Decision-Making

The case of *Melloni* arguably produces a disappointing result for the individual – Mr Melloni, as he is left to enjoy the lower standard of protection of their fundamental rights, provided by the EU, when there is a higher national standard available. This demonstrates what the European Court of Justice is prepared to sacrifice to affirm its core systemic values – "the primacy, unity and effectiveness of EU law" (Case C-399/11: para. 60). As Besselink succinctly puts it, "the court settles for absolute primacy as a greater concern than substantive rights" (Besselink, 2014: 1189).

Furthermore, in *Melloni*, the European Court of Justice may be said to be making an implied affirmation of absolute primacy (Besselink, 2014: 1180–1183). The rejection of both a lower and a higher national standard is meant to effectively lead to only one outcome: an affirmation of the EU standard as the only valid standard, under which national rights are protected. Torres Perez also supports the view that the ECJ's reasoning in para. 60 of the *Melloni* preliminary ruling amounts to an absolute conception of primacy, meaning that the Charter "is not just a floor, but it might also become in practice a ceiling" (Torres Perez, 2014: 317).

However, Advocate General Bot insists on a different interpretation of the value of the case, namely one that concentrates on the strategic goals behind the need to ensure the effectiveness of the European Arrest Warrant. Advocate General Bot argues this point as follows:

> "There is […] a clear link between the approximation of the laws of the Member States concerning the rights of individuals in criminal proceedings and the enhancement of mutual confidence between those states" (Bot, 2012: para. 114).

The European Arrest Warrant demands a high level of mutual confidence, which could be achieved by promoting and speeding up judicial cooperation (Bot, 2012: para. 115). The ultimate goal is for "the European Union to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States." (Bot, 2012: para. 115). Evidently, the European Arrest Warrant is merely a procedural manifestation of a much grander purpose.

Thus, the following question arises: How does one reconcile these two diverging conceptual frameworks (absolute primacy v. mutual trust) for the reasoning and outcome in *Melloni*? In other words, what exactly is the strategic value of the case of *Mello-*

*ni* for the authority of EU law? It seems to me that the ECJ purposefully uses the well-known language and rhetoric of primacy to pave the way for the principle of mutual trust – a relatively new and vulnerable concept in comparison. Advocate General Bot summarises the challenge the EU legal order faces in this respect:

> "In the absence of harmonisation of procedural guarantees, it would be difficult for the European Union to progress in the application of the principle of mutual recognition and in the construction of a real area of freedom, security and justice" (Bot, 2012: para. 117).

To sum up, the ECJ is determined to fortify the doctrine of mutual trust within the Area of Freedom, Security and Justice by effectively allowing no exceptions to the principle of primacy, even at the expense of a potential backlash from the national constitutional courts (Ostropolski, 2015: 175–176).

## 5.3. The Response by the Spanish Constitutional Court

It is questionable to what extent the ECJ's risky strategy was justified, since after preliminary ruling was issued, the Spanish Constitutional Court made clear its displeasure with the ECJ's approach of asserting absolute primacy, albeit not explicitly. The fact that the national constitutional court confirmed the outcome of the *Melloni* preliminary ruling with a significant delay of nearly a year (Torres Perez, 2014: 319) was perhaps telling of the mounting tension between the participants in the judicial dialogue (Pliakos & Anagnostaras, 2015: 119).

In its judgment, the Spanish Constitutional Court set out to implicitly, but decisively, reassert its authority in matters of fundamental rights protection, to the effect that the last word in case of constitutional conflict with the ECJ would belong to the Spanish Constitutional Court (Torres Perez, 2014: 320). In its determination to achieve this end, the *Tribunal Constitucional* was prepared to effectively treat the ECJ's reasoning in the *Melloni* preliminary ruling as "a mere hermeneutic tool" (Torres Perez, 2014: 323). Therefore, it resolutely put forward its own constitutional argumentation on a revised interpretation of the right to fair trial, which is not without substantial defects (Torres Perez, 2014: 322–323). It is also worth noting that despite its otherwise extensive argumentation, the Spanish Constitutional Court remained "strikingly defiant" (Torres Perez, 2014: 320) in keeping its silence on the interpretation of Article 53 CFREU. Such a decision is consistent with its approach of largely ignoring the ECJ's reasoning in *Melloni*.

Additionally, it may be argued that by endeavouring to re-conceptualise the case as a mere exercise in interpreting the national constitution, the Spanish Constitutional Court completely disregards the impact of the *Melloni* preliminary ruling as an expression of the authority of EU law on the national constitutional order (Pliakos & Anagnostaras, 2015: 119–120). Moreover, Perez (2014: 322) also shares the view put forward by Pliakos & Anagnostaras (2015: 120) that the national constitutional court

fails to conceal that it reconsidered its constitutional standard not by its own initiative or by virtue of other international law instruments, but because of the *Melloni* preliminary ruling.

## 6. Conclusion

The ambiguity at the heart of Article 53 CFREU, viewed concurrently through the prism of both pragmatics and legal interpretation, *sets the scene* for the ECJ's decision-making based on strategic ambiguity resolution in *Melloni*. The strategic value of this act lies in establishing equivalence between two competing lines of interpretation, thus placing the law-making initiative firmly in the hands of the ECJ. This characteristic of a key treaty provision robs the Court of guidance on a point of law integral to the implementation of the authority of EU law and forces it to rely on meta-teleological interpretation to an extreme degree. Thus, *Melloni* demonstrates that the constitutional peculiarities of the EU legal order demand the employment of creative judicial interpretation. It seems that the canonical understanding of judicial activism is too limiting and thus inadequate to faithfully and effectively respond to the judicial interpretation needs of the system.

Moreover, by framing the legal problem in terms of a binary choice, ambiguity facilitates a deeper understanding of the ECJ's priorities. It is through an acknowledgement of the available alternative that one can fully appreciate the corresponding constitutional cost the ECJ is prepared to pay for the fulfillment of its goals. This is true for the reinforcement of the doctrine of mutual trust at the expense of the level of fundamental rights protection granted to the individual. It is also valid in terms of taking the risk of aggravating the relationship with a national constitutional court for the sake of promoting the trinity of concepts, essential to the implementation of the authority of EU law on a systemic level. The ECJ's insistence on safeguarding the concepts of "the primacy, effectiveness and unity of EU law" (Case C-399/11: para. 60) shows its preference for system-building through concepts, rather than system-maintenance through acceptability. The reaction of the Spanish Constitutional Court confirms that the ECJ's decision was taken to the detriment of acceptability.

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# Theoretical and Logical Prerequisites for Legal Translation

*Anna Jopek-Bosiacka**

**Abstract**
The main research aim is to look at how formal principles of legal theory and logic across national jurisdictions affect translation of legislative texts. In the analyzed institutional legal context, official legislative drafting guidelines comprise the canon of good/quality legislation, universal and binding for each legal system. One of my research tasks is to juxtapose Polish legislative drafting guidelines with the European Union drafting guidelines, as well as with selected common law bill drafting manuals to see how certain parameters affect the way we process legislative texts in translation, and how different legal cultures influence the way we interpret legal texts. The qualitative analysis encompasses the legislative recommendations as to the formulation of legal definitions, the use of conjunctions, negation, and the grammatical category of aspect, mood and tense. Attempts are also made to search for any cross-cultural patterns of the analyzed parameters of normative texts. Thus, the comparison of normative texts between legal cultures, first, allows to observe that the legislative guidelines from various legal cultures differ with respect to the compared domains, and secondly, that these differences affect translated texts and the process of legal translation as such, as a result of the global processes of "Europeanization", standardization, unification and hybridization of the national legal/legislative discourses. The results show that law, as a system of norms, always actualizes in a particular language and a particular culture. The national perspective in legal communication, which also contains many universal elements, conditions the quality assessment of legislative translation. A good legal translation is supposed to reproduce normative patterns vested in national legal culture and system.

**Keywords**
legal translation, legislative drafting guidelines, normative text, legal theory, logic, legislative style, legal culture, quality

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# 1. Introduction

Legal communication and legal discourse may be viewed from various research perspectives and studied with different methodological tools such as those of philosophy of law (e.g. Hart, 1961; Dworkin, 1986; Raz, 2009), philosophy of language (e.g. Wittgenstein, 1922; Austin, 1962; Marmor, 2014), sociology of law (Cotterrell, 2006), theory of law (Wróblewski, 1948; Zieliński, 2012; Wronkowska & Zieliński, 1993, 2012), or logic (Ziembiński, 1995; Malinowski, 2006a, 2006b). The methodological framework applied here is that of logic and legal theory. Logic and legal theory are, in my opinion, two very important preconditions for correct construction and interpretation of legal texts. By legal texts I mean here legislative, i.e. normative texts, which are read mainly as prescriptive texts (see Bocquet, 1994; Šarčević, 1997).

Following Carnap's *Logical Syntax of Language* of 1937, I treat logic as a metalanguage, i.e. as a syntax of the language of law. Logic, understood here as a system of terms that refer to language, constitutes a frame of reference other than language (see Lovevinger, 1952: 488), thus allowing for cross-cultural and interlingual comparisons. Similar approach may also be found in early works of Carnap's follower, Ludwig Wittgenstein, first of all in *Tractatus logico-philosophicus* (1922). In Wittgenstein's search for a "logically perfect language" (Russell, 1922: 8), (formal) logic may be treated, basically, as the deepest structure of language, and a tool of linguistic analysis.

The other component, theory of law, is an inherent part of a legal system, being the system of norms, the system of knowledge and the system of authority (see Jopek-Bosiacka, 2017: 27). The system as defined above constitutes the most important part of the context – institutionalized context – for legal translation.

My main research aim is to look at theoretical and logical prerequisites of legal translation. No systematic account of this relationship of legal theory and logic to legal translation in the Polish context has been achieved so far.

I hope my research into legislative/normative texts will be able to clarify the following questions:

1. Do formal principles of legal theory and logic affect translation of legislative texts?
2. Does national perspective in legislative translation exist?
3. What does a good legal translation mean in the ideal world of legal norms and rules?

The above issues define the axis of the paper structure.

One of my research tasks was to look at legislative drafting guidelines from selected legal systems and cultures and juxtapose Polish civil law drafting guidelines[1] (amended as of 2016) with the European Union drafting guidelines, specifically *Joint*

[1] Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie „Zasad techniki prawodawczej" [Ordinance of the President of the Council of Ministers of 20 June 2002 on "Legislative Drafting Guidelines"], Journal of Laws Dz. U. of 2016, item 283, a uniform text. Available at prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000283/O/D20160283.pdf (accessed 5 October 2017).

*practical guide for EU legislative drafting, Interinstitutional style guide and* the Polish in-house style guide for translators *(Vademecum tłumacza)*[2] as well as common law bill drafting manuals (in particular American[3], Australian[4], and Canadian[5]). I was trying to assess how certain parameters affect the way we process legislative texts in translation, how different legal cultures influence the way we interpret legal texts. The qualitative analysis encompassed the legislative recommendations as to the formulation of legal definitions, negation, theme-rheme structure and the sentence word order, as well as the use of deontic modalities and conjunctions. I also hoped to search for cross-cultural patterns of analyzed parameters of normative texts. For this paper I selected examples concerning the use of conjunctions, negation, the grammatical category of tense, and the formulation of definitions, to signal how some features of legislative texts conditioned by theory of law and logic affect their manifestation in Polish-English/English-Polish translation.

## 2. Do Formal Principles of Legal Theory and Logic Affect Legal Translation?

In the institutional legal context, official legislative drafting guidelines comprise the canon of good/quality legislation, universal and binding for each legal system (see Dickerson, 1977; Kindermann, 1979; Thornton, 1987; Šarčević, 1997). Legislative drafting guidelines represent a national legal doctrine and express the principles of legal theory and logic of the law.

### 2.1. Alternation and Conjunctions

The logical reasoning embodied in the structure of legislative texts implies the usage of logical connectors, or conjunctions which are assigned specific meanings in law. In

[2] EU drafting guidelines comprise, amongst others, 1) *Joint practical guide of the European Parliament, the Council and the Commission: for persons involved in the drafting of European Union legislation*, 2) *Interinstitutional style guide*, 3) *Vademecum tłumacza – Polish style guide for translators (version 15, 2017)*. All documents are available at ec.europa.eu/info/resources-partners/translation-and-drafting-resources/guidelines-translation-contractors/guidelines-contractors-translating-polish_en (accessed 15 October 2017).

[3] *Legislative Drafting Guide*, U.S. House of Representatives, Washington 1995, legcounsel.house.gov/HOLC/DraftingLegislation/draftstyle.pdf (accessed 10 November 2017); U.S. Senate Legislative Drafting Manual, law.yale.edu/system/files/documents/pdf/Faculty/SenateOfficeoftheLegislativeCounsel_LegislativeDraftingManual%281997%29.pdf (accessed 5 January 2018).

[4] Drafting Directions issued by the Australian Government Office of Parliamentary Counsel, opc.gov.au/about/docs/drafting_series (accessed 15 October 2017); see also footnote 10.

[5] Federal Canadian English drafting online guidelines *Legistics* canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p3p2.html (accessed 8 January 2018).

Polish theory and logic the distinction between an exclusive "albo" / "or" (as in "either-or") and non-exclusive "lub" / "or" was once introduced, following the Polish philosopher of law, Tadeusz Kotarbiński, to indicate two types of alternation: non-exclusive and exclusive (Wronkowska & Zieliński, 1993: 147–148). This distinction is an inherent part of the Polish legal culture, subject to the socialization process during university law studies in the sense of Swales (1990), not recognized, however, in ordinary usage where the two connectors are used interchangeably. Logically, in broad terms, in non-exclusive alternation the compound is true so long as at least one of the components is true. By contrast, the exclusive alternation construes the compound as true only in cases exactly one of the components is true (Quine, 1982: 11ff; Ziembiński, 1995: 86–88).

In English this linguistic distinction is lost, contrary to e.g. Latin's exclusive "aut" and non-exclusive "vel", which basically means that "or" can operate as either an exclusive or non-exclusive disjunction. Thus, if the "or" is non-exclusive, it can logically have an implicit conjunctive function with the meaning "A or B, or possibly both". Therefore, the legal meaning of this ambiguous conjunction may only be worked out from the context, and in many cases is subject to judicial discretion (see also Holland & Webb, 2016: 144–146; Adams & Kaye, 2007: 1181–1191). The context is mostly understood as the sense of the legislation, and the structure in which the conjunctions appear (see, e.g., the U.S. Senate *Legislative Drafting Manual* 1997: 64, cited in footnote 3 above).

Let us take an example of a retranslated Polish Criminal Code provision on bigamy, taken from a reply by U.S. authorities to the Polish court request for legal aid when I was serving in the capacity of a sworn translator:

> "A person who contracts marriage in spite of remaining in a marital union is subject to a fine, penalty of restriction of liberty *or* imprisonment for up to two years." (Article 206, Polish Criminal Code)

The only possible translation, when enumerating penal sanctions, is to use the Polish disjunctive coordinator "albo", especially if we consult Polish legislative guidelines:

> „Kto zawiera małżeństwo, pomimo że pozostaje w związku małżeńskim, podlega grzywnie, karze ograniczenia wolności *albo* pozbawienia wolności do lat 2."

Under § 79.1 and § 79.2 of the Polish Legislative Drafting Guidelines[6], in the criminal law context, the punishments may be applied alternatively or cumulatively. The alter-

[6] § 79.1. The provision specifying a criminal sanction, allowing alternatively several types of penalties, is given the following wording:

1) „... is subject to penalty ... or [albo] penalty ..." (if only one of the penalties is allowed);

2) „... is subject to penalty ... or [albo] penalty ... or [albo] both of these penalties cumulatively" (if even both of these penalties are allowed).

§ 79.2. The provision specifying a criminal sanction, allowing cumulatively several types of penalties, is given the following wording: :

1) „... is subject to penalty ... and penalty ..." (if cumulation is obligatory);

2) „... is subject to penalty ..., besides penalty [...] penalty [... ] may be imposed ..." (if cumulation is optional). [translation – AJB]

(Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie „Zasad techniki prawodawczej", Dz. U. 2016, poz. 283).

nation under § 79.1 may be either exclusive or non-exclusive; nevertheless, the exclusive conjunction "albo" is used, with additional formula in the case when both punishments are imposed jointly. No non-exclusive "lub" is allowed to use in criminal law provisions.

The cumulation of punishments under § 79.2 of the Polish Legislative Drafting Guidelines may be either mandatory or supplementary. In the former case, the conjunctive connector "i" ("and") is used, the latter case requires a separate formula with no conjunctions of alternation mentioned above.

To be even more accurate, the Polish theorists of law (Wronkowska & Zieliński, 2012: 70, 180–182, 290–291) recommend the following pattern for criminal provisions:

„podlega karze A *albo* karze B *albo* karze C" (POLISH LEGAL THEORY)

– "is subject to A *or* B *or* C".

Legislative practice opts for a simplified version, with a comma replacing or substituting one of the conjunctions:

„podlega karze A, karze B, *albo* karze C" (LEGISLATIVE PRACTICE)

– "is subject to A, B or C", provided the comma is disjunctive.

Thus, the combination of non-exclusive "lub" and exclusive "albo" in criminal provisions would be logically incorrect. The following formula is wrong:

„podlega karze A *albo* karze B *lub* karze C"

– "is subject to either A *or* B, *or* C".

Multiple punishments under the Polish Criminal Code (e.g. Article 33 § 2) would be possible only in the case of fine and another punishment assigned such as imprisonment but only in situations strictly prescribed in legal provisions (see also Šarčević, 1997: 151– 152 on how important an accurate translation of logical connectors is in law). This solution is common to many jurisdictions (see for example Rule 146 of the Rules of Procedure and Evidence of the International Criminal Code[7]). In addition to punishments that are defined in Article 32 of the Polish Criminal Code, the court may order other "penalties" enumerated elsewhere in the Code (e.g. Articles 39, 44, 44a) such as forfeiture of proceeds, property or assets derived directly or indirectly from the crime (under the Polish law: "przepadek", "środki karne", "środki kompensacyjne"), but these are not mentioned in the Polish Drafting Legislative Guidelines. In the case of multiple penalties in common criminal law legislative drafting, to avoid ambiguity, the drafter is recommended by Martineau (1991: 109) to use the conjunction "or" rather than "and" before the last listed penalty, if each penalty is exclusive:

"a fine of $500 or a sentence of 6 months".

[7] Available at icc-cpi.int/iccdocs/PIDS/legal-texts/RulesProcedureEvidenceEng.pdf (accessed 5 January 2018).

If the penalties are not intended to be mutually exclusive, the listing should be followed by "or both" if there are only two penalties:

> "a fine of $500, a sentence of 6 months, or both".

If there are more than two penalties, the phrase "or a combination of them" should be used as in Martineau's example:

> "a fine of $100, a sentence of 6 months, community service of 500 hours, or a combination of them".

Such common legislative solutions seem to coincide to some extent with the Polish drafting guidelines. Logic in many aspects seems to be the universal language of law, following Wittgenstein's (1922) and Carnap's (1937) propositions.

In the EU context, from the very beginnings criminal law was mostly treated as part of the national sovereignty of EU member states. The Treaty on the Functioning of the European Union of 2007 ("TFEU" or "Treaty of Lisbon"), which entered into force in 2009, also limits the Union's competences in this field, establishing minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crimes with a cross-border dimension (the so-called "Eurocrimes" such as terrorism, trafficking in human beings, money laundering, organized crime, etc., under Article 83(1) of TFEU) (see also Neagu, 2015). Hence, it is very hard to find similar instances in EU legislation illustrating the use of conjunctions in criminal law.

## 2.2. Conjunctions and Negation

The observance of rules of logic in relation to conjunctions is also vital for other normative writing, to use Haggard & Kuney's distinction (2007: 13), which, besides public documents such as statutes and the like, includes other legal genres, for example contracts, leases, and wills. Using conjunctions with negation further affects the intended meaning. The following example related to the use of conjunctions and negation is taken from my practice as an arbitration court expert. The disputed wording of one of the lease contract clauses reads as follows:

> The Landlord undertakes that it will *not*: (a) lease and/or let for use any part of the premises to any competitor of the Tenant *and* (b) operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.

The dispute was about what constituted a breach of contract defined as conducting any competitive business in an office building. No Polish version was provided to the contract in question.

> Interpretation No. 1: The Landlord may not do (a) and may not do (b), i.e., it is not permitted to perform any of these activities. Each of the two activities listed is forbidden and may occur separately in order to breach the contract.
>
> Interpretation No. 2: The Landlord may not do jointly (a) and (b), i.e., breach of contract will only take place if the Landlord does (a) and (b) simultaneously.

