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Special issue:

*Studies in  
institutional  
translation and  
international  
legal  
communication*

Guest edited by

**Fernando Prieto Ramos**



## **Preface**

### **Studies in institutional translation and international legal communication**

This special issue is the second of two volumes devoted to research on legal discourse and translation, most of which was presented in the 2018 Transius International Conference on Legal and Institutional Translation at the University of Geneva's Faculty of Translation and Interpreting. The four papers of this volume focus on the interfaces between institutional translation and international legal communication. They provide a representative overview of approaches to these issues, including at EU and intergovernmental institutions, and the multiple facets and challenges of creating and applying multilingual instruments across borders. The selected studies also illustrate the fruitfulness of corpus-based methods grounded on legal analysis in this field, as well as the relevance of supplementing and enriching data with various institutional sources.

The first paper, "Legal-linguistic profiling in institutional contexts: The case of EU staff representation bodies", by Colin ROBERTSON (former lawyer-linguist at the Council of the EU), combines documentary research and a questionnaire as the starting point to define the scope of EU staff representation bodies, and their approaches to multilingual communication and translation. By applying a structured legal-linguistic profiling approach to contextualizing translation work, the study identifies a few differences and several commonalities between staff committees and trade unions, including, among the latter, the diversity of topics, textual genres and discourse styles covered in translation.

In "Epistemic modality: A corpus-based analysis of epistemic markers in EU and Polish judgments", Dariusz KOŹBIAŁ (University of Warsaw) explores a more specific aspect of EU legal communication, namely, markers of epistemic modality in English and Polish-language judgments of the Court of Justice of the EU, and how they compare to (non-translated) judgments of the Supreme Court of Poland. The analysis of these markers in 200 judgments of each group points to a high level of intra-generic convergence, which is more pronounced in adverbial epistemic markers than in verbal markers. The study confirms that this salient feature of judicial reasoning may be considered as idiomatic when

translating EU judgments into Polish.

The third paper, “The transposition of international criminal law concepts into national jurisdictions: The case of genocide”, also examines a subject related to the connection between international and national legal discourses, in this case in the area of criminal law. The author, Marie-Hélène GIRARD (University of Geneva), focuses on the concept of genocide to illustrate the nature and implications of legal transposition processes in this area. The corpus analyzed comprises 75 legal definitions of the concept in English, French and Spanish in 71 of the 131 States that had transposed the concept into their national legal systems as of November 2018. The semantic shifts identified confirm the transforming effects of transposition and translation processes, with variations that seem to correlate to differences in the languages and legal traditions of each jurisdiction.

In the last paper, “Facing translation errors at international organizations: What corrigenda reveal about correction processes and their implications for translation quality”, the guest editor sheds light on a subject that is also largely unexplored in the field. After a review of error correction procedures in three illustrative settings (the EU institutions involved in law-making, the United Nations and the World Trade Organization), the analysis of translation-triggered corrigenda published in two target languages, French and Spanish, by these institutions in 2005, 2010 and 2015 yields results on the number, type and severity of errors corrected, as well as their density per textual genre. A distinction is made between content reformulation corrections and minor formal corrections in order to measure their diachronic changes and their semantic impact. The implications of the findings for translation quality assurance and legal certainty are also discussed in light of contextual information gathered from institutional language services, particularly with regard to the growing number of corrigenda to EU legal acts.

My gratitude goes, once again, to Aleksandra Matulewska (editor-in-chief) and Emilia Wojtasik-Dziekan (co-editor) for their continued support through the editing process, as well as to all the authors and reviewers for their valuable contributions and cooperation.

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December 2019

# LEGAL-LINGUISTIC PROFILING IN INSTITUTIONAL CONTEXTS: THE CASE OF EU STAFF REPRESENTATION BODIES

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**Abstract:** This paper applies a structured legal-linguistic profiling approach to EU “staff representation bodies” as a way to access domains that lie behind the public face of EU institutions and their texts concerning translation, language and terminology. The study commences with a legal-linguistic analysis of EU texts for references to “staff”, “staff representation” and “employment” in order to identify specific texts and bodies of relevance to the study. This approach leads to two broad categories: staff committees and trade unions. Information is sought from EU institutions about these bodies

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<sup>1</sup> Retired, formerly an official with the Council of the EU Legal Service, Directorate for Quality of Legislation, and the Council Staff Committee. Currently a member of Union Syndicale Bruxelles. In addition, member of the Law Society of Scotland.

and their translation and language arrangements, and a list is made of websites available to the general public. These sites are then examined as part of the legal-linguistic profiling approach.

**Keywords:** EU language; Staff Regulations; staff representation; translation; terminology; staff committee; trade union; multilingualism.

## **PROFILOWANIE PRAWNO-JĘZYKOWE W OSADZENIU INSTYTUCJONALNYM – NA PRZYKŁADZIE PRACOWNICZYCH ORGANÓW PRZEDSTAWICIELSKICH W UE**

**Abstrakt:** W niniejszym artykule zastosowano ustrukturyzowane podejście do profilowania prawno-językowego do „unijnych organów reprezentujących pracowników” jako sposobu dostępu do obszarów poza oficjalnym obliczem instytucji UE oraz ich tekstów dotyczących tłumaczeń, języka i terminologii. Badanie rozpoczyna się od analizy prawno-językowej tekstów UE pod kątem odniesień do „pracowników”, „reprezentacji pracowników” i „zatrudnienia” w celu zidentyfikowania konkretnych tekstów i organów mających znaczenie dla badania. Takie podejście prowadzi do dwóch kategorii, ujmowanych szeroko: komitetów pracowniczych i związków zawodowych. Instytucje UE poszukują informacji na temat tych organów oraz ich tłumaczeń i ustaleń językowych. Sporządzono także listę stron internetowych dostępnych dla ogółu społeczeństwa, które następnie są badane w ramach profilowania prawno-językowego.

