2 INSIGHTS INTO INSTITUTIONAL-LEGAL TRANSLATION

The aim of this chapter is to provide a theoretical introduction to EU translation. With its two subchapters, it establishes the conceptual framework for the empirical analysis of EU discourse in Chapters 3 and 4. Firstly, EU discourse theory will be paid attention to before moving on to the specificities of the EU’s multilingualism policy and its impact on institutional translation.

2.1 EU Discourse as a Textual, Legal and Linguistic Challenge

2.1.1 Legal language & translation: challenges and trials

Beyond a shadow of a doubt, legal translation makes for a sort of specialized translation which has been regarded as “the ultimate linguistic challenge, combining the inventiveness of literary translation with the terminological precision of technical translation” (Harvey 2002: 177). This demanding nature of legal translation has been acknowledged by many scholars and legal experts who call for treating legal translation as a separate research field (cf. Garzone 2000; Šarcevic, 2000; Gémar, 2001 and 2013; Kjaer 2007) requiring independent approaches.

Many challenges and trials of legal translation result from intrinsic characteristics of legal language. The character of legal language tends to be rather informative and is employed primarily in the interaction between legal entities and natural persons. This accounts for the matter-of-fact and impersonal veneer of legal discourse, which does not allow for any subjective intrusion on the part of writer into the style of legal documents. The most crucial feature marking legal discourse off from all other subtypes of (specialized) language is that it is endowed with legal force. Thus, the task of a legal translator is to re-create a source text content in the target text in such a manner so that it represents its legal equivalent with identical legal effects. While lay people commonly think of legal language as abstruse, arcane or grave, experts speak of its template-like and clichéd nature which is in particular attributed to legal phraseology, schematicity and repetitiveness of certain textual elements. Matilla (2006: 233) associates it with “archaic verbal magic” and treating “language as a fetish”. Thus, the reliance on a set of fixed phrases greatly contributes to the perception of legal
language as a “frozen genre” (Bhatia 2004: 206) or “fossilized language” (Alcaraz and Hughes 2002: 9).

The fuzziness of the label ‘legal translation’ derives from the fuzziness of the category ‘legal language’. As argued by Asensio (2007: 48-52), legal translation is notoriously strenuous to define through traditional criteria applied to specialized translation, such as the situation (official translation, court translation), subject matter of the texts (economic, commercial, legal, scientific), grade of specialisation (a continuum from general to specialized), and a more recent one, genre. As to the degree of specialization, legal translation is not only communication between experts but may also be addressed to citizens (e.g. judgements, legislation). With regard to the subject matter, it should be attended to as a category with fuzzy boundaries as law regulates miscellaneous fields and areas of life and “the legal frame of activity” may sometimes be decisive in classifying a text as legal translation (ibid.: 51).

As frequently acknowledged, legal translation is an operation not only between two distinct languages, but above all, between two distinct legal systems, reflecting their own axiology, patterns of reasoning and idiosyncrasies of a particular people’s worldview. Therefore, the symbiosis of intersemiotic and intrasemiotic translation as a merger of both linguistic and professional competence on the part of translator is a prerequisite for performing a flawless legal translation (cf. Gibová 2010: 39). Böhmerová (2010: 82) adds that “apart from general linguistic knowledge translating legal texts and documents requires thorough understanding of the wording and contents of the original as well as parallel knowledge of the legal systems and terminologies concerned.” For legal concepts are usually the product of a national legal system, legal terminology has the system-bound nature (Šarcevic 1997: 232). In marked contrast to other types of specialized translation which transcend cultural boundaries due to universal concepts to a large degree, legal terms tend to be incongruous; the degree of incongruity being contingent on the affinity between systems and languages² (cf. de Groot 2002: 229-230 and Šarcevic 2012: 8). As aptly noted by Biel (2014a: 50), the incongruity makes for one of the major challenges in legal translation: it is found not only at the level of terms, but more importantly, at the level of concept systems, which affects how conceptual networks and conceptual fields are organized internally and externally. This requires translators to build compensating “terminological bridges”.