Which interpretation is correct? The common-sensical intuition may be supported with the rules of mathematics that are also used in logic. The British 19th-century mathematician Augustus de Morgan (1847) proposed two transformation rules relevant for this case:

1. "The *negation* of a disjunction is the *conjunction* of the *negations*."
2. "The *negation* of a conjunction is the *disjunction* of the *negations*."

The tautologies, i.e., the statements that have the final value of "true" for all possible combinations for the variables, referred to as De Morgan's laws may be illustrated in a simplistic version as follows:

1'. not(A *or* B) = (not A) *and* (not B)
2'. not(A *and* B) = (not A) *or* (not B)

Therefore, in our case the only reasonable solution was interpretation No. 1, following de Morgan's second rule of inference. Thus, any prohibited activity (a) or (b) was sufficient to speak of a breach of lease contract.

On the margin, better ways to prohibit each item in a list would probably be to rewrite the text, and

1. USE "OR" INSTEAD OF "AND": The Landlord undertakes that it will not: (a) lease and/or let for use any part of the premises to any competitor of the Tenant *or* (b) operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.

2. REPEAT THE "NOT", USE "AND": The Landlord undertakes that it will not: (a) lease and/or let for use any part of the premises to any competitor of the Tenant *and* (b) *not* operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.

3. AVOID THE USE OF "AND" OR "OR": The Landlord undertakes it will not *do any of the following*: (a) lease and/or let for use any part of the premises to any competitor of the Tenant, (b) operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.

This logical rule may also be important for drafting legislation to establish the proper logical relationships among paragraphed elements set out as a series of items. The three logical relationships between the list items are commonly expressed with the help of two conjunctions "and" and "or", illustrated as two intersecting sets in a Venn diagram.[8]

Similarly, in the case of paragraphs, using negation before a conjunction affects which conjunction gives the intended meaning. If the opening words negate the paragraphed elements, the appropriate conjunction will be "or":

"A person is not required to pay an admission fee if they are (a) under 18 years of age; or (b) at least 65 years of age."[9]

[8] See the illustrative figure on the Canadian Government's *Legistics* site: canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p3p2.html (accessed 5 January 2018).

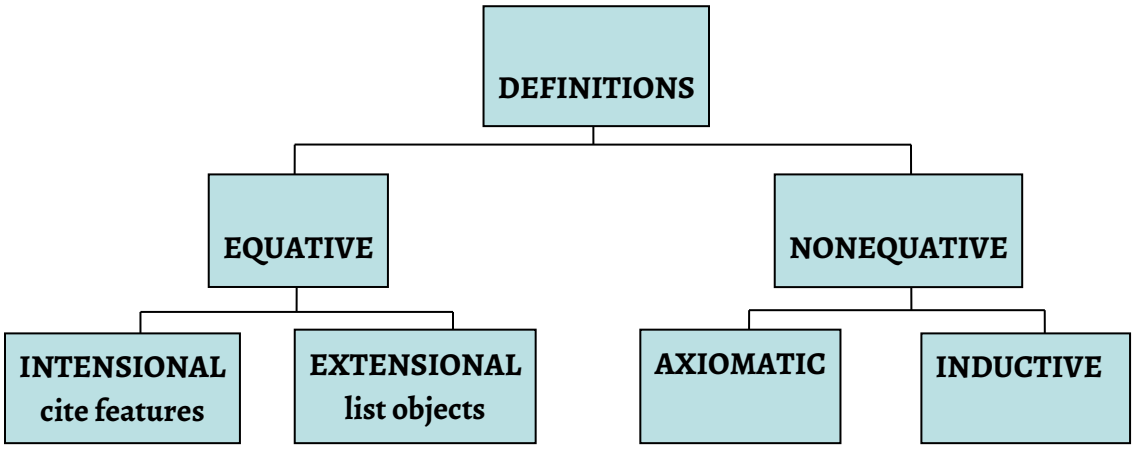
[9] Other examples and detailed recommendations in the federal Canadian English drafting online guidelines *Legistics*, Part 3 – Paragraphing, online source cited in the previous footnote.

## 2.3. Conjunctions and Definitions

Conjunction use in definitions is also subject to some logical constraints. Legal definitions are crucial in legal text interpretation. Interpreting and translating law terms depends, inter alia, on the accurate formulation of legal definitions from formal and logical points of view. The formulation of definitions may be determined by factors, such as the legal system, branch of law, position in the legal instrument, type of legal genre, and type of legal definition (see more in Jopek-Bosiacka, 2011). The last two factors are particularly relevant for this discussion.

The statutory definitions must be formulated within strict constraints of the national and/or drafting guidelines, being in turn the product of the theory of law and legal doctrine. The use of conjunctions is dependent on the type of legal definitions, especially in the case of "extensional" vs. "intensional" definitions, where certain conventions and logical rules are commonly used. This division is reflected in Figure 1, which presents a typology of definitions based on their structure and which is functionally useful for teaching logic to law students (see Lewandowski *et al.*, 2005), but also important for legislators and legal translators, pertaining to the multilingual drafting of legal instruments. Statutory definitions also seem to be the most difficult provisions to draft (Rylance, 1994: 137) and translate.

**Figure 1:** Types of definitions according to the criterion of „structure"




*Note:* See Lewandowski et al., 2005.

Taking positions of legal theory and logic (e.g. Stone, 1964; Ziembiński, 1995; Malinowski, 2006b), the definition is understood as the entire "definition-formulation" not the *definiens* alone, i.e. the expressions by means of which a term or concept is being defined.

In my discussion I will only refer to equative definitions and their subtypes (intensional/extensional) where the use of conjunctions is significant (see Figure 1). Equative definitions are used to denote those terms that are central to a given text (Zieliński, 2012: 199). In most equative definitions the *definiendum*, i.e. the term or concept being defined, is placed in the first position which eliminates possible ambiguity (Malinow-

ski, 2006b: 167). Intensional definitions cite the essential features constituting the core sense of the *definiendum*, while extensional definitions list the objects denoted and/or not denoted by the *definiendum*. The most frequent legislative practice nowadays is to use the verb "means" for complete (intensional) definition, "includes" for a stipulated expansion in meaning (extensional definition), and "does not include" for a stipulated contraction of meaning (exclusion) (Garner, 2001: 258).

The Polish legislative guidelines (§§ 146–154) specify which connective forms are used in different types of statutory definitions, how expressions required for correct formulation of a definition are rendered in legislative Polish, or what punctuation marks should be used. No attention is paid to conjunctions in that respect, so legal theory may be helpful here which will be discussed further.

In the EU drafting and translation practice, only intensional definitions are used, judging at least by the style guides for translators (see *Vademecum tłumacza*, Jan 2017: 99; *English Style Guide*, Nov 2017: 49), where the only connective form suggested between the *definiendum* and the *definiens* is "means" (*Vademecum tłumacza*, Jan 2017: 99; the last example – *English Style Guide*, Nov 2017: 49, emphasis AJB):

> "Customs office" *means* any office at which all or some of the formalities laid down by customs rules may be completed.
>
> – „Urząd celny" *oznacza* każdy urząd, w którym mogą zostać dokonane, w całości lub w części, formalności przewidziane przepisami celnymi.
>
> "Customs authorities" *means* the authorities responsible inter alia for applying customs rules.
>
> – "Organy celne" *oznaczają* organy uprawnione między innymi do stosowania przepisów prawa celnego.
>
> For the purpose of this Regulation, 'abnormal loads' *means* [definition].

The EU drafting and translation policy provides for the structural simplification of the statutory definitions, hence probably the lack of instructions on the use of conjunctions in definitions.

The common law, by contrast, with much more divergence and frequency as regards definitions (see e.g. Driedger, 1976: 45–47; Šarčević, 1997: 153–159), is subject to some authoritative guidance from legislators. Specifically, conjunctions use in definitions is regulated e.g. by the *Australian Drafting Directions* (Drafting Direction 1.5[10], 2016: 11). The Drafting Direction refers to definitions which are set out in paragraphs; in such a case the use of conjunctions depends on the definition type. In the event of the intensional definition ("x means…"), the conjunction "or" is used, for example:

> *domestic animal* means:
> a) a cat; or
> b) a dog; or
> c) an alpaca.

[10] Drafting Direction No. 1.5. Definitions, Document release 3.4, reissued by the Australian Government Office of Parliamentary Counsel, October 2016, available at opc.gov.au/about/docs/drafting_series/ DD1.5.pdf (accessed 9 January 2018).

Highlighting the defined term in italics and bold is used in Australian Drafting Direction No. 1.5, but other conventions such as capitalization, italics, bold, or not highlighting defined terms are also used in many jurisdictions (see Butt, 2013: 220–221; Garner, 2001: 258).

If the definition is extensional (i.e. in the form "x includes …"), the use of the conjunction "and" is recommended:

> *domestic animal* includes:
> a) a cat; and
> b) a dog; and
> c) an alpaca.

The Australian Drafting Direction of 2016 is in line with modern legal conventions that recommend inserting the linking word (i.e. conjunction) after every item in a list with the purpose to make the definition more accessible to readers unaccustomed to legislative texts (see e.g. Butt, 2013: 169).

Having in mind some fussiness of this new style, both Peter Quiggin, First Parliamentary Counsel and author of Australian Drafting Direction No. 1.5 (2016: 11) quoted above and Peter Butt (2013: 169) suggest alternative wording of the lead-in to avoid the need for the conjunctions:

> *domestic animal* [includes / means any of] the following:
> a) a cat;
> b) a dog;
> c) an alpaca.

These principles may also be extrapolated to full definitions not set out in paragraphs, as in the examples taken from Rosenbaum (2007: 27, emphasis added):

> "Grain" *means* wheat, barley, *or* rye [intensional or exact definition]
>
> "Grain" *includes* wheat, barley, *and* rye [extensional definition or definition by example]

In English-Polish translation the statutory definitions of both types should follow similar conventions as to the use of conjunctions:

> "Grain" *includes* wheat, oats, barley *and* rye (Canadian Wheat Board Act, RSC 1985; as quoted by Šarčević, 1997: 155).
>
> – „Zboże" *oznacza* pszenicę, owies, jęczmień *lub* żyto. (see the definition of "zboże" ["grain"] in Wronkowska & Zieliński, 2012: 291).

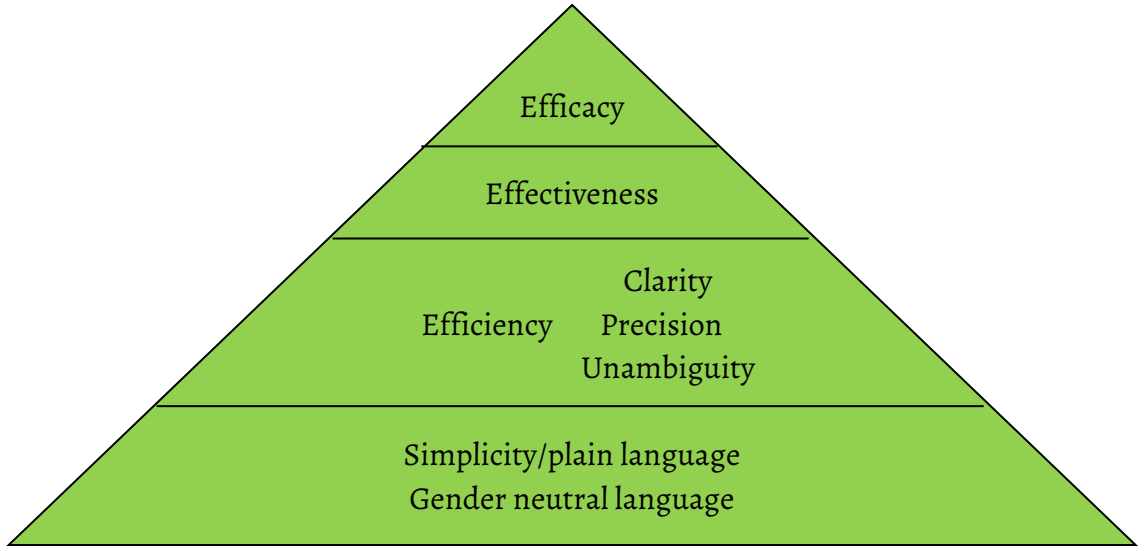
Given the normative nature of legislative texts and logical relations within the text items important for legal interpretation (such as alternation, disjunction, or conjunction), statutory definitions that are normative *per se* are a fine example of interrelations between law, legal theory and logic. Thus the answer to the first question posed in the introduction could be positive: formal principles of legal theory and logic significantly affect legal interpretation and legal translation. Examples may be countless.

## 3. Does National Perspective in Legislative Translation Exist?

One of my major assumptions underlying the research is that legal communication is an instance of cross-cultural communication which rests on the corollary that law as a system of norms always actualizes in a particular language and a particular culture. This means that national languages and cultures have their own language codes and systems of legal communication. Each jurisdiction develops its own drafting style, with or without the support of official or institutional drafting guidelines.

Drafting manuals may be functionally useful as, following Xanthaki (2010), a method of harmonization of drafting conventions at the national level, which ultimately leads to certainty in the law. Xanthaki perceives drafting conventions as "compilations of principles of legisprudence" setting the foundations of quality in legislation, which serve its efficacy as the ultimate goal of national laws. Seeking the approachability of laws – beyond the civil versus common law divide – she proposed the following pyramid of regulatory and legislative quality:

**Figure 2**. Hierarchical pyramid of drafting values (Xanthaki, 2008, reproduced in Xanthaki, 2016).




In the hierarchical pyramid (Figure 2), effectiveness is supported by clarity, precision and unambiguity. In turn, clarity, precision and unambiguity are promoted by plain language and gender neutral language (Xanthaki, 2016: 22).

I fully agree that some of the pyramid's levels or values (in Xanthaki's nomenclature) seem universal, irrespective of legal system and culture, for example, clarity, precision or unambiguity of language. Some of the labels though, such as "efficacy" or "effectiveness", resemble that of a neoliberal new public management discourse (see Kjær, 2017). But from the Polish perspective it is perhaps most difficult to agree on gender neutral language as the basis for this hierarchical classification of elements aimed at quality legislation, with certain implications for translation.

## 3.1. Gender Neutral Language and the Polish Legal Acts

In the Polish context, partly due to language constraints, names of professions in most Polish normative acts are mostly denoted by nouns in masculine forms (see Paweł Knut's expert opinion for the Polish Society of Anti-Discrimination Law). Poland's Council for the Polish Language formed by the Presidium of the Polish Academy of Sciences[11] to deal with all matters concerning the use of the Polish language in public communication, in an opinion issued in 2012[12], concluded as follows:

> "Forms of female occupation names and titles are possible in the Polish language system. If most of the names of occupations and titles are not commonly used today, it is because they are causing negative reactions from most Polish native speakers. This, of course, can be changed if the public is convinced that the feminine forms of the names mentioned are needed, and that their use will evidence the equality of women in performing occupations and functions. However, the language cannot be imposed, the adoption of any legal regulation in this regard will not make Poles begin using the feminine forms of engineer [*inżyniera / inżynierka*, […], minister [*ministra/ministerka*], […], or state secretary [*sekretarza stanu*]." (translation AJB[13])

A striking example of a non-neutral gender language may be taken from Article 131(3) of the Polish Act on Higher Education of 27 July 2005 (see Kiełkiewicz-Janowiak, 2018: 6), where a possessive pronoun in its masculine third-person form is used in relation to a pregnant (= female) academic teacher:

> „Nauczyciela akademickiego *w ciąży* lub wychowującego dziecko w wieku do jednego roku nie można zatrudniać w godzinach ponadwymiarowych bez *jego* zgody."
>
> – "An academic teacher who is *pregnant* or raising a child up to one year must not be employed overtime without *his* consent." (translation and emphasis AJB)

On the one hand, the above example realizes the principle of language economy in law discussed by Polish theorists on the examples of conjunctions and definitions (Wronkowska & Zieliński, 1993), abbreviations (Zieliński, 2012; Malinowski, 2006a; 2006b), syntactic structures and prepositions (Pawelec, 2009). Such forms might be treated as rather neutral when read by the legal audience, but definitely not by the direct or primary addressees of this legal provision (see Kiełkiewicz-Janowiak, 2018: 6). On the

[11] The Council for the Polish Language (Rada Języka Polskiego, RJP) was formed by the Presidium of the Polish Academy of Sciences (Polska Akademia Nauk, PAN) by decree No. 17/96 passed on 9 September 1996. The Council's activities are outlined in the Polish Language Act of 1999, see Council's official website: rjp.pan.pl.

[12] Stanowisko Rady Języka Polskiego w sprawie żeńskich form nazw zawodów i tytułów przyjęte na posiedzeniu plenarnym Rady 19 marca 2012 roku, rjp.pan.pl/index.php?option=com_content&view=article&id=1359 (accessed 2 September 2017).

[13] In the original: „formy żeńskie nazw zawodów i tytułów są systemowo dopuszczalne. Jeżeli przy większości nazw zawodów i tytułów nie są one dotąd powszechnie używane, to dlatego, że budzą negatywne reakcje większości osób mówiących po polsku. To, oczywiście, można zmienić, jeśli przekona się społeczeństwo, że formy żeńskie wspomnianych nazw są potrzebne, a ich używanie będzie świadczyć o równouprawnieniu kobiet w zakresie wykonywania zawodów i piastowania funkcji. Językowi nie da się jednak niczego narzucić, przyjęcie żadnej regulacji prawnej w tym zakresie nie spowoduje, że Polki i Polacy zaczną masowo używać form *inżyniera* bądź *inżynierka*, *docentka* bądź *docenta*, *ministra* bądź *ministerka*, *maszynistka pociągu*, *sekretarza stanu* czy jakichkolwiek innych tego rodzaju." (RJP, 19.03.2012, see footnote 12).

other hand, the English translation of legal provisions shows significant discrepancy between the conventions of the Polish language (in original) and the gender neutral language principle mentioned by Xanthaki and present in numerous international institutional recommendations for drafting legislation such as those by UNESCO, the Council of Europe, the International Labour Organization, and the European Union.

In the EU's *Interinstitutional style guide* (version updated on 12 May 2017) we read that

> "[m]uch existing EU legislation is not gender neutral and the masculine pronouns "he" etc. are used generically to include women. However, gender-neutral language is nowadays preferred wherever possible" (section 10.6).

Specific tips then follow, e.g. use gender-neutral nouns, avoid gender-specific pronouns, draft in the plural where possible, etc. This part on gender neutral language of the *Interinstitutional style guide* (2017) has no corresponding Polish version.

Similar examples of incongruence between gender and language may be found in the Polish Police Act of 6 April 1990, amended as of 2017 (Journal of Laws Dz. U. 2017, item 2067), where different types of third person pronouns in the masculine forms are used, for example "on" / "he") in Article 121b (5)(4):

> „5. Jeżeli zwolnienie lekarskie obejmuje okres, w którym policjant jest zwolniony od zajęć służbowych z powodu:
> 1) wypadku pozostającego w związku z pełnieniem służby,
> 2) choroby powstałej w związku ze szczególnymi właściwościami lub warunkami służby,
> 3) wypadku w drodze do miejsca pełnienia służby lub w drodze powrotnej ze służby,
> *4) choroby przypadającej w czasie ciąży*,
> [...] – zachowuje *on* prawo do 100% uposażenia."
> (art. 121b ust. 5 pkt 4 ustawy o policji z 6 kwietnia 1990 r.)
>
> – "5. If the sick leave covers the period during which the policeman is dismissed from the duties due to
> 1) an accident remaining in connection with the service,
> 2) illness resulting from special properties or conditions of service,
> 3) an accident on the way to the place of serving or on the way back,
> *4) illness during pregnancy*,
> [...] – *he* retains the right to 100% of the salary." (translation and emphasis AJB)

See also Article 44(1) and Article 44(2) of the Police Act, which refer to the rights of retaining salary by the police officer being dismissed from service until the end of periods of pregnancy and maternity leave by using the pronoun "he" ("on"), which in the third person form inflects for gender, in the dative form indicates the masculine gender after declension is used ("mu"), e.g.:

> „Art. 44.2. W razie zwolnienia policjanta ze służby na podstawie art. 41 ust. 2 pkt 5 i 6 w okresie *ciąży*, w czasie *urlopu macierzyńskiego*, urlopu na warunkach urlopu macierzyńskiego, urlopu ojcowskiego lub urlopu rodzicielskiego przysługuje *mu* uposażenie do końca okresu *ciąży* oraz trwania wymienionego urlopu."
>
> – "Art. 44.2. In the event a police officer is exempted from service pursuant to Art. 1 para. 2 subpara. 5 and 6 during *pregnancy*, *maternity leave*, adoption leave on terms of maternity leave, paternity leave or

> parental leave, *he* is entitled to a salary up to the end of the *pregnancy* or the duration of the leave." (translation and emphasis AJB)

Other Polish acts which use non-neutral gender language to be mentioned are, for instance, The Court System Law (Prawo o ustroju sądów powszechnych, Journal of Laws Dz. U. 2001, No. 98 item 1070 in Article 94 § 1a (2)), or The Prosecutor's Office Law (Prawo o prokuraturze, Dz. U. 2016, item 177) in Article 115 § 2 (2), where similar contexts are evoked.

