

14 THE CHALLENGES POSED BY MULTILINGUAL EU LAW

Autonomy, Translation and Databases

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14.1 INTRODUCTION

Operating a language policy,¹ including the standardization, updating and dissemination of the official language was traditionally a state task, or at least financed, oriented or implemented through education policy and other state measures and facilities. Since language is an important instrument for constructing identity,² and, consequently, the nation,³ as well as a communication tool of administration and politics, states jealously cling to their perceived prerogative to determine the grammatical rules⁴ and terminol-

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1 Of course, it is not only states that have a language policy, but firms, universities, organizations, etc. Finally, the term language policy itself, what it entails, 'who' is responsible for it is also highly debated. The following examples given by Bergenholtz and Gouws reveal that language policy may have very different designations and agendas: "in English-speaking countries especially, the term *language planning*, introduced by Haugen (1959), is more often employed. In addition, other terms are sometimes used synonymously, or for special kinds of 'language regulations', e.g. in English *language engineering*, *glottopolitics*, *language development*, *language regulation* and *language management*; in German *Sprachlenkung*, *Sprachpflege*, *Sprachreinigung*; and in Afrikaans *taalbeplanning*, *taalbeleid* and *taalpolitiek*. Henning Bergenholtz, Rufus H. Gouws: How to do Language Policy with Dictionaries. Lexicos 2006:16, p. 16.

2 See: Láncoş Petra Lea: *Nyelvpolitika és nyelvi sokszínűség az Európai Unióban*, Doctoral Thesis (2012), pp. 52-53.

3 Benedict Anderson: *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Verso (2006), 48. o., ld. még Benedict Anderson: *Western Nationalism and Eastern Nationalism – Is there a Difference that Matters?*. *New Left Review* 9 (2001 May-June), p. 42. For a summary, see: Láncoş Petra Lea: *Nyelvpolitika és nyelvi sokszínűség az Európai Unióban*, Doctoral Thesis (2012), p. 10, 31-33.

4 For a summary, see: Láncoş (2012) 195-199. Euró, az egységes ...; Misad Katalin: *Euró vagy euro az új pénzneve?*. *Új szó* (2009.01.26.), <<http://ujsoz.com/napilap/kultura/2009/01/26/euro-vagy-euro-az-uj-penzneve-neve?mini=calendar/2009/09/all&>>; *Euró vagy euro? Az EU vitába száll a magyar helyesírással*, <www.mtv.hu/modernkepmesek/cikk.php?id=63467>. Magyar EP-képviselők levelet intéztek az Európai Központi Bankhoz az "euró" helyesírásának ügyében, Jogi Fórum (2006.12.20.), <www.jogiforum.hu/hirek/15196>; "...és lehull nevedrol az ékezet – magyar EP-képviselők az euró mellett, Napi Hírek (2006.12.21.), <www.napihitek.net/hir/teljes-cikk/2689/-es-lehull-nevedrol-az-ekezet-magyar-ep-kepviselok-az-euromellett>; Latvia grapples with EU over euro (2006.01.03), <<http://news.bbc.co.uk/2/hi/europe/>

ogy⁵ of the ‘national language’. Meanwhile, Member States consider the status of their national language as official language of the European Union to be an expression of national equality,⁶ therefore, any effort at linguistic rationalization originating from EU institutions is met with fierce opposition.⁷

Notwithstanding the above, in the framework of Union legislative, judicial and communication processes we are witnessing an ‘outsourcing’ of language policy functions typically carried out at the Member State level.⁸ Namely, the Union exercises its competences in 24 national languages,⁹ the ‘official languages of the Union’¹⁰ identified by the Member States in their accession treaties (or at a later point in time).¹¹ In the course of

4578806.stm>; Szópárbaj az eurózóna eloszobájában, Index (2006.01.18.) <<http://index.hu/gazdasag/vilag/euro060118/>>.

