

LSP and EU Legal Language

1. Introduction: mapping EU legal language

This paper examines the legal language of the legislative texts of the European Union. This is a specialised domain and one that is of growing importance. There is insufficient understanding of the legal-linguistic nature of EU legal language and this paper addresses some general issues starting from a position of personal experience working on the legal-linguistic revision of draft legislative texts prepared through the services of the Council of the European Union. All opinions are purely personal. The purpose is to place EU legislative language in an LSP context.

One can start with the question: How do we map EU legal language? There are different possible answers, but one way is to distinguish it from national legal language, on the assumption that national legal language is better understood. This results in a comparative approach. The EU context is multilingual and multicultural. One approach is to trace through the implications and identify some of the impacts this fact has on EU legal language. In this paper the study relates primarily to English language for reasons of convenience, but each and every EU official language merits separate study.

Three topics are here considered in relation to EU legal language: *first*, EU language as compared with national legal language; *second*, some features of EU multilingual legislative drafting; *third*, the transfer of the EU legal message contained in the EU legislative text to the national law context through the process of 'transposition'. This last topic brings the EU and national legal-linguistic contexts into juxtaposition and direct comparison. It is a daily practical reality for EU and national legislative drafters. Through transposition there is a link between the two contexts and that reflects the EU reality that EU law must usually be transferred to the national contexts, thereby crossing legal and linguistic frontiers. This is not always clearly understood, which is also a reason why an LSP research approach is of interest.

There are now many thousands of pages of EU legislative (and judicial) texts which have been published, and the number is increasing all the time. So the topic is large, and it also increases when new competencies are conferred. The EU is not yet a single system although it is moving closer to being one under the Lisbon Treaty. It is constituted by several founding treaties, notably (at the time of writing) the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community and the Treaty on European Union. Each treaty contains delegated powers and competence to act. The secondary-level legislative texts are created in accordance with the legal powers delegated and the language of the treaty in question. Most EU legislative texts, especially the largest texts, are currently created under the EC treaty, and it is this treaty which provides the basic model.

Ideally, one would analyse individual texts and compare them with other EU texts and national law texts. This, in fact, happens every day, but it is undertaken by EU officials, national officials and lawyers and courts who work with the texts in EU and national contexts. Likewise translators,

1 Opinions expressed are purely personal

* Colin Robertson
Council of the EU
Luxembourg
colind.robertson@hotmail.com

linguistic and legal-linguistic revisers (lawyer-linguists) are working with EU legal texts every day. This paper derives from many years of practical experience. Its purpose is to encourage LSP research into EU legislative texts on the view that it is an area which deserves more attention than it has received so far by linguistic researchers. Are there barriers in this connection? If so, what might they be? Is the contextual information lacking? Is there a difficulty about multilingualism and knowledge of languages? Is it too complex, confusing, technical or specialised? Are there hidden prejudices against it? If so what? Why? Yet it is an important field, with widening scope and implications: what is the EU? Where is it going? If one studies the texts to see how the EU is visualised now, then it may help for visualising how it might be for the future. Applied linguistics has a role to play here. So does a study of semiotics.

In this paper, three questions in relation to EU legal language are posed:

- (a) Does EU legal language differ from national legal language? If so, how?
- (b) What problems arise in EU multilingual legislative drafting?
- (c) What problems arise for the transfer of information from the EU context to the national context?

EU language is thus set up in 'opposition' to national language in order to identify how it differs, and perhaps reveal some of its identity. The focus is placed on legislative language rather than judicial.

2. Does EU legal language differ from national legal language? If so, how?

As noted, EU legislative texts are based on devolved powers from the member states to the EU by means of treaties set out in written texts. Indeed the whole system rests on a foundation of written texts. There is a separate oral dimension to EU legal language which can be studied, but, to generalise, it can probably be regarded as linked to, and subordinated to, the creation and interpretation of the written texts. These texts comprise the primary treaties (EU treaty, EC treaty, EAEC treaty; Lisbon Treaty, etc), and secondary law texts (for example, EC regulations and directives, which have legal force, and resolutions and recommendations, which are more statements of political intention and desire. The status of a secondary-law text is laid down by the primary law text. The case law of the courts (ECJ and national) is also of major importance as regards EU legal texts, notably as regards the allocation of meaning.