**Słowa kluczowe:** język(i) Unii Europejskiej; przepisy pracownicze; przedstawiciele pracowników; przekład; terminologia; komitet pracowniczy; związek zawodowy; wielojęzyczność.

## **Introduction**

There is a growing literature on multilingual institutional language and translation. Robertson (2016) offers a broad introduction in respect of multilingual law and legal language and Albi and Prieto Ramos (2013) and Prieto Ramos (2018) explore translation issues in international institutional contexts which both include and go beyond the EU environment. At the same time the field of Translation Studies has been developing as we learn, among others from Munday (2016). EU institutions are the principal authors of EU

legal texts and they have translation departments to enable them to publish in 24 official languages pursuant to Article 55 of the Treaty on European Union (TEU),<sup>2</sup> Article 342 of the Treaty on the Functioning of the European Union (TFEU),<sup>3</sup> and EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, as amended.<sup>4</sup> However, suppose we ask ourselves a question: what is the linguistic reality for staff and employees of EU institutions as regards languages, translation, forms of discourse and terminology? The question posed in this paper concerns the ways in which the internal dimensions behind the official façade may be accessed. What are the methods of access, and what sort of information might we learn? Topics that first come to mind include: the languages in daily use, the internal translation arrangements, the different forms and genres of discourse in daily operation. If we can access such linguistic information, we may also be able to learn more about the practical working life of staff, including translation staff. This last information could also assist in the preparation of future EU translators. For each of these topics we refer to the available literature in respect of the different research fields, whether it be EU language and law (Šarčević 2015), EU multilingualism and translation (Cosmai 2014), genres and discourse analysis (Bhatia 2004, Paltridge 2006), corpus analysis (Biel 2010 and 2018), quality aspects (Svoboda, Biel and Ľoboda 2017) or translator training, just to mention some items and references. We learn a great deal from the literature, but it tends to be oriented towards the more public side of EU language and translation. How can one go behind the official face towards the internal language and life of officials? This question is important also because it provides glimpses into how multicultural and multilingual cooperation functions on a daily basis, and that is information that is relevant for the wider society. The purpose of this paper is to propose an avenue of enquiry that

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<sup>2</sup> [https://eur-lex.europa.eu/legal\\_content/EN/TXT/?uri=celex%3A12012M%2FTXT](https://eur-lex.europa.eu/legal_content/EN/TXT/?uri=celex%3A12012M%2FTXT) (accessed on 28 May 2019).

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> (accessed on 28 May 2019).

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31958R0001> (accessed on 28 May 2019).

draws on legal-linguistic techniques that embrace both legal and linguistic viewpoints, and to see where they lead.

The starting point is that EU institutions largely implement their obligation to publish in the 24 EU official languages, but the official documents do not necessarily provide a complete picture of the whole EU institutional linguistic and translation environment. In order to go “behind the scenes” to access language and translation contexts that arise in the everyday life of EU staff and employees in the course of their activities and working life, one needs to find alternative strategies. We can pose some initial questions. Which languages are used on a daily basis, and what are the internal translation arrangements for passing on information in a multicultural and multilingual environment? Which domains and registers arise in such translation contexts? These, and other, questions are pertinent to the work, careers and life of the linguistic and translation staff of the institutions and have an incidental bearing on recruitment and training. A clearer understanding of the internal translation context can help to enhance the quality of the translation product. This is the pragmatic operational dimension.

One approach is to mount formal research studies and interview and observe staff at work. An alternative approach is to seek materials that draw on the everyday work, career and lives of EU staff. The purpose of this paper is to explore this latter approach, working from the texts of staff-representation bodies who are in continuous contact with staff and exist to defend their interests. These bodies have close contact and understanding of staff and their language.

In order to facilitate and structure the study, recourse is had to a tool for analysis proposed in Robertson (2018) which involves a set of headings to use as starting points for legal-linguistic analysis of a multilingual organisation. The tool, as conceived, starts with a particular organisation to study from legal, linguistic, translation and terminology viewpoints. That implies that one starts with an organisation that one wishes to study, however in the present context that is not the case. The starting point instead is with an abstract concept. The hypothesis is that access to texts of staff-representation bodies may provide material for translation and linguistic research that can bring one closer to the life and language inside EU institutions. We need as a first step to identify some specific bodies that come within the scope of the concept.

To do that, we can use legal method to search for entities as the subjects for study. Matching up facts against abstract concepts is a routine legal task.

On the basis of the foregoing, the initial task is accordingly to identify bodies that come within the category of representing EU staff, so that their texts can be studied, provided that we can access the information. The method proposed in Robertson (2018) must thus be adapted by adding this initial abstract dimension of a concept, represented linguistically as a term, that is taken as the basis for a search for organisations that come within the scope, or definition, of the term. Pragmatically, the study needs to begin with document research, a form of corpus analysis. We are searching for staff representation bodies, but it helps to take a broad approach as different terminology may be used from that which we expect. The search environment is EU which is constructed on a foundation of treaties, notably TEU and TFEU, with implementing provisions in Regulations, Directives and Decisions. The treaties provide a framework and it is possible we may find our information only at a secondary implementing legal level. This is legal method, it builds on intertextuality.