- 5 Eg. The accession protocols of Finland, Austria and Sweden stipulate certain terms used in Austria that differ from the terms used in German, guaranteeing these terms equal status with their German counterparts under EU law. Somssich Réka: Az európai közösségi jog fogalmainak nyelvi megjelenítése, különös tekintettel az európai magánjogra. Doctoral thesis (2007), p. 131.; P & V International: Language and Translation in International Law and EU Law. Studies on Translation and Multilingualism. European Commission, 6/2012. DGT/2011/MLM2., 33.
- 6 Theodor Schilling: Language Rights in the European Union. German Law Journal, 9(2008)10, p. 1220.; Somssich op. cit. 5.; See also new Member States’ bout with the EU over the spelling of the euro: Recital No. 2 of the preamble of Council Regulation 974/98/EC foresaw that the spelling of the euro shall be uniform across the Member States. Member States such as Hungary, Latvia, Lithuania and Slovenia demanded that they be allowed to spell euro in all documents, including EU official documents, according to their own orthography, Latvia and Lithuania threatening to sabotage the Treaty Establishing a Constitution for Europe. As a compromise, Member States are allowed to use their own orthography for spelling the euro, except for official Union documents where euro is spelled uniformly. Lános Petra Lea: Euro vagy euró? A nyelvi sokszínűség ütközése az egységes valutával. De iurisprudential et iure public. 2012:1-2., pp. 5-10. Theodor Schilling: Language Rights in the European Union. German Law Journal, 9(2008)10, p. 1220.; Somssich op. cit. 5.
- 7 Eg. Joined Cases C-274 and 295/11 *Spain and Italy v. Council*, CLEU:C:2013:240.
- 8 Of course, organizations such as the United Nations and its bodies also provide language services, yet these are of much more limited reach: the fact that the multilingual output of these bodies is less and that these sources cannot not directly make their way into national law renders the linguistic interference of the relevant language services at best, marginal.
- 9 Official languages of the Union are: Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, English, Finnish, French, German, Greek, Hungarian, Italian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish. This generous linguistic regime stands in stark contrast with the United Nation’s (6) and the Council of Europe’s (2) number of official languages. Of course, these organizations impact only indirectly on national laws, therefore, issues of access to legislation and legal certainty arise with less force in respect of these organisations’ norms.
- 10 Council Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community, *Official Journal* 017, 06/10/1958 P. 0385-0386.
- 11 Special derogations applied to the official languages Maltese and Irish, with Irish being added only in 2007 and Maltese becoming fully operational in 2014. Derogations for Irish may be found in: Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations; Council Regulation (EU, Euratom) 2015/2264 of 3 December 2015 extending and phasing out the temporary derogation measures from Regulation No 1 of 15 April 1958 deter-

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discharging its duties, the Union generates an output of several million pages of documents.¹² Related language services are carried out by different directorates general, such as the European Commission's Directorate-General for Translation (DGT) and DG Interpretation (SCIC), the European Parliament's DG Translation and finally, the Court of Justice of the European Union's DG Translation. In addition, the Council of the European Union established the Translation Centre for the Bodies of the European Union¹³ in 1994 with the primary aim of rendering translation, proofreading and terminology services to the bodies and agencies of the Union.

In the framework of its language services the Union employs legal concepts borrowed from national languages for the purposes of EU law. As a result, a professional Union jargon emerges, which requires language planning and standardization in its own right. Accordingly, the EU sets up and operates different terminology databases, contributing to the flexibility and further development of the official languages, adapting them also to the challenges posed by new advancements in science, technology or politics. Consequently, organizing language policy is no longer the monopoly of the state, instead, these functions are partly carried out and financed by the Union. While this leads to a reduction in costs for Member States, it also means a constriction of national language policy competences and a host of changes made 'externally' to the national language.

The institutions of the European Union employ a vast number of translators to fulfil their obligations flowing from the principle of linguistic diversity and the information rights of union citizens. However, while a large proportion of EU language services are related to Union law, only a fraction of the institutions' translators are lawyers, so-called *juristes-linguistes*. Furthermore, the lack of mutual trust in the competence of each others' translators prompts institutions to create and develop independent institutional terminological databases, compromising the consistency of terminology and translation in the EU.

14.2 GOAL, FOCUS AND METHOD OF RESEARCH

It is not the ambition of the present paper to provide a comprehensive account of all matters related to language services in the European Union. Moreover, as a lawyer, I cannot undertake to analyse the problems identified from the perspective of linguistics.

mining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community introduced by Regulation (EC) No 920/2005.

12 Lesznyák Ágnes: Az európai intézmények terminológiai adatbázisa: a IATE. Magyar Terminológia 3(2010)2, p. 161.

13 Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union.

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Instead, I shall endeavour to highlight the main problems posed by multilingual EU law and related language services and make some general proposals.

