EU Translation as the Language of a Reunited Europe Reconsidered

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Abstract

This paper discusses EU translation in the context of the language policy of the European Union and the resulting equality of all translated acquis communautaire documents. Validity of selected classic concepts of Translation Studies such as original, translation, equivalence and intercultural communication is challenged as to their applicability in the EU multilingual environment. Taking a closer look at EU translation, some unexpected complexities are revealed. The paper also draws attention to some specificities and basic tenets regarding EU translation.

1. Introduction

The formation of European political structures from the 1950s onwards, the overall ensuing Pan-Europeanization process and lingering globalization tendencies have profoundly influenced the development of European law and its style, thereby the ways of how language in particular EU national legislations is materialized have been affected. In our modern era EU translation is undeniably becoming the language of Europe; a creator of a modern European legal way of expression within national, cultural and political communities. Translation of EU legislation represents a singular type of translation within legal translation in general and within the translation of legislation in particular.

EU translation is shaped under the constraints of European multilingualism and operates within a distinctive conceptual structure at Community level. The increased interaction among the Member States at supranational level leads to a cultural-legal convergence of all national legal traditions and such a dynamic communication environment requires effective communication strategies for bridging these cultural-legal gaps.

As early as the late 1980s Brian Mossop called for an institutional approach to translation and defined its theoretical underpinnings as "a missing factor in translation theory" (Koskinen 2008: 4), his appeal remaining largely unanswered, though. The phenomenon of EU translation did not come under close scrutiny until the second half of the 1990s and it still represents a rich repository of both theoretical and practice-oriented translatological problems. The purpose of the present article is to give an account of the theory of EU legislation translation in a specific supranational environment, from which certain implications for the translation of this text type follow, and perhaps unsettle some basic assumptions concerning its translation. The consequences of the peculiar EU language policy will be dealt with on the basis of the debatable application of some traditional translation theory terms such as "original", "translation", "equivalence" or "intercultural communication" to EU legal documents. The latter part of the article will focus on the main specificities and tenets when translating the *acquis communautaire*.

2. EU Language Policy

One of the key characteristics of the European Union has always been its multilingualism. The very first *Council Regulation No 1/58* regulating the use of languages in the former EEC and thus functioning as the Community's language charter, stipulated that all official languages of the Member States be equal. As the equality of all the EU citizens before the law and the right of each and every citizen to have access to all legal documents specifying his/her rights and obligations in a language that is intelligible to him/her form the foundation of any democratic structure, every piece of EU legislation has to be published in all official

languages of the EU. Such a language policy is an expression and at the same time a guarantee of equality of all the Member States and their citizens. By supporting the idea of "unity in diversity" EU multilingualism represents "a method of avoiding linguistic disenfranchisement" (Biel 2006: 2). Equally pertinent seems to be Rasmus Nordland's view that the language policy of the EU is "a reflection of an ideologically motivated wish to respect and preserve the national identities and cultures of the individual Member States"(2002: 38).

Even though all the EU languages are officially supposed to be equal, this equality is to a considerable extent only an illusion because some languages are in fact used much more than the others. The preponderant languages are labelled as *working languages* (Berteloot, qtd. in Šarcevic 2001a: 7), *procedural languages* (Wagner – Bech – Martínez 2002: 10) or *core languages* (Dollerup 2001: 276). These are used not only for the sake of intraeuropean communication within the EU institutions but also in the drafting process, during which EU legislation is subsequently translated into all official languages. In 2006 the Directorate-General for Translation (DGT) with its translation units in Brussels and Luxemburg produced according to official statistics approximately 1 541 518 document pages. As the breakdown by source language in Table 1 below shows, 72% of original texts were drafted in English, 14% in French, 2.8% in German and 10.8% in the other 20 EU languages (cf. *Translating for a Multilingual Community*, p. 5 at http://ec.europa.eu/dgs/translation).

