

MULTILINGUALISM IN EU LAW: HOW PROMULGATION AUTHENTICATES EQUALITY

Annarita FELICI

London Metropolitan University
Lecturer Applied Translation
Faculty of Humanities, Arts, Languages
and Education
Room MG5-15
84 Moorgate
LONDON EC2M 6SQ
a.felici@londonmet.ac.uk, annaritaf@hotmail.com

Estratto: Il diritto europeo è in vigore nei 27 stati membri dell'Unione ed è disponibile in 23 lingue, tutte facenti ugualmente fede. Ciò è possibile grazie al DGT (Directorate General Translation) che vanta uno dei maggiori servizi di traduzione del mondo, ma da un punto di vista legale, la traduzione rimane un puro mezzo, istituzionalmente 'inesistente'. La problematica ha ricevuto negli ultimi due decenni, considerevole attenzione da parte di ricercatori, linguisti e traduttori (Correia 2003, Kjær 1999, Koskinen 2000, Šarčević 2001, Tosi 2001, Wagner 2000), i quali hanno puntato il dito sul paradosso della traduzione e sull'assenza di una politica linguistica e di una cultura legale europea a livello unitario.

Basandomi esclusivamente su testi legali e sulla pragmatica delle norme giuridiche (Olivecrona 1994:[1962], von Wright 1963), intendo dimostrare che l'autenticità linguistica delle traduzioni del diritto europeo è meno contraddittoria di quanto sembra. Il principio di autenticità è valido solo quando i testi vengono autenticati e pubblicati sulla Gazzetta Ufficiale dell'UE, ma prima di quel momento, nulla impedisce di considerarli traduzioni o versioni linguistiche.

Abstract: EU law currently applies to 27 countries and is available in 23 languages which all carry equal status. In practice, this is achieved through translation and by the work of the DGT (Directorate General Translation), which hosts the largest translation service in the world. But from a legal point of view, translation is institutionally 'non-existent' and EU languages are all equal and authentic. The issue has been given attention in the last two decades mostly from scholars, linguists and translators (Correia 2003, Kjær 1999, Koskinen 2000, Šarčević 2001, Tosi 2001, Wagner 2000), thus raising awareness on the paradox of translation and the lack of a proper EU language policy and legal culture.

Focusing exclusively on legal texts and on the pragmatics of norms (Olivecrona 1994:[1962], von Wright 1963), I will argue that the equal authenticity of the EU language versions and the multilingual practice of the Union are less contradictory than they seem. The principle of equal authenticity applies only when texts are authenticated and published in the EU Official Journal. Before that, nothing prevents to regard them as translations or language versions.

EU multilingualism: *de jure* and *de facto*

EU multilingualism is directly linked to the political nature of the Union. Although established with the intent of common economic policies (ECSC 1951, EURATOM 1957 and EEC 1957), the current Union has evolved in less than half a

century into an association of States³⁷ equally and legally sovereign. The goal is to promote 'an ever closer union among the people of Europe, where decisions are taken as openly as possible and as closely as possible to the citizen'³⁸. Multilingualism is therefore an unquestionable asset and distinguishes the EU from all other international organizations. Unlike International law that requires an intention from the parties to be valid, member countries have transferred part of their sovereignty and political competencies to the Union and, where a dispute arises, EU law takes precedence over national law. This supremacy and the 'direct' application of Community law demand that all relevant documents be available in all the official languages as a guarantee of equality before the law. Similar rights have also been claimed for some of the Union's minority languages. In 2005 Spain signed an agreement with the European institutions whereby Catalan, Basque and Galician are eligible to benefit from official usage, provided the member state bears the costs for the additional language service. In this context, multilingualism is vital to the maintenance of democracy and represents the intention of different countries that have gathered to pursue common objectives. Thus, main treaties must be available in all the official languages of the Union and they all mention the safeguard of national identities. The only exception is the ECSC Treaty that was drafted exclusively in French after Robert Schuman (French foreign minister) initiative. But the two Treaties of Rome (1957) setting up the EEC and Euratom were from the very beginning drawn up in German, French, Italian and Dutch³⁹. They envisage a progressive European integration (art.3) and prohibit any form of national discrimination (art.7). However, they do not make any clear prescription as to language matters and a declaration of language equality does not equate with promoting a multilingual policy. Article 217 of the EC Treaty, or article 290 in the consolidated version, contains only a brief provision saying that: 'the rules governing the language of the institutions of the Community shall (...) be determined by the Council, acting unanimously'. This has adopted Regulation n.1/58 determining the languages to be used in the EEC and Article 1 states that: 'the official languages and the working languages of the institutions of the Community shall be Dutch, French, German and Italian', namely the languages of the member states which negotiated the Rome Treaty in 1957. This article has never changed and each time a new member country joins the Union, its language is added to the list. So, the European Union works at the present in 23 languages (Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian,