## **Staff Representation as Concept, Term and Specific Body**

A search in the TEU and TFEU for the terms “staff”, “representation”, and “employment” leads to Article 336 TFEU which states:

“The European Parliament and the Council shall, acting by means of regulations in accordance with the ordinary legislative procedure and after consulting the other institutions concerned, lay down the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union.” (title underlined for emphasis, and hereinafter referred to as the “Staff Regulations”<sup>5</sup>).

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<sup>5</sup> *Regulation No 31 (EEC), 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic*

The Staff Regulations constitute the primary text governing EU staff employment conditions. The document has been frequently amended and is highly complex; we need not concern ourselves with its contents beyond the present purpose.

Article 9(1) of the Staff Regulations states:

“... there shall be set up within each institution (...) a Staff Committee, which may be organised in sections for the different places of employment (...) which shall perform the functions assigned to (it) by these Staff Regulations.”

Article 9(3) sets out the role and tasks:

“The Staff Committee shall represent the interests of the staff vis-à-vis their institution and maintain continuous contact between the institution and the staff. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff.”

This role includes bringing to notice of difficulties “concerning the interpretation and application” of the Staff Regulations, together with a right of consultation. In addition, the staff committee submits “suggestions concerning the organisation and operation of the service and proposals for the improvement of staff working conditions or general living conditions.” We learn that the staff committee participates in the management and supervision of social welfare bodies set up by the institution in the interests of its staff and may itself set up such welfare services. Lastly, it is consulted by the “*appointing authority*”<sup>6</sup> on questions of a general nature.

The initial search has led to the Staff Regulations and staff committees as representative bodies, but more information is required, and for that Annex II of the Staff Regulations is relevant. Section 1 thereof provides for the composition and procedure of the Staff Committee. According to Article 1, the Staff Committee comprises

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*Community and the European Atomic Energy Community*. O.J. 45, 14.6.1962, P. 1385. Available online in an updated consolidated version including all amendments at: <https://publications.europa.eu/en/publication-detail/-/publication/b7628429-0855-4b54-b452-af676bc5427a> (accessed on 28 May 2019).

<sup>6</sup> Technical term for the employer administration.

its members, with alternates if any, for a period of office of three years, or less if an institution so decides.

The conditions for election are laid down by a general meeting of officials of the institution at the relevant place of employment. Membership is such as to ensure the representation of the different function groups, or categories of staff. Further:

“The duties undertaken by members of the Staff Committee and by officials appointed by the Committee to organs set up under the Staff Regulations or by the institution shall be deemed to be part of their normal service in their institution. The fact of performing such duties shall in no way be prejudicial to the person concerned.”

We have thus identified staff committees as bodies that represent staff and so come within the scope of the enquiry. However, this is not the full picture. A search of the Staff Regulations reveals other provisions that are also relevant.

Article 24b of the Staff Regulations states that

“Officials shall be entitled to exercise the right of association; they may in particular be members of trade unions or staff associations of European officials”.

Further, Article 10b says that the trade unions and staff associations referred to in Article 24b are to act in the general interest of the staff, without prejudice to the statutory powers of the staff committees. Thirdly, Article 10c says that “Each institution may conclude agreements concerning its staff with its representative trade unions and staff associations...”. From these provisions at least two categories of representative body are identified: staff committees and trade unions, and we can take these as our basis for study. We have identified conceptual categories, and now it is necessary to “put flesh” on them and identify the real-life bodies that can be the object of analysis. In principle each EU institution has a staff committee and can be asked about it. Similarly, one can seek information about the trade unions.

## **EU Staff Representative Bodies: Staff Committees**

In order to obtain specific information, an electronic communication was sent to contact points of principal EU institutions and bodies with an enquiry about staff-representation bodies and their translation and linguistic contexts. In summary, the following questions were asked:

- (1) Can you provide information about the staff committee? Does it have a website open to the public? (Particular interest: languages used, themes, translation and terminology)
- (2) Which trade unions are recognized as partners? How do they become recognized as such? Does each have a public website?
- (3) Which bodies represent retired staff? Do they have a website? Do they have translation needs?
- (4) What other forms of staff representation exist?
- (5) Is translation undertaken for the staff committee? If so, which languages?
- (6) Is translation undertaken for trade unions? If so, which languages?

Replies were received, and information provided which is incorporated below.<sup>7</sup> This included information in respect of both staff committees and trade unions, as well as a separate association for retired staff. We will first consider the case of institutional staff committees and the information received in connection with them. We will then turn to consider trade unions. Lastly, we will mention retired staff. At the outset it must be stated that the replies were contained in personal email communications and contained express disclaimers that the information does not bind the institution. The information given is primarily to inform and assist and strictly speaking it is subject to independent verification in each case. That said, one is able to obtain a broad picture and identify some websites for direct study. Each institution or body is taken in turn, and the text is drawn directly from the replies furnished.

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<sup>7</sup> All the replies received are acknowledged with gratitude.

