# DOWNLOAD PDF DRAFTING AND INTERPRETATION OF EU LAW AGNIESZKA DOCZEKALSKA

## Chapter 1 : Formal linguistics and law in SearchWorks catalog

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Interaction of law and language in the EU: It focuses on challenges in legal translation stemming from a new and hybrid EU legal system that developed over time through the influence of several European legal traditions. It is argued that the choice of English in translation of EU law as a source language, and in communication with the EU institutions poses several challenges to legal translation, in particular an inability to reconcile civil law traditions with common law traditions. Equally challenging is to translate specific EU legal and expert terminology that is often exclusive only to the EU legal system. Introduction We often do not fully appreciate the demanding task of translation and difficulties surrounding this process. We expect a translator to be able to reproduce the message expressed in a source language SL while at the same time preserving all cultural or legal differences between languages. It means that the translation should have equal value with the source text ST and should make no difference whether it is translated from one language to another Pym  This problem becomes even more prominent with legal translation. This is often regarded as the most demanding type of translation as the translator must simultaneously be an interpreter of a legal system concerned while preserving the fidelity of the ST. Hence, some argue that legal translation is frequently equated with untranslatability Mac Aodha  Legal translation in a multilingual and multi-legal community such as the EU is even more demanding. This paper will analyse the interaction between law and language in the EU multilingual context. The paper focuses on challenges in legal translation stemming from a new and hybrid EU legal system developed under the influence of several European legal traditions. Equally challenging is the translation of specific EU legal and expert terminology that is often exclusive only to the EU legal system. Legal Translation in the EU context Challenges of legal drafting and legal translation have existed for a long time in international law and international relations. As the process of globalisation relies on law and language, translators had to demonstrate attentiveness and creativity to rise to the challenge. The establishment of the European Economic Community EEC in and the subsequent deepening and widening of integration between Member States took this task to a completely different level. It introduced new legal concepts and doctrines often not known nor recognised in some Member States. Equally, the new legal order was created under the influences of several legal traditions, in particular the German and French legal traditions at the very beginning of European integration. No less important is the impact of international law on the development of EU law, as the EU is a legal entity that frequently accedes to various international treaties which are then incorporated into the EU legal system. Very often treaty terminology is incorporated in EU secondary legislation and imposes obligations on Member States 1. Similar provision respecting cultural, religious and linguistic diversity is guaranteed in the Charter of Fundamental Rights of the EU Article 22 of the Charter. It is not surprising that the first piece of secondary legislation passed by the EEC was Regulation No 1 determining the languages to be used in the EEC in  Furthermore, they can understand the law if they are bound by it Sharpston  Thus, the issue of translation becomes even more important in such a multilingual and multi-legal environment. Language should be understood as a way of disseminating information in a diverse environment. However, in the EU context it is also a means of conferring rights and imposing obligations to natural and legal persons. Hence, incorrect translation can lead to serious legal implications for all parties involved. It may result in the application of the doctrine of state liability, which imposes an obligation on Member States to pay damages to a party whose rights have been infringed as a result of incorrect transposition of EU legislation. This incorrect transposition may be caused by improper translation or misunderstanding of the meaning of certain legal concepts. Legal translation in the EU is regarded as a challenge to the central concepts of translation studies and it is affected by a unique combination of political, ideological and procedural factors Biel  As it is distinct from translation of national legislation due to its