² Indeed, the differences are much greater between the common law system and the civil law system (e.g. the UK and Slovakia) than between two civil law systems (e.g. Slovakia and Germany).
Furthermore, legal translation is many a time marked by a strong conflict between accuracy and naturalness. In this connection, Holländer contends that there is a paradoxical relationship between accuracy and intelligibility of legal parlance because the efforts to make legalese unambiguous and precise *de facto* lead to decreasing its comprehensibility (qtd. in Štefková 2012: 135). Still, accuracy is of supreme importance in legal translation and takes precedence over stylistic considerations.3 In more recent approaches to legalese, accuracy as to the information content (equivalence) is apprehended as “the presumption of equal intent” (Šarcevic 2000: 5) and the ‘spirit’ rather than the ‘letter’ of the law (Gémar 2013: 156).

To sum up, the problems faced by legal translators may be split into the following (based on Biel 2014a: 50):

1. Legal-system specific: incongruity of legal terms and concept systems resulting from the differences between legal systems and interpretative rules
2. Language specific: structural, semantic, pragmatic differences between languages in general and between legal languages in particular
3. Translation-process specific: distortions redolent of the translation process

Keeping the situation in the EU setting in mind, however, legal-system specific issues differ from prototypical legal translation. In institutional-legal translation, the translator has to transform a text from a terminological system of one country into that of another country, but country-specific terminology is to be employed very cautiously (see Principle No. 5 of the *Joint Practical Guide of the European Parliament, the Council and the Commission*). It is also desirable to avoid culture-specific terms since EU communication is essentially acultural (Koskinen 2000: 54). In comparison to classic legal translation, with regard to the knowledge of the legal systems involved in translation, institutional-legal translation might be a tad ‘simpler’ in the sense that EU documents are produced against the backdrop of a common legal system and the translator can lean on a relatively unified conceptual system when seeking translation equivalents. Moreover, as stressed by Lambert, EU-translation goes beyond legal issues and has also social, cultural and political implications: “It is (also) about identity, about entering a new world, first of all in terms of discourse, then (later) in terms of rights and commitments” (qtd. in Biel 2014a: 13). Therefore, institutional-legal translation, as taking place in the EU headquarters in Brussels and Luxembourg, stands for the language of legal integration, building bridges across the great variety of national legal languages towards a common grasp of law. A thought-provoking elucidation of legal translation in the context

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3 See Šarcevic (2000: 3): “It is agreed that substance must always prevail over form in legal translation“.
of supranational law as the recontextualization of SL legal knowledge was proposed recently by Sandrini (2009: 45), who defines it as “exteriorizing supranational legal knowledge systems, legal cognitive processes and norms […] aiming at disseminating them into another language against the background of national and local legal systems, while assessing their legal effect”.

2.1.2 Typologies of legal translation and EU translation

The interdependency of law and language is customarily underscored in legal theory, comparative law, and legal linguistics. Theories of legal translation generally take the interdependency of language and legal system as their springboard for descriptions of the characteristics of translation in the field of law and base categories of legal translation on that relationship. In this light, Kjaer (2007: 71-75) gives three interrelated classifications of legal translation:

(1) Classification of legal translation based on the degrees of difference and similarity of the legal systems involved;
(2) Classification of legal translation based on legal text types and purpose of the target legal text; and
(3) Classification of legal translation based on the distinction “between” or “within” legal systems

Firstly, following Kjaer’s approach to legal translation, de Groot (2002: 229-230) classifies the difficulty of legal translation according to the similarity or difference between the legal systems involved in the translation process:

The fact that comparative law is the basis of translating legal texts, justifies the supposition that the degree of difficulty is not primarily determined by linguistic differences, but by the extent of affinity of the legal system in question. The extent of affinity of the languages in question is a secondary factor which influences the degree of difficulty of the translation.