The *European Parliament*<sup>8</sup> has a Staff Committee with a website on the internal “intranet” open to other institutions but not on Parliament’s public “extranet”. The EU linguistic regime applies, but in practice, French and English are the most commonly used languages, both orally and written. The Staff Committee is elected for a period of three years. All officials of the institution, and other servants holding a contract of more than one year, are entitled to vote and to stand for election. The Staff Committee maintains relations with the staff committees of other institutions of the European Union, and with trade union organisations - a number of which run lists of candidates for the staff committee elections. However, there is no system of recognition of trade unions as “partners” by the staff committee. Retired staff are not represented on or by the staff committee. From the reply we learn about the Staff Committee languages but are not permitted to access its website.

The *European Council and Council of the EU*<sup>9</sup> has a staff committee with an intranet site not open to the public. This intranet site, like all staff committee communication is bilingual EN/FR (as much as possible). Translations are done in-house, either by staff committee members themselves or by the Council Translation Service. The Staff Committee is a statutory body of the Council, composed of 30 members of staff elected, for a 2-year-mandate, by the entire staff. It helps ensure the proper implementation of the Staff Regulations, general implementing provisions (GIP), decisions of the appointing authority as well as protocols and agreements concluded between the unions and the appointing authority.<sup>10</sup> It issues opinions on staff policy, working conditions, security, etc. It designates the staff representatives within joint bodies, promotion boards, competition juries, selection committees, etc. It organizes the elections of Service Representatives (RdS). It manages the Staff Library, the Sports and Leisure Centre, small Ads, and supervises the DIY workshop. It manages an annual budget which allows it to contribute towards the cost of holiday camps, subsidize sports clubs and cultural associations, organize social events

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<sup>8</sup> On multilingualism in the European Parliament, see: <http://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/multilingualism> (accessed on 4 June 2019).

<sup>9</sup> They are organised as a unified structure.

<sup>10</sup> *Appointing authority*: technical term for the employer.

(welcome cocktails, Staff Party, Children's Party, meeting with pensioners, etc.), fund the Staff Library.<sup>11</sup> From the reply we learn that the public is refused access to the staff committee website, but extensive information is furnished as to the tasks undertaken and, taken together with the governing provisions in the Staff Regulations, this enables one to make inferences about the domains of administrative discourse involved.

The *European Commission* context is more complex, and the information received reflects that situation. Its staff committee is composed of 8 local sections representing the main places of employment of the EC's staff (Brussels, Luxembourg, Ispra, Sevilla, Geel, Petten, Karlsruhe, France, and outside the EU). The Central Staff Committee is composed of representatives of each local section. The Central Staff Committee has a website and some local sections have one as well.<sup>12</sup> Staff representation exists through participation in joint committees. No translation is undertaken on behalf of the staff committee. It is considered as an internal service. "*DGT refuses to translate the Staff committee's documents.*" The translations are made by members of the staff committee on a voluntary basis.

The *Court of Justice of the European Union* has a staff committee which represents the interests of the staff vis-à-vis their institution and maintains continuous contact between the institution and the staff. It contributes to the smooth running of the service by providing a channel for the expression of opinion by the staff. It brings to the notice of the competent bodies of the institution any difficulty having general implications concerning the interpretation and application of the Staff Regulations. It may be consulted on any difficulty of this kind. It submits to the competent bodies of the institution suggestions concerning the organisation and operation of the service and proposals for the improvement of staff working conditions or general living conditions. It participates in the management and supervision of social welfare bodies set up by the institution in the interests of its staff. It may, with the consent of the institution, set up such welfare services. The legal

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<sup>11</sup> Information received subject to a disclaimer that the information does not constitute an official position of the Council.

<sup>12</sup> They can only be accessed with passwords.

base and the rules for the functioning of the Staff Committee are provided in the Staff Regulations of Officials of the European Union (Article 9 and others). The Staff Committee of the Court of Justice does not have a website open to the public. The Staff Committee publishes its documents in French, sometimes documents can be published in English and / or German. Translations are done by the Staff Committee itself.

The *European Central Bank* has a Staff Committee which represents the general interests of its staff members and is elected for a two-year term by ECB staff. There is no public website of the ECB's Staff Committee. It communicates in English.

The *Translation Centre for Bodies of the EU* complies with Article 24b of the Staff Regulations and the Conditions of Employment of Other Servants of the European Union which stipulates that staff members enjoy the right of association. They may in particular be members of trade unions or professional organisations of the European officials. However, in line with Article 10c of the Staff Regulations there is no obligation to conclude a framework agreement with the representative trade unions and staff associations. It is up to each institution to decide whether to conclude agreements concerning its staff with its representative trade unions and staff associations. Such agreements may not entail amendment of the Staff Regulations or any budgetary commitments, nor may they affect the working of the institution concerned. The representative trade unions and staff associations which are signatories operate in each institution subject to the statutory powers of the staff committee. As regards the social dialogue, at the Translation Centre this is guaranteed by the Staff Committee, which is the only recognised statutory body according to Article 9(3) of the Staff Regulations. The Staff Committee represents the interests of the staff at the Centre and ensures permanent contact between the management and the staff. The Staff Committee also cooperates with different services by providing an advisory opinion on any difficulties of general scope relating to the interpretation and application of the Staff Regulations and CEOS.<sup>13</sup> The link to the public information of the staff committee on the Translation Centre's internet

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<sup>13</sup> Conditions of Employment of Other Servants; part of the Staff Regulations.

page is: <http://www.cdt.europa.eu/en/staff-committee>.<sup>14</sup> It is in the 24 EU official languages.

