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ON THE CONCEPT OF TERM EQUIVALENCE

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Abstract

The article considers some terminological aspects in the process of harmonization of legislation reflecting on different approaches to the study of terms and especially to synonymy and term equivalence. The various mechanisms available to the translator are examined within the EU context and against the background of Bulgaria's legal culture. The analysis is based on translations of EU legislation from English into Bulgarian and highlights felicitous choices and techniques employed, as well as recurring inconsistencies in the long and arduous process of approximation of legislation.

Keywords: harmonization of legislation, supranational law, EU directives, legal terminology, translation equivalence, translation strategies, multilingual communication

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Countries acceding or seeking accession to the European Union are in the process of harmonizing existing institutions and bodies, creating new ones and finding the language to communicate adequately within unified Europe. Approximation of legislation entails the arduous and demanding task of standardizing legal terminology.

Some terminological aspects in this process are considered reflecting on different approaches to the study of terms. The various mechanisms available to the translator are examined within the EU context and against the background of Bulgaria's legal culture. The analysis is based on 120 pages of selected EU directives* on intellectual property, copyright and related rights and their respective translations from English into Bulgarian, highlighting some felicitous choices and techniques employed, as well as some recurring inconsistencies.

At present there is great instability in Bulgarian legal terminology. New terms are coined rather *ad hoc* without regard to uniformity even in one and the same legal instrument. Terms are not evaluated according to the conceptual system of the particular field under codification. There is a process of replacement of Bulgarian terms due to the demand of international lexis and a marked shift of content of some native words under the influence of the languages in contact (cf. Yankova & Vassileva, 2002).

The setting

Community law is a prime example of supranational law and given the now 24 official languages presents quite an idiosyncratic legal, linguistic, social and cultural setting. The A*cquis communautaire* or the collection of EU legislation encompasses primary legislation (the Treaties), secondary legislation (deriving from the Treaties) and case law. There are five types of secondary EU instruments: regulation, directive, decision, recommendation, and opinion, of which the first two are the most important and most recurrent. It is essential for the translator to be aware of the parts that compose each instrument, the functions it performs and whether and to what extent it is binding.

EU directives are one of the means for achieving the aims and purposes of the European Community and are binding to all Member States who have the discretion to

* Council Directives 91/250/EEC, 92/100/EEC, 93/83/EEC, 93/98/EEC, 96/9/EC

determine how to incorporate their stipulations in the respective national legislation. Non Member States seeking membership are also in the process of harmonization of their national laws.

What are some of the characteristics of the specific EU context and how do they shape the linguistic and cognitive structure of the produced texts? The distinctive nature of the EU setting lies in the fact that a Member State translates and incorporates Community legislation into its own national law and language, whereas in traditional cases nations draft their own laws, rather than adopt from outside.

The supranational environment in which EU legal instruments are drafted and the absence of a single culture are defining features of this setting. EU's multilingualism is a challenge for translation of legislative texts since the legal systems are not comparable. Terms that are used in one Member State sometimes cannot be easily rendered into the languages of another (e.g. summary judgement in English law is non-existent in the German legal system). Other realities that bear upon the way texts are shaped are the recommendations of the fight-the-fog campaign, the non-binding observance of age-long linguistic and legal traditions (as is the case in Britain for instance), the equal footing of all the official languages, the aspiration to draft legislation that will be comprehensible to the public at large and that can easily be translated into different languages, the fact that sometimes legislation in English is drafted by non-native speakers. Supranational and multilingual are the two most salient features of Community law. At least in theory.

In practice, some languages like Greek or Danish hardly ever function as source languages. Most documents are drafted in French, German, English or Spanish (cf. Robertson, 2001, p. 699, Trosborg, 1997, p. 150) with a marked predominance of English. The English text of a document is often used for negotiations between delegations and in the accession procedures with non-member countries. According to a 2001 public opinion survey in the then 15 Member States conducted by INRA-Europe, although the proportion of population of the EU speaking English as a mother tongue is 16% (24% for German) the total proportion speaking this language both as mother and non-mother tongue is 47% (32% for German), making it the most widely used language

in the European Union. With the 2004 accession of Poland, Hungary, the Czech Republic, Estonia and Finland, German rose in importance although English remains the most widely-spoken language within Europe. This is also in keeping with the worldwide tendency to employ English as the lingua franca in international communication.