On this background de Groot carefully distinguishes between the following categories:

(1) Easiest translation: legal systems and legal languages are closely related, e.g. legal translation in the relation Spain – France or Denmark – Norway
(2) Easy translation: the legal systems are closely related, but the languages have few commonalities, e.g. legal translation in the relation France – the Netherlands or Germany – Japan.

(3) Difficult translation: the languages are closely related, but the legal systems are very different, e.g. legal translation in the relation England – the Netherlands

(4) Most difficult translation: legal systems are very different and legal languages are hardly related, e.g. legal translation in the relation England – China.

Based on the above, EU translation may be ascribed to the category of relatively ‘easy translation’. However, as outlined by Kjaer (2007), there are a number of reasons why this assumption holds true only perfunctorily. Even if it is claimed that EU translation may be allegedly more straightforward since it draws on a common legal system, i.e. supranational legal system of the EU, this is in practice an understatement. The problem is that the legal terminology of the currently twenty-four official languages of the EU is rooted in, and derives its meaning, from national legal systems of the Member States. Hence, it is an oversimplification to say that only one legal system is involved in the translation of EU texts. The national laws of the Member States are certainly also present. Still, de Groot’s stance may be justified in the sense that EU translator is not compelled to interpret the meaning of concepts and determine the degree of their equivalence. As Sandrini (1999: 15, translated by author) contends: “The conceptual equivalence is given, potential problems are of a linguistic or textual nature.” In Kjaer’s view, however, taking comparative law as the starting point in any discussion of legal translation often precludes one from taking a broader view and makes it arduous to account for all relevant factors of language use in the field of law.

Secondly, another relevant classification of legal translation grounded on legal text types and purpose of the target language legal text is the one applied in Cao (2007: 7-9), with reference to Kelsen’s well-known distinction between performative and informative, prescriptive and descriptive legal texts in his “General Theory of Norms”:

(1) Translating private legal documents
   a) For performative purposes (e.g. contracts stipulating that both or all language versions have legal force)
   b) For informative purposes (e.g. legal certificates such as marriage, divorce, birth and death)
(2) Translating domestic legislation
   a) For performative purposes (in bilingual and multilingual countries)
   b) For informative purposes (from one monolingual country into another)

(3) Translating international legal instruments
   a) With binding legal effects (e.g. treaties, conventions and agreements)
   b) Without binding legal effects (e.g. resolutions, declarations, guidelines)

As it follows from the above, Cao treats EU translation as the case of ‘translating international legal instruments.’ Although the given classification is thoroughly meaningful and is recurrently used in translation theory, Kjaer (2007) is somewhat sceptical towards its application within the European Union. In her view, the appropriate textual category of EU translation should be that of a mixture of both international legal instruments and domestic legislation since many documents of the secondary legislation of the EU have a direct effect in the Member States. Only in this way, due to the complex character of the EU legal system – the interactions between the national and the European levels of law – legal translation in the EU setting can be accounted for properly.

Thirdly, the typology of legal translation may be rounded off by what translation scholars and legal theorists subsume under (1) translation “between” legal systems, and (2) translation “within” legal systems. As for the former, legal texts referring to and functioning within one legal system, are translated into another legal code which pertains to another legal system. This would correspond to the translation of “private legal documents” in Cao’s approach (Cao 2007: 101ff). The translation of this sort must be based not only on a contrastive analysis of the source language and target language, their comparison and interpretation, but also requires a juxtaposition of the two legal systems. As to the latter, translation within legal systems takes place in countries or international organizations with more than one official language and is required because legislative acts must be available in

