

Translation Theories Applicable to Legislative Documents

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***Abstract:** The age of globalization is also affecting the field of translation. Stereotypical expressions are increasingly used, especially when dealing with legal discourse. Thus, the task of the translator is merely to convey the message in the most comprehensible way for the reader. This paper attempts to present the difficulties in achieving the same legal effect when translating EU legislation from English to Romanian. The first part discusses some theoretical perspectives on legal translation trying to determine the best way of translating a legal text. The second part of my paper will be based on a comparative analysis of two translated EU directives, in terms of structure, vocabulary and syntax. The corpus of my study is based on translations of official EU documents from English to Romanian.*

***Key words:** stereotypes, standardization, legal translation, differences.*

Introduction

This paper will focus on the analysis of some translation theories which can be used in the translation of EU legal administrative documents. I will also discuss some terminological problems in the translation of these EU legislative documents from English to Romanian. The foundation of the EU starting with the fifties and the tendency towards unification and uniformity of the main ruling structures have had a significant impact on the development of the European legal system and drafting style. EU is characterized by linguistic diversity and it presently has 23 official languages. However, not all these official working languages are procedural languages. The EU Commission usually drafts legal documents in English, French and German and then these legislative documents are translated into different languages. One of the main principles governing the European Union is equality. All the citizens of all Member States have equal rights to consult the European legislation stating their rights and obligations. Therefore, all significant legislative documents have to be translated in all official European languages. The translator of legislative documents and especially of the *acquis communautaire* has the difficult task of translating directives, treaties, conventions but not private legal documents as for example marriage certificates, sales contracts, birth certificates, etc. Therefore, before formulating a hypothesis about the most suitable translation methods which should be used in translating legal documents, we have to think of the different text types belonging to the legal genre.

1. Overview on Translation Theories Applicable to the Legal Genre

One of the first translation methods which is adopted by most translators is the literal translation or the word by word translation. Using this method the translator preserves the word order and the syntax of the text. Researchers have had different views on this method. Some of them recommend this method for the translation of standardized official documents like court decisions, agreements, etc. In these documents, the translator makes use of special stereotypical patterns and expressions in order to transpose the meaning of the source text into the target language.

Newmark (1988) considers that there are four levels of translation which should be adopted by the translator: the textual level, the cohesive level (focusing on the structure and the tone of the text), naturalness (the translation should sound and read as natural as possible in the target language) and the referential level (the translation should correspond referentially and grammatically to the source text). But, before choosing any method of translation, the translator has to analyse the text type and then define the subject field of the text.

Risto Hiltunen suggests that there are three different types of legal writings: (1) academic texts which consist of academic research journals and legal textbooks; (2) juridical texts

covering judgements or law reports and (c) legislative or statutory writings consisting of Acts of Parliament, contracts, treaties, etc. (Hiltunen, 1990:81).

According to Yankova, the EU legal documents that are translated into all official languages are divided into three main categories:

- ”• documents that are essential in the final stages of the decision-making process;
- all texts that are for adoption by the Council;
- documents that are of general interest for the citizens of the Member States.”(Yankova, 2008:135)

When translating a specialized text, the translator has to bear in mind some aspects, as for example: (a) grammar and syntactical structures characteristic for both general and specialized text types; (b) special vocabulary, phrases and structures; (c) visual arrangement of the text (paragraphs, titles, subtitles).

Garzone considered legal translation to be ”a category in its own right” perhaps due to the complexity of legal discourse and the terminological precision of specialised translation. (Garzone, 2000: 395). According to the functionalist theory on translation, the source text cannot be regarded as the standard for the target text. Researchers argued whether this functionalist theory should be applied for the translation of legal texts. Their main objection was focused on the orientation towards the recipient or readership and they thought this was not acceptable due to the rigorous rules of interpretation (Garzone, 2000:2).