unique features and the requirement of multilingualism, there are submissions to treat it as a sub-genre of legal translation Biel  Some of the challenges surrounding legal translation in the EU are exposed by occasional differences between translations of the same legal text in various EU official languages. Despite the fact that legal texts in each of these languages are equally authentic Article 55 1 TEU , there are differences between legal texts which can already be seen from Regulation No. If we look closely at Article 7 of this Regulation, we can identify difficulties in achieving equivalence between languages. Even more noticeable differences between language versions that may have significant legal implications can be identified in EU treaties. Differences can also be identified in translations of secondary legislation and judicial decisions of the Court of Justice of the European Union, which certainly demonstrates the complex task of the translator. Differences between languages occur in court judgements too. Thus, these differences in translation can have an impact on the interpretation and enforcement of the judgement while in some other cases can even change the entire meaning of a legal provision in question. The greatest challenge for translators is to interpret legal concepts in the SL and find the appropriate legal terminology in the target language TL. It is often forgotten that even between common law traditions there are important differences. The most noticeable differences are between the English and Scottish systems as the latter was developed under the influence of both Roman and common law. The other example is the use of concepts that that derive from Roman law such as delict. Likewise, the translation process is further intensified by a variety of new EU legal and expert terms that found their place in the new EU legal order. Many of those terms were created as a response to sui generis political and legal order which is founded on specific division of power between EU institutions and unorthodox voting procedures which had to be made distinct from systems in Member States. The best example is the comitology procedure, now known as ordinary legislative procedure, which involves a partnership of the European Parliament and the Council of the EU in adopting EU legal acts. Specific EU legal and expert terminology also includes terminology which has different meaning than it would otherwise have in Member States. The fact that the EU now legislates in a wide variety of policy areas renders the terminology in legislation more complex and demands a high level of technical expertise from translators. Implications of English language as a SL Since the membership of the UK and Ireland in , the English language assumed an unprecedented significance in the translation process of the EU. It has displaced French to become the lingua franca of the EU. As Figure 1 shows, in , 81 per cent of legal texts are drafted in English, while in French and English were used equally in legal drafting. The preference for English is easily understandable. It is one of the most widely spoken languages, not only in the EU but worldwide. It has become one of the working languages in almost all EU institutions and international organisations. Equally, there is a great preference for the English language in new Member States as a majority of translators and national officials speak English as their first foreign language. Likewise, all candidate countries to the EU have already made a conscious choice to use English as a SL in the process of translating EU law in national languages, as well as to use English in all other correspondence with the EU officials. This new language results from the drafting process which often involves input from non-native speakers who bring their own ideas and concepts into the translation process but also from the constant interaction in English in almost all formal and informal EU settings. Unlike in Member States, the legal drafting in the EU is a multi-stage enterprise that brings together three main EU institutions and a range of public and business interest groups trying to voice their own objectives. As the Commission does not have sufficient expertise, it relies on expert advice provided by a wide range of national and EU interest groups comprising diverse social interests. The inclusion of various participants is also part of the adoption process in the European Parliament and the Council of the EU where the negotiations are usually conducted in English by representatives of all 28 Member States. The final legal act is a product of political compromise between various interests which is often reflected in a neutral legal language. EU legal texts in English very often contain imprecise terms, which is not something one would associate with traditional UK legal language. The importance of precision and clarity of provisions in the English common law system is greatly cherished both among academics and practitioners. Francis Bennion, a former UK parliamentary