It may be observed by way of conclusion that in the case of the Translation Centre, like all the EU institutions consulted, the detailed day-to-day work and discourse of the staff committee is not accessible to the public. This circumstance places a limitation on the extent to which information about the internal linguistic dimension of EU institutions may be accessed through staff committee texts. For practical purposes, without special access permissions, the staff committee websites are not available for access and study. So, one must turn to other sources.

## **EU Staff Representative Bodies: Trade Unions<sup>15</sup>**

We turn now to the second category of staff-representation bodies identified, namely EU trade unions. How many are there and who are they, so they can be studied? Accessing this information externally is difficult. Internet searches reveal some names. Questions to institutions provide more names. There is no certainty that there are not more, and the situation can change over time. It has not been possible to draw up a definitive list, and not all bodies necessarily have a website for study. That said, the replies from EU institutions revealed certain information and this should be set out, again using the contents of each response provided.<sup>16</sup>

The *European Council and Council of the EU* commented that Union Syndicale (US), Renouveau & Démocratie Conseil (R&D), and FFPE<sup>17</sup> Conseil were recognised in the Council. An Agreement was signed on 28 March 2006: Agreement between the Council of the European Union and the Trade Union or Professional

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<sup>14</sup> This is part of the Translation Centre's website: <https://cdt.europa.eu>. (accessed on 28 May 2019).

<sup>15</sup> For some background on what trade unions do, see inter alia: Bennett and Kaufman (2017) and University and College Union (UCU).

<sup>16</sup> Again, all the replies received are acknowledged with gratitude. The information received has been allocated under the headings. The European Parliament reply did not mention any trade union names and so is not included in the headings.

<sup>17</sup> European Civil Service Federation

Organisations of the Staff<sup>18</sup> of the General Secretariat of the Council. This is a public document, currently in the process of renegotiation.<sup>19</sup> A union fulfilling a certain number of requirements, especially a minimum number of paying staff members, is recognised by the Council. US has a public website. The FFPE also has a public website under construction. R&D Council has only a website on Domus (i.e. the internal website), not accessible from outside. Translation is undertaken by US in all official languages. The FFPE uses English and French in its communications. R&D uses English and French in its communications as well.

The *European Commission* recognises a number of trade unions as representative. Some of these are confederations of trade unions. They are composed of several recognised trade unions. The list includes: Alliance,<sup>20</sup> Union syndicale fédérale (USF),<sup>21</sup> Save Europe,<sup>22</sup> Regroupement syndical (RS)<sup>23</sup>, FFPE,<sup>24</sup> and Generation 2004.<sup>25</sup> In addition, there are recognised OSP's which are not components of a representative OSP, and these include: Solidarity Independence and Democracy (SID),<sup>26</sup> Ispra - contract agents (ISCA),<sup>27</sup> Union Générale Europa (UGE).<sup>28</sup> For the purpose of trade union activities, the Administration may authorise the recognised organisations to use the Commission's translation, reproduction and communication facilities, in return for payment against invoices. Usually the documents of the trade unions are translated by members of the trade unions on a voluntary basis.

The information from the Commission noted that there was a Framework agreement governing the relations between

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<sup>18</sup> Generally referred to as „OSPs”.

<sup>19</sup> Not found on the internet at the time of writing.

<sup>20</sup> See below under *Alliance*.

<sup>21</sup> <https://www.unionsyndicale.eu> (accessed on 28 May 2019).

<sup>22</sup> <http://save-europe.net> (accessed on 28 May 2019).

<sup>23</sup> Also called U4U. <https://u4unity.eu> (accessed on 28 May 2019).

<sup>24</sup> <http://www.ffpe-bxl.eu> (accessed on 3 June 2019).

<sup>25</sup> <https://generation2004.eu> (accessed on 28 May 2019).

<sup>26</sup> <https://sidtu.org/tiki-index.php> (accessed on 28 May 2019. Subsequent verification suggested site expiry).

<sup>27</sup> <https://www.facebook.com/ISCA-Ispra-Seville-Contract-Agent-299217090227966/> (accessed on 4 June 2019).

<sup>28</sup> On-line search did not reveal information at time of writing.

the EC and trade unions.<sup>29</sup> Article 6 provides for official recognition of the trade unions and staff associations of European Commission personnel, and acceptance as a social dialogue partner. Article 7 provides for trade unions and staff associations to be recognised if they declare that their statutory aim is to defend the interests of all members of staff without any discrimination based on any ground set out in an extensive list, and if they confirm they have been legally constituted. Article 8 provides for the possibility of “groupings” of recognised trade unions and staff associations. Article 9 deals with representativeness and places two restrictions for recognition: representation of at least 6% of European Commission staff at central level and 5% at local level (in a single place of employment), and at least 400 fully paid-up members who are officials, other servants or retired officials of the European Commission. If they meet these conditions the organisation may sign the Framework Agreement as a signatory representative organisation.

The *Court of Justice of the European Union* is understood to recognize the trade unions EPSU CJ<sup>30</sup> and Union Syndicale Luxembourg<sup>31</sup>. EPSU CJ is also representative, meaning that it is empowered to negotiate with the Court of Justice and with the institutions in general regarding conditions of work and employment. Rules about recognition and representativeness have been laid out by the Court.<sup>32</sup> The trade unions active in the Court of Justice publish their documents in French and sometimes in English. Translations are done by the unions themselves.