As far as the research method underlying the present paper is concerned, I relied on the available scholarly literature, mainly Hungarian cases and examples, and conducted interviews with experts working in the area of EU language services. In respect of the latter, I focused on the *juriste-linguistes* of the Hungarian Unit of the CJEU's Directorate-General for Translation. I chose this Unit for my research, because the Court of Justice of the European Union has a relatively small Translation DG and Units with a clear structure, enabling me to conduct the interviews specifically addressed to those responsible for the relevant subtasks. Furthermore, the staff of the CJEU's Directorate-General for Translation is mainly made up of *juriste-linguistes*, who, besides their translation skills, have a deep knowledge of the law, contributing to the correct use of legal terminology within EU institutions, bodies, etc.¹⁴ Finally, this Directorate-General is placed at an important stage in the process of providing EU language services: the *juriste-linguistes* of the CJEU are faced with terms developed in the course of Union legislation and solidified in the course of the national application of EU law. *Juriste-linguistes* play an important role in rectifying incorrect terminology and standardizing deviations. Based on the above, I shall mainly concentrate on the experiences of the translators working in the Hungarian Unit of the CJEU's Directorate-General for Translation.

14.3 CHALLENGES INHERENT IN MULTILINGUAL UNION LAW

14.3.1 *The 'Language of Union Law'*

An important characteristic of Union law is that it doesn't have its 'own language': legal acts of the Union are authentic in all official language versions.¹⁵ One of the typical

14 As Varga explains: "to translate legal texts it does not suffice to know both the source and the target languages, some basic knowledge of the law is also necessary. (...) Terminologists must carry out comparative law research as well, to be able to discern similarities and to analyze the differences between the institutions of different legal systems." Varga Zsófia: Terminológiai problémák a jogi szakfordításban – Korlátolt felelősségű társaság-e a limited liability company? Magyar Terminológia 6(2013)1; p. 21. Yet "training in the EU for translators and lawyer-linguists is carried out on the basis of employing someone who can 'hit the ground running', subject to 9 months' probation and the constant feedback via revision from senior colleagues." Martina Künnecke: Translation in the EU: Language and Law in the EU's Judicial Labyrinth. *Maas-tricht Journal of European and Comparative Law* 20(2013)2., p. 249. Jean-Claude Gémard: What Legal Translation is and is not – Within or Outside the EU. In: Barbara Pozzo, Valentina Jacometti: *Multilingualism and Harmonization of European Law*. Kluwer Law International (2006), p. 69.

15 In detail, see: Tamara Capeta: *Multilingual Law and Judicial Interpretation in the EU*. In: Lelija Socanac, Christopher Goddard, Ludger Kremer (ed.): *Curriculum, Multilingualism and the Law*, Nakladni Zavod Globus (2009); pp. 91-95.

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difficulties associated with legal language is to denote, delimit and interpret¹⁶ abstract legal concepts in the context, and against the terms of the national language – quite a feat even within the national legal system. This challenge is exacerbated in the framework of the EU, where there are 24 languages in play, and, with possible future enlargements, an ever greater number of languages shall form the fabric of Union law. As a result of the standardizing activities of Union translation services, an *autonomous professional legal jargon* of EU law emerges, which, on occasion, departs from the meaning attributed to these terms under national law.¹⁷

The autonomy of union law and its concepts are confirmed in the jurisprudence of the Court of Justice of the European Union. According to the CJEU, translation mistakes and challenges in interpretation generated by contradictory terminology should not be resolved by recourse to the ‘original language version’ (which, except for the documents of the Court, is predominantly the English text version). Instead, in arriving at the correct meaning of the act in question, regard must be had to the general aim and system of the measure, the effectiveness of union law, and the consideration of all authentic language versions.¹⁸

In light of these characteristics, there is a stark distinction between Union law and its carriers: the 24 official languages. The abstract, objective meaning of EU law cannot be tied to a single legal order or language, indeed, it much rather constitutes a constantly evolving legal culture inspired by, but not identical to Member States’ legal traditions. In turn, the lack of the cultural and linguistic embeddedness of EU law poses specific problems in the area of Union legal terminology, translation and interpretation which I will discuss below.

14.3.2 Linguistic Pitfalls of Multilingual Decision-Making

Normally, debates surrounding the wording of a legislative act take place in a single language,¹⁹ with decision-makers usually participating in discussions in their native language. Decision-makers in the Union, however, come to the table with different mother tongues and legal cultures, where discussions are carried in one ‘common’ language,²⁰ usually English, or with the assistance of interpreters (in some Council Working Groups,

16 Cf.: Arthur Kaufmann: Gondolatok a jogi hermeneutika ontológiai megalapozásához. In: Varga Csaba (szerk.): Jog és nyelv. Osiris (2000), p. 188.

