

'SHALL' AMBIGUITIES IN EU LEGISLATIVE TEXTS

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Abstract: This paper investigates the modal 'shall', whose excessive use can be problematic both in legal translation and interpretation (Coode 1843, Driedger 1976). The context of analysis is the EU for offering a relative young legal environment where translation represents the main channel of communication. The analysis moves from the deontic speech acts of ordering and prohibiting and looks at examples of performativity where 'shall' is not only deontically binding, but it is also used to express a necessary condition or to set a new state of things up. The disambiguation is particularly evident in multilingual translation and is performed with the help of parallel concordances, which also shed light on the conceptual framework of norms. Data consist of a parallel corpus including English, French, German and Italian versions of EU legislative texts chosen between 2001-04. As a term of comparison, a small comparable corpus containing English original texts has also been compiled.

WIELOZNACZNOŚĆ CZASOWNIKA MODALNEGO „SHALL” W AKTACH NORMATYWNYCH UNII EUROPEJSKIEJ

Autorka analizuje użycie czasownika modalnego 'shall', którego nadużywanie może prowadzić do problemów translacyjnych i interpretacyjnych (Coode 1843, Driedger 1976). Korpus badawczy obejmował akty normatywne Unii Europejskiej w języku angielskim, francuskim, niemieckim i włoskim wydawane w okresie od 2001 do 2004 roku. Należy tu zaznaczyć, że komunikacja prawnicza w ramach tej organizacji międzynarodowej ma stosunkowo krótką tradycję, a przekład prawniczy jest głównym kanałem komunikacyjnym. Analiza wykazała, że czasownik modalny 'shall' jest używany do wyrażania zarówno nakazu, zakazu jak i opisu stanów faktycznych

LE AMBIGUITÀ DI 'SHALL' NEI TESTI NORMATIVI DELL'UNIONE EUROPEA

Riassunto: L'articolo analizza il modale inglese 'shall' il cui uso eccessivo può rivelarsi problematico nel corso dell'interpretazione e della traduzione giuridica (Coode 1843, Driedger 1976). Il contesto dell'analisi è quello dell'Unione Europea, in quanto offre un ambiente giuridico relativamente recente, dove la traduzione rappresenta il canale principale di comunicazione. L'analisi parte dagli atti linguistici deontici dell'ordine e del divieto per soffermarsi su esempi di performativi dove 'shall' non impone alcun obbligo, ma esprime invece una condizione necessaria o pone semplicemente in atto un nuovo stato di cose, con precisi effetti pragmatici. La traduzione multilingue ed i concordance per l'analisi di corpora di testi paralleli permettono la disambiguazione di 'shall' e lasciano intravedere anche una struttura logica dietro la formulazione delle norme. I dati contengono un corpus parallelo in inglese, francese, italiano e tedesco con testi legislativi dell'UE datati 2001-04. Come termine di paragone, è stato compilato anche un piccolo corpus comparabile contenente testi legislativi scritti originariamente in inglese.

Introduction

While 'shall' is relatively infrequent in general use (Coates 1983), it is one of the most frequent modal verbs in English legal drafting. Its extensive usage covers meanings of obligations, entitlements, declarative statements, definitions, statements with negative subjects overlapping with 'may', directory requirements, future actions to be taken, thus often generating ambiguity and confusion when it comes to legal interpretation or court decisions. In recent years the 'misuse of shall' has been at the centre of several scholarly papers (Asprey 2003:194; Doonan 1995:175; Garner 1998:940) and since the late 1980s many English speaking jurisdictions have started replacing *shall* with other constructions, like the present indicative, the modal *must* or verbal periphrases². It remains however a typical feature of the British legal system, particularly when imposing a duty to act. The *Black's Law Dictionary* (2004) also confirms this usage and indicates that *shall* is 'generally imperative or mandatory' in contracts or statutes. But it also notes that a *shall* statement 'may be construed as merely permissive or directory' and it may imply 'an element of futurity'. In a nutshell, *shall* means *must*, except for when it means *may* or *should* or *will*.

The ambiguities of *shall* and its countless meanings become even more evident when it comes to international law, legal interpretation of multilingual instruments and translation. To this point, the present paper investigates the use of *shall* in the legislative documents of the European Union. This represents a relative young legal environment, which produces European Law in 23 different languages, all legally valid and authentic, and where the established tradition of continental Civil Law should be theoretically more influential than others.

The use of *shall* is investigated in a parallel corpus containing EU secondary legislation in four languages, English, French, German, Italian and published between the year 2001-04. A small comparable corpus of English legislation has also been compiled as a term of comparison between the current domestic legislation and the English of the EU. The analysis of parallel concordances is enlightening and constitutes a valid help in disambiguating the uses of *shall* within the EU legislation. This can improve legal interpretation but could also serve in the training of translators or in testing for automated translation tools. At the same time, the various usages of *shall* show recurrent features of legal statements, which may uncover in their turn, the conceptual framework of performatives.

