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Translation of Multilingual EU Legislation as a Sub-genre of Legal Translation

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The typology of texts may raise the translator's awareness of text functions and facilitate the choice of translation strategies. The term *genre/text type* refers to "the specific classes of texts characteristic of a given scientific community or professional group and distinguished from each other by certain features of vocabulary, form and style, which are wholly function-specific and conventional in nature" (Alcaraz and Hughes 2002: 101). It is generally acknowledged that legal texts constitute a separate register of language for special purposes, which is further divided into a number of genres according to functions. The most traditional bipartite[1] approach divides legal texts into regulatory (prescriptive) and informative (descriptive) ones (Šarčević 1997: 11), which is similar to Wróblewski's classification of legal language into the language of the law (język prawa) and the metalanguage of the law (język prawniczy) (1948). In addition, there are more detailed classifications of legal texts; for example, Gémar distinguishes the language of the legislator, judges, the administration, commerce, private law and scholarly writings (qtd. in Šarčević 1997: 9)[2]. In this paper it will be argued that owing to its unique features and constraints of multilingualism, the language of EU legislation is distinct from that of national legislation. For this reason the translation of Community legislation should be treated as a distinct sub-genre of legal translation.

[1] Some theorists propose a tripartite classification of legal language (cf. Šarčević 1997: 11).

[2] A different classification is proposed by Alcaraz and Hughes (2002: 101).

1. EU multilingualism and its consequences

One of the most vital factors that impact the language of EU legislation is **multilingualism**. Within linguistics it refers either to individuals (bilingualism) or to the linguistic situation of a nation/society and is divided into symmetrical multilingualism with the equal status of all the languages and asymmetrical multilingualism where at least one language has a higher status (Clyne 1997: 301). Typical multilingual countries include Switzerland, Belgium and Canada. However, EU multilingualism goes beyond the traditional understanding of this term as it refers to the linguistic situation of 25 Member States with 20 official languages[3] and approximately 60 other indigenous languages that were not recognized as official languages (*A New Framework*). The language situation in each Member State is either monolingual or symmetrically/asymmetrically multilingual. Typical consequences of multilingualism, such as the mutual mixing of languages, code switching and individual bilingualism, occur to a much smaller extent.

Above all, the main distinctive 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), as well as the 'parity of status for 20 languages' (*Translating*… 2005: 14). The multilingualism policy, as specified in *A New Framework Strategy for Multilingualism*, aims at giving citizens access to Community legislation and information in their native languages[4]. Since Community law has primacy over national law (the doctrine of European legal supremacy) and *ignorantia iuris nocet*, this egalitarian approach to all the official languages is a political necessity that guarantees certainty of the law and equality of all the EU citizens before the law. Multilingualism is, therefore, a method of avoiding linguistic disenfranchisement[5].

[3] 21 from 2007 (Irish).

[4] As a result, the scale of EU translations is remarkable. The very *acquis communautaire*, which has to be translated into the language of each new member, has approx. 80,000 pages (the 2004 data). The cost of translation in all the EU institutions is estimated at EUR 807m per year (the 2005 EU budget was EUR 105,221m); cf. Press Releases Rapid 13 January 2005: *Translation in the Commission: where do we stand eight months after the enlargement?*

[5] A person is regarded as "linguistically disenfranchised when he/she does not speak any of the official languages either as a native or second (or third) language" (Fidrmuc and Ginsburgh 2005: 4 fn 1).

In accordance with the multilingualism policy, EU-wide legislation – since it is binding on all EU citizens – is adopted in all the official languages of the EU. This issue was regulated by Council Regulation No. 1 of 1958 determining the languages to be used by the European Economic Community (as amended from time to time after each enlargement). Its Article 4 specifies that regulations and other documents of general application are to be drafted in all the official languages and that the Official Journal of the European Communities shall be published in all the languages. However, it is not only a matter of publishing legislation in all the official languages but, most of all, the fact that from the legal point of view all language versions are **equally valid** and **authentic**[6] and in case of interpretative doubts no version is more authentic than the other. As a result, there is no original and no translations; all language versions form a single legal instrument presumed to have the same meaning in all the languages. This approach is referred to as the **principle of plurilinguistic equality** (van Els 2001), the **principle of equal authenticity** (Šarčević 1997: 64), or the PEAT, i.e. **the principle of equality of authentic texts** (Doczekalska 2005).