	1997	***2004***	***2006***
Total output in pages	1 125 709	1 270 586	1 541 518
Drafted in English	45.4 %	62 %	72 %
Drafted in French	40.4 %	26 %	14 %
Drafted in German	5.4 %	3.1 %	2.8 %
Drafted in other EU languages	8.7 %	8.8 %	10.8 %

Table 1 Trends of predominance of the individual EU languages in drafting "originals"

From the figures in Table 1 it follows that until about the mid 1990s English and French were the principal drafting languages while from the second half of the 1990s onwards English seems distinctively predominant, keeping this tendency up to the present day. At the same time, Table 1 demonstrates an ever increasing volume of the produced EU institutional-legal document pages.[1] This phenomenon has been designated by Anthony Pym (2001: 1) as the diversity paradox: an apparent contradiction between the use of one language as a universal lingua franca, which should lead to lesser linguistic diversity and therefore to decreasing the volume of translator's work, and on the other, the increased use of translation in the EU institutions, which results in greater linguistic diversity. The paradox lies in the fact that both these tendencies are occurring simultaneously. Although the EU language policy has never been manifestly questioned, certain waves of fear regarding its functioning had already appeared before the 2004 enlargement. At that time, the candidate countries were obliged to translate according to the European Commission's estimates more than 80.000 *acquis communautaire* pages, which was an unparalleled record in the history of specialized translation. However, nothing seemed to intimate that the pillars of the EU language policy should be somehow unstable.

3. EU Translation and Classic Translation Theory Terms

The specific language policy employed in the EU institutions, described above, leads to a problematic application of some traditional translation theory terms to EU documents, though. Classic translation studies terms such as "original" and "translation" are losing their ground here because in the context of EU translation they make for unstable, dynamic and mutable entities. The question is "why"? It is vital to realize that the outcome of the co-drafting and parallel translation process in the EU at present is 23 equal language versions of a given document. However, it would be more than troublesome to designate these document language versions as "translations" for there is no single original from which all the other translations would be derived. Even if legislative instruments are more often than not drafted in English these days, once a particular legal document is finished, the original actually ceases to exist. The difference between the original and translation is wiped out and all texts are becoming equal in line with the principle of linguistic equality, which presupposes equivalence among all the language versions of a given EU document. Notably, source texts can become translations and these translations may then function as source texts when translated into other languages. From this it follows that in case of EU translation it would be inaccurate to designate one of the texts as the source text, even if it has really fulfilled such a function in the initial stage of the process. If one really wanted to define the source text in this unique institutional environment, it would have to be a textual network or rather a web-like texture comprising all different language versions of the given document that have been functioning as source texts during the drafting process. This problem of the vanishing source text(s), however, should not lead to a complete renunciation of this concept in the EU context. It would certainly be ill-judged to argue that there are not any source texts in the EU multilingual setting. It is necessary to underscore that there are source texts indeed, however, of a much less stable nature than one would probably expect. Instead of a sharply defined contrast original – translation one is confronted with an intricate tangle of mutually intertwined language versions of the given text.

Neither from a legal point of view is there a distinction between the original and its translation. Both texts are originals of the legislative instrument with the same degree of authenticity as the other language versions. This has a bearing on how a translator should approach both these texts: he/she should treat them as source texts, as equally important sources of EU law. Therefore, the translator should refrain from a literal translation of the source text (and favour the legal language conventions of the source text in this way) and he/she should not translate too idiomatically either (thereby giving preference to the target language conventions). The EU translator should go for the legal language lying in between, *i.e.* a more neutral, a more general language of the common denominators (see Šarcevic 1997: 255). Opting for such an approach could then corroborate the application of Toury's well-known definition of translation as "a norm-governed activity"[2] (qtd. in Koskinen 2008: 147) to EU translation.

Institutional EU documents have recently come to be perceived as a certain form of autotranslation or self-translation as EU institutions are typically the author of both the source text and its translation(s) (Koskinen 2008: 24). In this connection, it is often pointed out that EU official documents consistently avoid being called "translations" and the designation "language versions" is preferred instead (see Koskinen 2000: 54). Moreover, it is noteworthy that *Council Regulation No 1/58* does not explicitly mention the word "translation" anywhere. Article 4 of the Regulation refers to "regulations and other documents of general application being drafted in all the official languages" (Wagner, Bech and Martínez 2002: 6), where the expression "being drafted" suppresses "being translated." One should not seek the legislator's efforts to blot out the translators' visibility behind these words, and thus marginalize them in

the translation process but rather a logical consequence of the requirement of the equal status of all working languages of the EU.