The *European Central Bank* recognizes the International and European Public Services Organisation (IPSO)<sup>33</sup> as a trade union founded by staff of the ECB to represent the interests of their members. In order to be recognised as an ECB trade union, a threshold of having at least 10% of ECB staff holding an indefinite contract

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<sup>29</sup> Not found on the internet at the time of writing.

<sup>30</sup> <http://epsu-cj.lu/en/> (accessed on 28 May 2019).

<sup>31</sup> <https://www.uslux.eu/en>. (accessed on 28 May 2019).

<sup>32</sup> *Règles relatives à la reconnaissance et à la représentativité des organisations syndicales et professionnelles (OSP)*. Available online at: <http://epsu-cj.lu/wp-content/uploads/2014/01/représentativité-critères-septembre-2013.pdf>. (accessed on 1 June 2019).

<sup>33</sup> [www.ipso.de](http://www.ipso.de) (accessed on 28 May 2019).

on their membership needs to be reached. IPSO maintains its own website.

## **EU Trade Unions and their Websites**

One can draw on the foregoing information which reproduces the content and language style of the replies received. From it one learns about the context in which diverse trade unions function with respect to the institutions, and one also obtains some information about the languages and translation arrangements that are in operation. From the replies it is possible to draw up a list of the trade unions named and to make a search on internet to find out more about each of them. Where there is a website, it provides a public face for the union that addresses existing members, possible future members and a wider general public. That said, each website offers a site of engagement for study that is mainly turned towards the internal staff environment. For the present purpose, the aim is first to identify which trade unions have websites accessible to the public, second, to check on the languages used on the sites and third to make an assessment as to the role of translation for each of them. An introductory indication of focus of interest, range of activities and style of language may in addition be provided through a brief summary of information set out in the relevant home pages. The available space here does not permit a deeper linguistic analysis and comparison between the websites, which must accordingly be reserved for a subsequent study. The bodies are listed according to a neutral alphabetical ordering.

*Alliance (R&D, Conf SFE, CISL, Solidarité Européenne)*. No formal website has been found for the Alliance as such but individual documents attesting to its existence and activities are online which can be consulted.<sup>34</sup> Individual members have

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<sup>34</sup> [http://www.ffpe-lux.eu/docs\\_tracts/2014\\_osp\\_vps\\_20\\_juin\\_fr.pdf](http://www.ffpe-lux.eu/docs_tracts/2014_osp_vps_20_juin_fr.pdf) (Accessed 3 June 2019), [https://www.u4unity.eu/document2/FC\\_AC0406.pdf](https://www.u4unity.eu/document2/FC_AC0406.pdf) (Accessed 3 June 2019).

websites and are included below. It appears that CISL (*Confédération internationale des syndicats libres*) has been dissolved.<sup>35</sup>

*Conf SFE (Syndicat de la Fonction Public Européenne)*<sup>36</sup> has a website with French and English pages in parallel. It is a “democrat and humanist trade union organisation” open to anyone employed by an institution or organisation with an European vocation. Its specialist terminology fields relate to conditions of work, career (promotion and reclassification), JSIS<sup>37</sup> training, social and legal help.

*FFPE (European Civil Service Federation)*<sup>38</sup> has a website with French and English pages in parallel. Its main objective consists in the defence of the interests of all staff of the European Institutions and the promotion of the independence and the excellence of the European Civil Service. In the Commission, the FFPE is established in the form of a non-profit organisation according to Belgian law (*ASBL: association sans but lucratif*). It provides personal assistance: direct advice to colleagues, legal support, training courses, books, and an insurance broker. It negotiates new rights and conducts fair negotiations with the administration with the help of its active members, who also participate in staff committees and joint committees.<sup>39</sup>

*Generation 2004*<sup>40</sup> has a website in English. It aims at a unified European Public Service that is based on fair, just and motivating employment conditions and that is respected for its efficiency, effectiveness and the equal opportunities it offers to all employees of the EU institutions. It denounces the “systematic legal and practical discrimination of post-2004 staff vis-a-vis their pre-2004 peers”.

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<sup>35</sup> Background information available at: [https://fr.wikipedia.org/wiki/Confédération\\_internationale\\_des\\_syndicats\\_libres](https://fr.wikipedia.org/wiki/Confédération_internationale_des_syndicats_libres) (accessed on 28 May 2019).

<sup>36</sup> <https://www.conf-sfe.org> (accessed on 3 June 2019)

<sup>37</sup> Joint Sickness Insurance Scheme of the European Institutions (JSIS). See for example: [http://ec.europa.eu/pmo/info.sickinsurance\\_en.htm](http://ec.europa.eu/pmo/info.sickinsurance_en.htm) (accessed on 3 June 2019).

<sup>38</sup> <http://www.ffpe-bxl.eu> (accessed on 3 June 2019).

<sup>39</sup> The European Commission reply mentioned that *FFPE* was recognised by the Commission but had not signed an agreement with it and no translation requests had been made.

<sup>40</sup> <https://generation2004.eu> (accessed on 28 May 2019).

*IPSO (International and European Public Services Organisation)* has a website<sup>41</sup> that is in English, though one notes some text in German. IPSO works for the interests of its members in creating and continually improving a European Civil Service devoted to and inspired by the values of the European Union, namely the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. IPSO wishes to contribute to a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. IPSO is a staff union, founded by staff of the European Central Bank (ECB) to represent the professional interests of persons working for the ECB and other international institutions and agencies in Germany.