draftsman, in discussing various difficulties in legal drafting identified nine specific parameters which the drafter of legislation has to take into account, including certainty and comprehensibility of the legal language Slapper and Kelly  The impreciseness in EU legal texts in English often comes as a result of legal drafting by non-native English speakers who are not very familiar with the common law system and key legal concepts. The use of imprecise terms is especially prominent in EU treaties which use expressions such as aforementioned, abovementioned, above, below, hereby and provisions set below Robertson b. This renders the text imprecise, cumbersome and very difficult to follow. The translator must demonstrate an extreme caution in translating from the English as a ST as he or she has to ensure that it is clear to the reader to which provision these terms make reference to. The inconsistency in using certain terminology is not unusual in EU legal texts in the English language. A good illustration is the treaty provisions concerning judicial cooperation in criminal matters where the treaty uses interchangeably the terms crimes and criminal offences in Articles 83 and 87 TFEU, although those two terms have the same meaning in the treaty. This stems from the principle of legal certainty as addressees of the provision must understand their rights and duties prescribed by a legal norm. Another illustrative example of lack of clarity is the use of term arrangement in EU treaties which is used consistently in the English text but has various meanings depending on the treaty provision concerned. However, the translation of this vague term in other languages is more precise depending on the context. If we look at the French version we can immediately see this difference. The legislator uses several different terms depending on the context of the provisions as to render provisions more accurate. In this example, the text in French gives more clarity as it imposes an obligation on Member States to institute a system for making certain provisions for employed and self-employed migrant workers and their dependants. The Statutes shall define, in particular â€¦means of intervention and auditing arrangements, as well as their relationship with the organs of the Bank. The following example provides a good illustration of this challenge. If the term administration was to be literally translated in languages representing countries with a civil law tradition it would not denote the correct meaning of this provision. This problem is particularly prominent in regard to administrative law concepts, as common law systems do not have a long tradition in developing this public law discipline. As Bradley and Ewing  Unlike Germany and France where administrative law is a well-established discipline and there are separate administrative and constitutional courts, in the modern English legal system the lack of demarcation between the two legal disciplines is best illustrated by the actual work of courts Bradley and Ewing  In the United Kingdom there is no clear distinction between cases with constitutional significance and cases dealing with disputes between the citizens and the administration Bradley and Ewing  This difference in legal traditions is certainly embedded in English legal language which lacks a more extensive and varied legal administrative terminology. Translators may often identify the differences between legal traditions when it involves family law matters as legal concepts vary significantly between legal traditions. It is clear that this provision relates to situations when a person is incapacitated and unable to act and someone else is taking care of that person. However, civil law lawyers would not be able to know what type of incapacity each of those expressions involves. A similar problem arose in issues of separation and divorce. As this institution is not recognised in many civil law systems, it becomes important for a translator to find an equivalent term in other languages spoken in countries with a civil law tradition. As Walker points out, in the Middle Ages the church courts exercised wide civil jurisdiction and canon law of the Roman Catholic Church has had a continuous influence on the legal and social system Walker  Examples can be found in other areas of law such as criminal law. This example demonstrates how difficult it is for a translator to find an equivalent legal concept. At the same time, the French and German translations provide more guidance to translators from countries based on the civil law system as they use expressions that is widely recognised and accepted in most civil law countries. EU legal and expert language No less challenging for translators is how to interpret new EU legal and expert terms and find appropriate equivalents in the TL. This task becomes even greater as the EU is a dynamic entity that constantly evolves. In time, this interaction leads to the EU continually acquiring new competences which results in new areas of expert and highly technical legislation

that requires translation. The best indication of the variety of areas in which EU acts is the number of policies the EU negotiates with candidate countries. At the moment there are 35 policy areas involving a great number of legally binding legislation published in all official languages 2. Likewise, EU legislation is frequently amended and translators must maintain consistency in translation between all subsequent translations and the original translations.

## Chapter 2 : Formal linguistics and law (Book, ) [calendrierdelascience.com]

*Drafting and interpretation of EU law - paradoxes of legal multilingualism Doczekalska, Agnieszka. Formal Linguistics and Law. Edited by Grewendorf, GÃ¼nther.*

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. The contributions to the special issues address various aspects of the law and language intersection in the EU context: 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. Between Principles and Practicality. The International Journal of Language and Law, 1. Lost in the Eurofog: The Textual Fit of Translated Law. Quality in institutional EU translation: Parameters, policies and practices. A Case for Intra-linguistic Translation? Europe and the Politics of Language. Citizens, Migrants and Outsiders. A Single Text or a Single Meaning: Drafting and interpretation of EU law â€" paradoxes of legal multilingualism. The European Union, its Institutions and its Languages: Some Language Political Observations. Current Issues in Language Planning, 2 4 , â€" Language as ideology 2nd ed. Software of the Mind. Translating in the EU Commission. The Translator, 6 1 , 49â€" Comparative Legal Linguistics, trans. Hybrid Texts and Uniform Law? International Journal for the Semiotics of Law, 24, 97â€" Linguistic variation in legal Maltese: EU directives compared to national implementation laws. The Dynamics of Maltese in space, time and society pp. Alphen aan den Rijn: Multilingualism and the Harmonization of European Private Law: Legal linguistic knowledge and creating and interpreting law in multilingual environments. Brooklyn Journal of International Law, 29 3 , â€" New Approach to Legal Translation. Creating a Pan-European Legal Language. Lingua franca English â€" the European context. A hybrid translation theory for EU texts. Vertimo Studijos, 5, 76â€" Translation manuals and style guides as quality assurance indicators: EU translation problems and the danger of linguistic devaluation. International Journal of Applied Linguistics, 15 3 , â€" Translating hybrid political texts. Translation of Multilingual Instruments in the EU.