The paper will proceed in the next section with a brief overview of *shall* in general and legal usage, delving in particular into legislative propositions and performatives. A further paragraph looks at the use of *shall* within the EU context and serves both as a description of data and of the EU legislative background. The analysis of *shall* occurrences and a conclusive discussion follows.

² *Shall* has disappeared in Australia, New Zealand and South Africa.

General remarks on legislative *shall* and performatives

Most current grammar and dictionaries regard nowadays the English modal *shall* as formal and outdated. The *Oxford English Dictionary* (2010, 3rd edition) also lists 'instruction and command' among its meanings, but its usage seems to be confined mostly to the future tense, to intentions, to polite suggestions in the first person singular or plural:

- (i) in the first person expressing the future tense: *This time next week I shall be in Scotland/We shan't be gone long.*
- (ii) expressing a strong assertion or intention: *They shall succeed/ you shall not frighten me out of this.*
- (iii) expressing an instruction or command: *you shall not steal.*
- (iv) used in questions indicating offers or suggestions: *shall I send you the book? Shall we go?*

English legal drafting seems to make up for this gap and a close look at the *Black's Law Dictionary* (2004, 8th edition) accounts for five different usages of *shall*, all quite different from those above:

- (i) Has a duty to. More broadly, is required to. This is the mandatory sense that drafters typically intend and that courts typically uphold.
- (ii) Should (as often interpreted by courts).
- (iii) May. When a negative word such as 'not' or 'no' precedes shall, the word shall often means 'may'. What is being negated is permission, not a requirement.
- (iv) Will. As a future tense verb.
- (v) Is entitled to. Only sense (i) is acceptable under strict standards of drafting.

Now, although drafting guidelines agree mostly with the first instance of the Black's Law Dictionary, i.e. *shall* denotes a mandatory duty imposed on a person or an entity (Asprey 2003:193; Coode 1976:371; Driedger 1976:9, 139) and is therefore essentially deontic and agent-oriented, the variety above explains why it is so frequent in legal texts.

The nature of this ambiguity is probably to be found in diachronic linguistics and in the auxiliary variation in terms of meaning and role functions. Bybee et al. (1994:187) confirm that in Old English *shall* and *should* (present and preterit forms of 'scealan' = to owe, to be obliged) used to denote both moral, physical obligations and inevitabilities. It was only during the Middle English that *shall* moved to express promises and intentions in the first person, while *should* continued to be used to denote past destinies and inevitabilities. This old root links the use of *shall* to its contemporary future meaning, which is also confirmed by the shift in the 'change of roles' (Leech 1987:87-88) when relating to people, i.e. second or third person for mandatory meanings and first person singular or plural when indicating prediction or volition in the future. The *Collins English Dictionary* (2007, 9th edition) also stresses this shift: 'the usual rule given for the use of *shall* and *will* is that where the meaning is of simple futurity, *shall* is used for the 1st

person of the verb and *will* for the 2nd and 3rd: *I shall go tomorrow; they will be there now*. Where the meaning involves command, obligation or determination, the positions are reversed: *It shall be done; they will definitely go*'.

Nevertheless, the deontic nature of *shall* and its mandatory connotation remains well rooted in the English legal drafting tradition. Coode's report *On Legislative Expressions*, one of the oldest but still authoritative drafting text, confirms that 'in all commanding language at least, the word 'shall' is modal, not temporal; it denotes the compulsion, the obligation to act, (*scealan*, to owe, to be obliged) and does not prophesy that the party will or will not at some future time do the act' (quoted in Driedger 1976:371). In this way, with *shall* the speaker does not only impose an obligation, but also ensures that the event will take place at that particular time. This component of actualisation establishes a direct link between the utterance and the act that is to be performed and also explains why present indicative is to be regarded as the tense of law for its features of being constantly speaking. This is due to the performative character of legal norms and to situations where 'saying' becomes 'doing', provided this happens under designated circumstances, i.e. a context where the uttering is performed by particular people in certain positions (Austin 1962:33-37). Likewise, there are legislative statements that do not impose or prescribe anything, but simply set up a new state of things or a change in the previous state of things. These are called constitutive acts and consist mostly of repeals, nominations, promulgations, and entitlements, in a nutshell all those rules that produce legislative effects at the time when they come into force. Italian scholar A. G. Conte has called them 'thetic performatives' as they set and bring about a 'thesis' forth whose performativity also corresponds to the deontic status constituted in and by a legal order (Conte 1994, 247-60). Their language gains a performative value, because the act or the command is not only prescribed, but also performed. This double effect, which is essentially due to the performativity of the utterance, might justify the frequent occurrence of *shall* in non-deontic statements.