Notwithstanding the existing linguistic diversity, the working groups which try to institute a common European legal framework choose English as the language of communication. From a practical point of view, this precludes the necessity of elaborating uniform terminology in each language and facilitates greater concentration on the legal issues to be tackled. Concurrently, it aggravates potential language problems since English legal language is closely related to English legal concepts, which can sometimes essentially depart from civil law notions.

EU citizens that speak regional languages like Catalan (an estimated 4.5 mother tongue speakers in Spain, France and Andorra) do not enjoy the same linguistic rights as those speaking the national languages of the member States. More people speak Catalan than those who speak the official languages Swedish, Portuguese, Greek, Danish and Finnish (Forrest, 1998). Jacques Delors (1992, p. 32), among other EU officials, has expressed concern about the feasibility of maintaining language equality in an expanded and expanding European Union. Furthermore, at its 2667th meeting on 13 June 2005 in Luxembourg the Council of the European Union decided to amend the 1958 Regulation No 1 to grant Irish full status as official and working language and authorized the limited use at official EU level of languages recognized by member States other than the official languages.

What are the implications of this supranational, multilingual, multicultural context on professional interaction within EU institutions and more specifically on the communicative situation?

The specific multilingual communicative situation

Let us consider some features of the genre of statutory legislation from the point of view of the communicative situation, namely the participants in the communication, the purpose of communication, and the production strategies.

In the context of a national legislation process the legal draftsman does not as a rule participate in parliamentary discussions, he is only the writer of the document and not the actual author of legislation. To make matters more complicated, legislation is multi-authored prose and often time-pressured. In codification the link between addresser and addressee is mediated. The law is intended for each individual in the society, but is interpreted by the specialist. Its illocutionary force holds no matter who the participants in the communication are. The main function of statutes is directive - it imposes obligations and confers rights.

The principal concern in legal drafting is the expression of the intent of the legislative body, not the facilitation of text comprehension. The ultimate concern of statutes is to regulate behaviour and not so much to inform and impart knowledge.

In many other types of text, the author often expresses an idea and then reformulates it in a different way so as to give the reader sufficient means and time to digest it. In legislation, sentences are over-compact and arranged in lists: the interpreter has the task to determine which ideas are important. The draftsman always has to keep in mind that he is writing for a hostile audience - the text will be interpreted by warring sides in the courtroom. Statutory writing strives to be precise and at the same time all-inclusive.

In the context of Community law we are witnessing a remarkable communicative situation where standard concepts of sender-receiver of message, medium, text type, have become rather fuzzy, giving rise to hybrid texts (cf. Trosborg, 1997, p. 146) that derive from languages and cultures in contact, from intercultural communication. In addition to the traditional participants in legislative communication – the text producers (initiators and authors of statutory instruments) and text receivers (specialists who interpret the law and the general public) in this supranational and multilingual environment - there is another set of participants: that of translators and revisers who make certain that the produced texts are legally flawless and best suited to the local context. Translators are considered acting as mediators between text producers and receivers but can also be regarded as producing a new text and whose primary concern is target text receivers.

Translation problems that surfaced in the translated EU directives

In principle, Bulgarian legal language is not much different from other types of formal language. Bulgarian Acts can, as a rule, be read like ordinary prose with ordinary words with familiar meaning and ordinary grammar: they are easy to apprehend. Being part of the Continental tradition, the stress is on general principle at issue (or the 'ratio legis') resulting in brevity of expression.

The Bulgarian translation of the Directives under examination, however, demonstrates a marked deviation from this tradition, especially in the numerous Preambles and the long and complex sentences. Certainly, a point to consider is the standardization of texts produced in the Union. All the different versions have to be uniform not only regarding the content, but also regarding the organization of the text. The layout, articles, paragraphs, sentences have to match completely in order to facilitate reference to the document in any of the official languages. The full stop rule requires "an equal number of full stops in source text and translations" (Trosborg, 1997, p.152). The translator, though constrained by EU requirements for standardization and uniformity of legislation, should observe the natural word order in the target language, making the sentence sound as natural as possible.