It remains an open question whether it is possible to achieve the same meaning in 20 languages. Wagner from the Translation Service of the European Commission notes that it is a legal fiction and "a feat of legal magic which defies all logic but is nevertheless necessary, to safeguard linguistic equality" (2000: 2); a similar view is expressed by Wright, who describes this principle as "admirable in its idealism and concern to maintain equality between groups, but utopian" (qtd. in van Els 2001: 327). Having regard to major semantic theories, in particular to the views of Humboldt, Weisgerber, Wittgenstein, the Sapir-Whorf hypothesis or Cognitive Linguistics, meaning construal is language specific and it is not feasible to map the SL network of concepts on the TL network of concepts with utter precision. Furthermore, as argued by Gizbert-Studnicki, legal registers incorporate language-specific legal views of the world (*JOŚ*). As a result, in practice multilingualism is not problematic in typical multilingual countries such as Belgium or

[6] It was also confirmed by the European Court of Justice in Case 282/81 *Srl CILFIT and Lanificio di Gavardo SpA* v *Ministry of Health*: "Community legislation is drafted in several languages and (…) the different language versions are all equally authentic".

Canada because their legal registers incorporate the same legal view of the world, which stems from identical historical sources and is adjusted under the same practical needs (2001: 49). In contrast, EU multilingualism is much more complex as it incorporates the supranational linguistic view of the world expressed in the EU-wide legislation, which is imposed on the country-specific linguistic views of the world set forth in the national legislation of each Member State.

In order to make EU multilingualism practicable, it was necessary to adjust the language of input texts to make it translatable into other 19 languages (see 2.1), and to adopt a more flexible approach to statutorily interpretation. Interpretive doubts are settled by the European Court of Justice (ECJ), which is the supreme authority on Community law (Steiner and Woods 2003: 26). The ECJ follows the Continental interpretative approach called the teleological approach (McLeod 2005: 328). As argued by Harris, the ECJ "is far more creative and proactive in its interpretations" than English courts (qtd. in Stychin and Mulcahy 2003: 102), which mainly apply the literal approach (Slapper and Kelly 2003: 173). The difference between the English and EU approach was lucidly explained by Lord Diplock in *R* v *Henn* [1981] AC 850:

> 'The European Court, in contrast to English courts, applies teleological rather than historical methods to the interpretation of the Treaties and other Community legislation. It seeks to give effect to what it conceives to be the **spirit rather than the letter** of the Treaties; sometimes, indeed, to an English judge, it may seem to the exclusion of the letter. It views the Communities as living and expanding organisms and the interpretation of the provisions of the Treaties as changing to match their growth.' (qtd. in Steiner and Woods 2003: 26, emphasis mine)

A less rigorous approach to the letter of the law leaves the ECJ some room for manoeuvre to overcome discrepancies between the languages. What is important for translators is that this teleological approach involves interpretation of multilingual law by comparison of all the language versions. Doczekalska lists a number of judgements issued by the ECJ that recommend this procedure, e.g. Case 282/81 *Srl CILFIT and Lanificio di Gavardo SpA* v *Ministry of Health* ("an interpretation of a provision of Community law thus involves a comparison of the different language versions") (2005: 8-9). The ECJ's judgements stress that in order to ensure the uniform application and interpretation of multilingual Community law it is necessary to interpret it on the basis of the actual intention of the authors or even the purpose and gen-

eral scheme of the act emerging from all the language versions (Case C-268/99 *Jany* v *Staatssecretaris van Justitie*[7] and Case 30/77 *Régina* v *Pierre Bouchereau*[8]).

2. National and EU legislation in translation: a comparison

This section discusses the main differences between the translation of national legislation and Community legislation, starting from the language of the law, the recipients, translation function and status, directionality of translation, the translator's role, the approach to equivalence, and consequences of errors (see Table 1).