A critical stance on EU translation is further taken by Anne L. Kjaer (2007: 19), who argues that translation in the EU is not translation in the strict sense of the word, but only "interlingual text reproduction (!)." The primary concern when translating legislation in the EU is not the target language conventions and their recipient, but rather the reproduction of words and phrases that would assure coherence and cohesion across the 23 equally authentic language versions.

Furthermore, in EU translation the most important textual relation is not that of the source text and its translation but of intertextual relations among the individual texts within the institutional setting (Koskinen 2002: 114). Even though intertextuality as a concept originates in literary theory, EU texts are in fact intertextually more tightly knit than most literary texts. A strong intertextual interconnection of EU texts results from their co-drafting process, leading to 23 simultaneously elaborated translations, equivalent not only with the source text but also among one another. In addition, intertextuality is also manifested in the interconnection of the newly drafted documents with the previous ones by means of numerous references, direct and indirect citations, language clichés and by keeping the texts terminologically consistent.

Another translation theory term contributing to our proposed hypothesis about the invalidity of some traditional translation theory concepts in the EU setting is the moot issue of equivalence. Neither recent trends in translation studies accord equivalence such importance as in the past. Summing up the on-going heated discussions on equivalence, Andrew Chesterman conceives of it as "a supermeme in decline"(qtd. in Koskinen 2001: 296).

A critical account of equivalence or rather an illusion of equivalence of EU texts is offered by Kaisa Koskinen (2000: 55). As noted earlier, the policy of linguistic equality presupposes equivalence of all language versions. Irrespective of any qualitative attributes of the particular translation, all language versions are automatically assumed to be equivalent. What sets EU texts apart from other types of translation, is that they are equivalent not only with the source text, but with all the other language versions as well. Within the EU context, equivalence is an inherent *a priori* quality of all translations and is not judged from the point of view of quality as a defined requirement for the individual translated documents as it is in translation theory.

Moreover, the issue of equivalence seems even more delicate in the institutional setting. A specific feature of equivalence in case of EU document translation results from their function; the primary function of EU translation being predominantly their mere existence. In addition, EU translation is not furnished primarily with a communicative function but with a relatively high symbolic value since translations into all official languages of the EU supposedly give with their existence evidence of the linguistic equality among the Member States. This has been referred to by Koskinen as "existential equivalence" (ibid: 51). What we believe to strengthen this equivalence further is a very conspicuous surface similarity of EU texts, manifested in their identical graphic layout (location of headings, paragraphs, sentence split etc.), which is heading towards formation of a homogenous EU text type and subsequent convergence of all language versions.

Re-evaluating extant approaches to equivalence in EU translation has also been strived for by Susan Šarcevic. According to her, the consequences of EU multilingualism require a change in approaching equivalence in translation: "the principle of fidelity to the source text is losing ground to the principle of fidelity to the single instrument" (1997: 112). This means that from the legal point of view all authentic language versions of a particular legal document make up a single instrument.[3] Therefore, the translator's task is to produce a text that would preserve the unity of a single instrument, *i.e.* its meaning, legal effect and intent. As the

possibility of achieving the same meaning in translating parallel legal texts is often challenged, EU texts are expected to have at least the same legal effect. Moreover, legal registers subsume language-specific legal views of the world. EU multilingualism is even more intricate in the sense that it encompasses the supranational linguistic view of the world conveyed in the EU-wide legislation, which in the national legislation of the individual Member States requires an interpretation according to their specific linguistic conceptions of the world.

Other terms which need to be reconsidered in connection with EU translation are those of "culture" and "intercultural communication" which has been conveniently used to describe the essence of translation as such. As it is often problematic to determine the source and target culture by a long way within the EU environment, some claim that communication in the EU is essentially acultural (Koskinen 2000: 54). This is also supported by the need to draft generally applicable documents by avoiding culture-specific concepts that could pose a translation hassle. On the other hand, in some quarters (cf. Schäffner 2001: 252, Stolze 2001: 304) EU legislative documents are said to form a new, supranational legal and language culture. Due to EU texts blending features of various national cultures and languages in contact, they have come to be labelled as hybrid texts, *i.e.* texts that result from a translation process and exhibit features that seem out of place, strange or unusual to the receiving culture (Schäffner and Adab 1997: 325).