Irrespective of a number of bizarre examples in the Polish law, most professions in Polish, such as a judge, or a prosecutor have only a masculine form, or a masculine form is considered to be official and the only one to be used in normative contexts. Contexts such as those of pregnancy in law magnify certain difficulties posed by the grammatical system of the Polish language in realizing international recommendations on gender neutral language by international organizations and institutions (see also Kiełkiewicz-Janowiak, 2018; Mattila, 2013: 53–54 on the current state of affairs in Germany or Spain which undermines the gender-neutral language policies when proposing artificial solutions in some legal and public contexts).

Also, following Kiełkiewicz-Janowiak (2018), a question may be raised whether is it important for a prime minister, for example, to indicate gender? Paprzycka in her manifesto text (2008) argues against the significance of a gender in talking about professional roles in society. The paper analyzes various possible linguistic norms that could govern the feminine forms, which slowly appear in the Polish language, and which correspond to the masculine names of professions. Adopting a basically feminist standpoint leads the author to reject those proposals, which would legislate that the masculine forms ought to be applied to men while the feminine forms ought to be applied to women. Paprzycka considers in particular the inferential roles of concepts to argue for a gender-neutral rendition of the historically masculine forms, which I fully support.

Underlining a female gender in the context of, for example, official positions such as a prime minister or a minister may even be treated as offensive (see Kiełkiewicz-Janowiak, 2018). Such doubts may be supported with a view expressed by a famous Polish linguist, professor Witold Doroszewski, who in 1948 wrote: "The gender of a minister is equally unrelated to his/her social and state functions as the color of his/her eyes"[14] (Doroszewski, 1948: 69; quoted after Kiełkiewicz-Janowiak, 2018).

All in all, gender-neutral language is not always possible to use in legislation, such as Polish (see 3.1. above), Greek, or Albanian, where most nouns are classified as masculine or feminine (see *Law Drafting Manual: A guide to the Legislative Process in Albania*, 1996: 67). It is generally accepted though that in such languages of laws the use of the masculine implies the feminine too (and vice versa). This approach is also widely ac-

[14] Translated by AJB, in original: „W zasadzie sprawa płci ministra jest tak samo pozbawiona związku z jego funkcją społeczno-państwową jak i kolor jego oczu." (Doroszewski, 1948: 69)

cepted in many common law drafting manuals, e.g. the *Arizona Legislative Bill Drafting Manual* (2011–2012: 90)[15]. This trend presented in the Albanian law drafting manual published with the help of the European Assistance Mission to the Albanian Justice System (EURALIUS, 1996[16]) is in line with the principle of language economy discussed in legal contexts. Hence, the uncompromising statements by Xanthaki (2008, 2016) on gender neutral language as the foundation for the legislative quality can neither be treated as unconditional nor as absolute.

## 3.2. Tense, Mood and Aspect: A Comparative Approach

If we look at legal provisions, we may observe that norms of law are expressed in accordance with the rules of syntax specific to a given language. In the *Joint practical guide of the European Parliament, the Council and the Commission: for persons involved in the drafting of European Union legislation* (2015), under the general principles, we read that:

> "2.3.1. The choice of verb and tense varies between different types of act and the different languages, and also between the recitals and the enacting terms (see Guidelines 10 and 12).
>
> 2.3.2. In the enacting terms of binding acts, other languages, such as French, use the present tense, whilst English generally uses the auxiliary 'shall'. In both languages, the use of the future tense should be avoided wherever possible."

In the Polish version of the *Joint practical guide*, i.e. *Wspólny przewodnik praktyczny* (2017), one sentence is added to subsection 2.3.2. that Polish [in normative parts of binding acts] uses the present tense.

Polish legal norms are formulated as descriptive statements in the indicative mood, following the Polish legal theory (Zieliński, 2012: 101). This requirement is not mentioned though in the Polish legislative drafting guidelines. However, if we assume the normative nature of legislative texts, the grammatical category of tense does not matter. Let us consider two examples from the Polish Code of Administrative Procedure, with their respective English translations,[17] one in present and one in future tense:

> „Art. 123. § 1. W toku postępowania organ administracji publicznej wydaje postanowienia."
>
> – "Art. 123. § 1. A public administration body may make a ruling during proceedings."
>
> „Art. 226. Rada Ministrów wyda, w drodze rozporządzenia, przepisy o organizacji przyjmowania i rozpatrywania skarg i wniosków."
>
> – "Art. 226. The Council of Ministers shall make regulations regarding the receipt and handling of complaints and proposals."

[15] www.azleg.gov/alisPDFs/council/2011-2012%20Bill%20Drafting% 20Manual.pdf (accessed 29 December 2017).

[16] See www.euralius.eu/en/archive-2?download=74:law-drafting-manual (accessed 5 January 2018).

[17] Source of the English translation: www.asylumlawdatabase.eu/en/content/en-act-14-june-1960-code-administrative-procedure-poland-ustawa-z-dnia-14-czerwca-1960 (accessed 31 August 2017).

The illocutionary force of these examples of the Code of Administrative Procedure remains essentially unchanged regardless of the use present or future tense: both formulate the obligation to issue certain acts by the authorities specified in the legislation/Code. It is important to point out, however, that the forms of future tense are much rarer in the legal texts and are rather an exception to the rule that the laws are formulated in the present tense. This seems to be a universal element of formulating legal text, present in many legislative drafting guidelines, for example in the American Federal *Legislative Drafting Guide* (1995: 60):

> "(f) TENSE. –
>
> (1) GENERAL RULE. Whenever possible, use the present tense and avoid the future and past tense.
>
> (2) EXCEPTION. When expressing time relationships, there may be cases in which it may be appropriate to use the present tense for facts contemporary with the law's operation and then the past (or future) tense for facts that must precede (or follow) its operation. However, even in such cases, *it is preferable to remain in the present tense throughout* and express the temporal relationships explicitly rather than by means of the verb tense."

In Canada, the basis for using the present tense in legislation is expressed in section 10 of the *Interpretation Act* (R.S.C. 1985):

> "10. The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning."

Subsection 24(1) of the Legislative Drafting Conventions of the Uniform Law Conference of Canada provides that:

> "24. (1) Verbs should appear in the present tense and indicative mood unless the context requires an exception."

Other tenses, such as the future tense or the past tense could only be used in subordinate clauses expressing actions that take place either before or after the action in the principal clause (*Legistics*).

The *present indicative* has been advocated by many authorities on drafting such as Driedger (1976: 13) and George Coode (1845) (see also Šarčević, 1997: 138–140). It is used for provisions that state particular elements of an obligation, power or how the legislation operates. They are sometimes referred to as "rules of law", as opposed to "rules of conduct". Canadian *Legistics* presents some common examples of using the present indicative to express rules of that are at the same time components of rules of conduct:

> A licence *is* valid for one year after the day it is issued.
>
> The Clear Language Agency *is* (hereby) *established* for the purpose of promoting clear writing.
>
> The Agency *consists* of 10 members to be appointed by the Governor in Council.

Some examples of rules about how legislation operates are as follows:

> This Act *comes* into force on January 1, 1999.
>
> This Act *applies* to ships registered after January 1, 1999.

This Act *prevails* over any other inconsistent Act.

It is sometimes difficult to determine whether a provision states an ancillary or subordinate rule of law, as opposed to a rule of conduct. It is not certain if in the following example given by Šarčević (1997: 138) the particular requirement is mandatory or directory:

The candidate *signs* the application.

The indicative mood in legislative texts fulfils the pragmatic function of the imperative mood. Therefore, such Polish expressions as *sąd orzeka* ("the court holds that"), *sąd odsyła* ("the court refers to") are not descriptive, but function as directives or commands, and often correspond to the so-called normative indicative (Šarčević, 1997: 138 ff). The prevailing constructions in Polish legislative texts are indicative sentences, mostly of categoric and obligatory nature.

Similarly, the *imperfective* or *perfective aspect* has no direct link with the interpretation of legal provisions, i.e. whether the provisions express multiple or single activities. The legal effects are equal. Below there are some excerpts (Articles 385 and 897) of the Polish Code of Civil Procedure of 17 November 1964 as translated by Rucińska, Świerkot & Tatar (2016, C. H. Beck text edition).

Art. 385. Sąd drugiej instancji *oddala* apelację, jeżeli jest ona bezzasadna. [imperfective]

– Art. 385. The court of second instance *shall dismiss* an appeal which is considered groundless.

Art. 897 § 3. zd. 1 Po bezskutecznym upływie wyznaczonego terminu sąd *oddali* wniosek komornika, a komornik umorzy egzekucję. [perfective]

– Art. 897 § 3, s. 1. If obstacles are not removed within the stipulated time limit, the court *shall dismiss* the court enforcement officer's application whereupon the court enforcement officer shall discontinue enforcement.

In the above examples it is interesting to see how translators into English reflect on the Polish legal syntax and accurately interpret the aspect of verbs by using identical modal verbs to express the imperative character of the provisions.

Thus, in legal translation it is also important to comply with the national and/or institutional drafting guidelines. In legal translation into Polish, irrespective of the deontic modality used, due to the assumption of normativity, the best translation option to be used in Polish is the so-called normative indicative mood (see Zieliński, 2012: 170–171). Here are some examples:

Przewodniczący *ustala* porządek obrad i *przedkłada* go komitetowi.

– The Chairman *shall draw up* the agenda and *submit* it to the committee.

Grupy robocze *składają* sprawozdania komitetowi.

– The groups *must report* back to the committee.

The next example, taken from the preamble of an EU legislative act (Council Decision 1999/468/EC), also emphasizes the necessity to follow the established (institutional) rules in legal translation:

> The (Name) Committee,
> Having regard to (reference to the Council Act that created the committee),
> *has drawn up* its rules of procedure based on the standard rules of proce-dure adopted by the commission on: [present perfect tense]
>
> Komitet (Nazwa)
> Uwzględniając (odniesienie do aktu Rady, na mocy którego utworzono komitet)
> *sporządza* regulamin wewnętrzny na podstawie wzoru regulaminu wewnętrznego przyjętego przez komisję (data przyjęcia) [present tense]

The correctness of the above translation is imposed by *Vademecum tłumacza* (2017: 75) how to render the enacting formula of an EU legislative act in the Polish translation:

> EN: has adopted this Regulation/Directive
>
> PL: przyjmuje niniejsze/-ą rozporządzenie/dyrektywę

Naturally, when we talk about the interpretation and translation of a legal text, it is also fundamental to ask what is normative in a legislative text. In Polish legal culture, in addition to legal provisions expressing norms of law which are normative, the titles and headings, legal definitions and preambles are also normative because they are important for restoring the norm, and thus for the interpretation of the text (Zieliński, 2012: 105–106).

Thus, the comparison of the legislative guidelines from various legal cultures and systems, first, allows us to observe to what extent normative texts differ with respect to the compared domains (grammatical category of tense/mood/aspect, conjunctions, definitions), and secondly, how these differences might affect translated texts and the process of legal interpretation and translation. Clearly, although many elements of legislative drafting are universal, e.g. logical relations reflected in the use of conjunctions and negation in statutory definitions, the linguistic manifestations of alternation in the use of conjunctions, formulation of definitions, and particularly gender neutrality and syntax of legislative provisions expressing rights or powers prove the necessity to consider the national dimension for legal translation. The assumption of normativity of legal texts predefines the conventional forms of legal syntax and imposes specific rules of interpretation. This knowledge of rigid rules of the use of tenses or conjunctions in national legal languages is a prerequisite for accurate and adequate legal translation. Thus, the national perspective of a given legal system and culture, referred to in question number 2, seems to be an inherent component of translating normative texts.

## 3.3. Legislative Styles and Statutory Definitions

The appropriate style of legislative drafting is dictated by the function of laws and their diversity. The existence of various legislative styles, both fussy (for common law) and fuzzy (for civil law style), to use Lisbeth Campbell's well known comparison (1996), should raise awareness that a good legal translation is not possible without the

knowledge of what a normative text should be like in a particular language, culture and system, to answer question number 3 posed in the introduction. To use Kenneth L. Rosenbaum's (2007: 8) words: "[t]radition is the main source of style". The comparative investigation of institutional, legal and theoretical rules reveals, on the one hand, substantial cross-cultural differences in drafting practices and modes of expressions affecting the translation standards, but on the other hand, a common core of legal reasoning that arises from the very nature of law.

The global picture is being blurred though through the processes of globalization and "Europeanization" of laws, which lead to the standardization, unification and hybridization, and finally simplification of its national legal/legislative discourses. The European Union drafting guidelines use very simple formulae for creating statutory definitions, due to obvious reasons, I assume, not to complicate the already complex definitions in multilingual legislation.

The EU legislation is marked by a strong preference for equative intensional definitions with the definiendum and the definiens that cite essential features of the defined concept. The terms are always distinguished with quotation marks and there is only one form of a defining connective regardless whether the defined term is in singular or in plural form (Vademecum tłumacza 2017: 2.1.3.7):

> "Customs office" *means* any office at which all or some of the formalities laid down by customs rules may be completed.
>
> – „Urząd celny" *oznacza* każdy urząd, w którym mogą zostać dokonane, w całości lub w części, formalności przewidziane przepisami celnymi.
>
> "Customs authorities" *means* the authorities responsible inter alia for applying customs rules.
>
> – „Organy celne" *oznaczają* organy uprawnione między innymi do stosowania przepisów prawa.

Polish theory of law recommends at least eight ways of formulating definitions, depending on a logical type of definition, position in the instrument, branch of law and legal/legislative genre, such as full, partial, linear, aggregate or mixed, single, and parenthetical. There are three stylistic formulations in logic, called stylizations (Ziembiński, 1995: 49–50; Wronkowska & Zieliński, 2012: 289–290):

> DICTIONARY (term "A" means expression "B"),
>
> SEMANTIC (term "A" means B), and
>
> SUBJECTIVE, i.e. a definition based on the object (A is B).

The Polish legislative guidelines (§ 151(1) ZTP) suggest that legislation prefers semantic or dictionary formulations in legal definitions.

> § 151 ZTP „1. The definition is formulated in such a way as to indicate in a certain way that it refers to the meaning of the terms, in particular its form are as follows: "The expression "a" means b." or "The expression "a" means the same as the expression "b".

2. If stylistic considerations speak in favour of another form of definition, then the connecting form "is"["jest to"] is used."[18] (translation AJB)

But practically, most legal definitions in the Polish law are semantic (preferred by theorists, such as Ziembiński (1995: 50)) or subjective (Ziembiński, 1995: 50; Zieliński, 2012: 211), which is confirmed by empirical observations (see Malinowski, 2006b: 155–181). It is worth noting that the conventions of formulating legal definitions are not important for their functions in the legislative texts. They are always nominal definitions, defining meanings of concepts, not features of things (Malinowski, 2006a: 49, fn 6).

The European Union style guide for Polish translators *(Vademecum tłumacza* quoted above) provides only for a semantic formulation, typical also for common law guidelines where the defined terms are marked with quotation marks (see e.g. Canadian *Legistics*):

"In this Act, 'institution' means any international financial institution named in the schedule."

Hence, the defining connective in English has always the verb form of the third person singular. It makes EU legal definitions (nominal in nature) very easy to read, at least at the surface, formal level.

Such emphasis on the standardization of statutory definitions, irrespective of cross-cultural differences between definition types, show the striving of legislators for their communicativeness through various plain language methods, such as explicitness and simplification of structure (in definitions) or repetition (of conjunctions), or the technique of paragraphing. In Poland, long before the emergence of the plain language research, some Polish legal theorists, first of all Wronkowska and Zieliński (1993), advocated the communicativeness in legislative drafting and the clarification of rules related to conjunctions, definitions, syntax or modalities.

## 4. Conclusion

To address the issue of a good legal translation in the "ideal" world of legal norms and rules (question number 3), it is important to evoke a legal context in the assessment of legal translation. All in all, the quality assessment of legal translation depends, among others, on such parameters as:

the compliance with the norms of target text users;

the compliance with the institutional norms; and

the preservation of the hierarchy of norms.

[18] § 151 ZTP „1. Definicję formułuje się tak, aby wskazywała w sposób niebudzący wątpliwości, że odnosi się do znaczenia określeń, w szczególności nadaje się jej postać: „Określenie „a" oznacza b." albo „Określenie „a" znaczy tyle co wyrażenie „b".

2. Jeżeli względy stylistyczne przemawiają za inną formą definicji, używa się zwrotu łączącego "jest to"."

Naturally, the norms are motivated by a particular genre or text type, the legislative text being the most susceptible to the application of norms. The role of the national drafting guidelines in assessing the quality of legal texts and their translations in institutional contexts is pivotal. To conform to diverse systems of law, the multilingualism in the European Union leads to results similar to those produced by the localization industry. Conversely, today's statutes in many aspects are subject to the processes of hybridization, "Europeanization", but also standardization and simplification operating upon contemporary legal systems (see Biel, 2014). The EU law functions as *tertium comparationis* juxtaposing and combining very different legal systems, cultures and styles (see also Jopek-Bosiacka, 2011).

Nevertheless, the supremacy of legislative drafting guidelines comprising legal theory and logic peculiar to a given legal system and culture seems to be uncontested in assessing the quality of a legislative text and its translation (see also Jopek-Bosiacka, 2017).

Coherence is one of the cardinal values and a key principle guiding the assessment of translation quality in law. Cohesion of legal thinking implies coherence of a legislative/legal text functioning within the hierarchical framework of a given legal system (see also Zieliński, 2012: 299–304; Dickson, 2016). The translator should be the guardian of the logic of the legal system and be able to produce a target legal text that is coherent both horizontally and vertically.

Meeting all the national, institutional and genre requirements should lead to an accurate, consistent and unambiguous target legal text.

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# Legal Language and EU Integration
## — The Case of the Western Balkans

*Aleksandra Čavoški**

**Abstract**
This paper investigates whether the Western Balkans, in particular four case study countries of the former Yugoslavia (Croatia, Serbia, Bosnia and Herzegovina, and Montenegro) can be seen as a particular region in terms of legal language and legal culture. By examining legal language and legal translation within the EU accession process, this paper argues that nation state formation and ethnic conflict had little impact on legal languages and cultures which remained very similar in these four countries after the break-up of Yugoslavia. Furthermore, through analysis based on neo-functionalist theory of EU integration, this paper explains how legal translation, though not a part of a deliberate EU enlargement strategy, becomes a vehicle of further EU integration as a result of political spill-over. It is particularly relevant in the case of the Western Balkans whereby both the European Commission and the sub-national bureaucracies make a full use of a common legal language and culture to their advantage to facilitate the accession process through the lens of legal translation. The paper concludes that the four countries of the Western Balkans can be viewed as a particular and unique region resulting from a shared legal language and culture which may have potential implications for the EU's policy of multilingualism.

**Keywords**
Western Balkans, EU integration, legal language and culture, neo-functionalism, legal translation, European Commission, sub-national technocrats

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# 1. Introduction

Several years ago I read a book *Language and Identity in the Balkans* by Robert Greenberg which explores the development of recent linguistic policies in this region. The author begins with an anecdote about his visits to Croatia and Serbia in 1990, just before Croatia gained independence in 1991. During his fieldwork in Zagreb he started talking about his plans for July and to his surprise Croatian colleagues reprimanded him for using the Serbian word *jul* rather than Croatian *srpanj* (Greenberg, 2008: 2). He was somewhat surprised by this comment, though he knew that language was a sensitive issue. What escaped the attention of many people at the time was that language had become such an important part of national identity, not only in Croatia and Serbia, but in all countries that emerged from the former Yugoslavia.