\[4 \text{ The entire body of EU legislation is known under the French term as the } \textit{acquis communautaire}. \text{ The } \textit{acquis} \text{ consists of primary legislation (the Treaties in their original versions), secondary legislation derived from the Treaties (regulations, directives, decisions, recommendations and opinions) and the case law of the Court of Justice (Wagner 2000: 1). One of the prerequisites for new Member States’ accession was to translate the entire corpus of binding EU legislation applicable on the day of accession. This can be inferred from Council Regulation 1/58, which is based on Article 290 (previously Article 217) of the Treaty of Rome. The applicant countries normally translate and revise the entire } \textit{acquis} \text{ themselves while the EU institutions take responsibility for the final authentication prior to the publication by the Office for Official Publications of the European Communities. At present, the size of EU legislation is estimated at well over 160,000 printed pages of the } \textit{Official Journal of the European Union} \text{ (See http://ec.europa.eu/dgs/translation/faq/index_en.htm#faq_1 and personal e-mail communication with Johanna Pannebaker). Moreover, there is a net growth of approximately 3,500 pages annually (see Šarcevic 2001a: 26).} \]
all official languages. This category covers what Cao labels as “translating domestic legislation” – in bilingual and multilingual jurisdictions and “translating international legal instruments”. The striking feature of this sort of legal translation is that only one legal system is involved. Therefore, no comparison of legal systems is necessitated, and the translation process does not entail any cultural transfer of concepts. Hand in hand with this interpretation of translation, translating in this case seems to be only a matter of altering languages. Thus, in de Groot’s classification, it may be looked upon as relatively easy. Overall, when evaluating EU translation, Kjaer (2007) emphasizes that it ought to be approached as both translation within and between legal systems because the EU enjoys a special geopolitical status: EU law is not and will never be an independent, self-contained legal system. It owes its existence to the national legal systems in which it is applied. Thus, the thorny issue of defining the legal nature of the EU, as implied above, is inevitably transferred into the definition of EU institutional-legal translation.

Generally, most typologies of legal translations focus on the status of the source text (ST); hence, they tend to reflect classifications of the legal language. In most cases EU translation is not singled out as separate category. However, a few attempts have been made to categorise legal translation having regard to the target text (TT), which brings to the fore translation in multilingual settings and has implications for theorising about EU translation. One of such typologies is a somewhat simplistic classification according to the status of the TT whereby legal translation splits into non-authoritative and authoritative translations. The former apply especially to national legislation in non-multilingual countries where a target text is a ‘mere’ translation, having a lower status and the original prevails over it. By contrast, authoritative translations are equally authentic as the original: they have the same function and status as the ST. This situation concerns multilingual legislation adopted in a number of official languages (the EU, the UN, or multilingual countries such as Switzerland or Belgium) where translations are vested with the force of the law in more than one language (Biel 2014a: 51-52).

Moving onwards, a more elaborate approach is taken by Trosborg (1997: 147), who introduces a contested concept of hybrid text. She adopts a broader perspective and, intriguingly enough, views EU texts as hybrid political (emphasis added) rather than legal texts. Trosborg distinguishes four types of translation according to compliance with cultural norms:
(1) Source culture-bound translation: the translation stays within the source culture by importing new text types or textual conventions to target cultures;

(2) Target culture-bound translation: adaptation of a text type to target language conventions;

(3) Hybrid texts: the translation is a product of two or more cultures, or a compromise between a number of cultures; it applies specifically to the EU and UN texts;

(4) International texts: text types which remain stable across cultures.

