Translation of EU legislation: some terminological considerations

Diana YANKOVA

Rezumat

Lucrarea prezintă un model de studio al discursului instituţional al legislaţiei U.E., mai precis al terminologiei juridice, folosind abordarea funcţională a analizei discursului. Știind că sistemele conceptuale sunt ierarhii logice în care conceptele sunt subordonate, supraordonate sau juxtapuse, trebuie acordată o deosebită importanţă studiului relaţiilor ierarhice. Analiza compoenţială s-a dovedit a fi indispensabilă în unele domenii problematice, precum diferenţierea termenilor cu înțeles apropiat, devierea semantică a cuvintelor aparținând lexicului internaţional, împrumuturile.

Characteristics of the EU Context

The process of European integration in the last few decades is a truly unique historical, social, cultural and linguistic phenomenon, which calls for reconceptualization of our ideas of culture, language and society. The law of the European Union is an example of supranational law. EU institutions use at present 11 official languages which will become 21 in the near future (with the addition of Polish, Czech, Slovak, Hungarian, Estonian, Latvian, Lithuanian, Slovenian, Romanian and Bulgarian).

The principal purpose of the huge EU translation service is to safeguard the equal footing of all official languages, thus, multilingualism is, at least in theory, one of the main features of the European Union. Council Regulation No 1 (art. 2 and 3) provides that every EU citizen has the right to address and be addressed in his or her own national languages. When this Regulation was

*New Bulgarian University, Sofia.
drafted, there were only four official languages and hardly was the present situation of 11 official and working languages foreseen. Officially, all of them are equal, but in practice some (e.g. French, English, German) are more equal and others (e.g. Greek, Danish) which hardly ever act as source languages. Moreover, EU citizens that speak regional languages like Catalan or Saami, for instance, do not enjoy the same linguistic rights as those EU citizens speaking the national languages of the Member States. There is, in fact, a vicious circle - an enormous translation machinery which might soon become unmanageable in terms of efficiency and costs (if it is not already) and the 'illusion' that all official languages have an equal standing. Some EU officials, like Jacques Delors, have expressed concern about the feasibility of retaining absolute language equality in an expanded (and expanding) EU (The Economist, April 11, 1992:32).

The real situation is that most documents are drafted in one of the dominant languages - French, German, English or Spanish (cf. Robertson 2001:699, Trosborg 1997:150, Ball 1999:28) with definite prevalence of English. This phenomenon is in keeping with developments on a worldwide scale - the tendency to employ English as the predominant means of international communication. Consequently, the English text of a document is more often than not used for negotiations between delegations and in the accession procedures with non-member countries.

EU English is considered different from standard ‘English’ and this is determined by several factors. Sometimes legislation in English is drafted by non-native speakers (cf. Flesch 1998). A new variety is emerging, referred to as ‘eurospeak’, ‘eurojargon’, EU English, EU Danish, etc. Being supranational, EU legislation applies regulations and directives not existent in national legal systems. We are faced with a unique communicative situation where the concepts of sender-receiver of message, medium and text type have become rather fuzzy. New terms have sprung up to describe these changing variables. Trosborg (1997:146) talks of ‘hybrid texts’ as “documents produced in a supranational multicultural discourse community where there is no linguistically neutral ground”. Being a feature of intercultural communication, hybrid texts result from cultures and languages in contact.

Another characteristic feature of EU legal documents is the aspiration to make standard the produced texts. All the different language versions have to be uniform not only in content, but also in 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 1997:152).

**Complexities of the translation process**

There has been a long struggle between linguistic and functional approaches to translation. The former focus on the concept of equivalence with various interpretations of the term (e.g. formal equivalence, dynamic equivalence, text-bound equivalence, pragmatic equivalence, denotative equivalence). The latter offer models that take into account the situational variables of the communicative situation, the expectations and needs of the recipients of the target text, the culture-specific characteristics of translation.

Translation is an act of communication, not a mere linguistic rendering. The factors that have an imprint on the translation are awareness in source and target languages of: text conventions; addressee; lexico-grammatical resources, among other things. Translation “requires exploration of a socio-cultural, as well as semiotic systems of two languages to make appropriate linguistic and hence communicative choices depending upon individual motivations” (Bhatia 1997:204).

**Terminological equivalence**

A number of text functions can be used as a basis in a functional analysis of source and target communicative situations, e.g. referential, expressive, phatic, etc. functions.

In the field of terminology the connotations of the meaning play a secondary role. The referential function is of utmost importance, the conceptual content of the specialized term is essential. In the case of legal language, however, conceptual differences come to the fore, since law is effectuated by means of language.

Chesterman (1996) talks of the following theoretical tools that come in handy for translators: transposition, or changing of word class; deverbalization, or getting away from the surface structure of the source text to arrive at the intended meaning and then express this intended meaning in the target language; iconicity, or the matching of form and meaning so that the form reflects the meaning or the experience that is being described; relevance, or translating
what is relevant for the recipients of the translation, leading occasionally to explanations, additions or omissions.

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. Semantics have resorted to analyzing the meaning of a single word (word-internal semantics) and the meaning that word has with other parts of a sentence (external semantics). Legal terms 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.