## Chapter 3 : Agnieszka Doczekalska | Kozminski University - calendrierdelascience.com

*Agnieszka Doczekalska (). Drafting and interpretation of EU law - paradoxes of legal multilingualism. Drafting and interpretation of EU law - paradoxes of legal multilingualism. In Formal Linguistics and Law (pp. ).*

There are no two identical languages, and there are no two identical legal systems; this is the challenge for both comparative lawyers and legal translators. Legal comparison is necessary to obtain the adequate legal translation, which in turn is applied to give comparative lawyers information about foreign legal systems. Although comparative lawyers and legal translators often face similar quandaries when engaged in the translation of legal terms, they operate within distinct theoretical frameworks and make use of different methodologies. In order to determine whether the functional method developed for comparative legal studies can be a useful tool for legal translators, this paper compares this method with the methodology applied by legal translators to find functional equivalents. This cultural transfer is observed especially when legal texts are translated, since legal translation is performed between legal languages, which are deeply rooted in the legal culture and the legal system of a particular country. Unlike other specialized fields e. Instead, each legal system has its own legal terms, known as system-bound terms, to denote concepts specific to that system. This is evident when legal systems use different languages; however, even in cases where legal systems apply the same ethnic language to create legal texts for instance, English used by American and British law , the legal systems utilize different terminology, or the same terms are applied to denote concepts that are not exactly the same. Therefore, in order to carry out a proper legal translation, language and translation skills alone are not sufficient; familiarity with legal languages is also necessary. The latter cannot be acquired without a deep understanding of legal systems and of the differences between them. Law students, however, focus mainly on their domestic legal system and, to a lesser extent, on international and supranational law. Hence, most law graduates will not be extensively familiar with other legal systems or with the differences between them. Thus, both law and translation studies graduates might lack the knowledge necessary to perform a correct legal translation. However, there exists a discipline focused on recognizing and comprehending the differences and similarities between legal systems; that discipline is comparative law. With no claim to exhaustiveness, this paper aims to analyze whether comparative law can provide legal translators with the knowledge and tools needed to attain an accurate translation of legal system-bound terms. The main focus will be on the functional method, which is applied in comparative law to identify and compare functional equivalents. This method will be compared with the decision-making process performed by legal translators to identify functional equivalents in a target language. Before tackling the question of whether methods of comparative law especially functionalism meet the needs of legal translators, this paper explains why legal translators need comparative law. Divergence and incongruence of legal systems: The challenge for legal translators If the discipline of law shared a common system of reference like the discipline of science, medicine, and technology, legal translation would be much easier. When translating a manual for a mobile phone user, for example, all the translator needs to know is how the device works. The mobile model will operate in the same way, regardless of where or by whom it is used. In order to call someone, the user, will dial a number and then press the same icon or button, to the same effect, regardless of whether it is labeled as: In Poland, only two persons of the opposite sex can legally get married, whereas in Portugal two people of the same sex can also enter into a legal marriage. Marriage to a year old girl is considered void in all European countries, while it is valid in South Sudan Department of State , , yet such a marriage can take place just a short flight away in Cyprus, and it will then be recognized in Israel ibid. Marrying a woman while already validly married to another is recognized as an offence bigamy in many countries, whereas, in others, especially those governed by Sharia Muslim law e. These examples illustrate how differently the concept of marriage can be understood in various legal systems. What one legal system recognizes as a valid marriage can, in another, be considered a criminal offence. The above comparison, which is based merely on juxtaposition, not on comparative analysis,