The EU legislative text is multilingual. It is imagined as being a single legislative text expressed in (currently) 23 official languages, which are derived from the official languages of the member states. The message is intended to be 'the same'. One consequence is that the languages influence each other in the final product. The EU is also multicultural. It currently has 27 member states which have joined together to produce multilingual legal texts through negotiation. The competence to act is limited since EU law is limited in scope and context by the treaties. It follows from this that intertextuality is a vital feature, in particular the terms in primary treaty law must be followed in secondary law. EU law aims to change national laws and practices; it has a purpose namely that of change and, for example, movement towards closer integration (see the recitals to the treaties). The European Court of Justice uses the term 'teleological' when interpreting EC legislative texts; it looks at the purpose of the treaty and the act in question. This approach can be seen, perhaps, as looking beyond language and imagining something outside language, or as extending the meaning of words in particular, sometimes in unexpected, ways. If one thinks about specific words and verbs, scrutiny of EU legislative texts reveals a higher number of future verbs and future time periods for transposition of directives. Futurity is also a built-in feature.

If we now turn to national law by which is meant the general law of a member state, one can note that the national legal system is 'autonomous', not 'devolved'; or, to put it colloquially, 'has its feet on the ground'. National legal texts are also in writing. They are generally expressed in one language, unless the national system is bilingual or trilingual, and there tends to be a national

culture. It may be multicultural, but even then it is within a more uniform system of values and references. There is power to legislate on anything and this is limited only by external treaty and internal rules on allocation of functions between different bodies. There is intertextuality between higher and lower-level legislative texts and a high degree of control over the drafting of national legislative texts. These texts have direct impact on citizens, life and reality. National legal systems are extremely complex and there is a very sophisticated structure of legislative texts.

EU legal language differs from national legal language in a number of ways :

- (a) Legal terms are abstract, but meaning is derived from the EU context and not from the national context (for example, EC ‘regulation’ (Art 249 EC) is not a term of national law);
- (b) EU terms borrowed from national contexts become EU concepts and can take on new EU significations (eg ‘gender mainstreaming’);
- (c) EU language ‘feels’ different. It is drafted with an eye to translation. While the European Commission is responsible for the first drafts, afterwards the texts are the subject of negotiation, often intense and difficult, and that leaves its marks on the text. Clear, simple and precise sentences are requested in the guidance contained in the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation but there have often been long and complex sentences arising from the methods of negotiation and the complexity of the subject.
- (d) The texts are technical, often dealing with complex technical fields, especially in environmental texts (eg large combustion plants). They can be bureaucratic and require reports, controls, assessments, related to implementation of obligations. The texts are often drafted in English or French by non-native speakers and that leads to the syntax and cultural ideas from other languages being followed (for example, non-standard use of prepositions). Other variations can relate to the use of ‘collective’ nouns like ‘action’ becoming individualised and pluralised (eg ‘those actions’) to align with other languages. Variations in the use of indefinite and definite articles can arise, since, for example, Slavonic languages tend not to have definite articles (but Bulgarian does) and so speakers of those tongues are less sure about their use, as well as when to use ‘this’, ‘that’, ‘these’, ‘those’. (There are differences across languages.) However, native-speaker proof readers pick up on these points. As noted, EU texts frequently use verbs of futurity. Another aspect relates to the use of nominal expressions: some languages nominalise, others prefer verbs in the construction of complex ideas and these tendencies can appear at times in the texts; they are linguistic as well as political compromises.
- (e) In general, EU language uses the same national language, grammar, syntax, punctuation and spelling rules, but adjusts for uniformity across languages in the interests of a degree of standardisation to assist readers; for example, ‘decimal commas’ in place of dots for tenths of numbers in English (10,876), and a standard multilingual format and presentation of the texts, again in the interests of uniformity.
- (f) Technical terms are often defined so that all languages have the ‘same’ EU definition. In this way concepts and terminology are aligned and made common. It implies a form of linguistic terminology-legislation, in the sense that a single concept acquires 23 ‘labels’, whereby each means the same, like forms of inter-lingual synonyms. Thus, for example EC ‘regulation’ = ‘règlement’ = ‘verordnung’ = ... horizontally. But how far can that be taken?
- (g) One must be aware that there exists national variation in the background. The national concept may seem the same as the EU term as the word is the ‘same’, but the context is different and the exact meaning is therefore logically different. (This is evident from semiotics, for example of Peirce, and implies a different ‘sign’.) The EU text makes its own new multilingual ‘reality’ as regards the concepts used - or does it?