It should be added on this spot that Trosborg’s approach stresses the hybridity of texts, which are products of intercultural communication in a supranational and multicultural environment “where there is no linguistically neutral ground” (1997: 11). Even if hybridity has been elaborated by a number of researchers, among them most notably by Schäffner and Adab (2001), and with reference to EU translation by Tirkkonen-Condit (2001) and McAuliffe (2011), there are some scholars (e.g. Koskinen 2000) who question the usefulness of this concept for vagueness and inability to distinguish hybrid texts from other types of translation. However, Biel (2014a: 53) argues that hybridity allows us to make finer distinctions within authoritative translations. As pointed out by Schäffner and Adab (2001b: 300), hybridity accounts for concessions made during intercultural exchange. As a result, it is not only TT which is a hybrid, but it may also be an ST. This claim seems particularly valid in the context of EU discourse. Hybridity refers to STs, TTs, as well as to EU law itself, and is ascribed to varied causes. It is seen as a result of convergence between linguistic and cultural conventions and institutional patterns of behaviour. Keeping EU legislation in mind, Felici (2010: 102) attributes hybridity to complex drafting procedures as a consequence of which an ST undergoes various amendments and is discussed and revised in national languages: “the final product is a hybrid text, the nature of whose source and original has become more and more blurred”. A similar apprehension of EU language is observable in Caliendo (2004: 163), who notes that EU language is on the one hand culturally neutralised but on the other hand is constantly affected by national influences.

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5 Hybridity is understood differently than by Šarcevic (1997: 11), who sees it as the combination of descriptive and prescriptive elements in texts.

6 A hybrid text is “a text that results from translation process. It shows features that somehow seem ‘out of place’/‘strange’/‘unusual’ for the receiving culture […]”. These features, however, are not the result of a lack of translational competence or examples of ‘translationalese’, but they are evidence of conscious and deliberate decisions by the translator” (Schäffner and Adab 2001a: 176).
Turning our attention to the classification of legal translation with the aim of placing EU translation within its frame, Garzone’s viewpoint applying hybridity and jurisdiction type may be particularly beneficial (2000: 6-7):

(1) Texts generated within a single national legal system: “because of their lack of extraterritoriality, the validity of nationally-enacted legal documents is limited to the territory of the country where they are issued”. The translation is not authoritative and its purpose is to inform;
(2) Texts generated in bilingual and/or bi-juridical countries: both the ST and the TT are authentic;
(3) **Hybrid texts**: international instruments generated within supranational multicultural environment, in particular EU legislation; all language versions are authentic;
(4) International documents which regulate relationships between private parties in different nations.

On the plus side of the given classification is that it introduces a finer distinction within the authoritative translation and singles out authoritative translation in multilingual countries from other international contexts. From the angle of legal translation, EU translation clearly stands for the authoritative translation of hybrid texts in the supranational environment. Owing to its complexity, the translation of EU law should be approached as a category in its own right, albeit interdisciplinary and overlapping with legal translation (see Biel 2014a: 54).

Having dealt with the selected typologies of legal texts and translations so as to illustrate and emphasize the special status of EU texts and EU translation within them, a few more remarks deserve to be passed. It is vital to underscore that EU translation falls within a broad category of institutional translation and is affected by institutional norms imposing the highest constraints and qualitative requirements. Besides, institutional translation has been interpreted across translation studies as ‘self-translation’. What is symptomatic of it is that an institution “uses translation as a means of ‘speaking’ to a particular audience. Thus, in institutional translation, the voice that is to be heard is that of the translating institution. As a result, in a constructivist sense, the institution itself gets translated” (Koskinen 2008: 22). Simultaneously, multilingual legislation may be viewed as a textual genre of its own, at least potentially different from other kinds of institutional translation (ibid.: 119).
2.1.3 The translation of EU law and its preconditions

One of the most vital factors which govern EU translation is the multilingualism policy whose aim is to provide EU citizens with access to legislation in their native tongues. At present, EU multilingualism has reached an unprecedented scale since it comprises 28 Member States with 24 official languages. Above all, the main distinguishing feature of EU multilingualism is the mandatory equal treatment of all the official languages: The EU is committed to respect ‘its rich cultural and linguistic diversity’ and achieve ‘unity in diversity’ (Article I-3 of the Constitution). For Community law has primacy over national law, this egalitarian approach to all the official languages is a political necessity which guarantees the equality of the EU citizens before the law. Multilingualism is, therefore, a method of avoiding linguistic disenfranchisement (Biel 2007: 145).