In this respect, the interpretation of *shall* may often result in disputes, and as put it by Williams 'shall had become the victim of its own success' (2006:240). The last decade has seen several scholars (Asprey 2005:5; Garner 1998; Kimble 2000) suggesting to eliminate 'shall' entirely, and countries like Australia, New Zealand, South Africa, US to a certain extent³, have started drafting shall-free legislation with successful results (Williams 2006:245). This has been replaced, depending on the circumstances, by the present indicative, stative verbs, the modal *must*, negated *may* when drafting prohibitions, as well as verbal periphrases like *be to*. Still, legal drafting conventions are also cultural specific and *shall* remains a very frequent word both in the British legislation and in international Law. To this point, Williams (2005:207) argues in favour of a pragmatic solution and in his analysis of prescriptive legal texts highlights that while *shall* mandatory force denotes a duty, in *must*, it establishes a condition or a requirement. A similar view is also shared by the American lawyer Kenneth (2007) who mentions the 'negligible benefits of must' in business contracts. He suggests *shall* for an obligation, which is imposed on the subject of a sentence in the active

³ In American Court *shall* has been removed from the Federal Rules of Appellate Procedure and of Criminal Procedure (Asprey 2005:5).

voice, and calls for a disciplined use of *shall*, because 'banishing "shall" deals with the symptom, not the disease. By contrast, using "shall" to mean only "has a duty to" is intended to help treat the disease.

Data and preliminary results

The EU legal environment is not immune to the use of *shall* and English legislative documents account for a huge variety of meanings ranging from definitions, to directory and necessary requirements, deontic modality, entitlements, prohibitions and future actions to be taken. Véronis data (2005) on the English version of the Treaty for the European Constitution range *shall* as the sixth most frequent word, soon after conjunctions and prepositions. This is quite remarkable if we consider that the UK joined the Union only in 1973. The relative young legal environment of the EU should have been more exposed to the Civil Law tradition than to the Anglo-Saxon Common Law and in this scenario, one would expect a lower number of *shall* in favour of present indicative. However, *shall*-norms represent a stylized feature common to the drafting of many international instruments and their high occurrences in the European legislation denote the importance of contextual considerations and pragmatic conventions.

To account for the use of *shall* in both a monolingual legal perspective and within the EU legal environment, I have used a multilingual parallel corpus of EU legislation and a small comparable corpus of English legislation, drafted exclusively in the UK.

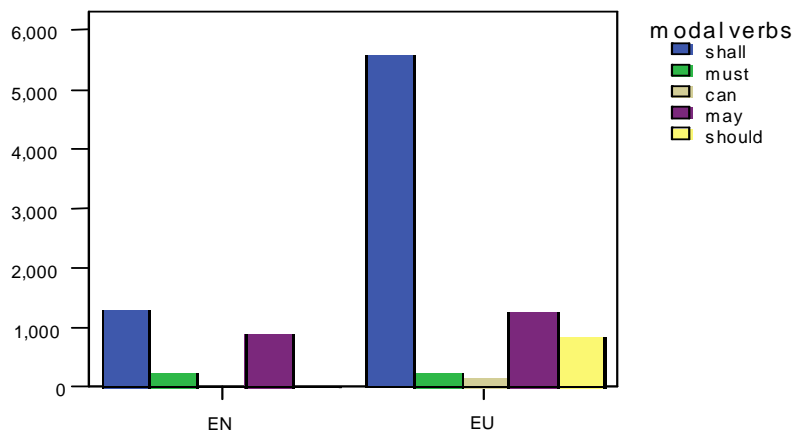
The parallel corpus (1,404,723 words) is made of the EU Constitution and of secondary legislation published between the years 2001-04. Documents are in four languages, English, French, German and Italian, and are meant to reflect contemporary EU legal language of the last decade. Texts (256 in total across the four languages) are all strictly 'legislative', namely binding and prescriptive rules on how things should and ought to be. They have been downloaded and collected in their entirety from the *Eur-Lex* database, which provide direct and free access to EU law in 23 languages. They are also known as instruments of secondary legislation and are of four types: regulations, directives, decisions and recommendations.

The English comparable corpus (160,765 words) is relatively small and is made of Public Acts and Statutory Instruments always chosen between 2001-04. Given the English Common Law system, which has no written Constitution, this choice attempts to mirror as far as possible the same criterion used for the selection of texts in the multilingual corpus, i.e. primary and secondary legislation. While Public Acts are statutes enacted as primary legislation by the legislative branch of government and could serve as the Constitution's counterpart, Statutory Instruments are delegated acts, i.e. law made by an executive authority under delegated powers and are conceptually closer to the EU secondary legislation.

The analysis is based primarily on the multilingual parallel corpus and on how occurrences of *shall* have been rendered in the other three languages. However, the distribution of *shall* has also been compared with the other modal verbs found in the two corpora. As the EU corpus was slightly bigger (337,825 words vs 160, 675 in the English comparable corpus), a Chi-square test was performed to compare observed data with data

I would expect to obtain according to the same hypothesis and number of occurrences. The table below confirms *shall* as the most popular modal verb, which appears in the EU corpus extremely frequent.

Table 1. Distribution of modal verbs in English



This high number of occurrences might be surprising when considering the British position within the EU context, as well as the nature of the EU Law. It is also a countertrend with the most recent legal practice, which advocates to use *shall* for mandatory requirements only, and to replace instead, all the other occurrences with the present indicative and less confusing alternatives. On the other hand, it is revealing in terms of drafting habits and pragmatic conventions, as *shall* is still very frequent in international instruments. Past and recent legal texts of the UN and other international organisations are laden with *shall* occurrences, thus showing that habits and conventions do not always follow linguistic rules and semantic interpretation.