As a lawyer who grew up in the former Yugoslavia, this intersection between language and politics is particularly meaningful to me. The importance of legal language and legal culture in this region has wider implications. As legal language differs from standard language (see Tiersma, 1999; Friedman, 1964), the impact of nation state formation on legal language and culture requires careful consideration. This has been overlooked in the developing scholarship on law and language discussed below, as the existing linguistic and political science literature predominantly examines the relationship between standard language, politics and national identities. In particular, the question of legal language and state building is of great relevance for former Yugoslav countries which were part of the same legal system and shared the same legal history and culture for over 40 years.

The issue of legal language is particularly pertinent to the on-going EU enlargement process whereby Western Balkan candidate and potential candidate countries, in fulfilling the membership requirements (including political, economic, legal and administrative criteria) are effectively changing their own legal systems in line with EU law. Accession countries must "take on the obligations of membership" (EU Council, 1993: 7.A.iii), which means that each accession country has to translate the EU *acquis*[1] and transpose it into its national legal system prior to its accession to the EU. To that effect, translation becomes a constituent part in building a new legal language and culture, since it lays the framework of a post-accession legal order.

This paper investigates whether the Western Balkans,[2] in particular four case study countries of the former Yugoslavia – Croatia,[3] Serbia, Bosnia and Herzegovina, and Montenegro – can be seen as a particular region in terms of legal language and legal cul-

[1] Body of EU law. Both the terms "EU *acquis*" and "EU law" are used interchangeably.

[2] Western Balkans is a term that the EU uses to denote a group of accession countries in Southeast Europe, including the following countries: Montenegro, Albania, Serbia, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and Kosovo* (this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence).

[3] Croatia is the only country from this bloc which joined the EU (1 July 2013).

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ture. By examining legal language and legal translation within the EU accession process, the paper explores whether nation state formation had an impact on the development of legal language and legal culture in those countries. Despite the fact that standard languages became an important part of national identity in the former Yugoslav republics, this paper argues that nation state formation and ethnic conflict had little impact on the legal language and culture of those republics. Consequently, the paper puts forward the potentially contentious argument that legal languages and cultures remained very similar in those four countries after the break-up of Yugoslavia.[4]

Furthermore, through analysis based on the neo-functionalist theory of EU integration, usually employed in the field of political science, the paper develops a new approach to the study of legal language and translation and to the discussion of EU integration itself. This novel application of neo-functionalism to the relationship between language and legal systems demonstrates not only its relevance beyond the domain of political science but also provides an explanatory model to examine how legal translation, though not a part of the deliberate EU enlargement strategy, becomes a vehicle of further EU integration. The paper argues that the EU acts as a cohesive force in further unifying legal languages and cultures in those four countries via the accession process. A neo-functionalist model explains how the two main actors, the European Commission and sub-national technocrats, took advantage of the identical accession process in the four countries and the common legal language and culture to pursue their objectives within this process.

Finally, the paper concludes that the four countries of the Western Balkans can be viewed as a particular and unique region resulting from shared legal language and culture reinforced by the EU's approach to integration though legal translation. This may have potential implications for the EU's policy of multilingualism. Greater cooperation with regard to the legal translation of EU law between the countries in the region, once the remaining accession countries become EU members, may help to ensure the sustainability of that multilingual policy.

Thus, the paper structure is as follows. The first part of this paper examines the legal and linguistic scholarship on the Western Balkans and sets out the research framework that forms the basis of this paper. The second part briefly outlines the history of languages in the Western Balkans countries. The paper next evidences the common legal language and culture and explores the extent to which these were impacted by nation state formation. Following that, the paper deploys a neo-functionalist model to examine how legal translation within EU enlargement contributes to further unifying legal languages and cultures in the region. The paper concludes by exploring the broader implications of a common legal language and culture in the region on EU multilingualism policy.

[4] In order to denote the idea of similar legal languages and cultures in the four chosen countries, this paper will use two terms interchangeably throughout the text – common legal language and culture or shared legal language and culture.

# 2. State of the Art and the Research Framework

## 2.1. Review of the Existing Scholarship

Research on language in the Western Balkans in the linguistic and political science literature primarily focuses on language as a marker of national identity in nation state formation in the former Yugoslav republics. A major contribution to this scholarship is Greenberg's seminal work on language and identity in the Balkans (Greenberg, 2008), which provides an important explanatory account of the intersection of language, politics and culture in the region. His main hypothesis states that the birth of new standard languages in the Balkans since 1991 was a direct result of the nationalist policies in Croatia, Serbia, Bosnia and Herzegovina, and Montenegro. This work has important purchase in examining this region, where language assumed a significant role in building or strengthening national identities. Greenberg examines the history of the Serbo-Croatian language, which was the official language in those four countries and its demise resulting in the development of four successor languages of Serbian, Montenegrin, Croatian and Bosnian.

Similarly, earlier research on post-conflict language policy discusses the process of fragmentation of Serbo-Croatian. Sito-Sučić examines how new linguistic identities have become an integral part of national identities (Sito-Sučić, 1996). She examines the difficulties in advocating the thesis of one nation identified with one language and one territory. A more recent case study of the former Yugoslavia by Bugarski (2012) explores the role of language in constructing collective identities, as well as playing a role in establishing and modifying ethnic boundaries in relation to political borders. The author examines dialectological and historical developments in order to identify changes in ethnic and linguistic boundaries within the context of Balkan nationalism. Despite the fact that language was used as a weapon during the conflict, the author argues that the four distinct national languages (Serbian, Croatian, Bosnian and Montenegrin) nevertheless remain a viable linguistic entity (Bugarski, 2012: 219).

However, the existing scholarship is limited to the discussion of intersections of politics and standard languages, while there is a gap in the scholarship on legal language and culture in Western Balkans countries. Moreover, there is a significant gap in law and language literature in relation to the EU enlargement and legal translation of the EU *acquis*, which was not the case during previous accessions, in particular during the enlargement to Central and Eastern European countries (see Cunningham, 2001; Gozzi, 2001). The only Western Balkan country examined in regard to legal translation and enlargement is Croatia, which successfully joined the EU in 2013. The collection edited by Šarčević examines three main themes on the challenges faced by Croatia, including

> "theoretical and practical aspects of translation and language policy in the European Union; basics of legal translation and procedures for legal translators; translation and translator training in Croatia,

> and Croatian terminology for EU terms in the Croatian edition of the EUROVOC Thesaurus" (Šarčević, 2001: VI).

Šarčević's (2013) analysis that the EU's policy of multilingualism leads to legal uncertainty (as a result of the imperfection of legal translation) is also interesting. That analysis is relevant to the Western Balkan countries, as are some proposals in the literature for policy reforms. Schilling, for example, proposes the option of one authentic language in the EU as a way of ensuring legal certainty that may be compromised by numerous authentic languages (Schilling, 2010). He does recognise that the choice of an authentic language could be difficult and offers several ways of doing this; the simplest being one authentic language for all legislative acts (Schilling, 2010). Other options include a European reference language model with two authentic reference languages (Luttermann, 2009) or adopting English and French as mandatory consultation languages (Derlén, 2011). Šarčević (2013) also puts forward the option of a greater harmonisation of EU laws as a means to ensure the sustainability of this EU multilingualism principle.

## 2.2. Research Framework

Whereas existing scholarship in the area predominantly focuses on the relationship between language and national identity, this paper discusses legal language and culture and the impact of the EU enlargement on legal language in the Western Balkans. To this end, one must define the concepts of legal language and culture as constituent parts of the research.

The study of legal language transcends many disciplines. Linguists and lawyers are at the forefront of this scholarship, each of them examining various aspects of legal language. The literature provides no definitive definition of legal language that would be acceptable both for lawyers and linguists. Many linguists working in this field understand legal language as a language for special purposes used by a variety of legal professionals (Mattila, 2006; Biel, 2007). They view legal language as formulaic and technical with its "own domain of use and particular linguistic norms" (Mattila, 2006: 3). Legal scholars are less inclined to define legal language and tend to understand it in much broader terms. Besides legal terminology, which is a significant starting point in analysing legal language, they think about the context in which law evolves and how political, historical and social factors may have an impact on its development. As Tiersma (1999: 7) argued, it would be impossible to "appreciate the nature of legal language without knowing something about its history". More importantly, legal language cannot be divorced from legal culture as it is inherently embedded in a legal culture specific to each state. This makes it different from any other technical language, such as medical language which transcends individual cultures and expresses a global scientific field. As McAuliffe argues, law can be seen as a culture-specific communica-

tive system; as a result, legal concepts and language become specific to a particular legal culture (McAuliffe, 2014). Thus, understanding and defining legal language is largely dependent on defining the notion of legal culture since both concepts are inseparably interlinked.

For the purposes of this analysis, the concept of legal culture includes both legal rules, values, doctrines and attitudes about law in society. This broad definition suggests that legal culture has both prescriptive and descriptive connotations by comprising the idea of compliance with legal rules, as well as the attitudes on what those rules should entail. This is in line with the existing interpretations of this concept. It was introduced by the legal sociologist Lawrence Friedman in the late 1960s. He defined legal culture as "what people think about law, lawyers and the legal order; it means ideas, attitudes, opinions and expectations with regard to the legal system" (Friedman, 2006: 189). His definition does not include legal rules, though other scholars recognise rules as a constituent element of this concept (Nelken, 2012). Friedman also makes a distinction between the internal legal culture, which is a "culture of lawyers and judges", and the external legal culture which is the "culture of everybody else" (Friedman, 2006: 189). The term legal culture is often replaced with similar terms such as legal tradition, law in action and legal ideology (Nelken, 2012). However, these synonyms are often defined and understood in the same way. Merryman & Pérdamo (2007: 2) define legal tradition as a "set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and polity, about the proper organisation and operation of law".

This paper argues that the legal language and culture in the Western Balkans has become more unified with the EU enlargement process. The neo-functionalist theory of European integration provides an explanatory framework for legal translation and legal language as forces for integration between these countries. The neo-functionalist theory was initially developed by Ernest Haas and offers a theoretical model of European integration (Haas, 1958). The main hypothesis states that the process of regional integration is driven by non-state actors (both sub-national and supra-national) who have an interest in pursuing political integration (Haas, 1958; Schmitter, 2005). Though states are important actors in the process (Schmitter, 2005), this theory places an important emphasis on the role of non-state actors, in particular technocrats such as the European Commission and regional bureaucracies that try to exploit the inevitable "spill-overs" that occur when "states agree to assign some degree of supra-national responsibility for accomplishing a limited task and then discover that satisfying that function has external effects upon other interdependent activities" (Schmitter, 2002: 2).

Neo-functionalist scholars make a distinction between the functional and political spill-over. Functional spill-over is a consequence of the interdependence between sectors of a modern industrial economy whereby integration in one sector inevitably leads to integration in a different sector (Slaughter & Mattli, 1993: 463). Political spill-over entails the process of adaptive behaviour where supranational and national actors and

groups change their expectations and values in the light of sectoral integration (Slaughter & Mattli, 1993: 464).

If applied to issues of legal language and legal culture in the Western Balkans, this theory explains how legal translation, though not a part of a deliberate EU enlargement strategy, becomes a vehicle of further EU integration as a result of political spill-over. It is particularly relevant in the case of the Western Balkans whereby both the European Commission and the sub-national bureaucracies make a full use of a common legal language and culture to their advantage to facilitate the accession process through the lens of legal translation. Lawyers, linguists and others involved in the translation process at the sub-national level are technocratic and comprise a "functional category likely to be receptive to integration" (Slaughter & Mattli, 1993: 462). As a result, there is a spill-over effect between sub-national actors (technocrats) who are willing to cooperate through the process of legal translation and learn from each other's experience in legal translation within the EU accession process. No less important is the spill-over effect where the Commission incentivises cooperation between regional authorities by creating the same accession process for all candidate countries. This, coupled with the fact that legal languages and cultures are very similar in the four states examined here, incentivises sub-national actors to adopt the same laws and regulations and processes to meet the membership requirements. The final outcome of this approach becomes harmonised legal languages throughout the countries of the Western Balkans which significantly expedites the process of the EU enlargement.

## 3. History of Standard Languages in the Western Balkans

In modern Europe language played an important role in state and national identity formation. As language can be an indicator to demarcate one ethnic group from other groups, or facilitate communication within one ethnic group (Barbour & Carmichael, 2000), language became an important marker of national identity. It was not surprising that, in Europe from the eighteenth century, links between the language and nation became increasingly close (Burke, 2004), in particular as a political tool of unification.

Unlike other European countries, nation state formation of the Socialist Federal Republic of Yugoslavia (hereafter: former Yugoslavia) followed a different path as language did not play a key role in state building.[5] The main idea of creating this new

[5] As notions of nation state and nation building are important for this discussion, it is useful to explain it in more detail. In the International Encyclopaedia of Political Science, Kersting (2011: 1646–1650) offers a good explanation of both concepts. Nation-states are considered to be mostly multi-ethnic and composed of various sub-nations. Nation building is seen as a process of collective identity formation to assert power in a certain territory which is dependent on the successful interaction between different ethnic groups. Kersting points out the processes of nation building became important in countries which disintegrated, such as state and nation failure in the Soviet Union, Czechoslovakia, and the former Yugoslavia (2011).

state was based on Yugoslavism whereby peoples in Yugoslavia were joined together in "brotherhood and unity" (the 1974 Constitution, main principles I). It was this sense of common Yugoslav identity, rather than language, which was the primary unifying factor among constituent peoples.[6]

The country was created in 1944 and throughout its history changed its name and constitutions several times.[7] The former Yugoslavia consisted of six republics including Bosnia and Herzegovina, Macedonia, Slovenia, Serbia, Croatia and Montenegro (Article 2 of the 1974 SFRY Constitution), though the early constitutions only recognised five constituent peoples – Serbs, Croats, Montenegrins, Slovenes and Macedonians.[8] The Serbo-Croatian language was one of the official languages in the former Yugoslavia, though this language has a longer lineage going back to the mid-nineteenth century.[9] According to the 1850 Vienna Literary Agreement, Serbian and Croatian writers and philologists established general guidelines for the formation a common literary language. The status of Serbo-Croatian as an official language was formally recognised after the end of the Second World War and the creation of the Socialist Federal Republic of Yugoslavia, though the early 1946 Constitution (in Article 65) deliberately omitted to specify the official language at the time. This lack of any specific reference to an official language in the first Constitution was not surprising as state ideology advocated that peoples of Yugoslavia are of the same origin with no significant differences between languages. Surprisingly, ethnic and religious differences were not officially perceived at the time as divisive and important, though there were significant ethnic cleavages in the former Yugoslavia.

An important landmark in the creation of the new language was the 1954 Novi Sad Agreement which stipulated the main decisions regarding the language reached by Serbian and Croatian linguists and writers (Novi Sad Agreement, 1954). There was an agreement that Serbs, Croats and Montenegrins share a single language with two equal varieties: *ekavian* (Serbian) and *ijekavian* (Croatian).[10] The official name of the language was to include reference to both Serbian and Croatian and both alphabets, Latin and Cyrillic, were to be regarded as equal. Nonetheless, the 1963 Constitution of the Socialist Federal Republic of Yugoslavia proclaimed Serbo-Croatian/Croatian-Serbian language as an official language in former Yugoslavia together with Slovenian and Macedonian (Article 131 of the 1963 SFRY Constitution). The 1964 Constitution re-

[6] The anthem of former Yugoslavia, which invoked a common South Slavic identity, was indicative of this.

[7] In 1944 it was called the "Democratic Federal Yugoslavia" (the state was created after the liberation of Belgrade); in 1946, it changed its name to "Federal Peoples Republic of Yugoslavia" and finally in 1963 it assumed the name "the Socialist Federal Republic of Yugoslavia".

[8] Initially, Muslims were not initially recognised as a constituent people, as religion was not regarded as a determinant of the national identity in line with the communist teaching. This was later changed with the 1974 Constitution which added a sixth torch to the state coat of arms representing Muslims in Bosnia.

[9] In the Constitution of Kingdom of Serbs, Croatian and Slovenians, which led to the establishment of Kingdom of Yugoslavia in 1931, the official language was titled Serbo-Croatian-Slovenian language.

[10] Translation by Greenberg (2008).

quired the mandatory use of Serbo-Croatian and the Latin alphabet in the Yugoslav Army and in Yugoslav diplomatic missions (Article 42 of the 1963 Constitution).

However, from the 1970s assertions of ethnic identity slowly gained prominence. There were calls for a more significant role for the republics within the federation. This prompted the adoption of the 1971 constitutional amendments and the 1974 Constitution as an effort to ease ethnic differences; the republics were given a right of veto in the decision-making procedure.[11] Moreover, these creeping ethnic differences also had implications on the linguistic policy in the Federal Republic of Yugoslavia. The 1974 Constitution deliberately failed to name official languages in the former Yugoslavia where it only stipulated that languages of all peoples are official, as are all scripts (Article 264 of the 1974 Constitution). Unlike the 1963 Constitution, there was no special provision on the use of one language in the army and for diplomatic purposes.

It was not surprising that in the midst of emerging nationalism language also gained a special significance as a part of ethnic identification (Greenberg, 2008). This was especially pertinent in Croatia and Bosnia and Herzegovina where different ethnic communities lived together. At the time of former Yugoslavia three ethnic groups lived in Bosnia and Herzegovina; Bosniacs,[12] Croats and Serbs. After the Yugoslav wars, ethnic conflict resulted in greater alignment of administrative borders with ethnic ones (see Greenberg, 2008: 9). In time, all six republics gained independence and recognised their own standard languages as official languages – the Croatian language in Croatia, the Serbian language in Serbia, the Montenegrin language in Montenegro while three languages (Bosnian, Serbian and Croatian) gained official status in Bosnia and Herzegovina. With the exception of Croatia and Slovenia, which have already joined the European Union, four successor countries are waiting in the queue for the EU membership.

## 4. The Impact of Nation State Formation on Legal Language and Culture

As shown above language became an important part of national identity, leading to the emergence of four distinct standard languages in the four former Yugoslav republics. However, nation state formation and ethnic divisions did have little impact on the creation of new legal languages and legal cultures in the countries that gained independence after the break-up of Yugoslavia.

While the break-up of Yugoslavia led to divergent standard languages, legal languages and cultures remained consistent throughout the former republics. Two factors

[11] Article 295, paras 1 and 2. See also Articles 298, 299, 300 and 301.

[12] It is important to note that the Constitution of Bosnia and Herzegovina uses the denotation "Bosniacs". Thus, the author will use the term "Bosniac" throughout the text. See Article IV of the Constitution.

affect this. The first is the legacy of the same legal history and culture shared by former Yugoslav republics. The second factor is the EU's approach to integration through legal translation where the European Commission and sub-national technocrats are incentivised to cooperate, leading to a greater uniformity of legal languages and cultures in those four countries. Thus, this section will briefly explain the legal system in the former Yugoslavia and then examine two factors that were instrumental in preserving the common legal language and culture.

## 4.1. A Glimpse of the Former Yugoslav Legal System

Before examining the consistency of legal languages and cultures in these four countries, it is important to briefly sketch the history of the legal system in the former Yugoslavia. This is necessary for understanding the context in which the law developed, as well as comprehension of legal culture as a dynamic concept shaped by a country's own particular history and its trajectory over time.

The legal system of the former Yugoslavia falls within the group of civil law systems based on Roman law. In its development it was heavily influenced by Austrian legal culture before the First World War[13] and subsequently by French legal culture after the First World War. Following the establishment of the Federal Peoples' Republic of Yugoslavia in 1946, powers were divided between the federal and republic levels (Article 44 of the 1946 Constitution). All subsequent constitutions contained the same provision on the division of powers. The exclusive competences of the federation to enact legislation were extensive including, *inter alia* property law, contract law, tort law and criminal law while shared competences remained limited (Article 161 of the 1963 Constitution).[14]

It is interesting that the 1963 Constitution had an explicit provision on legal language, i.e. the use of language in the official publication of laws. It was stipulated that federal laws and other general acts of federal bodies were to be published in Serbo-Croatian/Croatian-Serbian, Slovenian and Macedonian (Article 131 of the 1963 Constitution). A similar provision was omitted from the subsequent 1974 Constitution, as at that point Yugoslavia encouraged the use of languages of all peoples in the various republics as a way of reducing ethnic divisions. However, in practice it was still the Serbo-Croatian language that was regarded as official. It is worth noting that official publications of laws and regulations were done in two scripts (Latin and Cyrillic) and different scripts were perceived to sufficiently reflect a distinction between languages in different republics. Thus, laws in Croatia were published in the Latin script and *ijekavian* pronunciation, in Serbia in the Cyrillic script with *ekavian* pronunciation, in Montenegro in

[13] A good illustration is the 1929 Civil Procedure Act, which predominantly was a translation of the Austrian Civil Procedure Act. See Sedlo (2013).