³⁷ EU currently consists of 27 member states (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom) and uses 23 languages (Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish).

³⁸ Article 1, Treaty of European Union, 1997.

³⁹ Tabory refers that 'these Treaties were drafted primarily in French, with some provisions initially formulated in German only, and other still both in French and in German only' (1980:114-15). She also states that at the time of signature, only rough drafts existed for Italian and Dutch and they were signed in blank. It was not until the end of June 1957 that the four original language versions could be considered definitive.

Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish), which all enjoy official status and equality before the law.

In practice, 'language equality' is ensured by translation that finds no mention in any of the EU legislation. For each new enlargement, EU legislation in force (*acquis communautaire*) is translated into the new official languages and these new language versions are considered as legally valid and 'authentic' as the four initial versions⁴⁰. The principle is that, once EU legislative texts are officially published, they all become equally valid and authoritative. On that basis, 'drafting' equates to 'translating' and there is no parallel rendering of the EU law. The issue has raised lots of concern from both linguists and jurists and highlights a situation where language equality is more a *de jure* principle than a *de facto* practice. To this point, most jurists maintain that only one text can be 'authentic', that is the original one and the supposed 'equality' between language versions turns out to be more a fiction than a reality. The same drafting process of amending, correcting and rewriting a single document countless times (sometimes in different languages too) has strengthened the hypothesis of the absence of a real original version. Several linguists and translators are inclined to support the idea of the fictitious language versions, thus also wondering about the principle of language equality. Nystedt warns that although EU texts are considered 'language versions' and not 'translations', they are in reality nothing else than translations, often carried out in difficult working conditions (1999:200). Correia has stressed this ambiguity further and remarks that 'in practice Community law is inconceivable without translation, whereas in strictly legal terms Community law is inconceivable with it' (2003:40). Moving from this point, after a brief overview of the main translation practices across different EU institutions, I will focus on the peculiarities of the EU law and on how equal authenticity makes multilingualism happen. The final aim is to show that translation and language equality are less contradictory than they seem and to envisage the opportunity of thinking EU language needs in a broader perspective while enhancing at the same time the status of translation.

Translation practice in different EU institutions

Different EU institutions have different needs and Article 6⁴¹ of Council Regulation no.1 allows them to choose their own rules of procedure in relation to the language to be used. Though all the official languages are in principle equal and authentic, not all the EU documents are drafted and translated in 23 languages and multilingualism varies according to the specific addresses and needs of the Union. For practical reasons, full multilingualism is only used to make the EU law available and for dealings with the public; for internal communication and for in-house drafting, the Union

⁴⁰ The final Provision of the EC Treaty mentions the concept of 'equally authentic texts' (Article 314 of the Treaty establishing the EC Community): 'This Treaty, drawn up in a single original in the Dutch, French, German and Italian languages, *all four texts being equally authentic*, shall be deposited in the (...). Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be *authentic*'.

⁴¹ "The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in the specific cases"(Article 6 of Council Regulation no. 1 of EC Treaty).

tends to rely on English and French, often referred to as ‘procedural languages’, and to a lesser extent on German. According to recent EU figures⁴², English is now the vehicular language of the Union and unlike 15 years ago, when French still enjoyed a paramount role as language of diplomacy, over 70 per cent of the Commission’s documents are currently drafted in English, less than 15 per cent in French. The opaque allusion to ‘working and official languages’ stated in article 1 of *The Community’s Language Charter* (Council Regulation 1/58) highlights the practical side of multilingualism as well as the contradictions of the EU language policy. Most of the drafting takes place in English and French and equal status for all the other languages is ensured only at a later stage by authenticated translations. As a consequence, multilingualism has different applications and language policy varies according to different institutions and to the specific needs of the Union.