I would like to offer the following guidelines and considerations when choosing the appropriate target language term in translating legal terms:

- Conformity with the grammar of source/target language:

If the source text incorporates a characteristic structural feature, a similar equivalent in the target language should be used, but it should be in keeping with the target language norms and rules. Sometimes level or category shifts are necessary. The following is an example of class-shift:

……Whereas for a transitional period Member States should be allowed to retain existing bodies with jurisdiction in their territory over cases where....

…….. Както се има предвид, че за определен преходен период на държавите-членки трябва да се разреши да запазят съществуващите органи, които са компетентни на своя територия по случаите, в които ....


- Generic conventions:

The question is whether to preserve the generic identity of the source text or of the target text. Two conflicting opinions have been expressed:
a. that the translation should preserve the generic characteristics of the source text (Chaffey 1997:73); and

b. that the representative generic features of the target text should be aimed at (Bhatia 1997:206).

The interlingual translations of EU legislation present a very special case, since they do not involve intercultural transformations of the usual type. To a great extent source and target texts share the same culture and the same generic conventions. 'What is specific about EU translations is the blurred divisions of languages and cultures. It has been taken for granted in translation studies that a change of language always also entails a change of culture, but within the EU context many translations are in fact intracultural' (Koskinen 2000:59). In other words the translations are produced and consumed within the same cultural context; their perspective is not the national culture. Drafting of multilingual instruments in the EU is done within a common legal culture.

Translations of EU Directives and other legal texts into Bulgarian or into any of the languages that belong to countries seeking accession to the EU, however, call for an intercultural translation, which is the communication between the EU culture and the respective national culture.

The Acquis communautaire refers to the collection of EU legislation and 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 they perform and whether and to what extent it is binding. For instance, regulations are totally binding, while directives are binding in regard to the results to be achieved, but not to the exact methods of attaining these results, which is left to the discretion of each Member State.

The pre-accession translation of Directives should be clear, unambiguous, and precise in order to distinctly articulate the results to be achieved. Translators need not seek to apply legal terms from the national legislation, on the contrary, that might lead to misinterpretation. Since Directives lay down the results, it is only afterwards that suitable legal terms will be incorporated into the national legislation in a process called ‘transposition’. 

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EU instruments, like any other statutory texts, are formulaic. The arrangement is the following: they begin with the title, the name of the enacting authority (the Commission, the Council, the Parliament), then come the citations which set out the legal basis, then the recitals laying down policy considerations, then follow the Articles which provide the substantive provisions.

- Semantic considerations:

One of the problems that can arise is that of faux amis or false friends. They present an unnecessary frequent phenomenon in translation and would encompass cases such as rendering the French eventual as ‘eventual’, instead of ‘any’, or pays tiers as ‘third countries’, instead of ‘non-member countries’.

Differentiating between several meanings of the same word is also a problematic area: a case in point is the word ‘legal’ which can be rendered in Bulgarian as ‘правен’, ‘юридически’, ‘съдебен’, ‘законен’. In such cases, Jacobs’ assignment of thematic roles can prove to be very useful. For instance, in collocations of ‘(un)authorized + noun’, the presence or absence of the semantic roles + Theme or + Patient would render different choice in Bulgarian: ‘an authorized person’ – ‘упълномощено лице’, ‘unauthorized removal’ – ‘непозволено отстраняване’.

The necessity to translate terms that do not exist in the respective target language, since the institution itself does not exist might give rise to problems. One of the good choices in cases of semantically motivated or transparent terms is to opt for a literal translation (e.g. Community Law, Green Paper; in Bulgarian: право на общността, Зелената книга).

Sometimes terms have a very broad meaning in one language, such is the case of 'адвокат' in Bulgarian, which can be rendered in English as 'advocate', 'barrister', 'solicitor', 'counsel', 'lawyer', 'attorney'. This would present problems in English-Bulgarian translations, where some of the renditions will have to be effectuated through descriptive terms in order to make the required distinction.

- Pragmatic considerations:

In translation it is necessary to take into consideration situational factors such as the environment in which source and target texts originate, the participants in the communication, the purpose of communication, the production strategies, among other things.
For instance, 'касационен съд' (Cour de Cassation in French) could 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' in which case 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 translator of the Bulgarian Penal Procedure Code in English opted for the second possibility, preserving the term 'cassation'.)

Another case where functional and situational considerations should be born in mind are collocations such as: valid justification or moral rights whose correspondence in Bulgarian is ‘неимуществени права’ and ‘сериозно основание’ respectively (for more details see Yankova 2002, 2003).

**Concluding remarks**

In order to arrive at an adequate translation of terms, several ingredients have to be combined. The studies of discourse analysis have to be incorporated into terminological analysis. Several very important elements have to be kept into consideration, namely the analysis, delimiting and defining of concepts; the relationships between the concepts; the relationship between terms and concepts; and in the process resolving such issues as synonymy, polysemy, types of equivalence.

It is necessary to delineate the concept systems in the source and target language within which the individual concept is understood. The hierarchical relationships are of utmost importance since they create subordinated, superordinated, juxtaposed, superposed correlations. Several factors are of utmost importance: grammatical system, genre, semantics and pragmatics.

**References**

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