Legal translation can often be perceived as being more difficult than other types of technical translation due to its ”system bound nature of legal terminology”(Kahaner, 2005:1). And this is the case when trying to translate European legal documents. There may be certain difficulties due to the different legal systems and the conceptual meanings of the languages, due to the legal cultures, history and system. In order to acquire a better understanding of the European legal texts one has to acquire a basic knowledge of the legal systems of the source and target languages in which the documents are written and to sense the differences of those systems. This is an example of linguistic diversity in the translation of a court decision between English and German.

“(…)is a provision such as that of Article 57a of the Liechtenstein *Lawyers Act* [*Rechtsanwaltsgesetz*], according to which, in proceedings in which a party is represented by a lawyer or a defending counsel must be engaged, the European lawyer providing services must call in a local lawyer to act in conjunction with(…)” (Case E-1/07, 2007/C 143/08)

As we can notice, the translator has also preserved the German equivalent for the *Lawyers Act* for the sake of clarity.

Baker talks about the differences ”in the grammatical structure of the source and target language” stating that these differences change ”the information content of the message during the process of translation” (Baker 1992:87). This change may create new information in the target text, information which was not expressed in the source text, or it may even omit some information from the source text. In the translation of EU legislative documents, the translator should not omit any information or any part of speech; otherwise the meaning can be deteriorated.

It is thought that full adaptation of the target text cannot be an accepted method of translating legal texts because it can create semantic distortion (Koller, 1979:89). But disagrees with Koller’s view and thinks that a target text cannot be regarded as a translation if it is not ”bound” to the source text (Nord, 1988:31). Jakobsen thinks that the purpose of legal translation is to make ”target culture readers” understand ”the meaning which the source text has in the legal system to which it belongs”(Jakobsen, 1994:54). Legal documents are very interpretable and sensitive and the meaning should be preserved as much as possible.

A very important aspect in the translation of the European legislation is the principle of legal equivalence because the same legal effect from the target text can be preserved in the source text. Expert legal translators need to understand and interpret the meaning of the

source legal text so that they can transpose it into the target language. The principle of legal equivalence can be associated with functional equivalence because it is a procedure which occupies the universal area between the source text and the target text (Newmark, 2005: 83). After translating them, European legal documents (treaties, directives and conventions) should have the same legal value and structure and form as the source laws.

2. Issues in Translating European Community Documents between English and Romanian

Most of the EU Community documents are drafted in English, French and German. All these documents have to be translated into all official languages. The Directorate General for Translation with its head offices in Brussels and Luxembourg is in charge with the translation of these documents. Before the accession to the European Union, Romania had to translate the *acquis communautaire*. Taking into account all these aspects, we cannot use or apply a certain method of translation for this case. The translation of EU documents represents a process of parallel translation and may even be thought as a co-drafting process. There should be no difference between the source and the target text. Therefore, the translated texts may act as source texts when translated into another non-European language (Gibova, 2009 :147). According to Koskinen, the translation of EU documents is now being perceived as a type of auto-translation because the EU institutions act as the drafters and the translators of these texts (Koskinen, 2008:24).

It has been pointed out that many EU officials do not regard these texts as translations” but as ”language versions”(Koskien, 2008:24). An important particularity of EU translation is the fact that the ”drafting language must undergo a certain degree of deculturalisation in order to arrive at the identical legislative intent in all languages”(Gibova, 2009:151). This means that the legal drafter should avoid cultural-bound terms and should use clear, universal structures which can be reproduced with fidelity into the target language.

The corpus of my study is based on parallel translations taken from the EU legislation in force. I will try to identify to which extent the translator has managed to keep the fidelity of the source text.

whereas:

- (1) Council Directive 2006/112/EC (3) specifies that value added tax (VAT) shall be payable by any taxable person carrying out transactions involving the taxable supply of goods and services. In the case of cross-border transactions, and for certain domestic high-risk sectors such as construction or waste, it is foreseen, however, to shift the obligation to pay VAT onto the person to whom the supply is made.(Council Directive 2010/23/EU, L72/1)

întrucât:

- (1) Directiva 2006/112/CE a Consiliului (3) specifică faptul că taxa pe valoarea adăugată (TVA) este datorată de orice persoană impozabilă care realizează livrări de bunuri sau prestări de servicii taxabile. Totuși, în cazul tranzacțiilor transfrontaliere și pentru anumite sectoare naționale cu grad ridicat de risc, precum construcțiile sau deșeurile, se prevede transferul obligației de plată a TVA către beneficiarul livrării sau al prestării.(Directiva Consiliului 2010/23/UE, L72/1)

If we look at these examples on a structural level, we can notice that they are almost identical from the point of view of the sentence length and visual arrangement. Most of the paragraphs in European Directives consist of one long sentence. This paragraph is divided into two sentences. Shifting to the level of the syntax and grammar structures we can notice some differences between the two language versions. In the first main clause the translator has preserved the same grammatical structures for the target language. The main clause starts with the subject ”Council Directive/Directiva Consiliului” followed by the predicate ”specifies/specifică”. This clause is followed in both language variants by a direct object clause. The English variant is introduced by the relative pronoun ”that” while the Romanian variant by the conjunction ”că”. We can observe that the Romanian sentence is a little bit

longer because in the last part of the sentence the gerund "carrying out" has been translated through a relative clause introduced by the relative pronoun "care". In the next sentences we can observe some interesting differences in what the word order is concerned. For example, the adverb "however" which can be found in the middle of the English version sentence, was placed in initial position in the target language. The infinitive clause "to shift the obligation to pay" was translated through a noun phrase "transferul obligației de plată". All these observations show that the translator had to adapt the text, so that it could sound as natural as possible in the target language. The translator cannot keep the same grammatical and syntactic structures of the source text, having to rephrase the structures in order to be reader-friendly. The task of translation is quite difficult because the length of the sentences in both source and target language should be the same and the meaning should also be preserved.

Due to the fact that the EU legal system is relatively new, the EU terminology mostly relies on new concepts. This has resulted in the formation of a special EU language, which is sometimes called Eurojargon. The Eurojargon includes the following categories of terms:

- (a) Derivatives and compound words with the prefix euro-: *Euro-MP* (*European Member of Parliament*), *Euro-elections*, *Eurozone*, *Eurocheque*, *Eurocrat*, etc.;
- (b) Specialized terms or terms of art: *accession*, *Committee of the Regions*, *common strategy*, *community law*, *ombudsman*, *subsidiarity*, *sustainability*, etc.
- (c) Abbreviations: *DGT*, *EU*, *EURES*, *EURATON*, *EFTA*, etc.

Some concepts are totally unknown for some former communist countries and it is very difficult to define them. For example the term *ombudsman* has been adopted in Romanian in three variants: (a) a direct loan from English: *Ombudsmanul avea sacina de a promova aplicarea uniformă a legilor și inadvertențele legislative*; (b) a legal equivalent which existed in Romanian: *avocatul poporului*; (c) French borrowing: *mediator*. (Busuioc) There are also some recurrent expressions in the primary and secondary legislation and their translation has to be the same all over the text. These are some of the most frequently used examples of such specialized terms and their equivalences in Romanian: *amended by-modificat de, for the purposes of-în sensul, in witness thereof,...- drept care...*, *law of the case-autoritătea de lucru judecat*, *legal expert – jurist*, *legislative alignment –aliniere legislativă*, *without prejudice to – fără a aduce atingere*, etc.

EU translators have to comply with certain rules when translating an EU legislative document. They have to adapt the content of the source text to that of the target text and preserve the same structure of the original documents. The translators also have to be familiar with the community law-related concepts. They also have to avoid using terms and concepts belonging to their national law and to preserve the terminological consistency and use the standard terms even if that term might not be the most suitable equivalent.

Conclusions

In the European institutions the translation process is part of the legislative process. There is no special method which can be applied to the translation of these text types, but a combination of translation methods. The use of standardized forms in EU texts implies the use of certain rules in translation. This phenomenon of standardization can make the work of the translator easier, but it also has some disadvantages. The translation of EU legislation has to be effective, and the search for perfect equivalents from the standardized structures should not be reduced only to the process of matching up. In other words, the translator has to adapt the content, form and structure so as to be reader-friendly, and to send the same legal effect in the target language.

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