The EU Parliament

Parliament is without any doubt the institution where language access and equality are best represented. The fact that it passes laws and represents all the citizens of the Union requires a scrupulous implementation of multilingualism. Range of documents includes agendas, draft reports, amendments, resolutions, decisions of parliament’s governing bodies and by the European Ombudsman, and information for the citizens and the member states. As a general rule, its internal rules of procedure specify that no language version or text have priority over another, not even the original one if the President so decides⁴³. Language equality is valid even for amendments that have to be translated into all official languages before a vote can be taken (art.124, par.6)⁴⁴. However, Parliament has adopted a more pragmatic approach and a system of ‘relay’ languages ensures that a text is first translated into the most used languages (English, French or German) and from there into the other minor languages⁴⁵. Full multilingualism is used only during plenary sessions; where MEPs are entitled to take part and use their own language during all debates. Translation and interpretation are arranged according to the needs of the participants present, and only the principal parts of motions and resolutions are translated. In this way, languages are equal in terms of access and availability: a bit less as far as their status is concerned.

⁴² “Efficiency, transparency and openness: Translation in the European Union”, 4-7.08.2008, 18th World Congress of the International Federation of Translators, ‘Translation and Cultural Diversity’. Shanghai (http://ec.europa.eu/dgs/translation/publications/presentations/index_en.htm).

⁴³ According to Rule 117 (Languages) in *European Parliament Rules of Procedure, Chapter XVI, General rules for the conduct of sittings*, (14th Edition published in the Official Journal L 202, 02.8.1999) “All documents of Parliament shall be drawn up in the official languages. Speeches delivered in one of the official languages shall be simultaneously interpreted into the other official languages (...). Where (...) there are discrepancies between different language versions (...), he (the President) shall decide which version is to be regarded as having been adopted. However, the original version cannot be taken as the official text as a general rule, since a situation may arise in which all the other languages differ from the original text”.

⁴⁴ It is possible to deviate in part from this rule, but not if at least twelve members object.

⁴⁵ Italian, Polish and Spanish are somehow considered other major language and can also become relay language.

The EU Council

The Council, whose instruments do not require availability in all languages, has taken an even more flexible approach⁴⁶ and applies ‘strict’ language equality only to the documents, which need to be discussed, e.g. Commission proposals, amendments and reports. If no formal decision is taken and in all meetings below ministerial level, interpretation service is provided in a limited number of languages.

The EU Court of Justice

The Court of Justice arbitrates on Community law and pursues a particular, but no less rigorous application of multilingualism. While Article 7 of Council Regulation 1/58 grants special powers to the Court in determining its own language regime, the Court internal Procedure recognizes all the official languages (including Irish)⁴⁷. This means that each authentic text is considered independent for the purpose of interpretation by the courts and despite being translations, judgements and other documents are deemed to be authentic only if they are the language of the case. On the other hand, as none of them prevails and they all have the same meaning, whenever linguistic divergence or ambiguity arises, the European Court of Justice consults all the texts of a given instrument on a routine basis. Interpreting the intended meaning of the single instrument is given priority over any linguistic discrepancies and this is why revisers and translators of the European Court of Justice need to be lawyers. As far as the internal working language is concerned, French has kept a dominant role. Judges use it for internal communication and proceedings, and since no interpretation is provided for reasons of secrecy, it is also the language of judicial deliberations, which are subsequently translated into the other official languages.

The EU Commission

If the Parliament is the most respectful institution of multilingualism, the European Commission turns out to be the most flexible, so it is often at the centre of numerous controversies. It hosts the Directorate General of Translation (DGT) that is the largest translation service in the world with offices both in Brussels and in Luxembourg. The DGT is meant to ensure internal and external communication in all the 23 languages of the Union, but its approach to multilingualism reflects its distinct functions as well as the considerable amount of documents it has to deal with. It is not a chance that it has the

⁴⁶ “The Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages” as in Council of European Union Rules of Procedure, Article 14, *Deliberations and decisions on the basis of documents and drafts drawn up in the languages provided for by the language rules in force*, published in the Official Journal L 230/13, 28.8.2002.

