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Preface

Corpus research at the service of multilingual lawmaking

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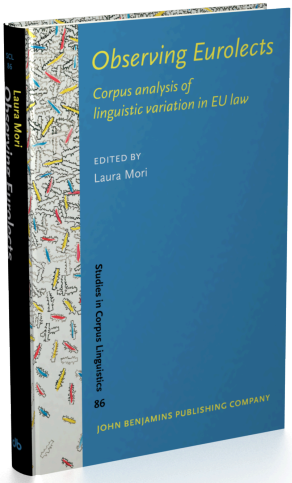

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Preface

Corpus research at the service of multilingual lawmaking

The multilingual lawmaking mechanism of EU law undoubtedly works and surprisingly well too, considering the complexity inherent in a legal system that interacts with 28 national legal systems in 24 equally authentic official languages.

Having said that, EU legislation is regularly subject to criticism. A recurrent issue is critical remarks on how EU legislation is drafted, its readability, the jargon (Eurospeak) it contains, and, more generally, its alienness.

The present volume provides a valuable contribution to this debate. Based on corpus research, the *Eurolect Observatory Project* explores whether there is such a thing as a specific variety of European legal language – a Eurolect – and, if so, what are its characteristic features and linguistic markers. To grasp the potential relevance this research project has for practitioners, let us briefly recapitulate some of the premises for the legislative drafting that takes place in the EU context.

Quality of legislation has been high on the EU agenda ever since the debate on transparency started in the 1990s. Over the years, a number of EU initiatives have been launched: Better Lawmaking, Better Regulation, Smart Regulation, BEST, REFIT, The Clear Writing Campaign, etc. Various guidelines have been issued: the *Interinstitutional style guide*,[1] the *Inter-institutional agreement on common guidelines for the quality of drafting of Community legislation*, the *Joint Practical Guide*, *The Essential Guide to drafting Commission documents on EU competition law*, and, most recently, the *Joint Handbook for the presentation and drafting of acts subject to the ordinary legislative procedure*. IT tools have also been developed.[2]

One of the main achievements of this process is the *Joint Practical Guide* (*JPG*), issued by the legal services of the European Commission, the European Parliament and the Council of the European Union. This manual lays down the general principles of EU legislative drafting. To begin with, it states that "the drafting of a legislative act must be clear, easy to understand and unambiguous; simple, concise,

1. <http://publications.europa.eu/code/en/en-000100.htm>

2. For a chronological review of the major initiatives, see the Legal Service of the European Commission webpage: <http://ec.europa.eu/dgs/legal_service/legal_reviser_en.htm>

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containing no unnecessary elements; precise, leaving no uncertainty in the mind of the reader" (JPG: 1). It explains that these common-sense principles are "the expression of general principles of law, such as the equality of citizens before the law, in the sense that the law should be accessible and comprehensible for all; legal certainty, in that it should be possible to foresee how the law will be applied" (ibid.). It goes on to say that "whenever possible, everyday language should be used" (JPG: 11) and that "identical concepts should be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language" (JPG: 20). Moreover, "overly long articles and sentences, unnecessarily convoluted wording and excessive use of abbreviations should be avoided" (JPG: 14), as well as "overly complicated sentences, comprising several phrases, subordinate clauses or parentheses" (JPG 20: 17).

To ensure that all official languages are treated equally, the *Guide* contains several recommendations that are essential for the drafting of the translated language versions. The *Guide* points out that the person drafting a legal act "must always be aware that the text has to satisfy the requirements of Council Regulation No 1, which requires that such acts be adopted in all the official languages. That entails additional requirements beyond those which apply to the drafting of a national legislative text" (JPG: 16). These additional requirements are further spelled out in the *Guide*:

> The original text must be particularly simple, clear and direct, since any over-complexity or ambiguity, however slight, could result in inaccuracies, approximations or complete mistranslations in one or more of the other Union languages. (ibid.)
>
> It is sometimes easier to draft complicated sentences than to make the effort to summarise content which results in clear wording. However, this effort is essential in order to achieve a text which can be easily understood and translated. (ibid.)
>
> Drafters must ensure that translators can immediately identify the sources drawn on in the original text. If a passage in the original text has been taken from an existing text (for example in a treaty, directive, regulation, etc.) that must be clear from the text or indicated separately, where necessary by appropriate electronic means. There is a risk that any hidden citations without a reference to the source will be translated freely in one or more languages, even though the author specifically intended to use the authentic wording of an existing provision. (JPG: 19)

Bearing on the discussion in this volume and the drafting of the 23 equally authentic translated language versions, the *Guide* stresses that they must not be perceived "as translations in a negative sense" (ibid.) and that "texts peppered with borrowed words, literal translations or jargon which is hard to understand are the source of much of the criticism" (ibid.) that has been voiced by and in the Member States.

Indeed, the translations produced in the EU lawmaking context are not *just translations* of an *original*, but applicable law, equally authentic language versions of the law. This means that the translated language versions of the law should also comply with the quality requirements for legislation, i.e. the general principles cited above: they should be accessible, easily understood and foreseeable, so that citizens understand their rights and obligations. And there must be no discrimination on the grounds of language.

At the same time, the norms of the trade establish that *fidelity to the original* is the first consideration in legal translation. Accuracy is a must. Every comma counts. Minor mistranslations can lead to court cases. This leads to a very prudent approach to translation, where texts tend to be translated in a rather literal way, copying syntactical structures from the source text, translating terms with *calques* and producing texts peppered with loan words, literal translations or jargon that are hard to understand and that, to quite some extent, risk being perceived precisely as alien or as translations in a negative sense.