17 Somsich op. cit. 19-20.

18 See: 29/69 *Erich Stauder v. Stadt Ulm-Sozialamt* [ECR 1969., 00419] para. 3.; 283/81 *C.I.L.F.I.T. v. Ministry of Health* [ECR 1982., 03415] paras. 18-19.

19 Of course, some states determine several official languages, where legal acts are formulated in these languages in parallel. For example, in Belgium, many legal documents are authentic in French, Dutch and German language, as a result, the boundaries between the original language version and the translation are blurred. Künnecke op. cit. 246. See also the example of Canada, Gémár op. cit. 76.; Michal Bobek: The Multilingualism of the European Union Law in the National Courts: Beyond the Textbooks. In: Anne Lise Kjaer, Silvia Adamo (ed.): Linguistic Diversity and European Democracy. Ashgate Publishing (2013); p. 131.

20 Magali Gravier, Lita Lundquist: Getting Ready for a New Tower of Babel. In: Anne Lise Kjaer, Silvia Adamo (ed.): Linguistic Diversity and European Democracy. Ashgate Publishing (2013); o. 80.

in Council meetings and in the European Parliament). Besides the problems with the 'common language' experienced by non-native speakers and the unavoidable losses associated with interpretation, the original text drafted during the given meeting itself raises certain issues as well, since "the true meaning of the terms used often remain unclear in such texts. This is all the more the case with Union texts, where the authors are often non-native speakers, resulting in possible mistakes in phrasing."²¹

Indeed, the vast majority (72 percent) of documents in EU institutions are originally drafted in English,²² often by non-native speaker authors.²³ Yet, involving native speakers in the drafting also fails to secure precision and clarity, since legal concepts are strongly embedded in respective legal cultures.²⁴ A classic example would be the concept of the *rule of law*, the meaning of which is not identical to the meaning of *Rechtstaatlichkeit* or even *l'Etat de droit*.²⁵ Moreover, a concept formulated in the very same language, for example in German, may have a different meaning in the German, Austrian, Belgian or Swiss legal culture²⁶ (the latter being a member of the EFTA group) or in the different branches of these countries' legal orders.²⁷ For example, the meaning of *Beamter* will be different in all Member States whose official language is German, simply because the status, privileges and scope of employment of these officials will differ across German-speaking states. Finally, it is worth noting that occasionally it is the Union legislator who contributes to terminological uncertainty by intentionally employing vague concepts to secure agreement between Member States who would otherwise refuse a stronger wording.

21 Lesznyák op. cit. 166.

22 Jan Fidrmuc: The Economics of Multilingualism in the EU. Economics and Finance Working Paper Series (2011). 2. o.; Julia Lichtkoppler: Language Use in the European Union – The Role of "English as a *Lingua Franca*". In: Dominik Hanf, Klaus Malacek, Élise Muir: *Langues et construction européenne*. Peter Lang (2010); 193-194. o.

23 The spreading of Euro English cannot be curbed, what with only 4,5% native speakers in Commission staff coming from the UK. This number is low, in particular when compared to the 12,5% proportion of UK nationals in the total population of the EU. <http://index.hu/kulfold/eurologus/2013/12/05/ujangol_szuleti-k_az_eu-ban/>.

24 Barbara Pozzo: The Translation of Legal Concepts and the Experience of Comparative Law. In: Barbara Pozzo, Valentina Jacometti: *Multilingualism and Harmonization of European Law*. Kluwer Law International (2006) 7. o. Somssich op. cit. 18-19. o.; Gémár op. cit. 73-74. o.

25 "[T]he protean nature of the English term, by comparison to other languages, is the major problem. For instance, 'the rule of law' may be translated in French – without being exhaustive – by the following terms: *prééminence du droit* (translation historically favored by the Council of Europe), *Etat de droit* (term today favored by legal scholars when referring to the rule of law as a constitutional principle governing the State), *primauté du droit*, *principe de légalité*. The term *règle de droit* may also be mentioned although it does not refer to the rule of law but rather to any rule of law." Laurent Pech: *The Rule of Law as a Constitutional Principle of the European Union*. Jean Monnet Working Paper 04/09; p. 8.