⁴⁷ According to Article 31, *Chapter 6, Languages* of Court's Rules of Procedure in Official Journal L 176, 04.7.1991 (<http://curia.europa.eu/en/instit/txtdocfr/txtsenvigieur/tx5.pdf>): “The texts of documents drawn up in the language of the case or in any other language authorized by the Court pursuant to Article 29 of these rules shall be authentic”. Article 29 ensures the member countries the right of using the languages of their choice in a case before the Court: “any supporting documents expressed in another language must be accompanied by a translation into the language of the case”.

least specific Rules of Procedure of the Union in terms of language uses and this approach reflects the distinct functions as well as the considerable amount of documents it has to deal with. They span from legislative proposals, reports, Green and White papers to conference proceedings, incoming documents, internal notes, public information, databases and website. Text typology is also extremely varied. It ranges from legal texts marked by stereotyped formulation and a strong community language, to administrative instruments, where style and language are less strict, and national features have therefore a stronger impact on lexis. In addition, there are thousands of informative texts and technical reports, written in a conversational style, technical terminology and calques. Choice of topics is even wider: national and international politics, environment, agriculture, employment, taxation, education and culture, information society etc. Having a wide discretion at all levels, the Commission is the institution that does most of the drafting and translation work and for practical reasons, this takes place in English and French, usually referred to as ‘procedural languages’, some other times in German. These are in fact, the languages in which official documents have to be provided before they can be adopted at a meeting of the Commission. The only documents produced in all 23 official languages are pieces of legislation and policy documents of major public importance and they account for about a third of the Commission work.

Other consultative bodies

English is the main ‘working language’ of other minor institutions of the Union. The European Central Bank drafts mostly in English, but official documents are required to be in all the ten official languages of the fifteen countries of the Euro zone. General Council and Governing Council meetings and debates are interpreted only in four languages (English, French, German and Italian). The other consultative bodies involving economic, social and regional matters (Economic and Social Committee and Committee of the Regions), and the European Investment Bank, which finances economic development, are subject to the general principle of all ‘working languages’ being equally used, unless otherwise stated⁴⁸. On the other hand, the Court of Auditors works with a reduced language *régime*: French, English and German.

EU translation: in search of the source text

The contribution of the DGT to the noble cause of multilingualism is enormous and translation is vital to the correct functioning of the Union. However, translation work escapes to any form of conventional patterns and presents features unique to the EU context and its legal system. The supranational nature of the EU ensures and imposes language equality from a legal conceptual perspective, but the Union’s multifaceted field of activity, e.g. different politics, institutions, texts, addressees and goals requires a different practice. The extent of these factors is often overlooked when it comes to multilingual production and if translation makes certain languages less equal than others, the whole system also escapes from the basic translation logic of source and target text/

⁴⁸ Documents submitted to the Executive Council Board are drafted in German, English and French.

source and target language production. Dollerup highlights that 'the combination of administration, logistics and languages are many and simply cannot fit in with the kind of thinking in Translation Studies which is based on one sender-> one message -> one translator -> one audience' (2001:285). Despite French and English being the 'official working language of the Union, their use is not linear and homogeneous because they both might be used within the drafting of the same document. This takes place at the Commission which has the 'right of initiative' and is in charge of drafting all the legislative proposals in the three procedural languages before they go for discussion in the three main institutions and reach the stage of adoption. The tortuous co-decision procedure involves, in the case of legislative documents, different services and generates countless language versions, drafts and translations. As noticed by Robinson (2005: 4-10), a translator at the EU, the first drafts are generally written by technical experts and the use of English or French depends on the language in use in their department and also on the language used in similar provisions of precedent legislation. These texts (i.e. a regulation, a directive etc) are subsequently revised by legal experts and then go through an approval process (with accompanying translations) in three main institutions (the Commission, the Parliament and the Council). Here, despite the increasing practice of using English, translations are discussed and amended in the national languages of EU members and may return back and forth to the Commission several times, always accompanied by the attached translated drafts and emendations. Finally, only once the text is approved, it is also translated into all the official languages of the Union. As a result, translators deal with an unstable text, whose source and original become more and more blurred. As put it by Dollerup (2004:197) 'the source text is a fluid and changeable mass of text, composed of recycled translation, new linguistic material from both the core or tool languages as well as national languages incorporated in the core languages'. This view is shared by other translation scholars (Schäffner/Adab 1997:325) who regard these texts as hybrid and as being the product of intercultural communication resulting from languages and cultures in contact. Trosborg borrows the definition of 'hybrids' to highlight the 'neutral' status of EU documents and maintains that the EU translation process is neither source nor target-oriented, but it fulfils the sociocultural communicative requirements while aiming at a sort of standardization (1997:146-157). However, the usefulness of the idea of hybridism does not convince Koskinen who finds Trosborg's assumptions too simplistic. The Finnish scholar remarks that, after describing hybrid texts, the same Trosborg claims that it is reasonable to expect that a translation into Danish or any of the EU languages can be read as original prose like any other text' (2000:87-88), so that her 'hybrids' remain an open question in terms of linguistic quality. Text quality is in fact another thorny point of the EU multilingual production, because most of these authenticated texts generate translations of other translations and the new attested versions may serve as 'original' source texts for the next EU enlargements and accessions. Susan Šarčević shows the subsequent implications for the quality of EU translation in the immediate future and wonders 'whether it is admissible for translators of the *acquis* to rely on one authentic text as the source text or whether they are obliged to consult and compare more than one or even all of the authentic texts of the single instrument' (2001:34-49). For example, given the increasing popularity of English, translators tend to choose the English versions as original source texts, even though, these