In such contexts, the high frequency of *shall* remains however challenging when it comes to translation and legal interpretation of parallel texts. A *shall* constructed in another language as a future action, or a duty as a declaratory provision might affect strongly the interpretation of the international instrument. EU Law in particular, is subject to a complex drafting procedure with countless re-editing of the same text, which goes back and forth through an approval process in three different institutions (Commission, Parliament and the Council) with accompanying translation and amendments. For these reasons EU legislative texts are generally regarded as hybrids and little reliable in terms of linguistic analysis, but they also reflect a communication event and function as law for all the member countries.

‘Shall’ in EU legislative documents: a qualitative analysis

The *Joint Practical Guide of the European Parliament, the Council and the Commission* (2003) and the *English Style Guide* (2011) of the Directorate-General for Translation sets precise guidelines for the use *shall*, which is only recommended in mandatory acts:

2.3.2. In the enacting terms of binding acts, French uses the present tense, whilst English generally uses the auxiliary 'shall'. In both languages, the use of the future tense should be avoided wherever possible.

2.3.3. By contrast, in non-binding acts (such as recommendations and resolutions) (see Guideline 7), imperative forms must not be used, nor structures or presentation too close to those of binding acts.

A closer look at data and the parallel extraction of the occurrences through Paraconc (Barlow 2003) show that *shall* in EU texts is not always or not only deontic. The table below presents the equivalents of 1382 *shall* entries across 16 EU Regulations. They are grouped into present indicative, modal verbs, verbal periphrasis, modal expressions, i.e. lexicalizations of verbs like 'it is forbidden, it is allowed' and ellipses. It is interesting to note that more than 80% of *shall* entries correspond to the present indicative, while only 5% of them is rendered by equivalent modals denoting obligation in the other languages (e.g. *dovere*, *devoir*, *müssen/sollen*). These include the field of possibility as well, e.g. *potere*, *pouvoir*, *dürfen*, but they could indicate prohibition when negated, as *dürfen* is semantically linked to the idea of conferring a right. This last feature is confirmed by the entries under 'modal expressions'. Verbs like *consentire*, *autorizzare*; *autoriser*, *octroyer*; *bewilligen*, *erlauben*, *zugelassen* are all translations of the English 'to authorize' and 'to allow'. Concordances also suggest a more 'constitutive' usage of *shall* when expressing acts of empowering and conferring rights and benefits (*avere il diritto*, *avere il potere*; *avoir le droit*; *das Recht/ den Anspruch haben*).

Table 2. Linguistic equivalents of *shall* in the EU Regulations subcorpus

REGULATIONS							
English MV	Italian	raw no.	%	French	German		
shall	Indicative - Others	1192	86.2518	Indicative - Others	1223 88.4949	Indicative - Others	1125 81.404
	MV	81	5.86107	MV	58 4.19682	MV	94 6.8017
	dovere (58)			devoir (32)		muessen (34)	
	potere (23) 9 neg.			pouvoir(26) 14 neg.		sollen (3)	
						duerfen (33) 9 neg.	
						Koennen (24)	
	Verbal periphrasis	6	0.43415	Verbal periphrasis	8 0.57887	Verbal periphrasis	71 5.1375
	va + Past part. (1)			ktre a (1)		sein...zu (61)	
	essere tenuto (5)			ktre tenu (7)		haben...zu (10)	
	Modal expressions	51	3.6903	Modal expressions	43 3.11143	Modal expressions	46 3.3285
	vietare (1)			interdire (1)		untersagen (1)	
	essere obbligatorio (15)			ktre obligatoire (15)		verbindlich sein (15)	
soggetto a obbligo (1)			soumis a obligation (1)		verpflichten (8)		
avere il potere (1)			avoir le droit (11)		das Recht/Anspruch haben (10)		
avere il diritto (12)			il importe (1)		befuegt sein (2)		
consentire, autorizzare, concedere (16)			autoriser, octroyer, habiliter (13)		bewilligt/zugelassen/erli t sein (7)		
occorre (3)			il importe (1)		gewaehrt sein (3)		
spettare (2)							
Ellipsis	52	3.76266	Ellipsis	50 3.61795	Ellipsis	46 3.3285	
TOT	1382		TOT	1382	TOT	1382	

This brief analysis and the comparison with the other three languages suggests that *shall* is not exclusively limited to binding acts and is likely to occur in the following legal sentences:

- (i) definitions
- (ii) constitutive statements
- (iii) deontic modality
- (iv) necessary requirements
- (v) authorisations and entitlements
- (vi) prohibitions and negative propositions

The extraction of parallel concordances has confirmed this assumption, thus allowing the disambiguation of complex usages and isolating at the same time contextual features of the norm like temporal aspects, type of agents, aim of the norm.

The sentence below is a clear example of a prescriptive provision that would be hardly classifiable as an imperative norm:

Example 1. Definition.