26 Pozzo op. cit. 8.

27 Varga op. cit. 1.; Somssich op. cit. 35.; Pozzo op. cit. 7.

14.3.3 Problems of Implementation

The autonomy of EU law notwithstanding, Union law is closely tied to Member States' legal systems in legislation, implementation and enforcement. This yields a special characteristic of Union law: in contrast with traditional international agreements, the concepts of which "live a life of their own conceptually and in meaning, within the confines of the international treaty", the concepts of union law form part of an independent legal order, albeit "existing side by side with Member State legal orders and superimposed over national law".²⁸ In light of the principle of the uniform application of EU law directly applicable or implementable Union law creates a special responsibility for translators of Union legal acts as well as national legislators incorporating EU law through the vehicle of the national language. Namely, translators working in the different DGs or for the national ministries will facilitate understanding or contribute to confusion surrounding the meaning of EU law. An example for the consequences of mistaken translation by EU staff could be the Hungarian VAT case, where the Hungarian language version wrongly contained the term *visszaigényelhető* (*reclaimable*, *réclamée*), while other language versions of Regulation 1084/2006 correctly included the term *recouvrable*, *recupérable* (*megtérülő*),²⁹ leading the Hungarian Government to believe that the VAT content of the investments may be reclaimed under the Structural Funds.

It is worth recalling that all specialist translation, including legal translation requires both language skills and an in-depth knowledge of the specific field the translator is specialised in.³⁰ In the case of legal translation, the main steps of the translation process comprise understanding the concepts in the source language, a comparative law exercise, and the delivery of source language concepts in the target language.³¹ The translator analyses source language concepts in their specific context in order to unfold the precise meaning of the same. The comparative law exercise allows the translator to identify the equivalent legal institution in the legal order of the target language, conveying the precise meaning of the concept in the translated text.³²

Experts translating Union law must be aware of the – possibly different – meaning carried by a given concept in Member State's legal language, keeping in mind that only the correct use of legal terms (employing 'functional equivalents'³³) may guarantee the

28 Somssich op. cit. 35.

29 T-89/10, *Hungary v. Commission*, not yet reported.

30 Künnecke op. cit. 244. o.

31 Künnecke op. cit. 247.

32 Ibid.

33 "[I]t has been argued that the notion of legal equivalence in legal translation in the EU context is in decline. The translator is confronted with legal terms which may have their origin in national law or EU law. Once a term is identified as an EU law term, its meaning is not always clear since European law is still developing and some EU law concepts may be in need of clarification. This, it is argued complicates the use of the notion of equivalence or partial equivalence. It also puts the use of the comparative legal method to the test since it is not always clear which legal system's concepts are relevant in the investigation and whether the

uniform implementation of union law across the Member States.³⁴ As Somssich points out, “the invested meaning of legal concepts cannot be conveyed from one legal culture to another. In these cases, only the translations are transposed into the new system, which are in turn immediately filled with the normative content supplied by the target system.”³⁵ As a result, the original meanings of the terms are lost.³⁶ On the other hand, union law has independent, autonomous concepts,³⁷ which feature in both the everyday language and the legal texts formulated in the official languages of the Member States. For example, although the content of the terms ‘worker’ and ‘consumer’ are different under EU law and national laws, the translator is bound to use these terms.³⁸ Finally, in case the meaning of Union law or even Member State law cannot be conveyed through the established terms of the official language in question and it cannot be precisely inferred from the context, the creation of new terminology may prove to be necessary. For example, in the Hungarian *Katz* case,³⁹ the term *pótmagánvádló* – a Hungarian legal institution unknown to other Member States’ legal orders – had to be translated into the other official languages, resulting in the creation of new terms (*private prosecutor in substitution for the public prosecutor*, *accusateur privé se substituant au ministère public*), albeit without the emergence of this legal institution in the respective legal orders of the Member States.⁴⁰

It is the responsibility of the national legislator and those applying Union law to identify the autonomous concepts of EU law and to proceed accordingly, notwithstanding the fact that its substance will differ from that provided for under national law.⁴¹ Since Union measures often lack proper definitions, both translators and officials active in EU institutions and the Member States experience the difficulties associated with the correct translation, interpretation and application of Union law.⁴² Moreover, similarly to national laws, EU law and the associated legal language is constantly evolving, making it hard to pin down the exact meaning of the different terms employed. To manage these challenges, the Union implements its own language policy tool of corpus development.

comparative legal method has any place in the translation of EU law concepts which have autonomous meaning; independent from national legal system”, Künnecke op. cit. 248.