Besides, from a legal angle, all language versions of EU legislation are deemed as equally valid and authentic. In case of interpretative doubts, no version is more authentic than the other, all versions are presumed to be given “the same weight” (Baaij 2012: 2). As a consequence, there is no original and no translation. All language versions form a single legal instrument expected to be endowed with the identical semantics in all languages of the EU. Accordingly, this approach is known as the principle of equal authenticity (Šarcevic 1997: 64), the principle of plurilingualistic equality (van Els 2001) or the equal authenticity rule (Cao 2007: 73).

However, Wagner from the Translation Service of the European Commission contends that it is a legal fiction and “a feat of legal magic which defies all logic but is nevertheless necessary, to safeguard linguistic equality” (qtd. in Biel 2007: 146). Having recourse to major semantic theories, in particular to the Sapir-Whorf hypothesis, cognitive linguistics or the views of Humboldt, the interpretation of meaning is language specific and it is not feasible to map the SL network of concepts on the TL network with utter precision. Moreover, as argued by Gizbert-Studnicki, legal registers incorporate language-specific legal views of the world (ibid.). On top of everything, EU multilingualism is even more intricate in the sense that it incorporates the supranational pan-European view of the world resulting from the country-specific perspectives of the Member States. Thus, EU law, which is also known as droit diplomatique, reflects much more complex negotiations and political compromise than national law. Accordingly, translators are required to keep up the same degree of ambiguity whether it is intentional or unintentional. Doing away with ambiguities could be seen as overstepping one’s authority as a translator and performing an act of interpretation (see...
Šarcevic 1997: 92-93). In practice, EU translators many a time complain about the ambiguity of English and resort to consulting more explicit parallel French and German versions. Owing to the growing awareness of the constraints of multilingualism with twenty-four languages and the inevitable discrepancies between language versions, calls for sweeping reforms have been made recently, including a proposal to introduce only two reference languages or mandatory consultation languages (see Šarcevic 2013: 17-21).

2.1.4 EU-English as a discourse

At present, English has become the leading drafting language overshadowing any other competing languages. More than 72% of the original texts translated by the Directorate General for Translation (DGT) are drafted in English and as little as 12% in French; by contrast English was used in 35% and French in 47% of inputs back in 1992 (Biel 2014a: 63). This suggests that English has inevitably turned into a lingua franca in the multilingual EU setting.

All the same, the increasing use of English may have some drawbacks since the conceptual network of the common law differs widely from the civil-law networks of the continental legal discourse. In this light, Robertson (2012: 1237) views EU English as “essentially a new genre” which has “a civil law foundation, but also shows features more familiar to common law countries, such as the creation of precedents by the Court of Justice of the European Union”. Thus, it is unavoidable that the two legal traditions are heading towards a convergence due to mutual influences, contacts and EU-level harmonisation.

As the body of the Community legislation was translated into English after the accession of the UK in 1973 from the then official languages (i.e. French, Dutch, German and Italian), EU English was shaped by translation and is itself translationalese. At present, EU English may be seen as a variety of English affected by interference from other EU languages and sociolinguistic accommodation. Nowadays, many scholars concur that EU institutional-legal texts have developed a specific language and/or style departing from the conventions of national languages, being a product of the process of interlingual assimilation. The distinctiveness of EU-English may be evidenced by a wide range of names running rampant in the secondary literature, some of which are construed with derogatory undertones: Eurolect (Goffin, Koskinen, de Corte, Mori), Eurospeak (Goffin, Wagner, Koskinen, Robertson), Eurojargon/eurolanguage (Trosborg, Caliendo), Euro-rhetoric (Tirkonnen-Condit, Koskinen), Euro-Legalese (Garzone), Euromorphology (Schmitt), Union legalese (Trosborg),
EU-ese (Baroni and Bernardini), EU legal language (Robertson, Gibová) or Eurofog (Goffin); see Biel 2014a: 76.