[14] This Article also prescribed shared legislative powers between the federation and republics.

the Cyrillic script with *ijekavian* pronunciation, in Bosnia and Herzegovina in both scripts with *ijekavian* pronunciation. The official publication of laws in Slovenia and Macedonia was in the Slovenian and Macedonian languages, respectively.

The establishment of the federal political system, combined with the rules on the use of language in official publications of laws and regulations, led to the creation of a unified legal system and legal language throughout the former Yugoslavia. The majority of basic substantive laws were adopted at the federal level, which contributed to ensuring a general and consistent application of laws in all republics. This is best illustrated by certain federal laws enacted at the time that applied uniformly in all six republics, including the 1978 Law on Obligations (sl. list SFRJ 29/78), 1980 Property Act (sl. list SFRJ 6/80), and the 1976 Criminal Code (sl. list SFRJ 44/761329). The rules of the court governing practice and procedure in civil, criminal and administrative cases were adopted at the federal level after the Second World War as soon as the new state was created. For example, the Civil Procedure Act (sl. list FNRJ 4/57) was adopted already in 1956[15] and subsequently amended in 1976 (sl. list SFRJ 4/77). The rules adopted at the central level were also instrumental in building and nurturing the same legal culture among legal professionals who were not only bound to comply with the same rules, but were encouraged to share common values and attitudes towards the law.

## 4.2. The Impact of the Break-up of Former Yugoslavia on Legal Language and Culture

With the beginning of the ethnic conflicts in former Yugoslavia, especially in Croatia and Bosnia and Herzegovina, language became an important part of nation state formation and it was not surprising that each ethnic community strived to ensure the formal recognition of its own language. Greenberg gives a good example of the situation in Bosnia and Herzegovina, which was gravely torn by the ethnic conflict. As he explains, Bosniacs could accept neither the Croatian nor Serbian language as it would have "signalled the Bosniac assimilation into either the Croatian or Serbian spheres" (Greenberg, 2008: 15). It had to be a new language which would not be regarded as a mere mixture of Croatian and Serbian (Greenberg, 2008: 136). As for Serbs and Croats it was important to make a break with the appellation of Serbo-Croatian and affirm the individual status of their languages. Thus, the emergence of new standard languages was the only possible way forward for all these former Yugoslav republics.

It was expected that these historical and political changes would also have an impact on legal language and culture. As Friedman points out, legal culture can be extremely volatile (Friedman, 2006: 192), especially under the pressure of ethnic divisions and nation state formation. Despite these expectations and the emergence of new

[15] It was drafted under the influence of the 1895 Austrian Act "Zivilprozessordnung".

standard languages, legal languages and cultures were little affected by nation state formation. What is also remarkable is that uniformity of legal language and culture permeated all branches of law, regardless of the fact that legal culture is often diverse across different branches of law and "the boundaries between units of legal culture(s) are fluid" (Nelken, 2012: 487).

If we understand the concept of legal culture entailing legal rules and having a prescriptive character, several examples can be used to illustrate the common legal language and culture across the four states. The best evidence is the continuous application of Yugoslav federal laws adopted in the mid-1970s, which are still applicable laws in successor countries. A good example is the 1978 Law on Obligations which continued to be applicable law in all four former republics with no or little amendment after the dissolution of the former Yugoslavia. This law was merely renamed as a law of the new country and published in the respective official journals. Furthermore, no significant changes to the legal language can be identified within the new laws on obligations in the four successor countries.[16]

One of the opening provisions of this act subsequently enacted in all four countries prescribes equality between the contracting parties as one of the basic principles of contract law. If we look closely at the provisions in all four acts, we will see almost identical legal language. Serbian, Montenegrin and Bosnian provisions are identical (the Montenegrin version uses plural), while Croatian version uses words *sudionici* which is synonymous for the word *stranke* in the Serbian, Bosnian and Montenegrin versions.

EN: Contracting parties are equal.
SR: Strane u obligacionom odnosu su ravnopravne.[17]
MG: Strane u obligacionim odnosima su ravnopravne.[18]
CR: Sudionici u obveznom odnosima ravnopravni su.[19]
BiH: Strane u obligacionom odnosu su ravnopravne.[20]

[16] A break with tradition and the introduction of a new legal language can be identified in the Croatian Law on Obligations, which emphasises the need to adjust the legal language with the new standard language. To that effect, it introduces several new legal terms which will replace certain former legal terms that constituted part of the 1978 Federal Law on Obligations (See more at vlada.gov.hr/UserDocsImages/Sjednice/Arhiva/54-02.pdf). However, some of the new terms in the Croatian Law on Obligations already formed part of the legal language in former Yugoslavia and were used by legal scholars and practitioners interchangeably throughout the former Yugoslavia. The best example is the term *pecuniary and non-pecuniary losses* which was denoted in the 1978 Law on Obligations as *materijalna i nematerijalna šteta* while the new Croatian Law on Obligations uses the term *imovinska i neimovinska šteta*. For example, this new term was widely used in Serbia before the break-up of former Yugoslavia, as can be seen in the works of famous legal scholars, such as Obrad Stanković, who wrote a book on this subject titled *Novčana naknada neimovinske štete* (1968). Similarly, the new Croatian Law on Obligations uses the new term *trgovački ugovor* to denote a commerical contract, which was called *ugovor u privredi* in the old 1978 Federal Law on Obligations. This term is widely accepted in Serbia, which decided in 2008 to rename commercial courts as *trgovinski sudovi*, and those courts are responsible for resolving disputes deriving from commercial contracts (see sl. glasnik RS 116/2008, 104/2009, 101/2010, 31/2011 – dr. zakon, 78/2011, 101/2011, 101/2013, 106/2015, 40/2015 - dr. zakon, 13/2016 and 108/2016).

[17] Sl. list SFRJ 29/78, 39/85, 45/89 - odluka USJ and 57/89, Sl. list SRJ 31/93 and Sl. list SCG 1/2003 - Ustavna povelja.

[18] Sl. list Crne Gore 47/2008.

[19] NN 35/05, 41/08, 125/11, 78/15.

Similarly, the 1980 Property Law Act is still applicable law in these countries. Some countries such as Serbia and Bosnia and Herzegovina did not adopt any amendments but still apply the federal law in its entirety, while Montenegro and Croatia adopted new laws and added several new provisions on issues that were not initially prescribed by the 1980 Property Act. If we look at the legal language again we see no difference in the language denoting the main legal concepts and terms. A good illustration is the terms used for tangible and intangible property, which is denoted and understood in the same way. The following statutory provision explains that natural and legal persons can possess property rights over tangible and intangible property. To that effect, the provision uses identical legal concepts denoted by the legal language.

EN: Natural and legal persons can acquire property rights on tangible (*pokretnim*) and intangible (*nepokretnim*) property.

SR: Fizička i pravna lica mogu imati pravo svojine na *pokretnim* i *nepokretnim* stvarima.[21]

MG: Objekti prava svojine i drugih stvarnih prava su pojedinačno određene *pokretne* i *nepokretne* stvari.[22]

BiH: Predmet prava vlasnistva su *pokretne* i *nepokretne* stvari.[23]

CR: Predmet prava vlasnista i drugih stvarnih prava moze biti svaka *pokretna* stvar ili *nepokretna* stvar (nekretnina) osim onih koje nisu za to sposobne.[24]

Equally, legal culture does not only have a prescriptive connotation by entailing the same legal rules and compliance with those rules. It also entails the same understanding of values, doctrines and principles about the law (Nelken, 2012). This shared understanding can be identified in all four countries after the break-up of Yugoslavia. Moreover, the legal profession has the same understanding and expectations with regard to the legal system, which is in line with Friedman's understanding of the internal legal culture of legal professionals (Friedman, 2006). This is evidenced throughout several branches of law. Good examples are testacy and intestacy rules which are based on the same underlying principles and identically applied in those four countries. For example, all countries recognise the same three main types of legal wills and have identical statutory provisions on making a will. In the absence of a will, the same intestacy rules apply whereby the spouse and the children (if any) are regarded as a first tier of legal successors.

Similarities are also evident in criminal law where laws in all four countries understand notions of *mens rea* and negligence in the same manner, unlike many other jurisdictions which have more restrictive interpretations or less precise definitions of these concepts.[25] To that effect, those laws contain the same legal formulations of those two notions. *Mens rea* is understood as an intention to cause the prohibited result when a

[20] Sl. list SFRJ 29/78, 39/85, 45/89 and 57/89; Sl. list RBiH 2/92, 13/93 and 13/94; Sl. glasnik RS 17/93 and 3/96.

[21] Sl. list SFRJ 6/80 and 36/90, Sl. list SRJ 29/96 and Sl. glasnik RS 115/2005 – dr. zakon.

[22] Sl. list Crne Gore 19/2009.

[23] Sl. novine Federacije BiH 66/13 and 100/13.

[24] NN 91/1996.

[25] See more about these notions in UK criminal law in Allen (2015).

person is aware that the result will occur and wants it to occur or when a person is aware that s/he can commit the prohibited act and consents to its commission.[26] Negligence also takes two forms including when a person is aware that his action can result in the prohibited act but s/he unreasonably concludes that it will not occur, or that s/he will be able to prevent it or when a person does not give any thought to the possibility of his action resulting in the prohibited result although a reasonable person should recognise this risk.

Several reasons can be put forward to explain why nation state formation did not have any significant impact on legal languages and legal cultures in the four countries that emerged from the former Yugoslavia. First, those countries shared almost half a century of a common legal history and culture. These states formed part of the same federal political system with a unified legal system. As this legal system was based on the same legal foundations, the successor countries had no incentive to make changes after the dissolution of the former Yugoslavia. Even if they chose to make changes, from a legal point of view it is not clear how this new system would look as the existing legal culture fits well within the existing political and institutional system in each of the four countries. Moreover, the legal culture underpinning the legal systems in each of the four countries embodies the same values, principles, rules and doctrines that are widely accepted by the legal profession. As discussed above, former federal laws that are still applicable are the best testament to the acceptance of the existing legal culture.

The second no less important reason is a level of inertia that is always linked to potential changes to the legal language and legal culture. Though the law is quite responsive to social change, there has to be some level of stability and permanence of law (Friedman, 2006). Likewise, the underlying principle of legal certainty should ensure some predictability in the application of law and, as such, is at odds with frequent changes of law. Equally, changing legal concepts is often a long-term process involving various members of the legal profession as well as representatives of civil society to reach an agreement and identify all implications of new legal rules. If we take any of the private law doctrines, such as the acquisition of a land title by prescription or adverse possession, it would take decades to design and implement new rules. Furthermore, the law and legal principles developed in former Yugoslavia stood the test of time due to the high intellectual quality of those laws. Finally, the existing legal culture is deeply rooted in the legal profession and there is always little appetite among its members to change the law, especially in regard to changes that are potentially politically motivated.

[26] Criminal Code of Serbia, Sl. glasnik RS 85/2005, 88/2005 - corrigendum, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016; Criminal Code of Montenegro, Sl. list RCG 70/2003, 13/2004, 47/2006 and Sl. list CG 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015 42/2015 and 58/2015; Criminal Code of BiH Federation Sl. novine FBiH 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14 and 76/14; Criminal Code of Croatia NN 125/11, 144/12, 56/15, 61/15, 101/17.

## 5. The EU's Approach to Legal Translation: A Neo-Functionalist Model of Regional Integration

This part will examine and evidence the EU's approach to legal translation in accession countries through a neo-functionalist lens, in particular how the process is driven by the European Commission and sub-national technocrats. This approach enabled the EU to act as a force for integration in the region and contribute to the further harmonisation of legal languages and cultures in the four countries in the Western Balkans. Both the Commission and sub-national technocrats have an interest in using legal translation as a means to ensure the incorporation of EU law into national legal systems and subsequent compliance with it.

The neo-functionalist model of EU integration offers an explanatory framework for understanding the EU's role in furthering the cohesiveness of legal languages and cultures in the four former Yugoslav republics. This approach focuses in particular on the role of non-state actors in enabling regional integration. Neo-functionalism identifies the consequences of the political spill-over in situations when states agree to transfer some powers to a supranational organisation to carry out entrusted tasks (Schmitter, 2002). In terms of EU enlargement policy, candidate countries accepted the terms and conditions of the accession process and embarked on the long journey of fulfilling the membership criteria. However, as Schmitter (2002) points out, neo-functionalists recognise that states, i.e. governments are not exclusive actors and over time they lose the predominant role in the integration process. This allows for a spill-over effect whereby the European Commission and regional technocrats responsible for accession exploit the process by deploying legal translation with the spill-over of furthering regional integration.

Taking advantage of the shared legal language and culture in four countries of the Western Balkans, coupled with identical accession processes, sub-national authorities in those countries display a willingness to cooperate and learn from each in the process of translating EU law. No less important is the European Commission which incentivises cooperation between sub-national authorities in the region by fostering the same accession process with all candidate countries. This leads to a greater harmonisation of legal languages and cultures in the Western Balkans. Though this is not part of the deliberate EU enlargement strategy it provides a spill-over effect of furthering regional integration between these four countries. This section will thus examine the Commission's and the sub-national technocrats' approach to legal translation.

## 5.1. The European Commission Creating An Environment for Legal Translation to Flourish

As Moravscik (1993) argues, neo-functionalist theory emphasises the political role of the Commission as the "archetype of an activist bureaucracy" in furthering EU integration. This is especially true in relation to enlargement policy where the Commission has a primary role in implementing this policy, overseeing the progress in candidate countries, providing technical assistance and giving the green light to opening negotiations with candidate countries based on their progress. By exercising its competences in this area, the Commission is well placed to create a strategy that relevant actors are likely to follow in pursuit of agreed objectives (Moravscik, 1993). To that effect, the Commission created an environment where the progress of each country is closely linked to its ability to fulfil the membership criteria.

This was achieved through the creation of a uniform and formulaic process for each candidate country to fulfil the membership criteria. In terms of the former Yugoslavia, candidate countries are expected to fulfil the usual Copenhagen membership criteria, including political, economic, legal and administrative criteria (EU Council, 1993). In addition, those countries have to strengthen regional cooperation as essential elements of the EU's enlargement policy in the region (EU Council, 2005). To that end, the Commission's approach to implementing the enlargement policy clearly reflects the main trajectories of the neo-functionalist model. The Commission recognised the importance of establishing close links with regional bureaucracies, exploited the guiding interests of national translation technocrats, identified areas of work and developed common enlargement strategies with the aim of ensuring a smooth and unified approach to enlargement.

The Commission's approach was tested over time, initially with the accession countries of Central and Eastern Europe, and it was later modified to suit the Western Balkans, where countries had a different historical background of ethnic conflicts. An important part of establishing peace and security and enhancing regional cooperation was the implementation of the Stabilisation and Association process through the Stabilisation and Association Agreement (SAA) as a first step of the accession process for all four countries.[27] All agreements are formulaic and contain almost identical provisions regulating the initial areas of cooperation, mostly related to the internal market. As a result, the legal language of the agreement is identical in all countries that signed the SAA and imposes the same obligations on all accession countries.

A good illustration is the provision requiring a candidate country to approximate national laws to EU law, which is identically phrased in EU agreements signed with Serbia, Montenegro and Bosnia and Herzegovina. The provision in the agreement with Croatia imposes the same obligation:

[27] Available at ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/sap_en (accessed 6 February 2017).

> SR, MN and BiH versions:[28] The Parties recognise the importance of the approximation of the existing legislation in Serbia/Montenegro/BiH to that of the Community and of its effective implementation. Serbia/Montenegro/BiH shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*. Serbia/Montenegro/BiH shall ensure that existing and future legislation will be properly implemented and enforced.
>
> CR:[29] The Parties recognise the importance of the approximation of Croatia's existing legislation to that of the Community. Croatia shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*.

Similar provisions can be found in many other policy areas covered by the SAA. Cooperation in the field of agriculture is another example.

> SR/MN/BiH: Cooperation between the Parties shall be developed in all priority areas related to the Community *acquis* in the field of agriculture, as well as veterinary and phytosanitary domains. Cooperation shall notably aim at modernising and restructuring the agriculture and agro-industrial sector, in particular to reach community sanitary requirements, *to improve water management and rural development as well as to develop the forestry sector in Montenegro* (wording in italics is missing in the SAA with BiH) and at supporting the gradual approximation of Montenegrin/Serbian legislation and practices (of Bosnia and Herzegovina) to the Community rules and standards.

If we then examine legal language once the SAA is translated in four different languages, we see how this formulaic approach facilitates legal translation, as countries are incentivised to use each other's translations in producing official translations of the agreement in their language. Consequently, the official legal language becomes the same upon translation and the SAA imposes equivalent substantive legal obligations on the four accession countries. Furthermore, this approach in designing the SAA strengthens the same legal culture as national authorities and members of the legal profession have the same understanding of the founding principles contained in the SAA and of the same legal rules that need to be enforced.

A good example are the translations of the aforementioned provisions of the approximation of national laws in line with EU law where we can identify almost identical translations between the countries, in particular between the following translations:

> MN: Ugovorne strane potvrđuju važnost usklađivanja postojećeg zakonodavstva u Crnoj Gori sa zakonodavstvom Zajednice, kao i njegovog efikasnog sprovođenja. Crna Gora će nastojati da osigura postepeno usklađivanje svojih postojećih zakona i budućeg zakonodavstva s pravnim propisima Zajednice (*acquis*). Crna Gora će osigurati adekvatnu implementaciju i sprovođenje postojećeg i budućeg zakonodavstva.[30]
>
> BiH: Strane priznaju važnost usklađivanja postojećeg zakonodavstva Bosne i Hercegovine sa zakonodavstvom Zajednice, kao i njegovog efikasnog provođenja. Bosna i Hercegovina nastojat će osigurati postepeno usklađivanje svojih postojećih zakona i budućeg zakonodavstva s pravnom

[28] Available at www.mei.gov.rs/src/dokumenta/sporazumi-sa-eu/sporazum-o-stabilizaciji-i-pridruzivanju; www.dei.gov.ba/dei/bih_eu/sporazum/default.aspx?id=9812; ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=12781 (accessed 6 February 2017).

[29] Available at ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=584 (accessed 6 February 2017).

[30] Available at durbin.cdtmn.org/durbin/images/dokumenta/SSP_CG_ i_EU.pdf (accessed 6 February 2017).

> tečevinom (acquis-em) Zajednice. Bosna i Hercegovina osigurat će propisnu primjenu i provođenje postojećeg i budućeg zakonodavstva.[31]

The formulaic approach is also noticeable in the Commission's approach to the monitoring of all four countries' progress. For that purpose, the Commission publishes annual reports and assesses the progress of each candidate country in regard to each membership criterion. All progress reports are very similar and follow the same structure, including a summary of the accession process and a review of laws and regulations, as well as institutional changes adopted with the aim of fulfilling individual membership criteria. This process again relies on legal translation, this time of national laws into English, so as to enable the Commission to assess the level of advancement. In order to facilitate the building of national linguistic capacities for translation and exchange of knowledge, the Commission deploys various financial mechanisms such as TAIEX to enable the exchange of knowledge between sub-national technocrats responsible for translation. Moreover, the Commission provides funds for setting up national systems for translations. To that effect, the Commission financed a pilot project in Serbia to translate 16,000 pages of the EU *acquis* into Serbian, which are accessible to translators in other Western Balkans countries.[32] In this way, the Commission incentivises sub-national technocrats to take advantage of the similar legal language.

In monitoring the progress of each country, the Commission uses the same legal and policy language which is subsequently translated in all four countries. This includes not only technical and legal terms from the EU legislation but also general comments and statements about the progress of each country such as "administrative capacity at state level remains weak"; "country moderately prepared in the area of public administration reform"; "good progress has been achieved with the adoption of" and "a country needs to remain committed". These expressions are subsequently translated in the same way in all national languages and even find their way into public and policy discourse in these four countries. Equally, in preparing information for the Commission on annual progress, civil servants and translators consult each other's progress reports and use translations of laws. A good illustration are the parts of the Commission's reports on the protection of human rights, where often one can identify identical translations on national provisions in reports prepared for the accession countries in the region.