relies only on one criterion; that is, who can legally enter into marriage. Other criteria, like rights and obligations of spouses, matrimonial property regime, or divorce, should also be taken into consideration to determine the full meaning of the concept under a given legal system. In order to grasp the meaning of the concept of marriage in Polish law, a lawyer must analyze not only legal acts, but also case law and doctrinal works, which provide the interpretation of legal provisions on marriage. A legal translator does not need to know all details and nuances associated with a legal concept to such an extent, but mere awareness of the complexity of legal concepts and differences between them in various legal systems might not be sufficient to make appropriate translation decisions in order to produce a good legal translation. In order for translator to make a correct decision when choosing term in a target language to denote a concept of a source legal system, some comparison of source and target concepts, institutions and terms is required. There is an understanding among translators that translation is not about replacing one word with another, but rather that it is the meaning that is translated28, thus the translator must go beyond the language in order to provide adequate translation Poon Wai-Yee , Nevertheless, the primary source from which we derive the meaning of the text is the source language. Moreover, a target language is used to render this meaning in a translated text. Therefore, it is important to use a method and strategy that makes it possible to find the adequate term in a target language denoting a legal concept of the source legal system. This legal concept, as a rule, is autonomous in legal language 29 and system-bound in the language of translation studies. The choice of what strategy or method is used depends on the type of legal translation. Two criteria apply when making this decision: The purpose of the legal translation is defined by the intended communicative function of the translated text in the target legal system. Functions of source and target texts are not always the same Cao , Hence, the translation process sometimes provides a shift of function i. Based on the criterion of the purpose of translation, at least two types of legal translation can be identified However, legal information can be rendered not only in legal acts but also in contracts, writings of doctrine or even in fiction novels When a text is translated for informative purposes, the translator can choose the equivalents that convey some elements of foreignness while at the same time providing the reader with the adequate associations about the meaning of the text. When a translated text will bind its addressees, the translator will focus mainly on finding wording for the target text such that it will have the same effect as the source text Translation for informative purposes usually transfers a legal text from a source legal system into a target legal system and, as mentioned earlier, involves comparison of legal concepts and institutions. Translation for normative purposes usually occurs when one legal system produces its laws in two or more languages. Thus, all authentic language versions of a legal act are applied within the same legal system, and consequently the legal terms in various language versions of the legal act refer to the same legal concepts and institutions. It would seem that translation performed to draft multilingual laws does not require any comparison; however, in practice, the comparison of legal concepts is often necessary when multilingual law is produced. For instance, the European Union has developed supranational and autonomous law drafted in its 24 official languages. These languages are also the official languages of EU Member States and are used to draft their national laws. In order to avoid confusion between national legal concepts and EU legal concepts, terms denoting EU concepts should be chosen carefully. Therefore, when legislative drafters choose terms from 24 languages that denote an autonomous EU legal concept, this EU concept is compared with the equivalent national legal concepts, and national legal terms denoting national concepts that could be regarded as functional equivalents are replaced with neutral terms i. Therefore, if EU legal acts seem to be awkward or difficult to understand, this is the result of the conscious decisions of legislative drafters and translators, not their mistakes. Hence, notwithstanding the purpose of translation and the number of legal systems involved in the translation process, translation requires comparison of both legal concepts and legal terminology. The example of co-drafting which in fact does not even include any translation elements of English and French versions of Canadian federal legal acts illustrates that both language versions can have the same legal effect even when the wording or even the structures of a legal provision differ widely; see examples at McLaren , Can comparative law provide a translator with such