Some of the terminologically problematic areas encountered in the translation of the directives into Bulgarian can be systematized as follows:

Conceptual non-equivalence. Since translation is a form of cross-cultural communication, one of the difficulties translators most often encounter is institutions or concepts which do not exist in one of the cultures. For instance, the Bulgarian terms *предварително следствие* (*predvaritelno sledstvie*, preliminary investigation) or *дознание* (*doznanie*, preliminary inquest) do not have conceptual equivalents in Britain. The National Investigation Service, an independent body in Bulgaria, does not exist in other law systems. The work of the *дознател* (*doznatel*) is performed by a police inspector in England. Another such term is *възпитателна работа* (*văzpitatelna rabota*) which is usually rendered by a loan translation in English as *educative work*. A corresponding example would be the fundamental to Common law concepts of *torts* or *trust* foreign to Continental legislative systems.

Specificity/Generality of terms. A greater or lesser degree of lexical density on the semantic continuum poses great demands on the work of the translator. Concepts in one language may have multiple meanings in another. More often than not Bulgarian legal terms have broader meaning than corresponding English terms. A case in point would be *адвокат* (*advokat*) which corresponds to *advocate, barrister, solicitor, counsel, lawyer, attorney*. The English *enactment* in the sense of *a legal document codifying the result of deliberations of a committee or society or legislative body* is rendered in Bulgarian with *закон* (*zakon*, act), *нормативен акт* (*normativen akt*, enactment), *правно предписание* (*pravno predpisanie*, regulation), *постановление* (*postanovlenie*, ordinance), *указ* (*ukaz*, decree).

Faux amis or false cognates. Superficial resemblance conceals their different meanings e.g. *third country* instead of *non Member State*, *process of law* is not *законен процес* (*zakonen proces*) but *законна процедура* (*zakonna procedura*). One of the most glaring examples of a semantic deviation of international lexis in the analysed texts is the translation of *public* as *публика* (*publika*). The word in Bulgarian means *audience*. The correct rendition of *public* is *общество* (*obštestvo*) or *общественост* (*obštestvenost*).

Collocational semantic variation. Discrimination between the diverse meanings of one and the same word depending on the immediate context: e.g. *legal* – *правен* (*praven*), *юридически* (*juridičeski*), *съдебен* (*sădeben*), *законен* (*zakonen*).

***Positive or negative latent value attribution to words or phrases in particular contexts*.** These are occurrences when past semantics hinders the adoption of loan words owing to negative connotation. The word *directive* itself, for instance, is a term associated with the former totalitarian regimes in Eastern block countries with negative overtones. It has seemingly undergone a motivated shift of content, however, and is currently freely used in relation to the institutional discourse of the European Union.

Selecting adequate translation strategies

In establishing equivalencies different criteria can be considered depending on the purpose of the translation. Equivalents can be communicative, linguistic (literal),

functional. A communicative translational equivalent is one that is directed to the recipient of a text. The purpose is to facilitate the specialist in the target language in understanding the concept behind the term. Secondly, a translational equivalent can be oriented towards the source-language term, giving primary importance to linguistic form. Thirdly, the translator can opt for an equivalent that is a legal term in the target language (for discussion of types of conceptual equivalence cf. Yankova, 2003, p. 57 ff.).

Of paramount importance in translating statutory texts is focusing on the content of the message and the precision and accuracy in meaning which override considerations of style. The prescriptive, authoritative character of legislation as a rule calls for literal translation in order for the translated text to achieve an effect identical to that of the source text. Therefore, functional equivalence is of utmost concern in legal translation. It is also recipient oriented in that it should correspond pragmatically to the source text.