## 5.2. The Response of Sub-National Technocrats to the Commission's Approach

As neo-functionalists argue, sub-national technocrats as actors "in league with a shifting set of self-organized interests" are also motivated to exploit the political spill-over

[31] Available at dei.gov.ba/dei/bih_eu/sporazum/glavni_text/default.aspx?id=1172 (accessed 6 February 2017).

[32] EuropeAid/120809/D/SER/YU; See latest IPA report for BiH at ec.europa.eu/neighbourhood-enlargement/sites/near/files/ipa_2016_39653 _4_bih_eu_integration_facility.pdf (accessed 6 February 2017).

effect with the support of the European Commission (Schmitter, 2002). In a given context, sub-national actors are more likely to deploy their resources with the aim of directly influencing regional integration processes (Schmitter, 2002), despite the fact they are not regarded as key players in the accession process. Sub-national actors are able to achieve this in two main ways that will be examined in this section. First, they observe and learn from each other by introducing the same processes and guidelines to enable legal translation, both of the EU *acquis* in national languages and of national laws into English. This approach is sustainable as sub-national actors in the four countries share a common legal language and culture and follow an identical accession process and it fits well within the existing legal and political systems in all four countries. Second, as they are faced with the same membership criteria, they have to pass the same laws and make similar institutional adjustments. In that endeavour, the four countries tend to use each other's legal texts and their translations which additionally strengthens the commonality of legal language and culture in the region. Thus, the sub-national technocrats in those four countries are incentivised to cooperate and exchange best practices in light of the membership requirement to nurture regional cooperation.

## 5.3. Legal Translation Process and Guidelines

Croatia was the first of the four countries to start with legal translation of the EU *acquis* as a structured and organised process, though all four countries undertook translation of the EU *acquis* on an *ad hoc* basis. Croatia introduced two processes to ensure the fulfilment of the membership criteria, especially the legal one. Both processes were coordinated by the Ministry of European Integration of Croatia. The first process was to ensure the incorporation of the EU *acquis* into Croatian law. Even before signing the SAA, which obliged Croatia to start with the approximation of Croatian law with EU law, in 1999 the Croatian Government prepared a plan of integration activities with the aim of presenting work to this end (Ramljak, 2008). It also introduced an obligation for ministries and other bodies with the power of legislative initiative to use the form "Statement on the compliance of the proposal act with the EU law" when submitting an act to parliament.[33] This was followed by the regular enactment of the national programmes for the accession to the EU and plans for compliance with the *acquis*.[34]

The second process was the introduction of a methodology and guidelines for legal translation of the EU *acquis*. Each translated text had to undergo a linguistic, expert and legal proofreading. A table of new legal terms or concepts, which may require the special attention of a legal expert, was attached to each translation. The Ministry of

[33] Available at mvep.hr/files/file/publikacije/Prirucnik_za_ pravnike.pdf (accessed 6 February 2017).

[34] Available at mvep.hr/files/file/2014/03-dodatak_2003.pdf; mvep.hr/custompages/static/hrv/files/Programme_of_the_Government_of_the_Republic_of_Croatia_for_the_adoption_and_implementation_of_the_acquis_for_2012.pdf (accessed 6 February 2017).

European Integration, in consultation with other line ministries, prepared and regularly updated a list of priorities for translation. As a tool for legal translation, Croatia prepared a Manual for Translation of the EU *acquis* followed by a series of general and specific glossaries and translation and term databases.[35]

This two-pronged approach was followed by the remaining three countries, Serbia, Bosnia and Herzegovina and Montenegro, though the process became more sophisticated and reliable in time with new IT translation software. All of these three countries have identical processes, both in regard to the incorporation of the EU *acquis* into national law and translation of the EU *acquis*. This approach had an important impact on the further development of legal culture in the region. As Nelken (2012: 483) points out, legal culture can also be discerned in different approaches to regulation and administration. Thus, the decision to put in place the same processes in four countries certainly contributed to further embedding a similar legal culture. Moreover, in the case of the Western Balkan countries, the process of borrowing had a reverse impact on legal culture. It is usually the case that legal culture is susceptible to change as it may be affected by various processes of "borrowing, imitations and impositions" (Nelken, 2012: 486). However, in the case of Western Balkan countries, this was a reverse process whereby the process of borrowing becomes crucial in maintaining and consolidating the existing legal culture.

Not only do these countries follow the same processes, but they use the same legal terms and concepts within those processes. Several instances provide evidence, in particular the use of legal translation guidelines and their impact on legal language. Good examples are manuals for translation which are almost identical between the four countries both in terms of substance and form. Likewise, legal language shares the same terms. For example, the key term *acquis commuautaire* is translated as *pravna tekovina* or *pravna stečevina* in all four countries.[36] Croatia was the first to introduce this translated term and it was unequivocally accepted by all three other countries. This was quite surprising as there were much better terms to choose from instead of simply replicating the same legal term, especially as the translated term denotes law of the past rather than law in force.

Manuals also reveal that all types of EU legal acts are translated by using the same legal terms in all four languages (treaty – *ugovor*; regulation – *uredba*; directive – *direktiva*; decision – *odluka*; recommendation – *preporuka*; opinion – *mišljenje*). In addition, the countries also instituted the same national legal drafting rules used to incorporate the EU *acquis*, which demonstrates that the same rules and processes underpin a shared legal culture. Serbia, Montenegro and Bosnia and Herzegovina decided to fol-

[35] Available at mvep.hr/hr/hrvatska-i-europska-unija/hrvatska-i-europska-unija0/prirucnici-za-prevodenje (accessed 6 February 2017).

[36] Available at mvep.hr/files/file/prirucnici/MEI_PRIRUCNIK.pdf; mei.gov.rs/upload/documents/prevodjenje/prirucnik_prevodjenjem_2016.pdf; dei.gov.ba/dei/dokumenti/uskladjivanje/default.aspx?id=9675; mep.gov.me/organizacija/det/prirucnik (accessed 6 February 2017).

low the Croatian example by introducing an important phase in the decision-making processes whereby the ministry responsible for proposing legislation must provide evidence that any new legislation is in compliance with EU law. This is done by filling a "Statement on the compliance of regulations with the EU law" which is identical both in term of substance and form among these four countries.

## 5.4. Legal Language in Newly Adopted National Laws

All Western Balkan countries are faced with the same membership requirements and to that end have to adopt the same laws and regulations. In regard to the political requirements, they need to ensure stable and democratic institutions, the rule of law and to guarantee human rights and respect for and protection of minorities (EU Council, 1993). This would, *inter alia*, require the adoption of laws on courts, an ombudsman act, a prevention of discrimination act, a data protection act, etc. Similarly, the economic criteria entail a functioning market economy and the capacity to cope with competition and market forces in the EU (EU Council, 1993). Thus, the candidate countries have to adopt a number of laws, including a companies act, a competition act, a public procurement act, etc. Finally, in regard to legal criteria, which entail an obligation to "assume obligations of membership", accession countries are obliged to translate and incorporate the entire EU *acquis* in all policy areas in which the EU exercises some competences. Accession countries negotiate 35 policy areas with the EU, which illustrates the scope and scale of the translation requirement.

Faced with demanding requirements and a shared legal language, it is not surprising that the fulfilment of these criteria leads to even greater uniformity of laws adopted in the four countries. The main burden is on the sub-national technocrats who are aware that legal translation is often regarded as a technical process. Thus, in a given context sub-national technocrats make a conscious decision to take advantage of the common legal language and culture in order to facilitate their own work. This in turn maximises the spill-over effects of the enlargement process. As Schmitter (2002) points out, in the light of a potentially cumbersome process and inevitable resource constraints, national bureaucrats will search alternative means to reaching their ultimate goal.

Taking advantage of the common legal language and culture, one of the obvious choices for those involved in legal translation at the national level is to borrow legal translations from countries that already completed translating the EU *acquis* in the relevant policy area. In 2010 the Croatian Government passed its translation of the EU *acquis* to the Bosnian and Serbian governments.[37] Though the quality of these translations was at times questioned, they continue to provide a useful basis for further translations.

[37] Available at savjetministara.gov.ba/saopstenja/saopstenja_predsjedavajuceg/default.aspx?id=10179 (accessed 6 February 2017).

Borrowing legal translation from other countries in the region occurs when technocrats are faced with new legal terms that are not part of the existing legal language and culture. A noteworthy illustration was the translation of the Third Money Laundering Directive (2005/60/EC), when national authorities were faced with a new legal concept that derives from the common law equity doctrine. The directive introduces a term beneficial owner who is regarded as a genuine owner of the assets albeit "hidden behind the curtain". As this is a new concept and is not part of the legal culture in Bosnia and Herzegovina, the national technocrats decided to migrate in its entirety the Croatian translation of the key words in the Directive. If we look at the provisions below, we will see that the key legal term "beneficial owner" is identically translated in Croatia and Bosnia and Herzegovina.

> EN: "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted.
>
> CR: "stvarni vlasnik" označava fizičku osobu/osobe koja u konačnici posjeduje ili kontrolira stranku i/ili fizičku osobu u čije ime se provodi transakcija.
>
> BiH: "stvarni vlasnik" klijenta je: stvarni vlasnik klijenta i/ili fizičko lice u čije se ime transakcija ili aktivnost obavlja. [38]

Definitions were slightly amended in line with the legal drafting rules in Bosnia and Herzegovina and became part of the Act on the Prevention of Money Laundering and Financing of Terrorist Activities. Though the ultimate goal is to facilitate compliance with EU law, this approach of borrowing legal constructs and terms becomes instrumental in unifying the legal language and maintaining a common legal culture. This is especially important in instances when a technocrat is faced with a new legal concept which offers an opportunity to create new terms in legal language and depart from a common legal culture. However, the sub-national technocrats decided not to seize this opportunity and followed the examples of their colleagues in those four countries.

This is not only the case when national technocrats are faced with new legal constructs and terms. Surprisingly, this trend is present even with regard to terms that are already established within national legal systems and form part of the existing legal culture. These constructs and terms are often prescribed in EU directives that leave discretion to member states to implement EU norms, though in some cases this discretion can be quite limited. One illustrative example is the Directive on waste (2008/98/EC), which defines the concept of waste and introduces several new concepts**.** This new definition introduces the term *discard* which is essential in understanding the term waste as waste is by definition discarded. Here, we can again identify how sub-national technocrats seized the opportunity to facilitate this process and rely on each other's existing translation. If, for example, we compare the Serbia Waste Act, Montenegrin Waste Act and the Waste Act of Bosnia and Herzegovina (in the enti-

[38] Sl. glasnik Bosne i Hercegovine 53/09.

ty with Croatian and Bosnian ethnic communities) we can identify almost identical legal formulations for defining the term *discard*:

> EN: 'waste' means any substance or object which the holder discards or intends or is required to discard;
>
> SR: otpad jeste svaka materija ili predmet koji držalac odbacuje, namerava ili je neophodno da odbaci[39]
>
> MN: otpad je svaka materija ili predmet koju je imalac odbacio, namjerava da odbaci ili je dužan da odbaci u skladu sa zakonom[40]
>
> BiH: otpad znači sve materije ili predmete koje vlasnik odlaže, namjerava odložiti ili se traži da budu odložene u skladu sa jednom od kategorija otpada navedenoj u listi otpada utvrđenoj u provedbenom propisu[41]

The Montenegrin and Serbian definitions of waste are identical in defining the key term *discard*, though there is a slight difference in defining the holder of the waste. However, this does not affect the main understanding of the term *discard* which remains the same between the two language versions. The only difference with the Bosnian version is that the Serbian and Montenegrin statutes uses the term that means *discard* while the Bosnian version uses the term *dispose*, which was used in French and German texts of the Directive on waste (European Commission, 2010). Equally, the same legal terms are used for concepts such as *operator*, *polluter-pays* and *household waste*, which are new to the legal system in Western Balkan countries.

Finally, the attitude towards law and its interpretation as a part of legal culture is also evidenced in the approach sub-national technocrats take in verifying the accuracy of translated EU legal texts. In this process, both the technocrats and external experts often have to interpret unclear or ambiguous provisions to ensure the correct translation. Led by the same understanding of key legal concepts, principles and doctrines, the sub-national technocrats use versions of EU legal texts in languages of civil law countries, especially French and German, to identify the meaning of the norm and to decide on the best translation. In addition, those technocrats also verify translations available in languages of those four countries in the region. At the moment, translations of all EU legal acts are available in Croatian and a significant number are available in Serbian.

A relevant example of the use of legal terminology from civil law is the translation of the term *law and order*, which in the English language text of the treaty invokes a state's powers to undertake measures for preventing any criminal activity or disorder (more examples in Čavoški, 2017).However, the EU treaty in French and German offers a better understanding of this concept, which is in line with the legal culture in civil law countries. This term is translated in French as the requirement of *l'ordre public* (public order) while in German as *öffentliche Ordnung* (public order), which entail a broader legal concept of compliance with the laws of a country. Moreover, the term *public order* is already widely accepted and well-known in countries of the Western Balkans.

[39] Sl. glasnik RS 36/2009, 88/2010 and 14/2016.
[40] Sl. list Crne Gore 64/11.
[41] Available at mpz.ks.gov.ba/sites/mpz.ks.gov.ba/files/MPZ_Zakon_upravljenje_otpadom_33-03_0_0.pdf.

## 6. Conclusions: Implications for EU Multilingualism and Integration

Throughout the ethnic and political conflicts in former Yugoslavia, language played a significant role in nation state formation. This was expected as language was often used as a political tool through the various stages of European history. After the break-up of Yugoslavia, former republics gained independence followed by the emergence of new standard languages in respective countries. One would assume that this phenomenon would be replicated in the construction of divergent legal languages and cultures in these countries.

In spite of divergent standard languages and national identities, shared legal language and legal translation played an important role in consolidating regionally coherent legal languages and cultures. This coherence existed due to the shared legal history of those four countries while they were constituent republics of the former Yugoslavia. In supporting legal translation in the region within the accession process, the EU further reinforced these consistent legal languages and cultures of the region. This is an important finding of this paper as, in effect, for the purposes of EU accession these four countries can be viewed as a legally coherent region.

The European Commission enabled the integration of legal language and culture in the region, not only through deliberate legal strategy of implementing the *acquis* but also through legal translation of that *acquis*. Moreover, sub-national technocrats provided a key impetus to EU integration by taking advantage of the identical accession process and the common legal language and culture as the best way to pursue their objectives within this process. They accordingly were motivated by their own interests to cooperate and learn from each other. The supranational European Commission engages directly with sub-national actors to incentivise activities that lead to further cooperation and regional integration. This conforms to the neo-functionalist model borrowed from the field of political science and put forward in this paper as a new way to investigate the development of legal language and culture.

Three important avenues of further research are opened up by this study. First, it establishes the value and original applicability of neo-functionalist theory to the growing area of law and language. Though this theory was predominantly applied in political science, this paper evidences its appropriateness in examining the role of legal language and translation within the EU accession process. This theory offers an explanatory model on how legal translation, both through the process and the language itself, can become a vehicle of further EU integration. The next step in the research could entail further testing of this theory by undertaking empirical research of translation practices within the Commission and sub-national regional authorities in the Western Balkans.

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Second, as this study puts forward a contentious idea of similar legal languages and cultures in the four chosen countries, it provides an opportunity for lawyers and linguists to work together by applying various research methodologies such as corpus analysis and doctrinal black-letter legal approaches in testing this proposition further. This joint work would help in providing a greater understanding of legal language through an interdisciplinary lens and will assist in bridging the gap between various disciplines concerned with this issue.

Finally, the question of facilitating the future functioning of EU multilingualism policy is an important one. As this region can be viewed as possessing similar and consistent legal languages, this may have implications for the EU's multilingualism policy. This opens up other avenues for future research closely linked to an inquiry on the future of this policy. As discussed in chapter 2, there are different proposals on how to reduce the number of authentic languages, which increases with every new accession to the EU. Though policy of multilingualism is one of the founding principles of the EU, the Western Balkans region certainly provides an opportunity for the EU to rethink its approach to legal translation if and when remaining countries in the region accede. As it is likely that those countries may join at roughly the same time, this will mean that three additional languages will have to be added to the list of EU official languages – Serbian, Montenegrin and Bosnian. The fact that those countries, together with Croatia, have a common legal language and culture may be used as an opportunity to further greater regional linguistic and legal cooperation between lawyers and linguists in all four countries. This may involve joint translation teams in all EU institutions in the future, especially in the Court of Justice of the European Union where the recruitment of qualified lawyer linguists could be even more challenging. Thus, the coherence of legal languages and cultures in the region may lead to a more sustainable and improved EU multilingual policy.

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# EU Legal Language and Translation
## — Dehumanizing the Refugee Crisis

*Elpida Loupaki**

**Abstract**
The aim of this paper is to investigate lexical choices made in the EU legal texts, which could contribute to dehumanizing the "refugee crisis", and compare them with the choices made by Greek translators. For this purpose, a corpus of EU legal texts, regulating migration matters and issued by the European Commission, is compiled. The language versions studied are English and Greek. The theoretical model adopted is Critical Discourse Analysis (CDA), and the major tools used are "framing" and "detachment techniques". The methodology employed in this research is corpus-based and the analysis is both qualitative and quantitative. The English corpus studied revealed some convincing evidence about the existence of dehumanizing strategies in EU legal texts, and its Greek version is, as expected, totally in line with the original lexical choices. By analysing a number of characteristic examples, the present paper sheds some light on the multidimensional relationship between language and ideology, while examining its influence on the translation process.

**Keywords**
EU Legal Language, EU Translation, Migration, Dehumanizing Strategies, Corpus-based Methodology, Critical Discourse Analysis

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# 1. Introduction

In the context of increasing social and political conflict, Europe is experiencing nowadays the greatest mass movement of people of the last sixty years. Almost one million migrants and refugees, fleeing war and persecution, intolerable misery or human rights violation, have arrived in the European Union (EU) to find refuge. How is this situation tackled at the European level? Are these populations received and welcomed? In the words of the Secretary General of Amnesty International, Salim Shetty, "While some counties such as Germany […] have tried to meet the challenge, the prevailing narrative in many countries is xenophobic, anti-migration, and driven by fear and concerns about security"[1]. Can language disguise agony, horror or violence? Can particular linguistic choices dehumanize a humanitarian crisis?

The aim of this paper is to study the language used in the EU in order to describe and/or regulate the socio-political phenomenon referred to as "the refugee crisis". More specifically, we intend to investigate the choices made by the Greek translator when rendering EU legal texts.

To do so, we first discuss the special characteristics of EU legal language and EU translation. We then briefly report on the current situation of the refugee crisis, with special reference to Greece. Next, we describe the interconnection between language and ideology and define "dehumanization" in linguistic terms. Finally, the actual case study we are working on and our results are presented and discussed.

The motivation for this study has been both the historical circumstance of the refugee crisis and our previous research on ideology, EU translation and terminology management. In our study, dehumanization is studied from the perspective of a corpus of EU legal texts, using a qualitative and quantitative approach in the English-Greek language pair.

Our theoretical background is Descriptive Translation Studies and Critical Discourse Analysis (CDA), while we also use the methodology of Corpus Linguistics.

## 1.1. EU Legal Language and Translation

As the EU is foremost a legal institution, texts produced in its context are mostly of a legal language. Legal language is considered a sub-category of general language, a language for special purposes (LSP), having its own morphological, syntactic and semantic characteristics (Koutsivitis, 1994; Gémar, 1995; Cao, 1997; Biel, 2012; 2014; Valeontis & Kribas, 2014). Despite the special characteristics that each national legal lan-

[1] "Tackling the global refugee crisis: Sharing, not shirking responsibility", Available at amnesty.org/en/latest/campaigns/2016/10/tackling-the-global-refugee-crisis-sharing-responsibility (accessed 31 October 2017).

guage may have, there are some common features, according to Cao (1997: 20–23). These are as follows:

1) At the lexical level, an extensive use of terminology is observed; in some languages the use of archaic forms of language is also present.[2]

2) At the syntactic level, the main characteristics are: impersonal constructions, nominalizations, long and complex sentences.

3) At the pragmatic level, performative language is used.

Another characteristic of legal language, noted by Biel with special reference to Polish, is the "depersonalised type of contact between the sender and the receiver" (2014: 27). According to the author, this kind of language lacks direct forms of address, diminutives, colloquial expressions or emotive words, etc. These remarks also apply to the Greek language (Koutsivitis, 1994).

Moreover, the term "legal language" covers different varieties of language used in different settings, such as courtrooms, legislative bodies or even public administration (Biel, 2014: 19). Thus, there is an internal hierarchy of legal texts and genres in which legislation has a prominent place. In the EU context, regulatory and prescriptive legal acts are: a) regulations, b) directives and c) decisions while recommendations, opinions, communications, or reports are non-legally binding texts[3].