information or with the method to acquire it? Do methods of comparative law meet the needs of legal translators? It can suggest that the term refers to positive law that has the force of law, or to a branch of law, like civil or criminal law, that encompasses a set of legal norms Despite its name, however, comparative law is an academic discipline or a branch of legal science, not a body of legal rules. The German and Polish terms bring the act of comparing into focus. Comparison of laws is the subject matter of this discipline. Comparative legal scholars compare different legal systems macro-comparison or legal institutions, concepts, rules, legislations and solutions to social problems micro-comparison  Such legal comparison or its results can be interesting to legal translators. However, has comparative law developed any methods that can be applied efficiently and successfully for the purpose of legal translation? For some authors, comparative law is nothing more than a method Gutteridge , as cited by Palmer , , yet as Palmer , observes, the seminal books on comparative law do not even mention methodology. Brand analyzes four methodological approaches to comparative law - functionalism, comparative law and economics, comparative law as a hermeneutic exercise and critical comparative law - which are deeply rooted in philosophy of law. Both Brand and Palmer note that methods applied in comparative legal research are limited in their application Setting aside the evaluation of comparative law methods and discussions of whether comparative law has developed or should develop its own methodology and whether plurality of methods will enrich or jeopardize the results of comparative legal research, I will focus on the very first method that has been consciously developed for the purposes of the comparison of legal concepts and institutions. Different names have been applied to this method, including functionalism Brand , , equivalence functionalism Michael , 20 , functional method38, or problem-solution approach Brand ,  Thus, this method or at least its findings can interest legal translators. In order to evaluate to what extent the functional method can be useful for legal translation, I will compare: Throughout the 19th century, when comparative law was still developing it was recognized as a new branch of legal science in the second half of the century , comparative legal studies focused on the investigation of legislation Stramignoni , and were based mainly on textual analysis Michaels, forthcoming, 3. At the beginning of the 20th century, the approach towards comparative legal research changed and scholars noted that positive research based on legal texts and legal language does not actually provide the full picture of the law. The analysis of legal provisions does not explain how a judge will interpret them and what legal effects they will actually provide. Moreover, because scholars distrusted language, they decided that legal research should be conducted beyond language. Instead of analyzing domestic and foreign legal texts, he compared the solutions to a particular social problem in different legal systems Gerber ,  The focus of the comparative legal research is not on language or terminology but rather on the set of legal norms that create a legal concept or institution. The functional method thus facilitates the research conducted beyond language and helps to omit pitfalls of terminological false friends. Terminology can be of as little assistance to a translator as it is to a comparative lawyer. Translators look for adequate terms in the target language to denote the concepts and institutions of the source legal system. In the event that they cannot find the exact equivalent, one of the methods that can be used is the search for a functional equivalent. The process that leads to the choice of an adequate functional equivalent has at least three stages: Thus, a comparative lawyer and a legal translator search for functional equivalents, but do they look for the same equivalent? Do comparative lawyers and legal translators apply the same method? The answer to these questions is important in order to determine whether they can learn anything from each other and whether they can apply the results of their findings in legal research and legal translation. In order to answer the questions, I will compare the methods applied in comparative law and legal translation and consider the following criteria: Legal translators search for functional equivalents in order to find adequate terms to denote source legal concepts that do not have exact counterparts in the target legal system. The investigation undertaken by comparative lawyers does not have a terminological character. Comparative legal scholars apply the functional method in order to find the solutions to social problems. The results of such legal comparison can, for instance, help to reform, unify or harmonize law. Therefore, they do not look for the terminology but rather for legal regulations that resolve certain problems. Consequently, the identification of

the social problem or need is the starting point of their research, whereas in legal translation the term that does not have the exact equivalent is the starting point for the translator to look for the functional equivalent. A given social problem may be addressed by a whole branch of law or by a single legal norm that does not create any legal concept or institution. Hence, a comparative legal researcher will compare legal regulations and legal norms. The considered norms may or may not form legal concepts or institutions.

## Chapter 4 : All Originals: Fiction and reality of multilingual legal drafting in the European Union and Canada

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*The paper identifies methods applied by judges of the Court of Justice of the European Union and national courts to deal with the discrepancies between language versions of EU legal acts. Through case law analysis, the paper demonstrates whether the principle of legal multilingualism actually guarantees legal certainty and what courts can do to make the right to remain unilingual in a multilingual setting real.*

## Chapter 6 : Cavoski article

*Agnieszka DOCZEKALSKA All Originals: Fiction and Reality of Multilingual Legal Drafting in the European Union and Canada Abstract The phenomenon of multilingual law stems from official multilingualism, which usually.*

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*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.*