2.1. Drafting languages: distinguishing features of the input text

At the EU level, legislation is drafted in one of the drafting languages (procedural/ working languages), which show some properties of a lingua franca and in fact have a more privileged status than other languages. In 2004, about 62 per cent of the original texts were drafted in English, 26 per cent in French, 3.1 per cent in German and 8.8 per cent in the other 17 languages within the European Commission; for comparison, in 1992 English was used in 35 per cent of inputs and French in 47 per cent of inputs (Translating… 2005: 6). From the figures it is apparent that the use of French is declining[9] and English becomes the main drafting language. It should be also noted that for practical reasons some countries, e.g. Estonia, Hungary and Croatia, did not translate *acquis communautaire* from the originals but mainly from English, which means that a large part was translated from a subsequent translation[10] (Doczekalska 2005: 6). It is worth noting that the

[7] "The uniform application of Community rules requires that they be interpreted in accordance with the actual intention of the person who drafted them and the objective pursued by that person, in particular in the light of the versions drawn up in all languages".

[8] "The different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part".

[9] Apart from the Court of Justice.

[10] The UK joined the EEC on 1 January 1973 while the EEC was established in 1957 and some primary legislation was already existing before the accession date. Earlier official languages were French, Dutch, German and Italian.

growing use of English is problematic because the common-law conceptual network of legal English shows a larger distance to the civil-law conceptual networks of continental legal registers. For example, legal Polish bears more conceptual similarity to legal German and French than to legal English. For this reason translators are recommended to consult not only the English version but also other language versions.

In order to arrive at the same meaning (or rather to convey the same legislative intent) in 20 languages, the drafting language undergoes a certain degree of **deculturalisation**. As noted by van Els, deculturalisation or the reduction of the cultural embedding is typical of lingua francas (2001: 329). A similar process is referred to by Craith as **deterritorialisation**[11], in particular to describe the role of French and English in the EU (2006: 50). Van Els illustrates deculturalisation with the aircraft manuals in the so-called 'controlled English', which are drafted according to the simplified lexical and grammatical guidelines (2001: 329). In a way, a phenomenon of semantic and syntactic simplification applies to the EU drafting languages and the input text to make them translatable into 19 other official languages. As noted by Kaduczak, a lawyer-linguist from the European Commission, "the drafter has to take into account constraints of other languages and avoid any 'idiolinguistic' solutions" (2005: 38). For example, it is recommended to avoid system-specific terms of national law when drafting the EU legislation and replace them with more neutral terms, aesthetic aspects being of secondary importance, "in Community law it is often necessary to avoid a term of national law which has no satisfactory equivalent in one or more Member States and which does not cover exactly a given notion or corresponds to a more general notion. In such a case a new, more appropriate, term should be used in its place (even if it is perhaps less elegant)" (*Manual of Precedents* 2002: 98). Similar recommendations are given to drafters in Principle 5 of the *Joint Practical Guide of the European Parliament*, the Council and the Commission, which specifies that "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" (2003: 17). For example, the supranational term *sub-*

[11] defined by Lull as "partial tearing apart of cultural structures, relationships, settings and representations" (qtd. in Craith 2006: 50).

sidiarity is preferred to the UK-specific term *devolution* (Wagner et al. 2002: 64). It is emphasised that country-specific legal terms are likely to lead to translation problems and when they do not have equivalents in other systems, they may be translated only through 'circumlocutions or approximations' and will result in discrepancies between the language versions (*Joint Practical Guide* 2003: 19).