In the absence of adequate conceptual equivalents in the target language there are several possibilities the translator can resort to. If we take as example the Bulgarian *касационен съд* (*kasacionen săd*) or *Cour de Cassation* in French, it can be translated as *Supreme Court* in which case a communicative translational equivalent would be employed, focusing on the concept. The aim would be to make a foreign lawyer understand that it is the highest court in the Bulgarian system. The other option would be for the term to be translated as *Court of Cassation* whereby it would be source-language oriented and faithful to the linguistic form. It would also convey the foreign nature of the concept it refers to. However, it might hamper text comprehension unless the foreign lawyer is well versed in French or Latin or is acquainted with the Franco-Germanic legal system on which the Bulgarian is based.

The Anglo-American term *trust* has no equivalent in civil law. First, the translator can supply additional information to explain that *trust* is a *right of property, real or personal, held by one party for the benefit of another*. Another possibility would be to preserve the source term. There has been an increasing tendency to use Anglicisms in the Bulgarian language. Most young professionals feel comfortable with the English language and the untranslated usage of English terms would eliminate mis-translation. However, the primary purpose of translation is to make the source text accessible to

people who do not know the source language. Moreover, non-translation renders an already hard to unpack legal text even more difficult for ordinary citizens. A third solution would be to find a short but sufficiently explanatory phrase, e.g. in the case of *trust*: *опека и управление на имущество* (*opeka i upravlenie na imuštestvo*). A fourth option would be to create a neologism. In my opinion, in most similar cases the best solution is the third option - finding a short, explanatory phrase that would be both relatively succinct and sufficiently descriptive. In Šarčević's view (1997) the most adequate rendering in cases of terminological incongruity is the attempt to convey the intended meaning in neutral language.

The creation of new lexical entities (neologisms) in cases of terminological incongruity can be of two types: totally new creations and borrowings from other languages. Neologisms should not be selected in an arbitrary way; they should show to a certain degree the content of the source term and be understandable by the target audience. When choosing neologisms the translator should also take into consideration the choice of earlier translators. Borrowings can be of three types: direct borrowing, e.g. *компютър* (*kompjutăr*) > *computer*; b) loan translation (calquing), e.g. *Бялата книга* (*Bjalata kniga*) > *White Paper*; c) internationalisms (Latin or Greek basic root forms, e.g. *магистрат* (*magistrat*) > *magistrate*. Direct borrowing can be recommended when the source language term can be easily integrated into the phonemic, graphemic, and morphological structure of the target language and if it permits derivatives. The use of Latin or Greek word elements produces internationalisms which facilitate text comprehension: e.g. *jurisprudence > юриспруденция* (*jurisprudencija*), ministry > *министерство* (*ministerstvo*), *restitution* > *реституция* (*restitucija*). Loan translation is generally used for complex or compound terms and phrases; e.g. *common law jurisdiction > обичайно-правна юрисдикция* (*običajno-pravna jurisdikcija*) and is generally preferred to direct borrowing. However, neither form of term creation is acceptable if it violates the natural word formation techniques of a linguistic community.

When the term is transparent or semantically motivated a good choice is a literal translation (*Community law, Green Paper > право на Общността* (*pravo na Obštnostta*), *Зелената книга* (*Zelenata kniga*). There are instances of description of the terms, as in

collecting society rendered as *организация за колективно управление на права* (*organizacija za kolektivno upravlenie na prava*).

Another approach would be to extend the meaning of an existing term to encompass that of a new concept, e.g. *piracy* now refers also to audio piracy, something that could not have been foreseen when the word was first created. Many terms are coined by the use of simile, i.e. the naming of a concept in analogy to another, familiar one. When a special concept (belonging to a target domain) is designated by the name of a general concept (belonging to a source domain) because of some resemblance between the two, then we have metaphorical term formation and its motivation can be found in similarities of form, function and position (e.g. *mouse* in computing, *control arm* in engineering, *bedrock* in geology). A term in one field can also be re-used in another field for a different concept (e.g. *hardware* in computing and general language).

When a concept in the source language has several equivalents in the target language, i.e. when it manifests differences along the semantic continuum, the felicitous choice would be effected through descriptive terms in order to make this distinction.

Most important of all before attempting translation, however, is to look closely at the system of concepts and concept relationships in each individual language. Acknowledging that concept systems are logical hierarchies in which concepts are subordinated, superordinated or juxtaposed to each other, of special importance for terminological work is the study of these hierarchical relationships. Conceptual differences between two (or more) languages are especially manifest in legal terminologies.