EU legal language is influenced by several other factors, such as the multilingual/multicultural environment of its production which is believed to lead to hybridity phenomena (Schäffner & Adab, 1997; Trosborg, 1997; Sosoni, 2003; 2012; 2016; Loupaki, 2005; 2008; 2017; McAuliffe, 2011). First introduced by Schäffner and Adab (1997: 325–337), "hybridity" in EU documents is defined as the linguistic elements that seem "out of place" or "strange for the receiving culture" (Schäffner & Adab, 1997: 325). In particular, hybrid texts present specific features at the level of vocabulary, syntax and style "which may clash with target language conventions" (Schäffner & Adab, 1997: 327). Inspired by functional/text linguistics theories, studies of this category place emphasis on the communication circumstances under which EU texts are produced (sender, receiver, medium, aim, genre, etc.). Another important factor is related to the fact that the authors of legal texts are not always native speakers of the drafting language, for instance English (EU-sociolect, Dollerup, 1996). Furthermore, another parameter that influences EU legal language is the need to reach a compromise between different Member States, between different political orientations, etc. (*Eurospeak*, Schütte, 1993). Finally, a recent approach to EU legal language has been inspired by ethnographic studies (Mason, 2003; Koskinen, 2008; 2014; Kang, 2011), which include EU language in the category of "institutional languages", i.e. languages that are self-referential. It is by no means accidental that all these contributions are made by translation studies scholars, as translation is vital for the functioning of EU institutions.

[2] For the use of "katharevousa" in the Greek legal language see Valeontis & Kribas (2014: 49).

[3] Available at europarl.europa.eu/ftu/pdf/en/FTU_1.2.1.pdf (accessed 31 October 2017).

In fact, the EU started with just four languages in 1958 and now works in 24 official languages, creating 552 language combinations. As such, translation constitutes a major tool for communication, or as Umberto Eco has stressed, "translation is the language of Europe". To give an example of the scale of translation services in the EU, the Directorate General of Translation of the European Commission

> "employs about 1 600 translators, 700 support staff and uses all kinds of new technologies to translate approximately 2 million pages per year, of which some 500 000 are handled by external contractors".[4]

Let us now move on to a brief presentation of the refugee crisis.

## 1.2. The Refugee Crisis: Some Facts and Figures

In 2015, the term "European refugee crisis" was coined to describe the rising numbers of people arriving in the EU, travelling across the Mediterranean Sea or overland through Southeast Europe. According to data available from the UNHCR portal, from 2015 till August 2017 there has been over 1.5 million new sea arrivals. Because of its geographic position, Greece is a major gateway on the Eastern Mediterranean Route. For instance, in the first six months of 2017, 9,286 refugees and migrants crossed the sea from Turkey to Greece with many in need of international protection.

Most of these migrants came from Syria (37 %), followed by Iraq (13 %), DR Congo (7 %), Afghanistan (6 %) and Algeria (6 %).[5] Most sea arrivals in the first six months of 2017 have been in Chios (33 %), followed by Lesvos (29 %), Samos (18 %), and the South Dodecanese islands (16 %). Of the arrivals, 46 % were male, 22 % female, 32 % were children. According to the same report, a large number of women coming to Greece from Africa have been victims of sexual and/or gender-based violence, either in their country of origin or during their journey. Moreover, from 2015 until August 2017, 11,000 refugees and migrants have been reported drowned or missing.

Once in Europe, the problems are not over for these groups of people; in a UNHCR report, it is stated that: "Those moving onwards irregularly from Greece and Bulgaria have reported abuse at the hands of smugglers, as well as being beaten, set upon by police dogs and pushed back by some border authorities" (2017: 2).

One of the founding documents to protect refugees is the 1951 Geneva Convention on the protection of refugees. Furthermore, since 1999, Member States have set as a common goal the creation of a Common European Asylum System (CEAS), in order to harmonize standards of protection and align the EU States' asylum legislation. To this end, new EU rules have been agreed, such as the revised Asylum Procedures Directive,

[4] Data available at ec.europa.eu/info/sites/info/files/en_print_ 2016.pdf (accessed 31 October 2017). To provide a measure of comparison, it is worth mentioning that leading Language Service Providers such as Lionbridge or SDL count some 4,500 and 2,700 employees respectively (Common Sense Advisory Report, 2012).

[5] Statistics from UNHCR Report "Desperate Journeys", available at data2.unhcr.org/en/documents/details/58838 (accessed 31 October 2017).

Reception Conditions Directive, Qualification Directive, Dublin Regulation, and EURODAC Regulation. As stated by the European Commission,[6] these legal documents aim, among others, to establish quicker asylum decisions, to ensure humane material reception conditions, and to improve access to rights and integration.

However, despite this legal reinforcement, the situation is far from ideal. For instance, during the winter of 2016, borders between Greece and the former Yugoslav Republic of Macedonia (F.Y.R.O.M.) were closed resulting in an unofficial, completely primitive refugee camp in Idomeni (Greece) for several months. Moreover, although an EU-Turkey deal was signed in March 2016 to prevent smuggling, Médecins Sans Frontières (MSF) report numerous violations of human rights and violent incidents both in Turkey and Greece, according to their patients' testimonies. Finally, in a report issued in October 2017,[7] MSF stress the urgent need to relocate asylum seekers from the Greek islands to the mainland, because of the adverse conditions they face, which in turn lead to an increased number of mental health problems.

Hence, in this context, if we conduct a Wikipedia search for information on the "European Migrant crisis", we can find the following statement as early as the first paragraph: "These people included asylum seekers, but also others, such as economic migrants and some hostile agents, including Islamic State militants disguised as refugees or migrants".[8] This description is indicative of the misleading perception of the refugee crisis, in which, as I will suggest, EU legal texts have a role to play. In fact, it is interesting to investigate which aspects of this socio-political phenomenon are described in EU texts and through which linguistic means; because, as is it will be discussed in the following section, language reflects ideology.

# 2. Theoretical Framework

## 2.1. Critical Discourse Analysis

The relationship between language and ideology is hardly a new phenomenon. According to Fairclough (1989: 3) "ideology is pervasively present in language," and as Hodge and Kress point out,

> "ideology involves a systematically organized presentation of the reality […] and presenting anything in or through the language involves selection." (1993: 15)

[6] See ec.europa.eu/home-affairs/what-we-do/policies/asylum_en (accessed 31 October 2017).

[7] Available at msf.lu/sites/default/files/2017_10_mental_health_greece_report_final_low.pdf (accessed 31 October 2017).

[8] Available at en.wikipedia.org/wiki/European_migrant_crisis#cite_note-12 (accessed 31 October 2017).

One approach of Linguistics that has contributed a lot to the analysis of the relationship between language and ideology, language and power is CDA. As explained in the Dictionary of Linguistics, CDA is a "socially directed application of linguistic analysis", which lays on the assumption that all language materializations bury ideological patterns; transmit an encoded perception of the reality (Malmkjaer, 2002: 102). Hence, different sociolinguistic choices may hide different ideological structures. It is worth mentioning however that CDA should not be regarded as an "automatic hermeneutic procedure" (Malmkjaer, 2002: 103). In this sense, all linguistic choices are studied in relation to their context of production.

In our research we intend to investigate the existence and translation of *dehumanizing strategies* in EU legal texts – or the lack of them. Dehumanizing, or as Simon Weill calls it *"l'empire de la force"* [the empire of force], is a certain state of mind in which "people deny the humanity of others whom they destroy, manipulate, or exploit" (White, 2006: 2). This ideological stance – typical of propaganda during wars or other military operations – can also be found in peacetime. Thus, the word "force" refers not only to military or physical force but also to other forms of force such as psychological, ideological or emotional (White, 2006: 5). Dehumanizing is here understood 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. It is a classic bipolar schema opposing *us* vs. *them*, which could be linked to what van Dijk describes as Ideological Square (1997: 28). This notion defines an argumentation strategy used in situations characterized by polarization, namely in political discourse, and is reflected in the semantic macrostructures[9]

Emphasizing Our Good Actions/Properties and Their Bad Actions/Properties

De-emphasizing Our Bad Actions/Properties and Their Good Actions/Properties

Another tool used in our analysis is "framing". Borrowed from Discourse Analysis, framing is part of the verbalization process (Chafe, 1982; Tannen, 1993), in which a speaker turns non-verbal knowledge into verbal.[10] One thing stressed by Chafe (1982) in relation to the verbalization possess is its creativity, as the speaker –ideally – makes choices between many available options. In this sense, choices are made in both morpho-syntax and semantics, for instance through the choice of active or passive structures; modality patterns; impersonal structures; as well as the choice of emotive or

[9] "Macro-structures are assumed to be semantic structures of discourse whose meaning and reference is defined in terms of their constituents' meanings. […] the meaning of macro-structures is a function of the meaning and reference of the constituent propositions of the explicit text base and the relations between those propositions." (van Dijk, 1977: 7).

[10] For Chafe, framing is the second stage of verbalization in his three-fold "schema-frame-category" and is limited to sentence level expression and role of participants. Here framing is understood in its wider sense, i.e. the linguistic choices made to name objects or actions with reference to the refugee crisis.

neutral lexical items; lexical items having positive or negative connotations; the extensive use of terminology, etc.

In our study, we will focus on the semantic characteristics of both English and Greek EU legal texts.

### 2.2. Aim of This Research

In particular, the aim of this research is to examine lexical choices made in EU legal texts, which could contribute to dehumanizing the *refugee crisis*, and compare them with the choices made by Greek translators. For the purpose of our study, we built and analysed a corpus of EU legal texts in ENG and their official translations into GR.

In the following section we will present our corpora and methodology.

## 3. Presentation of the Corpora and Methodology

The interconnection between translation and corpora is by no means a new one in Translation Studies (TS). From the early history of translation theory to the present, translation scholars have always analysed different texts: either the original with its translation, in comparative or sociocultural approaches; or translations with non-translations in descriptive approaches. The use of corpus linguistics methodology was first advocated by Mona Baker in 1993 and has since then expanded into the field of TS (for a general overview of the different studies in this area, see Olohan, 2004).

In our study we have used what Olohan describes as "unidirectional parallel corpora" (2004: 24). This category of corpora contains source texts in language A and target texts in language B, for instance English and Greek.[11] In particular, we have analysed 20 legislative texts,[12] all of which were issued in 2016 and 2017 (final version). The author of the texts is the European Commission and the genres they represent are mainly communications, reports, green papers, proposals for regulations, proposals for directives, etc. Following the hierarchy of legal texts that we have outlined earlier, the texts studied here belong to both legally binding and non-legally binding texts. Finally, the basic themes discussed in our corpora are: the resumption of transfers to Greece; the reform of the common asylum system; the temporary internal border control; receiving of applicants of international protection, family reunification, etc. Some statistical data about our corpora are presented in the table below:

[11] For legal reasons and because of the principle of equality of languages, all language versions are considered authentic in EU legal documents. However, for practical reasons, as Greek is not one of the procedural languages, we assume that the Greek version is a translation from the English original.

[12] For a detailed list of texts references, see Appendix.

**Table 1:** Statistical data of our corpora.

| | English sub-corpus (ENG) | | Greek sub-corpus (GR) | | Total |
|---|---|---|---|---|---|
| Documents | 10 | 50.00 % | 10 | 50.00 % | 20 |
| Sentences | 2,631 | 40.92 % | 3,799 | 59.08 % | 6,430 |
| Words | 103,618 | 46.27 % | 120,338 | 53.73 % | 223,956 |
| Tokens | 123,128 | 46.18 % | 143,504 | 53.82 % | 266,632 |

*Note:* Percentages refer to the Total value in the same row.

In terms of representativeness, as stressed by McEnery & Wilson (2003: 78), we should always keep in mind that "we are dealing with a sample of a much larger population". In fact, texts chosen in our study are a limited part of a larger group of texts entitled EU legal texts. Sampling was made randomly, although three basic criteria were taken into account:

a) we selected recently issued texts (2016, 2017),

b) the thematic field was the refugee crisis and we tried to include different aspects of the phenomenon, and

c) we were bound by the existence (or not) of a Greek translation available.

Regarding the methodology used in this research, firstly, we studied both originals and their translations in order to semantically map the texts and detect some of their macro-structures. After this stage, we chose the thematic fields of security vs. insecurity and misery vs. support and we tried to identify all notions related to them. To do this, we have created a list of key-words in English that were expected to be found in relation to the four fields mentioned. For instance, key words related to the notion of *security* were "order", "regular", "lawful", "controlled", and "stable", while the notion of *insecurity* was represented by key words such as "disorder", "irregular", "unlawful", "uncontrolled", and "instable".

These words were both chosen after examination of a sample of the texts and some presumptions made by the author, based on linguistic expectations.

Subsequently, Sketch Engine[13] was used to study all the occurrences, along with their linguistic environment and examine their translation into Greek.[14] Three functions offered by Sketch Engine were mainly used:

a) Word Sketch, which is a one-page summary of a particular word's grammatical and collocational behaviour (Kilgarriff et al., 2014: 9).

[13] Sketch Engine is the flagship product of Lexical Computing, a research company founded in 2003 by Adam Kilgarriffff. Sketch Engine is an easy-to-use corpus management tool that contains more than 200 corpora in more than 60 languages. It is web-based and also offers the possibility to the user to build its own corpus.

[14] This same linguistic tool has been used by Kopytowska & Grabowski (2017), Kopytowska, Grabowski & Woźniak (2017) and Kopytowska, Woźniak & Grabowski (2017) to analyse discourse on refugee crisis in Polish language.

b) Concordancer, in which all instances of a word or phrase found in a corpus, also called "a node", are presented along with their immediate context.

c) Sketch Diff, which is a table illustrating the grammatical and collocational behaviour of two different words using different colour for each word (see Picture 1 below).

All examples found by the use of Sketch Engine were then analysed in a qualitative way, as will be explained in the following section.

# 4. Data Analysis

The data presented here illustrate dehumanizing strategies found in our corpora of EU legal texts and their translation into Greek.

## 4.1. Framing

We will firstly analyse the framing techniques used to verbalize the actual situation of migrants and refugees arriving in the EU, travelling across the Mediterranean Sea or overland through Southeast Europe and in particular the use of the word "crisis". According to Oxford English Dictionary online, the word "crisis" derives from the Latin word "crisis", which in turn is borrowed from Ancient Greek "κρίσις" [krisis], meaning discrimination or decision. In the 16th century, it was used in medicine to describe the point in a disease trajectory when a development takes place that determines whether one will recover. Finally, in the 17th century, it took on the meaning which is closer to its current one: a decisive point in the course of an event where change is inevitable. As we see it, "crisis" is a misleading term when used to describe a situation that has been ongoing for three years. It no longer refers to a point in time and, in a way, it nourishes the hope that there is an end in sight. In the entirety of Greek examples, crisis is translated as "κρίση".

Another framing element is the use of different lexical items to describe people involved in this crisis situation; in our corpora we find the following nine lexical choices:

**Table 2:** Framing the agents of the refugee crisis

| ENG | Freq. | GR | Back translation |
|---|---|---|---|
| Refugees | 166 | Πρόσφυγες | Refugees |
| Migrants | 93 | Μετανάστες | Migrants |
| Asylum seekers | 41 | Αιτούντες άσυλο | Asylum applicants |
| Asylum applicants | 24 | Αιτούντες άσυλο | Asylum applicants |
| Asylum claimants | 1 | Αιτούντες άσυλο | Asylum applicants |

| | | | |
|---|---|---|---|
| Those in need of international protection | 52 | Άτομα που χρειάζονται διεθνή προστασία | Persons who need international protection |
| Third country nationals in need of protection | 14 | Υπήκοοι τρίτων χωρών που χρειάζονται προστασία | Third countries nationals who need protection |
| Those who seek protection | 2 | Άτομα που αναζητούν προστασία | Persons who seek protection |
| Applicants for international protection | 46 | Αιτούντες διεθνή προστασία | Applicants for international protection |

*Note:* Back translation (in French 'traduction retour', Larose, 1989: 83) is a technique for checking the accuracy and the construction of a Target Text in comparison with its Source Text. As a word-for-word translation, it is by no means a fluent one.

For the difference between all these terms, we consulted two reference documents in Migration Terminology: Firstly, the Asylum and Migration Glossary 3.0 produced by the European Migration Network (EMN), and published in October 2014 by the European Commission.[15] This glossary is only available in English but its earlier version (2.0) was published in a number of EU languages, as well as Arabic. Secondly, the Glossary on Migration, published by the International Organization for Migration (IOM), in 2004 in English.[16]

For the term "Asylum Seeker" the EMN Glossary provides the following definition: "In the EU context: a person who has made an application for protection under the Geneva Convention in respect of which a final decision has not yet been taken". The term "Applicant for international protection" is defined in the EMN Glossary as "A third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken". It is worth mentioning, however, that in the notes of this entry it is clarified that:

> "In most Member States th[e] term asylum seeker is understood as a synonym to applicant for international protection following the adoption of Directive 2011/95/EU (Recast Qualification Directive) and Directive 2013/32/EC (Recast Asylum Procedures Directive)".

Furthermore, in another explanatory note we find: "In everyday use, the terms 'asylum application' and 'application for asylum' are often used more frequently than 'application for international protection'". Finally, the terms "asylum applicant" and "asylum claimant" are not included in either Glossary. We can find a reference to them only in IATE, the inter-institutional term base of the EU, where all three terms are listed in the same entry as synonyms. Furthermore, if a closer look to the reference material for "asylum applicant" and "asylum claimant" is taken, it becomes clear that the terms derive from UK immigration rules and Border Agency. We can therefore assume that these terms are mostly used in common law.

[15] Available at ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf (accessed 31 October 2017).

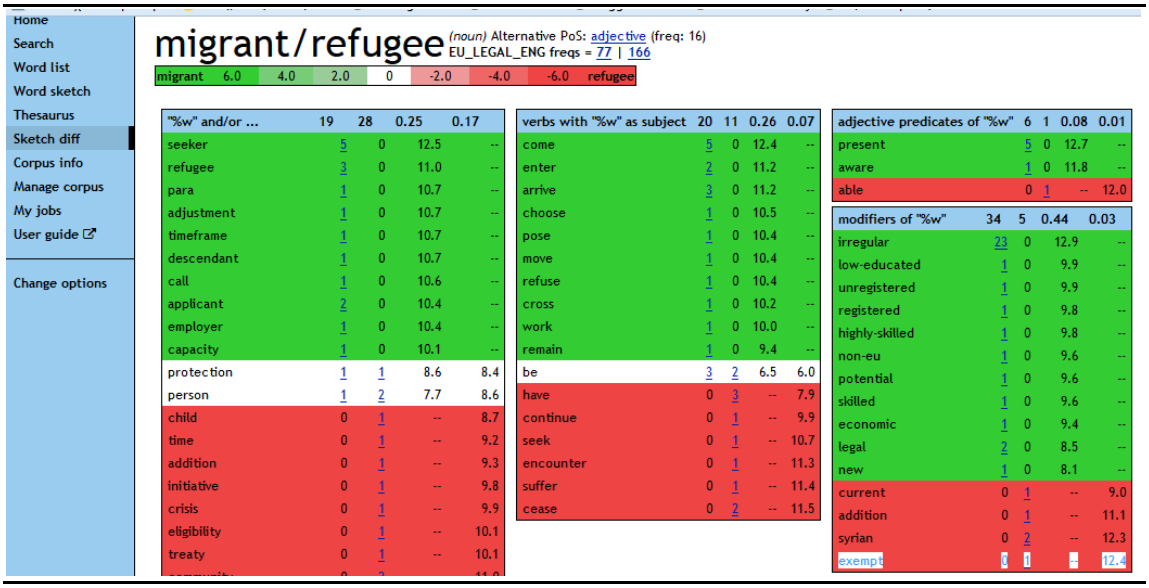
[16] Available at publications.iom.int/system/files/pdf/iml_1_en.pdf (accessed October 2017).

Some could advocate that legal language requires different terms to describe different realities; nevertheless, do these nine terms and collocations really describe different realities? In Prescriptive Terminology the goal in special languages is to have one term for one concept. This is known as the "univocity principle". Even though this principle has been questioned by modern scholars, the idea that multiple designations of the same concept may lead to semantic confusion is still valid.[17]

The Greek version, in the majority of cases, translates word-for-word the lexical choices made by the original in English legal text, thus reproducing the phenomenon of multiple denominations for the same concept. The only differentiation in translation are the terms "asylum seekers", "asylum applicants" and "asylum claimants" which are all translated with the same term in Greek "αιτούντες άσυλο" [etúndes ásilo]. Furthermore, the English pronoun "those" is translated as "persons" [átoma].