are in most cases a translation of the first four originals⁴⁹. However, assessing the quality of EU texts exclusively on the basis of translation procedures and strict linguistic strategies may result a biased operation that envisages only half of the EU multilingual context. More attention should be probably shifted to the different translation needs of the EU and to the particular role of translation in that context. As already mentioned, the same translation process takes place, at least for certain kind of texts, under very particular conditions. In addition, European legislation is often the result of political compromise and negotiations. The fact that the text can be amended until the very last minute is clear proof of this because stylistic vagueness or circumlocutions may be sought on purpose just to avoid nationally specific terminology.

EU law and the principle of equal authenticity

The same EU legislation represents a pretty unique case within international law. Although operating alongside the laws of the member states, it has direct effects on its citizens and governments and it often overrides domestic law without parties having to declare their intent. This is the principal reason why texts need to be available in all the 23 languages of the Union. The main law consists of primary legislation (the Treaties or the so called *acquis communautaire*), secondary legislation derived from the Treaties and the case law of the Court of Justice. Now, while the Treaties correspond more or less to the international law in force, the EU secondary legislation (*regulations, directives, decisions, recommendations and opinions*) present features that are borderline with domestic law. *Regulations* are entirely binding and directly applicable in all the member states. *Directives* are addressed to the member states. They are 'binding as to the result to be achieved' (Article 249 of the EC Treaty) but the choice of the form and method to achieve this result is left to the national authorities. *Decisions* are also directly binding, but only on those to whom they are addressed. Finally, *recommendations* and *opinions* are not binding. As a consequence and despite the EU's efforts to produce a kind of legal unification, EU law cannot be defined an established legal system on its own. The variety of its politics and the different legal systems of the member countries (Common Law, Civil Law tradition, the new political system in ex Eastern Europe) often require a supranational legal adaptation, rather than a cultural and linguistic one. The result is a melting system of rules and concepts, whose development is currently *in fieri*. For these reasons, some scholars have been wondering about the real international nature of the EU law (Janis 2003, Kjør 1999, Slaughter *et al.* 1998) and, from the point of view of translation, one might also wonder which source legal functions and meanings should be taken in consideration: a supranational uniformity or a cultural adaptation. On the other hand, where the EU law shares commonalities with other international organisations is exactly in the translation process and in the principle of 'equal authenticity'. This means that the final clause of an international instrument encloses a provision specifying 'the text is equally authoritative in each language, unless the treaty provides or the parties

⁴⁹ The United Kingdom joined the EC in 1972 and all the English legislation prior to that date fall into the category of translation.