- (h) There is a ‘tension’ between terms in the different EU language versions ‘horizontally’ and also between each EU language version and national law terms which appear the same in a given language and which are not specifically connected solely to the EU context. Are they the same? (for example, ‘environment’ (EN): ‘environnement’ (FR): ... + (all other language terms). Do these words *first* have the same meaning in the EU text and *second* also have the same meaning in the national language context for each word in each language?
- (i) Leading on from that, a further question to ask is whether words have been used in the same way in related texts over time. On the one hand words can change meaning over time; on the other hand in a multilingual context which involves translation and translator variability, the question can arise whether, for example, the particular term used in, say, French texts is the same as two or three terms used in, say, English texts translated from French where translators chose different words for the same French term. Same meaning, but different words used?
- (j) These questions raise the issue of meaning and interpretation which is a central concern for the courts, but they also arise in the context of ‘transposition’ to national law. Put practically: can one use the same EU terms in a national law text?
- (k) Can the same EU words be used in the national law text? Are different words possible? Is one ‘trapped’ in the word? Does it matter in practice? Can one ‘escape’ and solve the difficulty by using definitions? These are daily questions.

There are consequences for a language of becoming an EU language. Thus, when a language becomes an EU language it is placed on the ‘same-sized bed’. EU texts require equivalent terms in every language. If they do not exist in national language, they must be created. This first happens on a large scale at accession at a point when knowledge and experience of the EU is more limited, since the EU ‘acquis’ must be translated into the new accession language before accession, so as to be ready for day one of membership. Many new words are created, not only the names of EU legal concepts (*acquis communautaire*, regulation), but also technical and economic terms (sheepmeat for mutton...(*viande ovine*): an onerous task for a new member state. For an initial period of years after accession terminology is a problem; then it settles down and becomes established.

3. What problems arise in EU multilingual legislative drafting?

Many problems arise in EU multilingual drafting. It is convenient to refer to these using different viewpoints, for example: policy, law, language and action which are all linked to the construction of the legislative text. The background tends to be that policy issues arise in the member states which generate a need for legislation (for example, heating-up of the climate). An EU legislative text is chosen because the EU has ‘competence’ and/or because the field affects many member states and a common approach is best for the ‘internal market’ or generally for dealing with the problem. A text is then created using legal and linguistic tools. Structure and form are largely standardised. Words and terms are chosen intertextually within the policy field and according to the rules and methods of EU law. References to national law tend to be generic (‘competent authority’) to embrace all member states, and these are the linguistic points at which the EU text is ‘handing over the baton’ to the national context and national law, which picks it up and continues the local implementation of the policy using national legal tools. Thus there is a partnership and complementarity between the EU and the national texts. One multilingual 23 language text: 27 member states.

EU terms and texts are as specific as possible, but cultural differences can lead to generalising to a higher level, or inserting definitions of terms in order to be precise and technical. The method of production is standardised (one main language version, perhaps switched to another language (‘language switching’) for further work), followed by translation and revision and legal-linguistic

revision. Officials from all member states meet regularly to discuss and prepare the texts. Typical problems include: (a) understanding the implications of a Commission draft for the national context; (b) agreeing on policy objectives and intended meanings and actions; (c) defending national interests which leads to compromise texts, ambiguities and lack of clarity so that translation becomes more difficult and some languages for reasons of their structure are forced to choose one particular meaning where there is ambiguity; (d) establishing equivalence of concepts and understanding; (e) checking all language versions have the 'same' meaning. Issues of drafting are discussed in Robertson (2009) in the context of legal-linguistic revision of EU legislative texts.

4. What problems arise for the transfer of information from the EU context to the national context?

Many issues arise for the transfer of information from the EU to the national context. These include: (a) interpreting and understanding the EU policy in the different languages; (b) deconstructing and discarding purely EU elements (for example, the EU committee procedure references); (c) creating the national law text within the national legal framework, intertextually within it, so as to implement the EU policy; (d) making choices such as whether to repeat the EU text verbatim, enact in detail every implication, or something in between; (e) being aware that each and every approach has implications; the effect and impact however can vary according to the choices made. For example, does adding more detail enhance or detract from the effect?; (f) being aware that EU words have EU meanings; do the same words have the same meaning (or one that is sufficiently close) when transferred into the national context?; (g) is one trapped within the same language where the EU term and the national term have different meanings but there is no alternative word to fill the space? Can the problem be solved by introducing definitions into national law?

The topic of transposition is a very large subject in its own right which takes up a lot of the time of EU and national officials as it lies at the heart of the EU system. It merits special attention.

5. LSP perspectives

With EU legal language one can look at one language alone, by itself, in the form of EU texts written in that language. But EU law is multilingual and each language version is influenced by other languages in various ways: drafting may be by non-native speakers; the text translated from another language; concepts borrowed from another language; the base language switched to another version during negotiation, etc. The meaning of EU texts derives from all the texts together and not just one language version. These factors make the study of EU legal texts more complicated. From an LSP perspective, one can take different aspects and make a note of some issues which appear to come into play. Some suggestions are given here.