Another element that we studied is the linguistic environment of the lexical items used to frame these peoples, and especially the pair "migrant – refugee":

**Figure 1:** Sketch Diff migrant/refugee




*Note*: The screenshot depicts the collocations found in relation to this pair of words. In the last column, entitled "modifiers" we can observe for the word "migrant" that negatively connotated adjectives such as "irregular", "low-educated", "unregistered" return 25 items, while positively connotated modifiers, such as "registered", "highly skilled", "skilled" return 5 items.[18]

[17] This lack of consistency in the terminology used with reference to migration is also stressed by Eugenio Ambrosi, Regional Director of International Organization for Migration's Regional Office for the EU (for the entire interview, see chicagopolicyreview.org/2015/10/06/crisis). For comprehensive work on the use of the terms "migrants", "refugees" and "asylum seekers" in different EU languages, see also Mariani (forthcoming).

[18] A comparison of word sketches of the lexical units "migrant" and "refugee" in Polish data has been done by Kopytowska & Grabowski (2017). For a descriptive analysis of the different translations of the term "irregular migrant" into Greek and their political and ideological implications, see also Loupaki (forthcoming).

As our corpus refers to refugees, we investigated the frequency of words framing "misery". The following table presents the key words used in our search and their 68 occurrences in the ENG sub-corpus.

**Table 3:** Lexical items denoting misery

| Lexical item | Occurrences | Lexical item | Occurrences |
|---|---|---|---|
| Smuggling | 6 | Trauma | 3 |
| Suffer | 13 | Victim | 17 |
| Trafficking | 14 | Vulnerable | 15 |

*Note:* Occurrences total 68, out of 103,618 words in the ENG sub-corpus (see Table 1).

In particular, considering the lexical item "suffer", it has 13 occurrences in a total of 103,618 items and its distribution is 5/11 texts. 6 times out of 13, the specific item is found in the collocation "real risk of suffering serious harm" which is a specific expression used in Article 15 of the Qualification Directive (2008) in order to identify someone as refugee. The Greek translation of this particular collocation is less emotive than its English equivalent, as the word "suffer" is translated as "undergoing".

The following two examples also contain the lexical item "suffer":

EXAMPLE 1: "Their family members may have undergone similar situations of conflict, trauma and extreme hardship as the refugees have suffered themselves." [Appendix # 17 & 18]

– "Τα μέλη της οικογένειάς τους μπορεί να έχουν υποστεί παρόμοιες καταστάσεις συγκρούσεων, τραυματισμών και δυσμενών συνθηκών όπως και οι ίδιοι οι πρόσφυγες." [The members of their family may have undergone similar situations of conflict, injury and extreme hardship as the refugees themselves]

EXAMPLE 2: "Both girls and boys in migration are exposed to risks and have often suffered from extreme forms of violence, exploitation, trafficking in human beings, (…)" [Appendix # 5 & 6]

– "Αγόρια και κορίτσια είναι εκτεθειμένα σε κινδύνους και έχουν συχνά βρεθεί αντιμέτωπα με ακραίες μορφές βίας, εκμετάλλευσης, εμπορίας ανθρώπων, (…)." [Boys and girls are exposed to risks and have often faced extreme forms of violence…]

As back translation reveals, in example 1 the lexical item "suffer" is omitted in the Greek translation and in example 2, the word "suffered" is translated by the more neutral "have faced". An implication of this translation choice is the decrease of compassion towards this population.

## 4.2. Depersonalized Contact

All the examples in this section are typical of the phenomenon described by Biel as "depersonalized type of contact between the sender and the receiver" (see *supra*). A very close notion in Discourse Analysis is "detachment strategies" which refers to linguistic choices often observed in written discourse that serve to distance language from spe-

cific states and events; in other words, speaker puts more emphasis on the information conveyed than its interpersonal connection with the listener/reader (Tannen, 1993: 124–125; Chafe, 1982: 45). Detachment devices are, for instance, the use of passive voice, impersonal syntax and extensive use of terminology.

Examples of neutral, depersonalized lexical items frequently found in our ENG subcorpus are "management", "mechanisms", "schemes", "structure", "sustainable", "system", and "tools".

EXAMPLE 3: "Concrete actions to implement the above-mentioned approach are currently ongoing and focusing on supporting the development of child protection mechanisms in partner countries, with specific focus on unaccompanied minors, in order to provide a safe environment for children along the migration route." [Appendix # 5 & 6]

– "Επί του παρόντος βρίσκονται σε εξέλιξη συγκεκριμένες δράσεις για την εφαρμογή της ανωτέρω προσέγγισης οι οποίες εστιάζονται στη στήριξη της ανάπτυξης μηχανισμών προστασίας των παιδιών στις χώρες εταίρους, με ιδιαίτερη έμφαση στους ασυνόδευτους ανηλίκους, προκειμένου να εξασφαλιστεί ασφαλές περιβάλλον για τα παιδιά κατά μήκος της μεταναστευτικής διαδρομής." [… which focus on the support of the development of child protection mechanisms in partner countries, with specific emphasis to unaccompanied minors, in order to ensure a safe environment for children along the migration route]

EXAMPLE 4: "…to strengthen regional cooperation on child protection supporting the West Africa Network for the protection of children on the move, providing assistance in developing common protection standards and sustainable return and reintegration mechanisms" [Appendix # 5 & 6]

– "…για την ενίσχυση της περιφερειακής συνεργασίας για την προστασία των παιδιών υποστηρίζοντας το Δίκτυο Δυτικής Αφρικής για την προστασία των μετακινούμενων παιδιών, παρέχοντας συνδρομή για την ανάπτυξη κοινών προτύπων προστασίας και μηχανισμών βιώσιμης επιστροφής και επανένταξης." [… to strengthen regional cooperation for child protection, by supporting the West Africa Network for the protection of moving children, providing assistance in order to develop common protection standards and mechanism for sustainable return and reintegration]

In these examples the use of the word "mechanism", which originally refers to "a system of parts working together in a machine; a piece of machinery" (Oxford English Dictionary online) creates a conceptual metaphor. In their classic book "Metaphors We Live By", Lakoff & Johnson (1980) explain that human language is filled with metaphors that conceptualize one abstract idea by borrowing terms and notions that originally belong to another, more concrete, physical or social experience. Here the word "mechanism", used in industry, communicates the values of stability, reliability and accuracy, traditionally connected to machines. Along with the use of the terms "children on the move" and "unaccompanied minors" and the very obscure word "sustainable" it offers a very detached perspective of the very emotionally-loaded subject of children being abused, attacked or harmed, either physically or emotionally. The Greek translation totally aligns with the original in terms of linguistic choices.

EXAMPLE 5: "…speeding up the interviews and procedures while maintaining the requisite standards, with the support of EASO where appropriate, including by introducing interview and support tools" [Appendix # 19 & 20]

– "να επιταχύνει τις συνεντεύξεις και τις διαδικασίες, διατηρώντας παράλληλα τα απαιτούμενα πρότυπα, με την υποστήριξη της EYYA όπου χρειάζεται, μεταξύ άλλων εισάγοντας εργαλεία για τη συνέντευξη και τη στήριξη" [… with the support of EASO, when needed, by introducing, among others, tools for the interview and the support]

Example 6: "In particular, the Commission proposed the two temporary crisis relocation schemes agreed in September, which provide for the transfer of responsibility for certain asylum claimants from Italy and Greece to other Member States." [Appendix # 15 & 16]

– "Ειδικότερα, η Επιτροπή πρότεινε τα δύο προσωρινά προγράμματα μετεγκατάστασης λόγω κρίσης που συμφωνήθηκαν τον Σεπτέμβριο, τα οποία προβλέπουν την μεταβίβαση της ευθύνης για ορισμένους αιτούντες άσυλο από την Ιταλία και την Ελλάδα σε άλλα κράτη μέλη." [In particular, the Commission proposed the two temporary relocation programs because of crisis that have been agreed in September, …]

Examples 5 and 6 illustrate the phenomenon of extensive use of terminology, i.e. terminologization. Collocations such as "temporary crisis relocation schemes" or "interview and support tools" may condense a complex reality, but on the other hand they are quite opaque, enhancing depersonalised contact or detachment between *us* and *them*. The translation into Greek follows the same style, syntax and linguistic options with its original. The only exception is the word "scheme" that is translated by "program" in Greek.

Example 7: "The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit." [Appendix # 15 & 16]

– "Η ΕΕ χρειάζεται ένα εύρωστο και αποτελεσματικό σύστημα για τη βιώσιμη διαχείριση της μετανάστευσης στο μέλλον, το οποίο να είναι δίκαιο για τις κοινωνίες υποδοχής και τους πολίτες της ΕΕ, καθώς και για τους υπηκόους τρίτων χωρών και τις χώρες καταγωγής και διέλευσης." [The EU needs a robust and effective system for the sustainable management of migration in the future, which will be fair for reception societies and citizens of EU, as well as for third countries' nationals and the countries of origin and transit]

Example 8: "Ensuring and enhancing safe and legal migration routes. Smart management of migration requires not only a firm policy in addressing irregular flows while ensuring protection to those in need, but also a proactive policy of sustainable, transparent and accessible legal pathways." [Appendix # 15 & 16]

– "Διασφάλιση και ενίσχυση ασφαλών και νόμιμων μεταναστευτικών οδών Η έξυπνη διαχείριση της μετανάστευσης απαιτεί όχι μόνον μια αυστηρή πολιτική για την αντιμετώπιση των παράτυπων μεταναστευτικών ρευμάτων με την παράλληλη προστασία εκείνων που τη χρειάζονται, αλλά και μια προορατική πολιτική βιώσιμων, διαφανών και προσβάσιμων νόμιμων οδών." [Ensuring and reinforcement of safe and legal migration pathways. Smart management of migration requires not only a rigid policy to address irregular migration flows…]

Examples 7 and 8 illustrate the extensive use of the lexical unit "management", found in our sub-corpus (see Table 4, below). According to the Oxford English Dictionary online the word refers to "the process of dealing with or controlling things or people" and it is typically used in companies and in economic contexts. The systematic use of this lexical unit, along with its collocational environment "robust and effective system",

"firm policy in addressing irregular flows" emphasizes on the idea of order and security for US, while de-emphasizing the insecurity felt by THEM. All these lexical units are equally prevalent in their Greek version.

> EXAMPLE 9: "Applying the current RULES and improving the functioning of existing TOOLS AND MECHANISMS is key to regaining control of the present situation." [Appendix # 15 & 16]
>
> – "Η εφαρμογή των ισχυόντων κανόνων και η βελτίωση της λειτουργίας των υφιστάμενων εργαλείων και μηχανισμών είναι καίριας σημασίας για την επανάκτηση του ελέγχου της παρούσας κατάστασης." [The application of current rules and the improvement of functioning of actual tools and mechanisms is of high importance to regain control of the present situation].

This final extract best exemplifies the ideological square that we have explained before (see *supra*). Conceptual metaphors, such as "tools" and "mechanisms", lexical items denoting "law and order", such as "rules" and "control", are chosen to reinforce the idea of security against the insecurity caused by the refugee crisis, which is indirectly alluded as "the actual situation". Here, the macro-structure places emphasis on the concept of security for *us* while it de-emphasizes the concept of insecurity for *them*.

The following table offers a general overview of the lexical choices:

**Table 4:** Lexical items of Security/Insecurity

| **Security** | | **Insecurity** | |
|---|---|---|---|
| **Lexical item** | **Occurrences** | **Lexical item** | **Occurrences** |
| Mechanisms | 59 | Trauma | 3 |
| Tools | 10 | Victim | 17 |
| Schemes | 43 | Smuggling | 6 |
| Structure | 13 | Trafficking | 14 |
| Management | 15 | Suffer | 13 |
| Sustainable | 28 | Vulnerable | 15 |
| **Total** | **168** | **Total** | **68** |

These lexical items were chosen after manual examination of a sample of the texts and are also the result of some presumptions made by the author, based on linguistic expectations.

Following the analysis of the most representative examples found in our corpora, let us now move to the discussion of our findings.

## 5. Discussion

The aim of this research was to examine lexical choices made in EU legal texts, which could contribute to dehumanizing the "refugee crisis", and compare them with the

choices made by the Greek translators. The study of our corpus verified the existence of depersonalising techniques, such as the extensive use of terms for naming refugees, leading sometimes to a kind of terminological saturation; the preference for formal, impersonal words; the framing techniques that perpetuate the *us vs. them* dichotomy. Could we conclude that EU legal texts reflect dehumanizing strategies?

Although general conclusions cannot be drawn from the findings, owing to the small size of the sample, they do offer convincing evidence about the existence of dehumanising strategies in the corpora studied. In other words, EU legal discourse reproduces (intentionally or not) representations of the refugees that erase their human nature and overstress the complications related to their arrival, perpetuating, in this way, a hostile image of them. These representations which are ideologically charged should be expected to play a role in the perception of the migration phenomenon by citizens of the Member States. Some could argue that the findings discussed here, such as terminologization, impersonal syntax or detachment techniques, are to a great extent predictable, as they are typical of legal language. In fact, as already explained in section 1.1., their existence is demonstrated by several linguists and TS scholars, in many EU official languages. However, a broader study with bigger corpora involving many sensitive subject matters could better test our initial hypothesis and lead to findings which can verify it.

As far as the Greek translator is concerned: his/her choices are totally in line with the original, transferring the same authoritative/detached style, the same semantic and structural choices. As already demonstrated by Sosoni (2012: 87), the notion of equivalence, which is heavily criticized by modern TS approaches, seems to be pertinent in the EU context, as the goal of the translation process is to attain "identity" or "analogy" between the original and its translation. Furthermore, the few changes observed contribute to further neutralizing of the target text. Neutralization techniques are systematically observed in EU translations and have led us to propose the hypothesis of translational norms governing the translation process (see Loupaki, 2008); a hypothesis that is once more confirmed by our corpus analysis. In this sense, the neutralizing phenomena identified in our corpus are not language-dependant, i.e. are not imposed by the target language system, but are highly regulated by the factors governing the translation activity, by a particular "translation routine".

Finally, a question that arises is whether these translations could influence the general public's perceptions about the migration phenomenon in Greece. In other words, it is interesting to investigate whether EU terms or collocations have migrated in everyday Greek language and if so, in which way? This question could be further investigated through the use of corpora belonging to different genres, such as press releases, journalistic articles, NGO's documentation or even TV news reports. Such studies have already been conducted in other languages and their results could serve as a starting point for future studies involving Greek.

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# Appendix: List of Legal Documents Studied

| # | Document Title | Year | Language |
|---|---|---|---|
| 1 | COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL<br>Seventh report on relocation and resettlement | 2016 | ENG |
| 2 | ΑΝΑΚΟΙΝΩΣΗ ΤΗΣ ΕΠΙΤΡΟΠΗΣ ΠΡΟΣ ΤΟ ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ, ΤΟ ΕΥΡΩΠΑΪΚΟ ΣΥΜΒΟΥΛΙΟ ΚΑΙ ΤΟ ΣΥΜΒΟΥΛΙΟ<br>Έβδομη έκθεση σχετικά με τη μετεγκατάσταση και την επανεγκατάσταση | 2016 | GR |
| 3 | Proposal for a<br>REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents | 2016 | ENG |
| 4 | Πρόταση<br>ΚΑΝΟΝΙΣΜΟΣ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ ΚΟΙΝΟΒΟΥΛΙΟΥ ΚΑΙ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ<br>σχετικά με τις απαιτήσεις για την αναγνώριση των υπηκόων τρίτων χωρών ή των απάτριδων ως δικαιούχων διεθνούς προστασίας, για ένα ενιαίο καθεστώς για τους πρόσφυγες ή για τα άτομα που δικαιούνται επικουρική προστασία και για το περιεχόμενο της παρεχόμενης προστασίας και για την τροποποίηση της οδηγίας του Συμβουλίου 2003/109/ΕΚ, της 25ης Νοεμβρίου 2003, σχετικά με το καθεστώς των υπηκόων τρίτων χωρών που είναι επί μακρόν διαμένοντες | 2016 | GR |
| 5 | COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL<br>The protection of children in migration | 2017 | ENG |
| 6 | ΑΝΑΚΟΙΝΩΣΗ ΤΗΣ ΕΠΙΤΡΟΠΗΣ ΠΡΟΣ ΤΟ ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ ΚΑΙ ΤΟ ΣΥΜΒΟΥΛΙΟ<br>Η προστασία των παιδιών-μεταναστών | 2017 | GR |
| 7 | Proposal for a<br>COUNCIL IMPLEMENTING DECISION setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk | 2016 | ENG |
| 8 | Πρόταση ΕΚΤΕΛΕΣΤΙΚΗ ΑΠΟΦΑΣΗ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ<br>για σύσταση σχετικά με την παράταση του προσωρινού ελέγχου στα εσωτερικά σύνορα σε εξαιρετικές περιστάσεις που θέτουν σε κίνδυνο τη συνολική λειτουργία του χώρου Σένγκεν | 2016 | GR |
| 9 | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council | 2016 | ENG |

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| 10 | Πρόταση<br>ΚΑΝΟΝΙΣΜΟΣ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ ΚΟΙΝΟΒΟΥΛΙΟΥ ΚΑΙ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ<br>για τη θέσπιση πλαισίου της Ένωσης για την επανεγκατάσταση και την τροποποίηση του κανονισμού (ΕΕ) αριθ. 516/2014 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου | 2016 | GR |
| 11 | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection (recast) | 2016 | ENG |
| 12 | Πρόταση ΟΔΗΓΙΑ ΤΟΥ ΕΥΡΩΠΑΪΚΟΥ ΚΟΙΝΟΒΟΥΛΙΟΥ ΚΑΙ ΤΟΥ ΣΥΜΒΟΥΛΙΟΥ<br>σχετικά με τις απαιτήσεις για την υποδοχή των αιτούντων διεθνή προστασία (αναδιατύπωση) | 2016 | GR |
| 13 | REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL<br>on the application of Council Implementing Decision of 12 May 2016 setting out a Recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk | 2016 | ENG |
| 14 | ΕΚΘΕΣΗ ΤΗΣ ΕΠΙΤΡΟΠΗΣ ΠΡΟΣ ΤΟ ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ ΚΑΙ ΤΟ ΣΥΜΒΟΥΛΙΟ<br>σχετικά με την εφαρμογή της εκτελεστικής απόφασης της 12ης Μαΐου 2016 για σύσταση σχετικά με την καθιέρωση προσωρινού ελέγχου στα εσωτερικά σύνορα σε εξαιρετικές περιστάσεις που θέτουν σε κίνδυνο τη συνολική λειτουργία του χώρου Σένγκεν | 2016 | GR |
| 15 | COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL<br>Towards a reform of the common European Asylum System and enhancing legal avenues to Europe | 2016 | ENG |
| 16 | ΑΝΑΚΟΙΝΩΣΗ ΤΗΣ ΕΠΙΤΡΟΠΗΣ ΠΡΟΣ ΤΟ ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ ΚΑΙ ΤΟ ΣΥΜΒΟΥΛΙΟ<br>Μεταρρύθμιση του Κοινού Ευρωπαϊκού Συστήματος Ασύλου και προώθηση των νόμιμων οδών προς την Ευρώπη | 2016 | GR |
| 17 | GREEN PAPER<br>on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC) | 2011 | ENG |
| 18 | ΠΡΑΣΙΝΟ ΒΙΒΛΙΟ<br>σχετικά με το δικαίωμα οικογενειακής επανένωσης των υπηκόων τρίτων χωρών που διαμένουν στην Ευρωπαϊκή Ένωση (οδηγία 20033/86/ΕΚ) | 2011 | GR |
| 19 | RECOMMENDATIONS COMMISSION RECOMMENDATION (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council | 2016 | ENG |
| 20 | ΣΥΣΤΑΣΕΙΣ ΣΥΣΤΑΣΗ (ΕΕ) 2016/2256 ΤΗΣ ΕΠΙΤΡΟΠΗΣ της 8ης Δεκεμβρίου 2016 προς τα κράτη μέλη σχετικά με την επανέναρξη των μεταφορών προς την Ελλάδα βάσει του κανονισμού (ΕΕ) αριθ. 604/2013 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου | 2016 | GR |