In addition to some degree of deculturalisation and decontextualisation and functioning as a 'multicultural contact-point of the various cultures' (Koskinen 2000: 58), EU legal language has created a common legal culture of its own[12] on the basis of *acquis communautaire* (cf. Wagner 2000: 3). In fact, it developed a distinct supranational conceptual network. As emphasised by the ECJ, the terminology of EU legislation is 'peculiar' to it and in consequence "legal concepts do not necessarily have the same meaning in Community law and in the law of the various member states" (Case 282/81 *Srl CLIFIT and Lanificio di Gavardo SpA* v *Ministry of Health*). What is problematic is that EU legislation is drafted in languages whose legal terms already have fixed connotations (Heutger 2005: 209)[13]. In addition to new concepts, the EU conceptual network consists of old national concepts with completely or partially overlapping boundaries. Thus, a given legal term may have polysemous meanings: that peculiar to the national legal system and that peculiar to the Community legal system. A good illustration may be found in the ECJ's judgements in C-498/03 concerning *charitable*[14] and C-449/93 concerning *establishment*[15] (Doczekalska 2006: 19). In the former the ECJ ruled that charitable in the English version of the Sixth Council Directive 77/388/EEC has a meaning independent of national law and is a Community law concept which derives its meaning from all the language versions. As regards the latter, Directive 75/129 sets forth

[12] It may be reasonably expected that the EU legal culture and the MS legal cultures will grow more and more similar in the future as a result of the harmonisation of laws.

[13] EU legislation is sometimes referred to as 'hybrid texts' defined by Trosborg as "texts produced in a supranational multicultural discourse community where there is no linguistically neutral ground" (qtd. in Garzone 2000: 6).

[14] *Kingscrest Associates Ltd and Montecello Ltd* v *Commissioners of Customs and Excise*.

[15] *Rockfon A/S* v *Specialarbejdderfobundet i Danmark*.

a collective redundancy procedure to be observed by *establishments*. This term was assigned different meanings in the language versions, including an *undertaking, work centre, local unit and place of work*. The Danish company Rockfon A/S dismissed ca. 25 employees without the observance of the collective bargaining procedure, contending that it was not an 'establishment' under Danish law. In its judgement the ECJ clearly stated that Community law concepts cannot be defined by reference to national law. As manifested above, Community law uses its own concepts but may access them through terms that are shared with national law. As a result, one of the distinguishing features of EU translations is 'the blurred divisions of languages and cultures' as translation is frequently *intra*cultural (Koskinen 2000: 59).

Apart from the semantic simplification, the language of EU legislation is marked by some *syntactic simplification*. Principle 1 of the *Joint Practical Guide* says that to account for multilingualism EU legislation requires a clear, simple and precise language to ensure 'the equality of citizens before the law' through comprehensible law (2003: 10). It is further recommended to use everyday language as "where necessary, clarity of expression should take precedence over felicity of style" (2003: 11). Item 5.2.2. instructs drafters to avoid too complex syntax with multiple subordinate clauses and parentheses and to formulate clear relationships between different parts of the sentence. It is claimed that overly complex or ambiguous sentences may be problematic in translation, increasing the risk of 'inaccuracies, approximations or real mistranslations' in the other official languages (2003: 17-18). For example, English drafters and translators are recommended to use Plain English "since the Commission lays itself open to misunderstanding or ridicule if it sounds 'foreign' or fails to get an appropriate message across in the UK or Ireland" (*English Style Guide* 2001: 1). Thus, Principles 1 and 5 impose crucial restrictions on the language of Community legislation compared to the drafting of national legislation.

One should also not overlook the fact that a lingua franca is influenced to some degree by its non-native users, a phenomenon which van Elms refers to as the **shift in the ownership of the language** (2001: 344). EU legislation is drafted both by native speakers and non-native speakers[16], with some native speakers "beginning to lose touch with

[16] Wagner et al. claim that non-native speakers of English or French write the majority of texts prepared internally by the EU institutions (2002: 70).

their language as a result of working in a multilingual environment" (*English Style Guide* 2001: 1). This factor may increase the risk of interpretative doubts in the course of translation.

By contrast, language of national legislation activates a well-established intersubjectively shared system of country-specific knowledge[17]. Legislation is drafted in the official language of a given country without any consideration for problems translators may have.

2.2. Status, function and recipients of translation

In most cases the translation of national legislation is non-authoritative. It is a 'mere' translation and the original prevails over it. It mainly performs an informative function and as noted by Garzone "the translated version is a *Verständnishilfe*, having the status of a parallel text, a gloss or a commentary to be used as a key of access to the original, which has no legal validity of its own" (2000: 6). A translation informs foreign investors and international businesses about the content of national legislation and provides access to the domestic market, especially in the case of 'exotic' languages. Translations may be also used by EU institutions that intend to verify the implementation of Community law. It is worth noting that recipients are not always native speakers of the TL.