In other words, there is a tension between some of the guidelines in the *Joint Practical Guide* and translation practice. There is also tension between EU law and national legal systems, not only in terms of striking the balance between creating new EU terminology or using existing (national) terms, but also between drafting conventions and discursive patterns: legislative drafting is a very formalised, even formulaic practice, so literal translation strategies tend to reproduce source-specific formalised structures and discursive features and practices well beyond mere terminology and set phrases. At the same time, EU law is a legal order in its own right, and EU legislation should therefore first and foremost comply with the drafting conventions of EU law, even if these differ from the drafting conventions of national legal systems. In this respect, a closer look at the guidelines in the *Joint Practical Guide* shows that most of them are conditioned by formulations such as "in so far as possible", "overly", "excessively", which opens them up for interpretation and poses the question about who decides where to put the bar.

To complete the picture, legal scholars agree that legislative texts are operational texts. What ultimately matters is not what legislative texts say *linguistically*, but what they say *legally*. What matters is the legal effect. To this, we can add the teleological interpretation methods of the Court of Justice of the EU, focussing on the purpose of the text when in doubt as to its interpretation.

It is against this background that the *Eurolect Observatory Project* is of great potential interest for everyone involved in drafting EU law. The present volume provides factual evidence for a large number of official EU languages of what it is, linguistically, that characterises the legal discourse we produce at the European level. Translators and lawyer-linguists from all languages will be able to build on this, continue the reflection and draw conclusions as to whether the findings point

at good or bad habits and whether they should lead to changes in how multilingual EU law is drafted, be it EU-induced phenomena, contact-induced features or intra-linguistic variability, at the lexical, morphological, syntactical, or textual level, for example:

- Some findings provide evidence confirming what we already knew intuitively, for instance the presence of some EU-induced phenomena.
- Some findings rather show that some of our perceptions might be unfounded, for instance that EU legislation is less readable than legislation drafted at national level.
- There are also findings that unveil features most of us were unaware of, e.g. interesting differences in the use of connectors, cohesion markers, pronouns, etc., both within languages and across languages.

This will enable us to build on facts, not just perceptions, and to make tacit norms and conventions more explicit. Importantly, it provides insight into how languages differ from each other, behave differently and may need to be treated differently to produce the intended meanings and legal effects in a non-discriminatory way, where all languages are treated equally. The findings show patterns of contact-induced issues originating in the English version that affect all languages, but also others that affect only specific languages or language families, whether in similar or – even more interestingly – different ways. This is likely to help translators and lawyer-linguists to avoid unnecessary interference from English.

In June 2015, half-way through the research project, the European Commission's Directorate-General for Translation (DGT) organised a *Translating Europe Workshop* in Brussels, where the researchers involved in the *Eurolect Observatory Project* presented the project and their preliminary findings to an audience of institutional translators, lawyer-linguists and legal revisers. As part of the workshop, the researchers also met with translators and lawyer-linguists of their respective languages for more in-depth discussions to explore the relevance and possible pitfalls of the research approach. Each language was represented by 7–10 people. For most languages, all the EU institutions involved in the legislative process were represented.

The discussions showed that there is great interest amongst practitioners in this type of research, but also a fear of being exposed to (perhaps unjustified) criticism. Discussions enabled researchers to clarify that theirs is descriptive research, in clear contrast with the prescriptive environment of the practitioners. At the same time, there were concerns that researchers might miss the point if they do not entirely grasp the complexity of the text production environment. In this respect, a number of possible pitfalls surfaced in the discussions, such as the importance

of understanding the specificities of EU legal terminology and formal drafting instructions; the gradual switch from French to English as the language of the *original* documents that took place during the reference period; the potential impacts of workflow, time pressure and non-native drafters.

Is the recurrent criticism towards EU drafting practices justified? Are the reported problems inherent in multilingual lawmaking and the inevitable result of legal harmonization and the contact between legal orders or are the problems partly due to poor drafting or poor translation? Is there room for improvement?

The *Eurolect Observatory Project* provides facts and descriptive data that enable us to better reply to such questions. This evidence has a solid basis in the study of corpora of directives, national implementing measures and national law and will lead to in-depth knowledge about how EU law differs linguistically, or not, from national law.

This, in turn, will make it possible to further discuss not only these differences but also, and more importantly, their communicative implications not only in terms of denotation, but also connotation, pragmatics and text type conventions.

Such aspects are potentially relevant for the efficiency of communication and for non-discrimination on language grounds. Future research could also valuably explore patterns for languages that are official in several Member States (Dutch, English, French, German, Greek, Swedish), for which the balancing act inherent in multilingual lawmaking becomes even more tricky with intra-linguistic variation not only between EU and national legal drafting but also between different national legal drafting traditions using the same language.

Well-functioning text production of multilingual law in 24 equally authentic language versions is a pre-condition for European cooperation to run smoothly. This inevitably includes drafting quality. On behalf of the practitioners, the persons who are involved in the challenging task of drafting multilingual EU law, I warmly welcome this kind of research and look forward to the discussions that the findings will trigger. This is the kind of research that contributes to bridging the gap between practitioners and researchers, showing that they can be useful to each other and that it is important that they interact.

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* The opinions expressed are those of the author and should not be considered to represent the European Commission's official position.