agree that, in case of divergence, a particular text shall prevail' (Art.33).⁵⁰ A similar principle is stated in article 314 of the Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community. But for different reasons, there is no hint to the agreement of the member countries and the matter of divergence and legal interpretation is tackled in the Court's Rules of Procedure⁵¹. It is also interesting to note that stress is not on 'languages' or 'language versions' but on the word 'texts'. Talking about 'language versions' implies the existence of an original source text that may undermine the legal authority of all the other texts. Multiple authenticities, on the other hand, are necessary for the existence of democracy in Europe and reflect the desire that there should be no dominant language or culture in the Union. This is why all EU texts focus on the word 'authentic' in the sense of 'legally valid' rather than 'original'. The semantic nuance is more evident when looking at the rendering of *equally authentic* in some other language versions. The French final provisions of the EC Treaty translate it as *as faisant également foi* and the same occurs in Italian: *tutti facenti ugualmente fede* both meaning 'legally valid and authoritative'. The German *wobei jeder Wortlaut gleichermassen verbindlich ist* goes even further in this direction, as the proper meaning of *verbindlich* is 'authoritative' or 'binding'. So, although it is translation that makes multilingualism possible, stress is more on the legal 'authenticity' than on the drafting of several 'language versions'. Acknowledging an official value to translation would mean, from a legal point of view that some language versions have priority over others, thus threatening the EU principle of equal rights. Legal interpretation is expressed more or less in the same terms; in fact reference is always on the texts 'authenticated' rather than 'translated' or 'drawn up'. In this way, it is hardly possible to talk about translation from a legal and from an official point of view. Indeed, translation exists; it is supported by an advanced system of computational translation aids⁵² and the DGT, despite the use of procedural languages, ensures multilingual communication in order to enhance EU's openness, legitimacy and democracy.

Authenticated texts: is translation a contradictory notion?

EU official language versions rely on subsequent translations that mean 'authenticated texts', generally referred to as parallel texts. From a legal point of view, once these texts have been adopted or authenticated they are not translations anymore; they represent the law regardless of the source language and carry legally binding effects. Moreover, as legislative texts do not envisage any particular target readership, language equivalence is sought at a high level: in words, in meanings and in effects. Unlike informative legal texts, whose communication function allows translators a slightly wider

⁵⁰ http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf, and Final Clauses of Multilateral Treaties Handbook 2003 (<http://intreaty.un.org/English/Final/Clause/english.pdf>). Accessed on 16.07.09.

⁵¹ Article 31, Chapter 6, *Languages of Court's Rules of Procedure* in Official Journal L 176, 04.7.1991 (<http://curia.europa.eu/en/instit/txtdocfr/txtsenvigueur/txt5.pdf>). Accessed on 15.07.09.

⁵² The DGT has at present three main types of translation aid: terminology tools and data banks (*IATE*, *CCVista Data Base*, *Eur-lex*), Systran Machine Translation and translation memory technology or TWB.

margin of freedom, authentic translations have traditionally fallen within the translation of directive texts, where formal correspondence, namely fidelity to the source text, is the rule. But fidelity to the source text does not necessarily imply fidelity to the same meaning and effects.

According to article 220 of the EC Treaty, the Court of Justice and the Court of First Instance arbitrate on the uniform interpretation and application of the EU law. The internal Procedure recognizes all the official languages (including Irish) and from a legal point of view, each authentic text is considered independent for the purpose of interpretation by the courts. In case of ambiguity, the European Court of Justice consults all the original versions of the same instrument, looking for the intended meaning of the law and not for the common meaning resulting from the comparison. On that basis, all language texts are equally authentic and the functions of the source text cannot vary according to the translator's interpretation or the cultural factors of the target language. 'Since the communicative function of institutional texts is standardized, all the parallel texts of a single instrument have always the same communicative function' (Šarčević 1997:21). The legal status of the authenticated official text implies at 'first glance' that the process of translation has not occurred, even though nobody can deny that these texts are translations, and of a very particular type. The matter has generated in recent years lots of debates, for the most part through the isolated initiatives of linguists and translators who have claimed the paradoxes of translation, the illusions of language equality and consequently, the impossibility of defining the translator's role (Correia 2003:40, Koskinen 2000:83, Tosi 2002:179, 2007:105,117). However, if we look carefully behind the principle of equal authenticity, it does not apply to the genesis of the text and this is also congruent to any legal interpretation of the norms. The performative nature of norms implies a legal authority uttering intentional acts, and aiming at producing effects on a third party. Their validity is subject however to some felicitous conditions, whose failure to fulfil them, would make the act invalid. In the case of legislative acts, one of these conditions is the *promulgation* of the legal proposition by a certain authority in particular circumstances. And the felicitous utterance of the promulgation 'is an essential link in (or part of) the process through which this norm originates or comes into existence (being)' (von Wright 1963:94,125). The general aim is in fact 'to establish' a new legal event, whose validity is dependent on the uttering of constitutive statements under special circumstances and by a particular authority or institution (Olivecrona 1994 [1962]: 169-170). Institutionalised authority is therefore necessary to the existence of norms because, as found by Searle, 'every institutional fact is underlain by a (system of) rule(s) of the form X counts as Y in context C and without the institution, the result would only be a piece of paper with various grey and green markings' (1969: 51-52). A similar focus on authority is also found in Benveniste (1994 [1962]: 187-195), for whom 'executive utterances' only exist if they have been 'authenticated' as *acts*. So, the performance of these acts is identified with the utterance of the act itself, which also determines the uniqueness of the 'executive' statement. In our case, it is only when the 23 EU texts are authenticated and published on the Official Journal that they become equally valid and authentic. No legislation enters into force before then. Although drafting takes place in one or two working languages, it is only the fact that there are 23 language versions, which confers them legal authority. This means