(EN) For the purpose of paragraphs 1 and 2, „Community legislation” **[[shall]]** mean all Community Regulations, Directives and Decisions.

(IT) Ai fini dei paragrafi 1 e 2, per „legislazione comunitaria” **si intendono** tutti i regolamenti, le direttive e le decisioni della Comunità.

(FR) Aux fins des paragraphes 1 et 2, **on entend** par législation communautaire l’ensemble des règlements, directives et décisions communautaires.

(GE) Im Sinne der Absätze 1 und 2 **bezeichnet** der Ausdruck „Rechtvorschriften der Gemeinschaft“ sämtliche Verordnung, Richtlinien, Beschlüsse und Entscheidungen der Gemeinschaft

The intentions of the legislator here are clearly to give a definition because there are no animate agents on whom to impose anything and the presence of ‘shall’ does not add anything to the validity of the proposition. It rather suggests an instruction on how to intend “Community legislation” on the basis of paragraphs 1 and 2, but it is certainly not meant to instruct people on how to use the term. This is differently marked in the other three languages where definitions are given with the equivalent verb ‘mean’ or with a paraphrase stating what is ‘involved’, ‘intended’ or ‘defined’ as such. It is worth noticing that correspondences between the other three languages are very consistent; when French uses ‘mean’ (*entendre*), we have the same linguistic equivalent in Italian and German. In other cases definitions are rendered in the form of a dictionary entry, with the term followed by comma or colon and the actual definition.

In most cases *shall* is clearly constitutive and aims not at performing an act but at bringing to reality a new state of things. See the following examples:

Example 2. Constitutive statement.

(EN) Members’ term of office **[[shall]]** be four years and can be extended.

(IT) Il mandato dei membri è di quattro anni e può essere prorogato.

(FR) Le mandat des membres **est** de quatre ans et peut être prorogé.

(GE) Die Amtszeit der Mitglieder **beträgt** vier Jahre und kann verlängert werden.

Example 3. Constitutive statement.

- (EN) Article 3 [[shall]] be replaced by the following: „Article ...3
(IT) L'articolo 3 è **sostituito** dal seguente: „Articolo 3...
(FR) L'article 3 **est remplacé** par le texte suivant: „Article 3...
(GE) Artikel 3 **erhält** folgende Fassung: „Artikel 3...

Example 4. Constitutive statement.

- (EN) In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF)(9) [[shall]] apply without restriction to the Centre.
(IT) Ai fini della lotta contro la frode, la corruzione ed altre attività illegali, le disposizioni del regolamento (CE) n. 1073/1999 del Parlamento europeo e del Consiglio, del 25 maggio 1999, relativo alle indagini svolte dall'Ufficio per la lotta antifrode (OLAF)(9) **si applicano** senza restrizione al Centro.
(FR) Aux fins de la lutte contre la fraude, la corruption et d'autres activités illégales, les dispositions du règlement (CE) n° 1073/1999 du Parlement européen et du Conseil du 25 mai 1999 relatif aux enquêtes effectuées par l'Office européen de lutte antifraude (OLAF)(9) **s'appliquent** sans restriction au Centre
(GE) Zur Bekämpfung von Betrug, Korruption und anderen rechtswidrigen Handlungen **gelten** für das Zentrum uneingeschränkt die Bestimmungen der Verordnung (EG) Nr. 1073/1999 des Europäischen Parlaments und des Rates vom 25. Mai 1999 über die Untersuchungen des Europäischen Amtes für Betrugsbekämpfung (OLAF)(9).

In each of these statements *shall* is not meant to prescribe any future action and its non-deontic function is clearly evident: example 2 establishes the member's term of office up to four years, example 3 modifies an existing Article and finally, sentence 4 puts a provision into being. Once more, we find a stative verb with no animate agents, and just the result of the law, which will have immediate effect for the sole reason of being enacted within the legal instrument. As pointed out by Driedger, we are dealing here with a 'creative *shall*' that 'operates to create something the moment the words are spoken, and its force is then spent' (1976,13). This element has to do with the performative character of the norms, which in this case derives from the context, i.e. there is an enacting formula, which enacts the provision and gives effectiveness to it because of an authority issuing the norm. The *Plain English Manual* of the Australian Office of Parliamentary Council (2005, points 83 and 84) regards these statements as neither imperatives, nor future actions to be taken, but 'declarations of the law' and calls for the present indicative, as in the French, German and Italian versions above. The reason behind is that 'even if the event is yet to happen, the law speaks in the present because an Act is always speaking'. Of a different opinion is Williams, who although in favour of the present tense, captures the pragmatic function of these statement and talks of a 'theoretical time sphere that has equal validity at any given moment' (2006, 247). Hence, it is the fact of being enacted as law, which confers to it the character of being always speaking.

A clear deontic and mandatory use of *shall* appears instead in the examples below where we find an animate subject and a dynamic verb, which shows a continued or a progressive course of action:

Example 5. Deontic shall.