From the analysed classic translation theory terms brought into a critical light in the EU context, it follows that it might be apt to put EU translation in contact with postmodern theories. Although these are often bound up with especially literary translation, EU translation with its bureaucratic and restricting attributes is more akin to its antithesis. A closer investigation of EU translation, however, discloses several hidden references to central postmodern themes such as cultural ambivalence, intertextuality and hybridity.

4. Other Specificities and Principles of EU Translation

In order to arrive at the same legislative intent in all the languages, the principal drafting language is bound to undergo a certain degree of deculturalisation. As noted by van Els (2001: 329), deculturalisation or reduction of the cultural embedding is to be expected in a lingua franca, which should be reflected in a semantic and syntactic simplification of drafting languages in the EU.

Apart from a certain degree of deculturalisation the legal language of the EU functions as a multicultural contact point of various cultures which have formed their own legal culture by means of the *Acquis communautaire*. From the formal point of view, all document language versions refer to the common EU law. However, the reference relation between the individual language versions and EU law is in fact much more complex because EU law does not have its own language as such. EU law is expressed in the 23 national languages which are at the same time its official languages. The legal terminology of the pertinent official languages is embedded in the national legal systems of the Member States from which its meaning is derived. As EU concepts are conveyed currently in the 23 official languages, being at the same time the national legal languages of the Member States, it is not possible to avoid using national legal system concepts. This complexity of the translation process is illustrated in Figure 1 below (adapted from Kjaer 2007: 12).