Let us take as an example the English legal term *defamation*. Black's Law Dictionary gives the following definition: "holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community. The definition includes both libel and slander. Under *libel* we find: "a method of defamation expressed by print, writing, pictures, or signs" and under *slander*: "the speaking of base and defamatory words tending to prejudice another in his reputation, office, trade, business, or means of livelihood".

Within the conceptual system of British law *libel* and *slander* are both methods of defamation; the former being expressed by print, writing, pictures, or signs; the latter by oral expression or transitory gestures; and *defamation* is the generic term. Or, in linguistic terms, *defamation* is the superordinate term for the co-hyponyms *libel* and *slander*. The semantic characteristics look like this:

defamation: (+ false), (+ defamatory), (+ (or) - permanent form), (+ (or) - transient form)

libel: (+ false), (+ defamatory), (+ permanent form)

slander: (+ false), (+ defamatory), (+ transient form)

If we consider the conceptual system of Bulgarian law, we only find the term *клевета* (*kleveta*) which corresponds in semantic features to the generic term *defamation*:

клевета: (+ false), (+ defamatory), (+ (or) - permanent form), (+ (or) - transient form).

In an English-Bulgarian translation the appropriate choice is a descriptive equivalent (e.g. a phrase that is equivalent to *oral defamation* and *defamation in a permanent form*). When translating such terms from Bulgarian into English, translators should be careful in choosing the pertinent co-hyponym.

In cases of collocational variation Jacobs's (1995) assignment of thematic roles can be very useful in delineating the diverse meanings of a word. Undoubtedly a componential analysis is indispensable in the choice of translation procedure. The term and its concept have to be identified, delineated in the source language in order to find the appropriate term in the target language. Semanticians have resorted to analysing the meaning of a single word (word-internal semantics) and the meaning that word has with other parts of a sentence (external semantics). The legal terms under consideration in this study constitute a semantic unit; their definition is a proposition consisting of a predicate and arguments that fulfill varying semantic or thematic roles. Fillmore (1968) explains the propositional content (the deep structure) of a simple sentence through deep cases (relations) such as: Agentive, Instrumental, Objective, Factitive, Locative, Benefactive, which are converted into surface representation of

sentences. Jacobs (1995) talks of the following thematic roles that the predicate assigns to its arguments: Agent, Instrument, Theme, Experiencer, Source and Goal, Benefactive, Location and Time.

- *Agent*: a mind-possessor who acts intentionally;
- Instrument: the thing with which the action is done;
- *Theme*:

a. inert entity, which is in a certain state or position or is changing state or position,
b. affected mind-possessing entities (or Patient);

- *Experiencer:* the one who experiences a mental state or process such as thinking, knowing, believing, understanding, fearing, etc.;
- *Source and Goal:* source refers to the location from which someone or something originates and goal to the location that serves as the destination;
- *Benefactive:* the role of the individual for whose benefit some action is undertaken;
- Location and Time: these are thematic roles for nonargument noun phrases. (Jacobs 1995, pp. 22-29).

All the different ways of rendering *legal* in Bulgarian included the thematic roles: + Agent, + Instrument, + Theme. However, the various uses demonstrated a different thematic role as the salient one in the four cases, or even additional thematic roles, besides the essential ones:

legal & noun:

правен (*praven*) **& noun:** + Agent: *legal protection* > *правна закрила* (*pravna zakrila*), *legal implications* > *правни последствия* (*pravni posledstvija*);

юридически (*juridičeski*) **& noun:** + Instrument in the salient role: *legal entity* > *юридическо лице* (*juridičesko lice*) *legal residence* > *юридическо местожителство* (*juridičesko mestožitelstvo*);

съдебен (*sădeben*) **& noun:** + Locative: *legal costs* > *съдебни разноски* (*sădebni raznoski*), *legal opinion* > *съдебно становище* (*sădebno stanovište)*;

законен (*zakonen*) **& noun:** + Theme as the salient role: *legal duties* > *законен дълг* (*zakonen dălg*), *legal right* > *законно право* (*zakonno pravo*).