- (EN) the manufacturer **[[shall]]** check the disassembly of the system and ...
(IT) il fabbricante **deve** controllare il disassemblaggio dell'unità di sistema e redigere una relazione al riguardo.
(FR) le fabricant **doit** vérifier le démontage du produit et établir un relevé de démontage...
(GE) Der Hersteller **muss** die Zerlegung des Produkts prüfen und eine Zerlegungsbericht bereithalten...

Example 6. Deontic shall

- (EN) The controller **[[shall]]** be required to verify the competence of the recipient and to make a provisional evaluation of the necessity for the transfer of data.
(IT) Il responsabile del trattamento **è tenuto** a verificare le competenze del destinatario e ad effettuare una valutazione provvisoria della necessità del trasferimento dei dati.
(FR) Le responsable du traitement **est tenu** de vérifier la compétence du destinataire et d'évaluer à titre provisoire la nécessité du transfert de ces données.
(GE) Der für die Verarbeitung Verantwortliche **ist verpflichtet**, die Zuständigkeit des Empfängers zu prüfen und die Notwendigkeit der Übermittlung dieser Daten vorläufig zu bewerten.

In both cases the norm aims at regulating other peoples's behaviour while imposing a duty, which will ideally happen in the near future and not exactly at the time in which is uttered, as in the constitutive statements above. In terms of linguistic features, it seems that when the duty is imposed on a private individual, as in example 5, *shall* is more likely to correspond to an equivalent modal verb or to another linguistic structure that states clearly the obligation (i.e., deontic verbal periphrasis and lexicalized forms highlighting the mandatory nature of the provision). In example 6, the provision is closer to a binding requirement than to a command and the duty looks more toned down in French and Italian, but not in German where 'the controller is obliged'.

A similar translation of *shall* is also to be seen when the norm does not prescribe, modify or bring about anything new, but it simply expresses a necessary requirement or condition. This function is called from Greek *anankastic* and it is linked to the semantics of necessity. In philosophical and normative studies, it was first identified by von Wright (1963, 94) and pertains to the study of 'constitutive rules', meaning the necessary pre-condition (positive or negative) to the validity of a certain action, norm or state of things: 'a statement to the effect that something is (or is not) a necessary condition of something else I shall call an anankastic statement' (von Wright 1963, 10). In a way, the concept of the necessary condition is analogous to the one of the technical rule, which is mostly concerned with the means to be used to attain a certain goal, or with some sort of constitutive requirements as in example 7 below:

Example 7. Anankastic shall.

- (EN) The television **[[shall]]** have an on-mode energy efficiency index (EEIon) which is lower than 65% of the base-case consumption for a television of that format.
(IT) Il televisore **deve** avere un indice di efficienza energetica in modalità „on” (IEEon) inferiore al 65 % del consumo base di un apparecchio di tale formato.

(FR) Le téléviseur **doit** avoir un indice de rendement énergétique en mode de marche activé (IREon) inférieur à 65 % de la consommation de base usuelle des téléviseurs de même format.

(GE) Das Fernsehgerät **muss** in eingeschaltetem Zustand über einen Energieeffizienzindex (EELon) verfügen, der weniger als 65 % des Grundverbrauchs eines Fernsehgeräts dieses Formats beträgt.

The parallel concordance shows here full agreement in the formulation of constitutive requirements and in fact, the three languages use the same modal verb. Actually, the modal *must* would have been perfectly suitable in English, as the EU conventions regard it for 'objective necessity' and the statement is about how things should be, rather what somebody should do. This is also in line with Šarčević who advocates in prescriptive texts *shall* for duties and *must* to express requirements or conditions (2000, 138).

Another frequent overuse of *shall* occurs with rights and entitlements, i.e. sentences, which are intended to express neither a duty or a necessary requirement, nor a constitutive-performative act, as in 8 below:

Example 8. Entitlements.

(EN) Undertakings, research institutes or natural persons from third countries **[[shall]] be entitled** to participate on the basis of individual projects without receiving any financial contribution under the programme, provided that such participation is in the interest of the Community.

a (IT) Le imprese, gli istituti di ricerca o le persone fisiche di paesi terzi **hanno diritto** partecipare al programma in base a decisioni prese progetto per progetto e senza ricevere un contributo finanziario, qualora ciò sia nell'interesse della Comunità.

(FR) Les entreprises, les instituts de recherche ou les personnes physiques des pays tiers **sont autorisés** à participer au cas par cas en fonction du projet, sans bénéficier d'une contribution financière au titre du programme, lorsque leur participation est dans l'intérêt de la Communauté européenne.

(GE) Unternehmen, Forschungseinrichtungen oder natürliche Personen dritter Länder **können** sich auf Projektbasis an dem Programm beteiligen, wenn dies im Interesse der Europäischen Gemeinschaft ist, erhalten jedoch keine finanzielle Unterstützung im Rahmen des Programms.

This is a case where *shall* does not add anything and present indicative would have served the same scope of the sentence. However, correspondence in the other languages denotes a slight semantic nuance. Although empowering and granting a right share the same semantic area of permission and the agent has freedom to perform a certain action, being 'entitled' denotes a right to something, 'empowering' implies authority to do something with a consequent discretionary power. In the English and Italian versions, undertakings and research institutes are literally entitled to take part in the program, in French they are authorized and in German, with *können*, they seem to have rather a discretionary power to do that.