*Renouveau & Democratie*<sup>42</sup> has a website that uses both French and English together on the same website pages. It gives reasons for joining a union: defend rights as an official, participate in institutional social dialogue, solidarity with colleagues, dignity and pride of EU officials and support the political project of a strong EU. The trade union works in two spheres, namely “political” in relation to staff working rights, representation, and negotiation of terms and conditions; and “personal”, in relation to trouble at work, promotion related problems, legal advice, insurance, training courses.

*Save Europe*<sup>43</sup> has a website in English and French on parallel pages. Its site has headings for Brussels, Ispra, Luxembourg and Outside EU. Its objectives are to participate in negotiations on constitutional changes, defend the principles of equal treatment and respect, assist in career development (evaluation reports, etc), maximise the chances of Contract Agents to become official through their trainings.

*Solidarité Européenne*<sup>44</sup> has a website with English and French text side by side. It deals with standard trade union matters defending members and addresses issues related to work or private life. It has conferences on wellbeing, health and parenting, including

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<sup>41</sup> <http://www.ipso.de> (accessed on 28 May 2019).

<sup>42</sup> <http://www.renouveau-democratie.eu/fr/> (accessed on 28 May 2019).

<sup>43</sup> <http://save-europe.net> (accessed on 28 May 2019).

<sup>44</sup> <http://solidarite-europeenne.eu/index.php/contact> (accessed on 28 May 2019).

sophrology and reflexology. It provides training in a “holistic and personalised package”. It is based in Luxembourg.

*Solidarity Independence and Democracy (SID)*<sup>45</sup> has a home page in English. It has tracts in Spanish, German, Persian, Italian, French, Polish, English, Hungarian, Portuguese, Swedish, Arabic, Bulgarian.

*Tao AFI (Association of Independent Officials)*<sup>46</sup> has a website in English. It welcomes all staff categories and function groups: civil servants, contract or temporary agents, whether pre or post 2004 or 2014.

*Union for Unity (U4U) (Regroupement syndical)*<sup>47</sup> has a website with both French and English texts, sometimes in translation and sometimes not. It defends its profession, usefulness for society and European construction and budgetary resources allocated to it. Its fields of activity include the provision of services for training, coaching, legal assistance, giving quality information via newsletters, videos and websites. It defends the basic principles of the Staff Regulations in respect of salaries, promotions, pensions, sickness insurance, salary. It attends to crèches, child care centres and European schools.

*Union Syndicale fédérale (USF)*<sup>48</sup> has a website in French and English in parallel. It currently has 21 Unions Syndicales affiliated, representing a variety of locations within the European and International Public Service. Their members number thousands of people of all grades, nationalities, professions and contractual status.<sup>49</sup> It protects the moral, material and financial interests of its members or of staff of the institutions. It is affiliated to the trade union movement in Europe and works with it. It seeks to guarantee the people of Europe a public service for all of Europe which is stable, independent and up to the job, and mindful of how it manages the public's money. Its services cover starting at work, training, insurances, legal advice, notarial advice and medical advice.

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<sup>45</sup> <https://sidtu.org/tiki-index.php>. (accessed on 4 June 2019. Subsequent verification suggested site expiry).

<sup>46</sup> <https://www.tao-afi.eu> (accessed on 28 May 2019).

<sup>47</sup> <https://u4unity.eu> (accessed on 28 May 2019).

<sup>48</sup> <https://www.unionsyndicale.eu> (accessed on 28 May 2019).

<sup>49</sup> For a list see <https://www.unionsyndicale.eu/en/usf/> (accessed on 28 May 2019).

It produces a magazine AGORA<sup>50</sup> which contains articles contributed by members.

*Union Syndicale Luxembourg*<sup>51</sup> has a website that indicates pages in parallel in French and English. It is a union for officials in Luxembourg to defend the rights of staff and the development of public service.

## **Retired EU Staff**

In addition to working staff, there are the staff in retirement who need representation. On retirement, staff are free to live where they wish, so they are scattered round the world. They are subject to the local conditions of life, but they remain governed by the Staff Regulations for certain matters, notably pension and medical welfare. Frequently, they are not covered by a national welfare scheme. The *Council of the EU* in its replies observed that the Council unions represent also the retired staff. The *Court of Justice of the EU* reply mentioned representation by the staff committee and trade unions of the Court, but that this was not very much. It also mentioned the *International Association of Former Officials of the European Union (AIACE)* that functions in three languages. The *Commission* reply listed two associations: first the AIACE, comprising a principle “international” entity and national sections in 15 Member States. The AIACE International website<sup>52</sup> has links to national sections. Regularly, for different types of document such as general information to pensioners, vademecums, brochures, etc, translations are necessary. AIACE is currently the sole association with which the Commission has signed a partnership agreement. The second association mentioned by the Commission was the FFPE (see above). It is recognised by the Commission but has not signed an agreement with it and no translation requests had been made. The *European Central Bank* replied that the ECB’s Oversight Committee represents the interests of

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<sup>50</sup> In paper and online, available at: <https://www.unionsyndicale.eu/publications/agora/> (accessed on 28 May 2019).

<sup>51</sup> <https://www.uslux.eu/fr/a-propos>. (accessed on 3 June 2019).

<sup>52</sup> <https://aiace-europa.eu/>. (accessed on 28 May 2019).

the beneficiaries of the ECB Retirement Plan and the ECB Retirement Scheme by monitoring the overall running of the Plan and the Scheme. There is no public website of the ECB's Oversight Committee.