that before being adopted, there is no legal constraint in defining these texts translations or language versions. For the same reason, word-for-word translation recommended for legal translation should not be considered a 'scapegoat' (Koskinen 2000:85) when dealing with non-normative EU texts. And although a Green or a White paper becomes official only when is published, it undergoes no formal authentication, thus making the status of translation, at least in principle, much less paradoxical than it seems. In this scenario, translators as well would enjoy the opportunity to gain a better identity for their role, thus following different approaches on the basis of the EU communication needs. After all, multilingual access to the EU is ensured by translation and if noble political reasons are an unquestionable asset, it is also true that today's Europe has completely different needs from those of the six founder members - and the increasing number of enlargements has been the most tangible demonstration. This also provides a good reason for the use of English as a working language. It is unthinkable to draft documents in 23 different languages and compared to a decade ago most of the current Commission's drafting takes place in English, whose usage will continue to grow. One may raise the issue of power relations -that has been left out from this analysis- by arguing that EU members would not enjoy any more the same language rights. But, in reality, using 23 different languages or adopting a neutral and artificial language like Esperanto is not an alternative either, because only few people would master it and the role of English has a global 'lingua franca' is undeniable. It is worth noticing that the English in use at EU is often drafted by non-native speakers and has been regarded as very different from the standard of British English and from its other varieties (Seymour 2002:22-32; Wagner 2000:11). Translators on their turn are often faced with the task of deciphering what the author has meant before carrying out the translation of the text itself. The use of some core languages should not be regarded as synonymous with language hegemony and political domination. It would probably increase uniformity in the original drafts, thus improving consequently also the quality of the target texts. However, this operation cannot be restricted to the general translation strategies and approaches either, because the EU law and its political organisation have developed text features and problems that are not to be encountered in any other translation setting. The unusual text generation and the supranational nature of the EU and its political and socio-cultural identity *in fieri* are not to be neglected and should probably be the starting point of any discussion about EU multilingualism. In this scenario, the legal principle of multilingualism could allow rethinking the role of translation in a much broader perspective that suits the specific needs of the EU.

Concluding remarks

In this paper I have looked at EU translation issues both from a legal and a practical point of view in an attempt to reconcile the *de jure* principle of multilingualism with the *de facto* practice of its realisation. Moving from a legal standpoint I argued that the existence of translation is less paradoxical than it seems. The principle of 'equal authenticity' applies only when the texts are authenticated and published in the EU Official Journal. Before that, nothing prevents regarding them as translations or language versions. The fact that translation is not mentioned or restricted could be almost exploited

as a legal pretext, because in the end what is not prohibited or restricted, is implicitly permitted. The matter envisages the possibility of thinking translation in a broader perspective and in a way that better suits the EU context and its upcoming linguistic needs.