In contrast, translation of Community legislation is authoritative and acquires the status of an authentic text with equal value and meaning as the 'original'. Translation of Community legislation can bind citizens; hence, it has a normative function. As noted by Šarčević, translation enables "the mechanism of the law to function in more than one language" (2000: 1). For example, a regulation does not require further implementation as it is "of general application (...), binding in its entirety and directly applicable in all Member States"; a directive is "binding, as to the result to be achieved, upon each Member State to which it is addressed" while a decision is "binding in its entirety upon those to whom it is addressed" (Article 249 of the EC Treaty). In any case the translation has the same status as the original document. Indirect receivers include EU citizens while direct receivers are lawyers[18].

[17] The comparison does not apply to typical multilingual countries, such as Belgium or Switzerland.

[18] cf. Šarčević for the concept of direct and indirect receivers of legal translation (2000: 4).

2.3. Directionality of translation and the translator's role

In respect of national legislation, the directionality[19] of translation depends on a country. In Poland there is no official institution that translates national legislation. Translations are mainly inverse and are carried out by native speakers of the SL (i.e. Polish) despite the rule of translating into one's mother tongue prescribed, for example, by the UNESCO (cf. Lonsdale 2001: 64). It is mainly due to the insufficient number of native speakers of English capable of translating from Polish at the professional level. It is also worth noting that since English is the lingua franca of the business world, the UK legislation is rarely translated into other languages.

As far as EU legislation is concerned, translations are mainly direct and are carried out by the native speakers of the TL[20]. Translations are mainly done inhouse by the EU institutions and externally by freelance translators (by way of tenders). This can be illustrated by the Directorate-General for Translation of the European Commission, the world's largest translation services, which employs 1,650 full-time translators and 550 support staff and outsources about 20 per cent of translations to free-lance translators[21]. According to the data obtained from the DGT, the rate for Polish translations is higher, amounting to ca. 34 per cent in 2005 and 23 per cent in 2006 (January-October). The DGT does not keep any statistical data on the types of texts outsourced; however, as a rule legislation is translated inhouse and is outsourced only in exceptional cases. This does not apply to the *acquis communautaire*, which has to be translated by a candidate country before the accession. The European Court of Justice employs only lawyer-linguists as translators since according to its Rules of Procedure, translation service is to be "staffed by experts with adequate legal training" (Article 22).

The translator of Community legislation is part of the legislative process and may have some impact on the draft act as a result of the less sacrosanct approach to the original (cf. Wagner 2005: 223). The

[19] cf. Lonsdale for more information about directionality (2001).

[20] In general, the EU abandoned the native tongue principle, mainly with reference to translations into English or French. In practice the native tongue principle is still applied to translation of legislation since these texts are drafted in and are translated from English or French.

[21] the DTG website, August 2006.

Joint Practical Guide advises drafters that translators' comments may be valuable and practical as they help identify errors and ambiguities in the original text and "in many cases, the best solution will be to alter the original, rather than the translation" (2003: 20). Kaduczak confirms that it does happen in practice that the draft act is adjusted to the translation, "the original draft being a result of political negotiations and being written by a non-linguist, often non-native speaker, its 'translations' are frequently of higher linguistic quality than the 'original' and in the further process of amending the act the 'original linguistic version happens to be corrected to align it with the 'translations'" (2005: 39). A similar bi-directional relation between drafters and translators does not exist in translations of national legislation, which have little if no impact on the original.

2.4. Approach to equivalence

Legal translators are required to produce faithful translations; yet the notion of faithfulness seems to be subjective and difficult to define. Šarčević argues that multilingualism requires a change of approach to equivalence: "the principle of fidelity to the source text is losing ground to the principle of fidelity to the single instrument" (1997: 112). She observes that since it is unrealistic to expect that the same meaning will be achieved in translation, the equal meaning and effect presumptions are secondary to 'the presumption of equal intent'. The success of translation is determined by its uniform interpretation and application (2000: 5). On the other hand, as rightly noted by Doczekalska, translators do not take part in Parliamentary debates and negotiations so it is unlikely that they will know the drafter's actual intention (2005: 9). In practice, to achieve multilingual concordance (i.e. the same meaning in all language versions), translators who translate the same text in the European Commission exchange information in the intranet and at collation meetings (Wagner 2000).