(a) Words (terminology):

- EU legal texts use specialised terms for EU concepts;
- they use general specialised terms from the policy field of the text;
- EU specialised legal concepts have equivalent words across languages (regulation = règlement = Verordnung = ...);
- technical, or general terms, may need defining in the EU text if national contexts vary and there is no agreed meaning;
- many neologisms in all languages (sheepmeat, pigmeat);
- non-standard use of prepositions (influence of other languages and their speakers);
- hybrid words invented and used (franglais) (for example: 'infracion' for 'infringement');
- all this leads arguably to a new dialect – Euro-speak;
- 'Euro-speak' applies to all EU languages, but perhaps especially to 'lead' languages such as English and French.

(b) Language system

- Derivation from national language; application of its rules of grammar, syntax, spelling and phraseology. (practitioner view); but which national dialect? (eg German terms or Austrian) Which form of English, French ?;
- EU context can affect the syntax and phraseology where text is translated and conforms to a 'foreign' syntax, or is created by a non-native speaker who uses 'foreign' constructions;
- sometimes English when in lead is 'bent' to accommodate other languages (" those actions") which translate from it.

(c) Text:

- EU texts are specialised, adapted to context and purpose;
- EU legislative texts have their source in the treaties and are structured against certain models originating mainly from French law;
- multilingualism: translation requirements reinforce a desire for brevity and simplicity in style (KISS – keep it short and simple!), but topics are often complex and technical;
- EU law aims at economic purposes; national law aims to regulate society, family and property. (Different aims? Different methods of drafting and interpretation? Is EU law changing its purpose – e.g. name changes from EEC, to EC to EU? Are different aims of national and EU law reflected in different tenses for verbs: national law: present tense but EU law future tense?);
- EU legislative texts are structured and constructed in specialised ways. Each part has a specific purpose. Each has special form (eg title, citations, recitals, articles, annexes for an EC Directive or Regulation).

(d) Communicative activity:

Who speaks to whom? What discourses? What frameworks of meaning? For example, a current draft Directive establishing a framework for Community action to achieve the sustainable use of pesticides can be analysed as follows:

- enacting body: European Parliament and Council;
- Art 25: "This Directive is addressed to the Member States";
- Art 4(2): "Member States shall communicate their National Action Plans to the Commission and to other Member States."
- Art 4(4): "... the Commission shall submit to the European Parliament and to the Council a report; "The Commission shall make information communicated ... available to the public on a website."
- Art 7: "Member States shall take measures to inform the general public and to promote and facilitate information and awareness-raising programmes and the availability of accurate and balanced information ..."
- Art 10: "Member States may include in their National Action Plans provisions on informing persons who could be exposed to the spray drift. (ie particular individuals).

What do we learn?

- text addressed to Member States;
- the Member States make national law and address the national public directly;
- but a direct link between the European Commission and the European public is inserted in the Directive;
- the EU text is published in the Official Journal of the European Union in all languages in parallel;
- individual persons may be contacted directly.

It seems that there are several layers of communicative strands. How does that affect the drafting? What is the legal-linguistic significance? From there one can go on to ask other questions: such as who or what is a 'member state'? Is it a government or the whole people or something in between? To whom or what is the Directive addressing itself? Is it sufficient to say that a member state is a legal person, ie a legal concept? With these questions we come inside the conceptual linguistic structure of the legal edifice. As the member states comprise the Council they are also addressing themselves! How does this compare with national law concepts about legislation?

We can study the discourse(s) and frameworks in which meanings are created in EU legal texts.

6. Conclusion: mapping LSP research

In conclusion a few words are proposed in answer to research questions posed by the Aarhus Symposium on LSP:

- (a) *What kind of problems does one intend to solve?* Understanding EU legal language and texts; enhanced text production; training; relationships to national law and language;
- (b) *What disciplines?* Law, language(s), semiotics, communication ...
- (c) *Research Communities?* Law, linguistics; but also implications for other fields ...
- (d) *Research community/methodology, methods?* Legal-linguistics; practical applications; education and training; encouraging research;
- (e) *Types of knowledge to achieve?*
 - (i) practical: EU legal text production, meanings ...
 - (ii) theoretical: language, structures, power, European integration ...
 - (iii) EU law: a framework of reference in which meanings are created/interpreted using LSP.

And lastly, on a personal note, the assistance provided by the information and abstracts published on the Symposium website have proved an aid for the preparation of this paper. Thanks go to the Aarhus School of Business.

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