According to Biel (ibid.: 77) the most striking features of Euro-English comprise hybridity resulting from the interplay between the Member States’ national cultures and EU intraculture and involvement of non-native speakers as text drafters, the institutionally controlled language of source and target texts, the complex drafting process consisting of multilingual translation, the extensive standardisation of terminology and textual patterns, semantic and syntactic simplification. All the mentioned issues greatly add to what Koskinen (2000: 61) refers to as “the extreme visibility of the ‘translatedness’ of the texts.”

With respect to terminology, European legal English “is in many ways macroscopically different from the legal English of the UK. As the result of the convergence of the European legal systems, its terminology is neither typically ‘continental’ nor English” (Catenaccio 2008: 276). Aside from this, EU-ese or whatever one calls it in the light of the designations above, shows also certain syntactic aberrations from UK English, which has been corroborated by Salmi-Tolonen (1994), including corpus-based studies by Bednárová-Gibová (2012) and Jablonkai (2010).

In large measure, the EU legal language is marked by syntactic simplification, which is prescribed in drafting guidelines. For illustration, Principle 1 of the Joint Practical Guide (2003: 10) reveals that multilingualism of the EU entails a clear, simple and precise language to ensure “the equality of citizens before the law” through comprehensible law. Plain English and everyday language are recommended because “where necessary, clarity of expression should take precedence over felicity of style” (ibid.: 11). However, research has shown that quite the opposite is true of current EU texts since English source texts and their pertinent language versions tend to be suffused with longish complex sentences stretching across several lines compelling utmost text recipient’s attention (cf. Gibová 2010: 68-78). This syntactic and stylistic prolixity of EU texts coupled with countless text redundancies and an influx of new terminology led in the long run to various campaigns such as Fight the FOG or KISS (Keep It Short and Simple) whose aim was to fight these unpalatable linguistic tendencies.

Despite the varying degrees of success of syntactic simplification observable in EU texts, there is also a certain terminological austerity in the sense that EU drafters are highly

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7 This may be illustrated by EU institutional-legal instruments related to a European company where neologisms tend to supersede the traditional UK company law terminology: e.g. administrative board/organ versus board of directors, statute versus articles of associations, or public limited-liability company instead of the UK public company limited by shares (Biel 2014a: 64).
recommended to avoid culture-specific terms of national law which do not have direct translation equivalents in other languages and substitute them with more neutral terms. From a legal point of view, the specificity of the EU is that legal instruments are produced within the EU system, but applied in each of the 28 domestic legal systems (Kjaer 2007: 79). As a consequence, the common pan-European system of concepts is still under development and is heavily based on national conceptual systems. Hence, legal concepts have multiple references. As stressed by Twigg-Flesner (2012: 1374) EU texts are drafted in languages whose legal terms possess a “pre-loaded” meaning. This results in, what Biel (2014a: 66) proposes to refer to as a “conceptual osmosis”: legal terms with polysemous meanings that are peculiar to both the national legal system as well as the EU legal system. As a result of the interaction of the EU terminology and national terminology, English as the major drafting language undergoes deculturalization (van Els 2001: 329), or what Craith (2006: 50) designates as de-territorialization. Striving for syntactic and semantic simplification outlined above, EU discourse forms a territory of its own where the global (European) meets the local (national) to craft a hybrid pan-European text genre.

Last but far from least, in accordance with some postmodernist theories in linguistics, there has also been a shift in what Widdowson refers to as ‘the ownership of the language.’ It should be pointed out that nowadays the majority of texts prepared by EU institutions are drafted by non-native speakers of English and French (Wagner, Bech and Martinez 2002: 76), which mirrors the current change of a paradigm removing native speakers from their pedestal of power and authority. Thus, even if Euro-English definitely does not stand for the genuine article of vintage English but only one of the many offshoots and outgrowths of World Englishes, it embodies an important (if somewhat linguistically controversial) strand of the current English language’s development on the international stage where the lives of millions of Europeans are ruled.