The context of authorizations shows inevitably more pitfalls, because of the mandatory force of the act, and of its implicit element of restriction:

Example 9. Authorizations.

(EN) Personal data [[**shall**]] only be processed for purposes other than those for which have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body.

(IT) Il trattamento dei dati personali per fini diversi da quelli per cui sono stati raccolti è **consentito** soltanto se il cambiamento di finalità è espressamente autorizzato dalla regolamentazione interna dell'istituzione o dell'organismo comunitario;

(FR) Les données à caractère personnel ne **peuvent** être traitées pour des finalités autres que celles pour lesquelles elles ont été collectées que si le changement de finalité est expressément autorisé par les règles internes de l'institution ou de l'organe communautaire.

(GE) Personenbezogene Daten **dürfen** nur dann für andere Zwecke als die, für die sie erhoben wurden, verarbeitet werden, wenn die Änderung der Zwecke durch die internen Vorschriften des Organs oder der Einrichtung der Gemeinschaft ausdrücklich erlaubt ist.

The sentence above has a clear mandatory value, because an authorization is a deontic act, which derives its force and effectiveness from the fact of granting permission - in this case in certain circumstances 'only'. Nevertheless, the *shall* above could have also read as 'personal data *may*...', this without undermining the force of the authorization. In fact, the permission to process personal data is literally paraphrased in Italian (*è consentito*) while in French and German we find the modals *pouvoir* and *dürfen* that are semantically linked to the idea of permission and possibility.

Finally, a further and controversial usage of the deontic *shall* occurs in its form of *shall not* or *no person shall*, when expressing prohibitions, i.e., a negative command, an obligation not to do. The *English Style Guide* of the European Commission (2011) also acknowledges this use, but recommends *may not* as the EU convention:

6.17. Where a negative command expresses a prohibition, use may not [...] Linguistically speaking, 'shall not' or 'must not' could also be used to express a prohibition, but this is not the convention in EU legislation. Note however, that **shall not** is used where no prohibition is meant, for example:

The contract shall not be valid in any of the cases below:

This agreement shall not enter into force until/if...

6.19. For a negative permission, use *need not*.

For the translator, it is very important to understand and recognize the type of norm intended by the legislator. Logically speaking 'no prohibition' implies that something is optional, whereas from a legal point of view means that there are no legal effects (injunctions, sanctions) attached to the non-performance of the act. The examples quoted above in the *English Style Guide* suggest the presence of temporal and factual conditions that 'restrict' the scope of what is not possible. In other words, a condition or an exception might derogate from the negative directory provision and make the act possible. Example 10 shows a similar context because the factors restricting the action are explicitly mentioned, i.e. before 30 days:

Example 10. Negative requirement

(EN) The examinations referred to in point (b) [[**shall**]] **not** take place before 30 days

have elapsed after the completion of preliminary cleaning and disinfection measures on the infected holding.

(IT) Gli accertamenti di cui alla lettera b) **non possono** essere effettuati prima che scadano 30 giorni dal completamento delle operazioni preliminari di pulizia e di disinfezione nelle aziende infette.

(FR) Les examens visés au point b) **ne peuvent** être pratiqués que trente jours après l'achèvement des opérations préliminaires de nettoyage et de désinfection des exploitations infectées.

(GE) Die Untersuchungen gemäß Buchstabe b) **werden frühestens** 30 Tage nach Abschluss der Grobreinigung und Vordesinfektion der Seuchenbetriebe **vorgenommen**.

This means that the negative requirement will be applicable only if the condition of the 30 days is present and it is in a way analogous to a conditional prohibition. The comparison with the other three languages does not help much in finding a univocal translation, but the German thematic structure (*will take place not before...*) is probably closer to a deontic/anankastic requirement. On the other hand, French and Italian negate the modality and express a lack of permission, which is closer to the prohibition with *may not* as intended by the *English Style Guide* of the Commission. In linguistics, the main difference depends on whether we state 'you are not permitted to do that' or 'you are obliged not to do that'. French and Italian show exactly the same pattern with negated *dovere/potere* and *devoir/pouvoir*. In German, this difference is less evident because *dürfen* implies 'permission' and has no epistemic meaning. The goal is in both cases to 'prevent' a certain action or state of things from occurring, hence a prohibition, but the semantics of 'possibility' and 'necessity' carries different effects. *May not* (together with *non può/ne peut pas*) negates the modality and implies a denial of permission (= it is not possible for Y to do X), *shall not* and similarly *non deve/ne doit pas* negate the proposition (= it is necessary for Y not to do X) and can be read like a negative command. Now, according to the *English Style Guide* of the Commission, prohibition is understood as a negation of the modality, i.e. as the fact of 'not being permitted' of doing certain things, with a clear deontic and performative force. *Shall not* is used instead for negative requirements where no prohibition is meant. This is evident in example 11 below, where *may not* forbids to bring into circulation products with an exceeding level of aflatoxin and the other three languages express the same ban by clearly negating the proposition, i.e. someone 'is obliged' not to:

Example 11. Prohibitions

(EN) Products which levels of aflatoxin exceeding the maximum limit **[[may]] not** be brought into circulation, either as such, after mixture with other foodstuffs or as an ingredient with other foodstuffs.