On the other hand, it is argued that at least at the terminological level, literal equivalents are preferred. Garzone argues that "quite often the pursuit of legal equivalence can go hand in hand with literal translation" (2000: 6). As already noted, drafters of Community legislation avoid national terms by replacing them with Community-wide terms. Šarčević observes that to ensure uniform interpretation, drafters form terms which are "reasonably transparent and can be easily translated.

Since the terms must be easily recognizable in all languages, literal equivalents have clearly had priority in the formation of Community terminology" (1997: 261). This view is confirmed by Miler, who stresses that terminological difficulties are solved relatively quickly by calquing English terms, "the general rule is that the terms are being copied directly from English language if they do not have a direct Polish counterpart" (1995:7). Translators use calques as they do not want to be liable for producing a text with a different legal effect than the original. One may observe a certain paradox: literalism in the translation of terminology on the one hand and a departure from literalism in interpretation by the ECJ on the other hand.

2.4.1. Terminological requirements in translation

It is generally accepted that the terminological incongruity between legal systems is the greatest challenge for legal translators. As noted by Kierzkowska, in Poland there is no officially prescribed terminology to be used in translations of Polish law (2002: 92). By contrast, translators of EU legislation are required to use the EU terminology that is consistent both internally within a given act and externally with other Community legislation from the same field[22]. Terms have to be checked in terminological databases (e.g. www1.ukie.gov.pl/dtt.nst[23]). To ensure a higher degree of terminology standardisation, inhouse translators working in the Commission are provided with several terminological aids, such as tools for terminology searches IATE[24] and Quest; processing of sentence fragments by Tman, translation memories held centrally by Euramis, texts retrieved from the DGT's internal archiving system[25]. Furthermore, the Commission employs 20 terminologists, one for each language, to ensure congruity of terms between the languages (Rettman 2006). As demonstrated above, the translator's freedom of terminological choice is substantially limited. For example, they are requested to use *Niderlandy* (Netherlands) in official publications even though a

[22] cf. Principle 6 of the *Joint Practical Guide* (2003: 21).

[23] established by the Polish Office of the Committee for European Integration (UKIE).

[24] The EU Interinstitutional Terminology Database System comprising 3 major databases (EURODICAUTOM, TIS, EUTERPE).

[25] DGT website.

large number of Poles may have problems with connecting it directly with *Holandia* (Holland).

It is understandable that since it is recommended to drafters of Community legislation to avoid national legal terms (see 2.1), the same will apply to translators. In his commentary on the translation of the E.E.C. Treaty into English, Akehurst claims that "the fatal mistake is to use technical terms of English law which sound like a French term but which do not mean the same thing" (1972: 26). Wagner et al. note that since national terms may be misleading, it is better to use supranational terms without any 'immediate' national connotations (2002: 65). In particular, it should be remembered when translating directives since they specify only results to be obtained by the Member States and are subject to transposition into national law. As emphasised by Wagner, national terms may "appear to be trespassing onto the territory of the national parliaments" (2000: 3) since during the transposition generic supra-European concepts are replaced by national concepts (Wagner et al. 2002: 64). An interesting example of erroneous transposition in the Polish VAT Act was discussed by PricewaterhouseCoopers experts[26]. The place of the *supply of services* is used in the 6th VAT Directive as a factor deciding where and by whom VAT is to be paid. For instance, a translation carried out by a Polish translator in Poland and sold to a company in another MS is exempt from Polish VAT and the tax is paid by the purchaser in their country. *Supply of services* was transposed as *świadczenie usług* [lit. performance of services], which is a standard and aesthetically pleasing collocation but nevertheless puts some Polish taxpayers at a disadvantage. As a result, certain services may be subject to double VAT taxation: by the Polish service provider in Poland where a service was performed and by the purchaser in the country to which this service was supplied. At the same time similar services supplied to Poland are not subject to VAT at all[27]. The literal translation of *supply of services* as *dostawa usług* would be more accurate; even though it is an obscure collocation[28], it is understandable and creates the same legal

[26] Gawlas, D. and H. Szarpak. "Błąd, za który płacą polscy usługodawcy." *Rzeczpospolita* 15.09.2005; reprinted from *Podatkowy przegląd prasy*.