34 Künnecke op. cit. 253.

35 Somssich op. cit. 22.

36 Vismara op. cit. 64.

37 Künnecke op. cit. 256.

38 Ibid.

39 C-404/07 *Katz* [2008] ECRI-7607.

40 Varga op. cit. 4., 18.; Künnecke op. cit. 256.

41 Sacha Prechal, Bert van Roermund (ed.): *The Coherence of EU Law: The Search for Unity in Divergent Concepts*. Oxford University Press (2008), p. 5, 38.

42 Pozzo op. cit. 13. o.

14.4 CORPUS DEVELOPMENT: STANDARDIZATION, FRAGMENTATION AND PROBLEMS OF COOPERATION

The work of the different Union directorates general for translation is not limited to translating legal texts and other documents. The use of precise and uniform terms requires significant investments in corpus development. Consequently, the individual directorates general and centres for translation have developed different terminology databases⁴³ containing terms of EU relevance in the official languages of the Union.⁴⁴

IATE (Inter-Active Terminology for Europe) is an open access⁴⁵ on-line, inter-institutional terminology database created by the Translation Centre for the Bodies of the European Union in cooperation with Union institutions and certain bodies. IATE absorbed earlier terminology databases managed independently by the different institutions (Eurodicautom,⁴⁶ TIS,⁴⁷ Euterpe,⁴⁸ Euroterms, CDCTERM)⁴⁹ with the goal of standardizing Union terminology and making it available to all Union institutions and bodies.⁵⁰ The database was built on the basis of a wide cooperation between the Translation centre and other institutions and bodies,⁵¹ therefore, this open-access corpus could be the single point of reference for Union terminology.

Yet although the terms entered into IATE by translators underwent a validation procedure carried out by terminologists,⁵² the Hungarian Unit of the CJEU admitted that they had negative experiences with the use of the database, leading them to question the quality of this corpus.⁵³ Terms that are used in various different fields appear to be particularly problematic, with expressions used by technical experts, lawyers and Union administration getting inextricably mixed up.⁵⁴ Thus, in case the translation or proofreading of legal acts is done on the basis of IATE, but not by *juriste-linguistes*, the meaning of individual provisions may be distorted. This is the reason why the different Units com-

43 Lesznyák op. cit. 163.

44 Ibid., 165.

45 Open access since 2007, available to staff of Union institutions and bodies since 2004.

46 Ian Johnson, Alastair Machphail: IATE – Inter-Agency Terminology Exchange: Development of a Single Central Terminology Database for the Institutions and Agencies of the European Union. Workshop on Terminology Resources and Computation, LREC 2000 Conference, Athens, Greece, p. 2.

47 Ibid. 2-3.

48 Ibid. 3.

49 Cf. Anna Braasch, Lina Henriksen: Merge of terminological resources. Magyar Terminológia 5(2012)1; pp. 89-98.

50 Lesznyák op. cit. 163.

51 European Parliament, Council of the European Union, European Commission, Committee of the Regions, European Investment Bank, European Central Bank. Ibid.

52 A special validation working group manages the incoming terms. Johnson, Machphail op. cit. 5-6. Lesznyák op. cit. 164. Since 2008 terms awaiting validation were also made available to translators under the heading Pre-IATE.

53 Lesznyák op. cit. 164.

54 Ibid. 168.

piled their own corpora, with the CuriaTerm serving as a primary source in the work of the Hungarian Unit.

CuriaTerm was set up and has been developed on an ongoing basis by the CJEU's Directorate General for Translation with the goal of creating a Union level correlation table for legal terminology. It was created for internal use only and is updated daily,⁵⁵ containing terms identified in the course of translations carried out at the Court in the 24 official languages.⁵⁶ The database presents the terms together with their relevant context: the labels related to the terms indicate the use of the term in Member State law, their provenance and exact definition.

In 2008 the Publications Office invited the CJEU's DG Translation to compile a new terminology database in the framework of the European e-Justice Portal project. The ensuing Vocabulaire Juridique Multilingue Comparé (VJM) developed by the Directorate General is restricted both in focus and access: the DG decided to concentrate on the areas of rights of aliens and family law, the database being for internal use only.⁵⁷

While IATE sought to standardize the use of legal terms through comparing different databases developed by the institutions, the individual directorates general for translation continue to use and develop separate databases and glossaries.⁵⁸ Since no official, formalized framework for inter-institutional cooperation has been fostered aside from the IATE project, any standardization takes place through personal contacts, informal requests and possible updates of terms in IATE. This process is not without obstacles: using IATE is not mandatory, the overlaps and deviations between the different databases are in a constant flux, therefore, parallelisms in terminology use are to be expected in the near future as well.