The supranational nature of EU law, on the borderline with features of several domestic systems, and the lack of an established Euro-culture are strictly related to the concept of multilingualism and they might demand a more attentive reflection on multicultural legal and political integration. Before considering linguistic issues, the question of multilingualism should be probably addressed in different terms, i.e. on whether the EU wants to be 'united in diversity' by promoting an own culture or by being a reference point offering multilingual access and services. In both cases, it will only be possible with a collaborative approach and a constant dialogue among different parties, institutions, legal experts, linguist and translators.

Bibliography

- Benveniste, E. 1994 [1963]. La filosofia analitica e il linguaggio. *Il linguaggio del diritto*, U. Scarpelli e P. Di Lucia, (eds). Milano: LED, p.187-195.
- Correia, R. 2003. Translation of EU legal text. *Crossing barriers and bridging cultures: The Challenges of Multilingual Translation for the European Union*, A. Tosi (ed) Clevedon: Multilingual Matters, p. 38-44.
- Dollerup, C. 2001. Complexities of EU language work. *Perspectives: Studies in Translatology, volume 9:4*. Clevedon: Multilingual Matters, p. 395-414.
- Dollerup, C. 2004. The Vanishing Original. *Hermes, Journal of linguistics no.32*, p.185-199.
- Janis, M. 2003. *An Introduction to International Law*. New York: Aspen Publishers.
- Kjær, A.L. 1999. Überlegungen zum Verhältnis von Sprache und Recht bei der Übersetzung von Rechtstexten der Europäischen Union. *Übersetzen von Rechtstexten: Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*, Sandrini, P. (ed). Tübingen: Narr, p. 63-79.
- Koskinen, K. 2000. *Beyond Ambivalence*. Acta Universitatis Tamperensis 774.
- Nystedt, J. 1999. *L'italiano nei documenti della CEE. Il progetto di Stoccolma: presentazione e sommario di documenti stilolinguistici, statistici e quantitativi*. Dipartimento di Francese e Italiano. Università di Stoccolma. Cahier de la Recherche n.10.
- Olivecrona, K. 1994[1962]. Linguaggio giuridico e realtà. *Il linguaggio del diritto*, Scarpelli, U. e Di Lucia, P. (eds),. Milano: LED, p. 147-186.
- Robinson, W. 2005. How the European Commission Drafts Legislation in 20 Languages. *Clarity* 53, 4-10. Retrieved on 20.07.09 from www.clarity-international.net/journals/53.pdf.
- Šarčević, S.1997. *New Approach to Legal Translation*. The Hague/London: Kluwer Law International.
- Šarčević, S. 2001. Preserving Multilingualism in an Enlarged European Union. *T&T* 2, p. 34-49.

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- Schäffner, C. and Adab, B. 1997. Translation as intercultural communication- contact as conflict. *Translation as intercultural communication*, Snell-Hornby, M., Jettmarová, Z. and Kaindl, K. (eds.) Amsterdam: John Benjamins, p. 325-337.
- Searle, J. R. 1969. *Speech Acts. An Essay in the Philosophy of Language*. Cambridge: Cambridge University Press.
- Seymour, E. 2002. Euro-English: The New Pidgin? *T&T.3*, p. 22-32.
- Slaughter, A.M., Sweet, A.S. and Weiler, J.H.H. 1998. *The European Court and National Court – Doctrine and Jurisprudence: Legal Change in its Social Context*. Oxford: Hart Publishing.
- Tabory, M. 1990. *Multilingualism in International Law and Institutions*. Alphen aan den Rijn: Süthoff & Noordhoff.
- Tosi, A. 2001. *Language and Society in a Changing Italy*. Clevedon: Multilingual Matters.
- Tosi, A. 2002. The Europeanization of the Italian Language by the European Union. *Multilingualism in Italy: Past and Present*, Lepschy, A.L and Tosi, A. (eds.). Oxford: Legenda, p. 170-194.
- Tosi, A. 2007. *Un italiano per l'Europa. La traduzione come prova di vitalità*. Roma: Carocci Editore.
- Trosborg, A. 1997. Translating Hybrid Political texts. *Text Typology and Translation*, Trosborg, A. (ed.) Amsterdam: John Benjamins, p.145-158.
- Von Wright, G. H. 1963. *Norm and action. A Logical Enquiry*. London: Routledge and Kegan Paul.
- Wagner, E. 2000. Quality of written communication in a Multilingual Organisation. *T&T.1*, p. 5-16.