[27] Ibid.

[28] *dostawa* is typically used with reference to tangible objects, e.g. *dostawa towaru, produktów, węgla. Dostawa usług* breaks linguistic norms and forces a different conceptualisation, e.g. delivery of services via the Internet.

effect. It shows that in some cases even the TL-oriented phraseology may be an obstacle to uniform interpretation and application.

On the other hand, the avoidance of national terms and the Community-level conceptual structure and terminology increase text alienation; hence, the distance between the translation and its recipients. It is further increased by 'unfamiliar and undomesticated eurorhetoric' (Koskinen 2000: 61). As noted by the Joint Practical Guide, "texts peppered with loan words, literal translations or jargon which are hard to understand are the source of much of the criticism of Community legislation which is, as a result, regarded as alien" (2003: 20-1). Translators are frequently blamed by the public and the press for the incomprehensibility of Eurospeak and are criticized even for the very avoidance of national terms. For example, Włodzimierz Cimoszewicz, former Polish Minister of Foreign Affairs, commented on the Polish translation of the Constitutional Treaty, "the Treaty was translated by EU-employed translators and even though these are frequently people of a given nationality, one may spot clumsy expressions, mechanical, automatic translation of legal concepts in a way that **is not adjusted to the legal language** of a given country"[29]. In another article in *Rzeczpospolita* translators are criticized for using terms that are 'incompatible with the Polish network of concepts'[30]. Having regard to translators' limited freedom under multilingualism and a separate conceptual network of Community law, this criticism is partly misdirected (except from mishaps) and may reflect insufficient knowledge about the specificity of the EU translator's work. Furthermore, as noted by Pym, the tolerance of linguistic interference vary in the Member States. Native speakers of English and Spanish, who are frequently confronted with other varieties and 'non-native' distortions of their own language, are accustomed to new usages and have higher tolerance for Eurospeak and its opacity (2000: 6). By contrast, native speakers of Polish are rarely exposed to 'distorted' forms of Polish or non-native influences and have not learnt how to deal with them. As a result, they are more likely to resist the Eurojargon.

[29] Translation and emphasis mine; Bielecki, J. "Europejska Konstytucja jak marna instrukcja obsługi." Rzeczpospolita 17.11.2004.

[30] Rochowicz, P. "Lingwistyczna wieża Babel." *Rzeczpospolita*. 02.02.2005.

2.4.2. Stylistic requirements in translation

As argued by Šarčević, translators are allowed to be creative provided that the substance remains unchanged, otherwise they "should exercise constraint in the interest of preserving the single instrument" (1997: 226). Their creativity is further restricted by the stylistic recommendations specified in a number of guides. In the case of Polish, these include: *Wskazówki dla tłumaczy aktów prawa Unii Europejskiej, Dziennik Urzędowy. Wskazówki redakcyjne; Wspólny przewodnik praktyczny Parlamentu Europejskiego, Rady i Komisji dotyczący redagowania aktów prawa wspólnotowego; Wskazówki dla tłumaczy orzecznictwa Trybunału Sprawiedliwości Wspólnot Europejskich i Sądu Pierwszej Instancji.* The guides emphasise the communicative factor of translation, noting that it should be written in a clear and comprehensible language. For example, the English Style Guide advises translators to use "language which is as clear, simple, and accessible as possible, out of courtesy to our readers and consideration for the image of the Commission" (2000: 1).