While the possibility for inter-institutional cooperation among translators on general terminology issues is open in principle,⁵⁹ direct consultation with the author or drafter of the source text would be the optimal source for *juriste-linguistes*. Analysing the work of the CJEU's Directorate General for Translation, however, Gallo stresses that both professional ethical standards and confidentiality rules binding Union *fonctionnaires* prevent *juriste-linguistes* from acquiring information or suggesting wording through their institutional connections.⁶⁰ What *juriste-linguistes* can do is to add comments to the text they are working on (preliminary references, judgements, etc.) drawing the Court's attention to contradictions, confusions and discrepancies regarding terminology. This way, judges

⁵⁵ Künnecke op. cit. 259.

⁵⁶ Ibid.

⁵⁷ Ibid. 258-259.

⁵⁸ Lesznýák op. cit. 162.

⁵⁹ Inter-institutional committees organize the relationships between institutions' translation services: Giovanni Gallo: Organisation and Features of Translation Activities at the Court of Justice of the European Communities. In: Barbara Pozzo, Valentina Jacometti: Multilingualism and Harmonization of European Law. Kluwer Law International (2006); p. 194.

⁶⁰ Ibid. Künnecke op. cit. 249.

may be informed about possible terminology issues, and, if necessary, the CJEU may pose questions to the applicant.⁶¹

14.5 TRANSLATION ERRORS AND THEIR MANAGEMENT

The consistent use of terminology and the conceptual coherence of Union law and Member State law are key to the uniform interpretation and application of the law. The significance of such consistency had already made itself felt in Hungary even before accession: in preparation for joining the EU, Hungary was bound to achieve full harmonization of its legal system with EU law, triggering problems regarding the correct use of terminology. At this time, the translation of secondary law was Hungary's responsibility, resulting in translations that often departed from the terminology employed in official translations prepared in the Union DGs. The competent Hungarian Ministry of Justice regularly conferred with the translation services of the EU, nevertheless, such discrepancies continued to crop up.⁶²

Although it would be expedient to take the 'original' language version (mainly the English language version, or the French language version at the CJEU) of the text as a starting point, due to relay translation practices through so-called *pivot* languages,⁶³ this seems to be an unrealistic feat. Relayed translation is a rationalization technique designed to save time and to prevent a radical increase in translation staff.⁶⁴ While the CJEU's *juriste-linguistes* in the EU15 were capable of directly covering the existing 110 translation directions, meaning direct translation from one official language into any other official language, the system was no longer sustainable following the Eastern enlargement. Thus, the translation of Member State languages joining the EU in the years 2000 was solved through *pivot* languages (French, English, German, Spanish and Italian).⁶⁵ In the case of Hungarian, for example, this means that a reference for a preliminary ruling arriving at the Registrar in Hungarian language will first be translated into the *pivot* language Spanish and then into all other official languages.⁶⁶

Owing to the system of relayed translation, applications submitted to the Court of Justice of the EU are not necessarily translated into French first. Although such a practice

61 Ibid.

62 Following Hungary's accession to the EU, the native language of the Head of the Hungarian Translation Unit in the European Parliament was German, while the mother tongue of the Head of the European Commission's Hungarian Translation Unit was Danish.

63 Direction Générale de la Traduction: Gestion du multilinguisme suite aux élargissements 2004, 2007 et 2013, (CJEU), p. 3.

64 Gravier, Lundquist op. cit. 81.

65 Gallo op. cit. 185. Gallo is of the opinion that on balance, institutional experience with the use of pivot languages has been positive.

66 Why is it that the pivot for Hungarian is Spanish? Since Hungarian is not an Indo-European language (but a Uralic language, together with Finnish and Estonian), this choice was not made for reasons of linguistic similarity, but much rather because it was the Spanish Unit that volunteered to learn Hungarian.

would greatly contribute to the consistency of translations, the workload of the French Unit,⁶⁷ procedural time limits and reasonable time requirements render such a solution unfeasible. For example, the Hungarian Unit may have to prepare the Hungarian translation of an application received in English language with a shorter deadline than when the French translation will be finished. As a result, translators cannot rely on the availability of a French translation or may have difficulties understanding the document they are working on due to vague wording, contradictoriness, etc. A relatively recent innovation can help them find the linguistic support they need: in case the translator experiences problems with the French version of the text (typos, grammar, ambiguous wording), he may contact the colleague assigned to the text from the Unit of the language of the case, the so-called *personne de référence*. The *personne de référence* may provide clarification regarding a specific national legal institution or concept to his colleagues working in the different Units, while also transferring any possible questions to the *referendaires* of the *judges rapporteur* assigned to the case.⁶⁸