Another example is **(un)authorised & noun** (e.g. *an authorized person*, *unauthorized removal*) where depending on the presence of the semantic roles + Theme or + Patient, the respective Bulgarian terms are: *упълномощено лице* (*upălnomoštено lice*), *непозволено отстраняване* (*nepozvoleno otstranjavane*).

Conclusions

A basic difficulty in translating legal (or any other specialized) texts is the lack of equivalent terminology. A successful translation is one that relays the content of the source text achieving adequate semantics and pragmatics in the target language. Searching for terminological equivalence entails constant comparison between the legal systems of the source and target languages. Legal traditions and cultures are so diverse that concepts in one system are alien to another system; therefore the cultural dimension of the concept should also be taken into account when looking for terminological equivalents. Some authors hold the view that full equivalence can only occur when the source and target language relate to the same legal system. "In principle, this is only the case when translating within a bi- or multilingual legal system, such as that of Belgium, Finland, Switzerland and - to some degree – Canada" (de Groot, 2000, p. 133). The on-going process of establishing a uniform legal system and institutions across Europe would mean that terminological equivalence is both necessary and possible. The issue is how to achieve this equivalence? What conceptual and linguistic resources to employ? Analysis of the objective form of language, the outsider view or the 'etic' aspects in conjunction with how language functions for users in real-life, the insider view, or the 'emic' aspects can offer insights into both the common, shared meaning and the culturally specific facets of meaning.

To summarize, I would like to give a list of proposals that have resulted from the present study as guidelines for further legal translations from Bulgarian into English and from English into Bulgarian:

- each term should be evaluated with regard to the conceptual system of the particular field under codification;
- a componential analysis of the semantic features of the concept is indispensable in finding the most appropriate translational equivalent of a term;

- in the absence of adequate equivalents the possible choices are: non-translation (preserving the source term), finding a short explanatory phrase (paraphrase), creating a neologism;
- preserving the source term is the least desirable option unless it concerns established Latinisms in one of the languages;
- paraphrase is a very useful technique for non-existing legal terms. It should be short, but sufficiently explanatory;
- neologisms cannot be chosen in an arbitrary way. They should be somewhat transparent to the target audience and should not violate the natural word formation of the target language. They should also allow for derivatives;
- in choosing neologisms, the choice of earlier translators should be taken into account in order to achieve continuity and avoid confusion.

References

Jacobs, R. (1995). *English Syntax: a Grammar for English Language Professionals*. Oxford University Press.

de Groot, G-R. (2000). Translating Legal Information. In G. Zaccaria (Ed.), *Journal of Legal Hermeneutics. Translation in Law*, 5 (pp. 131-149). Lit Verlag Münster-Hamburg-London.

Delors, J. (1992, April 11). Survival of the fattest. *The Economist*, p.32.

Fillmore, C. (1968). The Case for Case. In E. Bach & R.T. Harms (Eds.), *Universals in Linguistic Theory* (pp. 1-88). New York: Holt.

Forrest, A. (1998). The Challenges of Languages in Europe. *T & T* 3, 101-121.

Robertson, C. (2001). Multilingual Law: A Framework for Understanding LSP within the EU. In F. Mayer (Ed.), *Language for Specific Purposes. Perspectives for the New Millennium*, *2*, Tübingen: Gunter Narr Verlag.

Trosborg, A. (1997). Translating Hybrid Political Texts. In: A. Trosborg (Ed.), *Text Typology and Translation* (pp. 145-158). John Benjamins, Amsterdam/Philadelphia.

Šarčević, S. (1997). *New Approach to Legal Translation.* The Hague: Kluwer Law International.

Yankova, D., & Vassileva, I. (2002). Supranational Legislative Texts: a New Challenge for Translators in Europe. In H. P. Kelz (Ed.), *Die sprachliche Zukunft Europas. Mehrsprachigkeit und Sprachenpolitik* (pp. 145-158). Nomos-Verlag, Baden-Baden.

Yankova, D. (2003). Towards Achieving Equivalence in Bulgarian-English Translation of Statutory Writing. *Чуждоезиково обучение* [*Foreign Language Teaching*] *3*, 52-63.