What remains to be emphasized by way of summary is that legal translation serves as a mediator and facilitator of intercultural communication among peoples. In the EU, it has greatly enhanced legal communication between the Member States, testifying to the fact that law is indeed translatable despite legal-system specific, language specific or translation-process specific problems. Since EU translation transcends legal issues and has also a political and cultural legacy, positioning it within the framework of extant legal translation typologies.

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8 See Principle 5 of the Joint Practical Guide (2003: 17): “draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care.”
is nowhere near as straightforward as it might seem. EU translation blends features of international legal documents with domestic legislation and represents translation both between and within legal systems. It is an authoritative translation of hybrid (political) texts in the supranational context, a unique case of self-translation. In upholding EU multilingualism, Euro-English, deculturalized and de-territorialized, despite its linguistic aberrations, stands as a crucial go-between which has been fashioned to make multilingual translation feasible.

2.2 EU Translation as the Language of a Reunited Europe Reconsidered

The formation of European political structures from the 1950’s 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 the 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 1980’s 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 1990’s and it still represents a rich repository of both theoretical and practice-oriented translatological problems.

The purpose of the present subchapter 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 translation” to
EU legal documents. The latter part of the subchapter will focus on the main specificities and tenets when translating the *acquis communautaire*.

### 2.2.1 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 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 2007: 145). 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 and Martínez 2002: 10) or *core languages* (Dollerup 2001: 276). These are used not only for the sake of intra-European communication within the EU institutions but also in the drafting process, during which EU legislation is subsequently translated into all official languages. In 2014 the Directorate-General for Translation (DGT) with its translation units in Brussels and Luxembourg produced according to official statistics approximately 2,300,000 document pages. As the breakdown by source language in Table 1 below shows, 78% of original texts were drafted in English, 7% in French, 2.6% in German and 12.4% in the other EU languages (cf. *Translating for a Multilingual Community*, p. 5 at http://ec.europa.eu/dgs/translation).
From the figures in Table 1 it follows that until about the mid 1990’s French and English were the principal drafting languages while from the second half of the 1990’s 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.\(^9\) This phenomenon has been designated by Anthony Pym (2001: 1) as the diversity paradox: an apparent contradiction between, on the one hand, 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 hand, 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 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 *aquis communautaire* pages, which was an unparalleled record in the history of specialized translation. However, nothing seemed to intimate that the pillars of EU language policy should be somehow unstable.

2.2.2 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

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\(^9\) According to Johanni Lönroth, 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).
ground here because in the context of EU translation they make for unstable, dynamic and mutable entities. There several reasons for this. It is vital to realize that the outcome of the co-drafting and parallel translation process in the EU at present is twenty-four equal language versions of a given document. However, it would be more than troublesome to designate these 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 again 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 strove 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 illjudged to argue that there are no 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”¹⁰ (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: 87), 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 twenty-four 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 twenty-four 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.

¹⁰ 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.
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 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 I 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 the 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.\(^\text{11}\) Therefore, the translator’s task is to produce a text that would

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\(^{11}\) This approach is referred to as “the principle of plurilingual equality” by van Els (qtd. in Biel 2007: 146), “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 2007: 146).
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 requires an interpretation in the national legislation of the individual Member States 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 hitch. 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 2001a: 176).

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 postmodernist 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 postmodernist themes such as cultural ambivalence, intertextuality and hybridity.

2.2.3 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 deculturalization. As noted by van Els (2001: 329), deculturalization 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 deculturalization 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 twenty-four 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 twenty-four 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: 81).

![Figure 1](image-url)  
**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 twenty-eight 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 to 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 2004a: 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 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. 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 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.

By way of conclusion, I 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 by default 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 deculturalization 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.