It is important to note that the staff of the CJEU's Directorate General for Translation are not only faced with their colleagues' possible translation errors, since they encounter and must manage the erroneous use of terminology in 'external' documents as well. The Vademecum of the Hungarian Unit provides, that "it is mandatory to use the official Hungarian translation of secondary law (...) [e]xcept where a manifest error in the official Hungarian translation may be discerned." In such cases, the CJEU's DG Translation will add the remark "helyesen:" (correctly) and the correct term directly after the mis-translated term of the quoted provision.⁶⁹ Although this correction tool may be employed by all Units of the DG, this has only been applied by the translators of the "new" language Units.

It is worth noting in this respect that the work of the *juriste-linguistes* of the Court is not necessarily the end of the line from the point of view of Union language services. This is because the official translations of CJEU judgments are binding and as such, the termi-

67 60 percent of the overall translation workload of the *juristes-linguistes* at the CJEU is made up of translations into French. The workload of the individual units is eased by outsourcing approximately 15-20 of the translations. The work of new entrants to the translation units is controlled by proof-readers. Gallo op. cit. 183, 187. Gravier, Lundquist op. cit. 81.

68 Ibid. 193.

69 When discussing the pitfalls of multilingual translation I mentioned that documents are generally formulated in one language. However, due to the shortness of time available for translation before publication and promulgation of the documents, as well as the uncertainties generated by the use of relay translation, errors in translation may occur that are only identified following the publication of the given document in the Official Journal. Bobek op. cit. 131-132. In these cases the Publication Office publishes a 'corrigendum' in the Official Journal, correcting the mistranslated provisions. Quite often, however, this results in a modification of the meaning of the affected provision. Ibid. 128. While it is a legitimate means of remedying errors in translation, corrigenda modifying the content of a provision also raise issues of legal certainty. Mattias Derlén: In Defence of (Limited) Multilingualism: Problems and Possibilities of the Multilingual Interpretation of European Union Law in National Courts. In: Anne Lise Kjaer, Silvia Adamo (ed.): Linguistic Diversity and European Democracy. Ashgate Publishing (2013); 148-150.

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nology used therein is authoritative. Meanwhile, the terminology choices made by the Court's *juriste-linguistes* are particularly well founded: these translators have legal training, their work is controlled by professional proof-readers, finally, the judge speaking the language of the case also checks translations.⁷⁰ This way, the language services rendered by the Court's *juriste-linguistes* "improve the drafting of the documents themselves and consistently influence the legal language used by scholars and practitioners in legal matters."⁷¹

14.6 SUMMARY

The multilingual nature of EU law, the lack of a single authoritative language version of Union documents and the rapid evolution of EU legal terminology poses a constant challenge for translators. While a central database was set up to alleviate problems associated with inconsistent use of terminology, the translators of the different institutions' DGs continue to develop their own databases and glossaries. From the point of view of the Directorate General of the European Court of Justice one of the reasons for treading their own path is that the majority of translators working on IATE and in the other relevant DGs are not *juriste-linguistes*, leading to mistranslations of legal terminology. What's more, *juriste-linguistes* of the Court are generally only faced with those errors in translation, that are presented to them in the concrete documents they are assigned to and can only identify a small proportion of the mistranslations in Union documents. Based on the above, the key to achieving a more consistent legal terminology on Union level is to include *juriste-linguistes* into the translation of legal acts, to allow access to terminology databases currently restricted for internal use only and to promote stronger inter-institutional cooperation between the relevant DGs.⁷² Where the translation of legal texts is outsourced, these should be proofread by *juriste-linguistes* to guarantee consistency. Finally, the comprehensive training and certification of translators with *fonctionnaire* status in EU institutions should be considered, based on a curriculum with a strong focus on Union law and terminology, as well as comparative law.

⁷⁰ Gallo op. cit. 193.

⁷¹ Ibid. 195.

⁷² On general solutions to cooperation in terminological work, see: Görög Attila, Hennie van der Vliet, Willy Martin: Is there anything more we can do? A collaboration plan for Terminology Service Centres (TSCs) in Europe and beyond. Magyar Terminológia 4(2011)2; pp. 202-206.