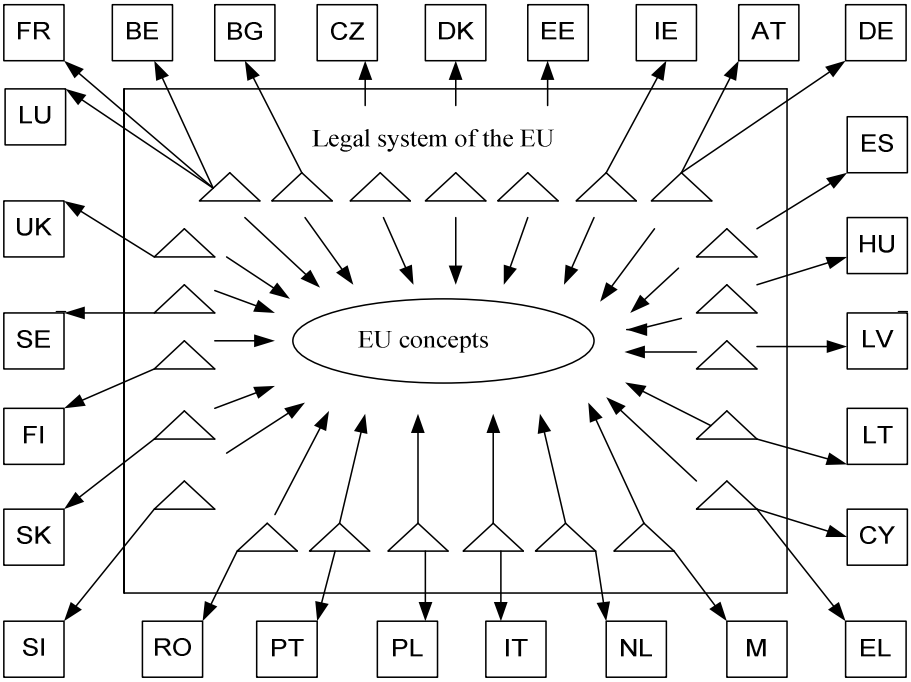

Figure 1 Multiple reference system between the official languages of the EU

As Figure 1 implies, the specificity of EU law is that even though legislative instruments are produced within a single system, they are applied in each of the 27 domestic legal systems of the Member States. Due to this reason in any EU legal text there seems to be an inherent tension between the common EU law on the one hand and the national legal systems in which the laws are implemented, on the other. This interaction with the Member States, however, is not the sole factor causing idiosyncrasy of translations in the EU. Another thing which makes legal translation in the EU a *sui generis* translation is the dynamics of EU law. In fact, EU law is a relatively young legal system which is still under development and there are legal concepts lacking a deep semantic structure otherwise typical of legal semantics. Therefore, a great many EU terms might strike one as fuzzy and vague. It often happens that the intended meaning of the source text is not clear to translators themselves and this uncertainty may then be reflected in translating. One of the possible solutions of this problem could be offered by standardization of terms. However, in case of legal translation this may be very problematic because the meaning of legal terms is hardly ever fixed and is liable to being redefined by lawmakers (see Sandrini 2004: 145). If standardization of terms is feasible at all in the legal field, in the EU setting it will probably never ever be able to keep abreast of the on-going development of EU law.

Another challenge that EU translators have to face is the issue of reliability of legal translations, which is judged primarily on the basis of linguistic purity and legal certainty. Linguistic purity entails that the EU translations should be "clear, unambiguous and written in the genius of the target language" (Šarcevic 2001b: 318). Accordingly, translations that follow the source text(s) too closely or are ambiguous, put the uniform application of EU law at risk. On the other hand, EU translation must equally promote legal certainty, *i.e.* the documents must be "legally watertight", which can be guaranteed by terminological consistency. Even if each EU Member State has its own strategy for creating EU terms, some fundamental principles should still be observed for the sake of legal certainty and linguistic purity. These follow primarily from the general principles of EU law as well as from the institutional translation practice. They could be summarised as follows:

- to avoid using terms of national law to designate EU concepts;
- to consult and compare more than one and preferably several originals (e.g. the German and French ones), ideally not only in the event of an ambiguity in the primary source text;
- to strive for terminological consistency – once a particular term has been agreed upon, translators are obliged to use it even if they might not regard it as the best solution;
- not to remove mistakes and improve already authenticated translation versions;
- to safeguard clarity, unambiguity and observe target language structures;
- all language versions must contain the same sentence breaks, so as to enable uniform citation;
- to adhere to fidelity to the single instrument, its intent, effect and meaning (in the given order of importance). In case of language discrepancies, the legislative intent of lawmakers and the effect of a given legislative document are to be considered primarily (loosely based on Šarcevic 2001a: 80-91 and Šarcevic 2001b: 318-319).

From the principles given above, it follows that the goal of the translators of the *acquis* is not only fidelity to EU law as such but to the individual languages of the EU as well. Observing the given tenets seems to be the key to the success of translations and the future of multilingualism in the EU.

5. Conclusion

By way of conclusion, we wish to accentuate that the European Union forms a supranational geopolitical entity *sui generis*. EU law has never been an independent legal system; its existence arises from the national legal systems to which it is applied. The specific language policy of the EU, promoting the principle of linguistic equality, leads to a problematic application of classic translation theory terms to its textual genres. Concepts such as original – translation make for dynamic entities and equivalence is automatically perceived as an inherent *apriori* quality of all translations. Equally debatable is the application of the concept of culture to EU texts which are thought of as essentially acultural due the impossibility of unequivocal determining of the source and target culture. Another particularity of EU translation is that the drafting language must undergo a certain degree of deculturalisation in order to arrive at the identical legislative intent in all languages. EU law is further characterised by a very complex reference system between the individual document language versions. Last but not least, reliability of EU translation is judged primarily on the basis of linguistic purity and legal certainty, the respecting of which requires adhering to a whole spectrum of tenets following from the basic principles of EU law and translation practice within the institutional setting.

Notes:
1 According to Johanni Lönnroth, the European Commission's translation chief, this figure will continue to rise by 5% annually (cf. http://www.euractiv.com/en/culture/eu-translation-policy-stay/article-170516).
2 Drawing on Toury's distinction between preliminary and operational norms (cf. Munday 2001: 113-115), the former concern the very existence and nature of translation policy, while the latter direct the translators' decisions during the actual translation process. It would seem reasonable to assume that preliminary norms somehow govern and constrain the nature of operational norms, though.
3 This approach is referred to as "the principle of plurilinguistic equality" by van Els (qtd. in Biel 2006: 2), "the principle of equal authenticity" by Šarcevic (1997: 64) or the PEAT, *i.e.* "the principle of equality of authentic texts" by Doczekalska (qtd. in Biel 2006: 2).

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