Translators are also required to maintain the same degree of ambiguity whether it is intentional or unintentional (cf. Akehurst 1972: 26). *The Manual of Precedents* instructs drafters/translators "not to give a wider or narrower interpretation to a given notion in one language or another". Legislative language is frequently a compromise between precision and flexibility to account for various future situations (cf. Wronkowska 2003: 15). Vague areas may be incorporated on purpose to reflect negotiations or a lack of political agreement between the Member States, which is called 'deliberate uncertainty' by Hartley (qtd. in Doczekalska 2005: 7). If a provision is unclear, it is a national court that refers it to the ECJ for interpretation under the preliminary ruling procedure. Eliminating ambiguities is perceived as overstepping one's authority as a translator[31]. It is worth noting that one of the preconditions for a legal provision to be directly effective is that it should be clear and unambiguous; if such ambiguity is cleared in one of the languages uniform application may be disturbed.

2.5. Consequences of Errors

There were a number of articles in the Polish press concerning errors in Polish versions of Community legislation, especially with respect to outsourced translations. Some of them are related to negligence and lack of due diligence, the most notorious being: 5 months instead of 5 years, paprika instead of pepper, a loss of not, etc.[32] Others result from the translator's insufficient legal or other knowledge, e.g. "the opening of insolvency proceedings" was translated as *uruchomienie środków odnoszących się do reorganizacji lub otwarcia postępowania likwidacyjnego* instead of *wszczęcie postępowania upadłościowego lub naprawczego* or *wszczęcie postępowania w sprawie niewypłacalności* (Porzycki 2004). The consequence of an error is that citizens are bound by the law containing an error and such a law does not have uniform application in the EU.

External translators have to pay high fines for low quality translations or delays. A rejected page costs 50 EUR while a rejected document costs 500 EUR[33]. As reported by *Gazeta Wyborcza*, in January 2005 three tranches of corrections, amounting to 4,500 pages, i.e. ca. 5 per cent of total legislation translated, were sent to the EU institutions by UKIE[34]. According to the information obtained from the DGT, financial penalties for unacceptable quality amount to 10-20 per cent of the due amount. With reference to Polish translations, in 2005, the DGT imposed financial penalties in 38 cases out of 857 translated documents (i.e. 4.4 per cent).

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[31] cf. criticism of Akehurst's approach to ambiguities when he translated the EEC Treaty into English (Šarčević 1997: 92-3).

[32] Uhlig, D. "Błąd na błędzie w tłumaczeniach unijnych aktów." *Gazeta Wyborcza*, 9 Jan 2005.

[33] Szyszko, M. "Wolny strzelec w Unii." *Gazeta Wyborcza*, 9 March 2005.

[34] Uhlig, see fn 31.

Table 1. Comparison of translation of national law and EU law

	Translation of national law[35]	Translation of EU law
Language of the law	- activates a rich inter-subjectively shared system of national legal knowledge - drafted by native speakers and without any consideration for problems translators may have	- deculturalisation vs. new common supranational context - drafted by native and non-native speakers under constraints of multilingualism and with regard to subsequent translation
Interpretative rules	Common law system (literal) Civil law system (purposive)	Teleological approach
Status of translation	Non-authoritative	Authoritative; authentic text that forms a single instrument with the original
Function	Informative/descriptive	Normative/prescriptive
Recipient	Investors, businessmen	Citizens of the Member States, lawyers
Directionality	Inverse translation – in most cases native speakers of the SL (applies only to translations into English)	Direct translation by native speakers of the TL
Fidelity	Fidelity to the SL	Fidelity to the single instrument
Terminology	In most cases no officially prescribed terminology; frequently SL-oriented terminology to meet the needs of an international audience	Prescribed by EU institutions, consistent with already existing translations in the field, excluding terms reserved for national law
Style	Consistent with national use	Consistent with prescribed European use
Who resolves ambiguities	National courts on the basis of the original	the ECJ consulting all the language versions

Conclusions

To sum up, translation of EU legislation is a special type of translation within the field of legal translation in general and within the translation of legislation specifically. It is shaped under the constraints of unique EU multilingualism and operates within a distinct Community-level conceptual structure. Major translation challenges stem from the requirement to achieve the same meaning, or rather uniform application and interpretation of legislation, in 20 languages.

[35] excluding countries with multilingual legislation (i.e. Belgium)

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