(IT) I prodotti contenenti aflatoxine in quantità superiore ai massimi stabiliti **non devono** essere messi in circolazione, sia in quanto tali, che miscelati con prodotti conformi o utilizzati come ingredienti di derrate alimentari.

(FR) Les produits ayant des teneurs en aflatoxines supérieures aux teneurs maximales fixées **ne doivent** être mis en circulation ni en tant que tels, ni après mélange avec d'autres denrées alimentaires, ni comme ingrédient d'autres denrées alimentaires.

(GE) Erzeugnisse mit einem Aflatoxingehalt, der über dem Höchstgehalt liegt, **dürfen**

weder als solche noch nach Vermischung mit anderen Lebensmitteln oder als Lebensmittelzutat in den Verkehr gebracht werden.

In these respects negative contexts present situations with a high degree of overlapping meanings, and without considering each single context, type of agents and sort of restrictions, it is often difficult to discern between mandatory prohibitions denoting an obligation not to perform certain duties, and directory prohibitions, stating negative requirements. The complex logic of negation and the overlapping semantics pertaining to the modals *shall not*, *must not*, *may not* is a further fuzzy factor which 'is also confirmed by the contradictory statements of drafting manuals' (Williams 2005:213).

Concluding remarks

Data have showed the various usages of the English modal *shall* in a parallel corpus of EU secondary legislation. They go far beyond the expression of binding norms and deontic modality, and also include definitions, entitlements, necessary requirements, declarative statements and future actions to be taken. This has been highlighted in particular by the extraction of parallel concordances in other languages, which may suggest different interpretation of the legal act or even disambiguate complex meanings. In these regards corpus studies and cross-linguistic analysis can offer a practical help to foster legal interpretation and suggest translation solutions. The additional knowledge provided by the comparison with other languages should be seen first of all in terms of 'meaning', thus exploring how an idea or a word in one language is conveyed in another. Although parallel texts and translated language do not enjoy the same status as their original counterpart, they inevitably reflect a communication event and as put by Baker (1993, 234): 'what justification can there be for excluding translations produced by native speakers, other than that translated texts per se are thought to be somehow inferior or contrived?' Having said that, the same parallel corpora are an integral part of the business communication of multilingual societies like the United Nations, NATO and the EU, but also within officially bilingual countries like Belgium, Canada or Switzerland.

In legal language, the ambiguity of norms is a well-known matter of fact. This is both linked to the semantic complexity of certain concepts and to the syntactic relation in linking words with meanings, not to mention the contextual factors and the specific conventions of each legal system. It is a matter of fact that legal language would be pure syntax if deprived of the context in which is uttered and where it functions. In the legal field, maybe more than in any others, pragmatics allows the realization of the linguistic sign and its communicative content. As part of a social context, relations among signs are given by 'agents', by the type of 'norm-action' they are meant to state or perform, and by the 'situational context' in which they take place.

In these respects, the investigation of parallel concordances have helped to shed light on the behaviour of *shall* in context and its meanings. Concordances have pointed towards a contextual analysis of each legislative statement, and more precisely towards patterns linked to: a) the type of agents, b) action's projection, 3) aim of the norm and 4)

type of verbs. When looking at the other languages, these are more likely to be translated in a recurrent form, thus allowing for a certain degree of disambiguation of the modal *shall*. Defining a legal proposition as deontic, constitutive or anankastic means essentially to look at these linguistic factors in context, as well as at their interaction. Deontic norms are usually performed by animate subjects, they carry dynamic verbs and are future-oriented with the focus on the process of the action. The retrieval of parallel concordances has showed that the English *shall* often corresponds to an equivalent modal verb in the other three languages or to a verbal periphrasis. Similar translations are frequent when it comes to necessary requirements, although subjects are not animated and the construction might be in the passive. On the other hand, *shall* constitutive statements tend to be rendered in the other languages with the present indicative only. They often carry a stative verb, they have present or no time reference because they perform the act at the same moment it is uttered, and although it is not a rule, there are often no animate subjects. This is due to the overlapping between 'how things are' and 'how things ought to be' typical of this norm type.

In this way, despite the odds linked to the interpretation and production of parallel legal texts, translation and cross-linguistic analysis can offer a detailed annotation of what a term means, thus reducing as in this case the fuzzy areas of certain legal words. On that basis, the focus should be on the exploitation of the information that we can derive from the comparison of two or more languages. Whether this information triggers linguistic description, translation research or the implementation of new computational tools, it is only due to the goal of the different research areas and to the wide opportunities offered by parallel retrieval. On the other hand, the role of translation remains instrumental in bridging the gap between a theoretical descriptive approach to parallel text and a more practical and automated one.

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