## **Legal-linguistic Profiling**

Following the question initially posed about accessing information on the internal linguistic and translation realities in EU institutions and selecting the texts of staff-representation bodies for study in that respect, a range of specific bodies has been identified. One can therefore turn to make a comparative analysis of them. To that end, the legal-linguistic framework of headings in Robertson (2018) will serve to reflect on features shared and those that differ. It can be observed in passing that the duties and functions set out in the Staff Regulations for staff committees provide additional information in respect of their domains of language and translation since the texts are legally binding.

## **The body and legal aspects of its texts**

The staff committees as a class share a common background in the EU Staff Regulations. The context is explicitly EU law and EU legal language and terminology. With the trade unions, however, the situation is more complex. They are not part of the hierarchy of EU legal texts. Instead they are created by staff members. We can ask which law and legal system, and therefore terminology context, governs them? Analysis of the websites should reveal this information. For example, in the Commission the FFPE is established in the form of a non-profit organisation (ASBL) according to Belgian law. Thus, it is a Belgian-law entity, governed by Belgian law and the meaning of its constituent texts would be interpreted according to Belgian law. Yet its function is to assist EU staff in an EU legal environment. This raises the issue of hybridity and drawing demarcations between what is EU and what is Belgian.

To which we can add that staff come from, or work in, different Member States, with spouses of potentially any nationality. That in turn means that questions involving law and language may potentially arise in connection with any legal system or language. Meanings of specialised legal terminology link, intertextually, into the governing legal system for a given text and its language. For legal texts this may be clear, but what about a text that just advocates some theme in general terms? Ultimately, we may not know, and ambiguity could arise. In the case of the AIACE, as it comprises a series of nationally based organisations, we would expect them also to be created under local law.<sup>53</sup>

## **Languages of the body and its documents**

The staff committees as part of an EU institution are subject to the EU language rules providing for 24 official languages. However, the information supplied suggested that in practice the institutional staff committees may function in two languages: French and English. The European Parliament information was that in practice French and English are the most commonly used languages, both oral and written. However, the ECB staff committee communicates in English, and the Court of Justice staff committee publishes its documents in French, while sometimes publishing documents in English or German. The trade-union bodies generally work in one or two languages: French and English, sometimes with bilingual websites, sometimes with a mixture of the two languages, as evidenced from their individual websites. The AIACE website is in three languages: English, French and German.

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<sup>53</sup> See for example the Spanish section registered under Spanish law: [http://www.aiace-es.es/wp-content/uploads/2016/01/EstatutosSocialesAIACE\\_Nov2006.pdf](http://www.aiace-es.es/wp-content/uploads/2016/01/EstatutosSocialesAIACE_Nov2006.pdf) (accessed on 28 May 2019).

## **Specialist terminology domains and particular terminology**

With respect to terminology there seems to be overlap, insofar as staff committees and trade unions share a role in relation to employment and working conditions of all EU staff. Here the central text is the EU Staff Regulations, and therefore the primary range of terminology is to be found within it. A complex, technical and subtle document, it represents a specialist field in its own right. Here is a short list of general terms to be found in it: Rights and obligations, Career, Administrative Status, Active employment, Secondment, Leave on different grounds (personal, military service, parental, interests of the service), Reports, Advancement to a higher step and promotion, Termination of service (Resignation, retirement), Working conditions, Hours of work, Leave, Public holidays, Remuneration and expenses, Social security benefits, Pensions and invalidity allowance, Disciplinary measures, Appeals, Special and exceptional provisions applicable to officials serving in a third country.

The foregoing are generic terms, and we can list a few more specialised that occur in the Annexes to the Staff Regulations: Types of posts in each function group, Multiplication rates for guiding average career equivalence, Composition and procedure of the various committees including staff committees, Competitions, Part-time work, Leave, Compensatory leave and remuneration for overtime, Remuneration and reimbursement of expenses, Pension scheme, Disciplinary proceedings.

In addition to terms found within the Staff Regulations, staff committees and trade unions deal with matters that go beyond the strict employment arrangements. For staff committees, these include, as the Council informs us, the Staff Library, Sports and Leisure Centre, holiday camps, sports clubs, cultural associations, Staff Party and Children's Party. In the case of the trade unions, in so far as their members participate as elected members of staff committees, the foregoing also come within their ambit. However, trade unions also provide services to members that have terminological implications: training, social and legal help, insurances, legal advice, notarial advice and medical advice. One trade union R&D identifies a dichotomy between "political" (staff working rights,

representation, and negotiation of terms and conditions) and “personal” (trouble at work, promotion related problems, legal advice, insurance, training courses). All in all, the range is considerable and diverse, though weighted around employment, personal, social and family matters. In the case of AIACE which addresses retired members, there is an emphasis on pensions, medical matters, social life, entertainment and shared activities such as holidays together.

## **Drafting, translation and interpretation methods**

The information provided does not address drafting of documents. Staff committees, trade unions and representative associations are not law-making bodies. They prepare their own documents as need arises, but they are intimately involved with legal and administrative texts, rule-making and administration. Staff committees have a role to nominate members for administrative joint committees, as does the administration side, under the chairmanship of a senior administrator. Similarly, there are obligations to consult staff committees on various matters under the Staff Regulations.

Trade unions play a role in drafting processes too. As social partners they have a role in lobbying and negotiating when changes are made to the Staff Regulations, or treaty provisions affecting staff, so they participate in the law-making processes; this is a “political” role, and we would expect “political” styles of language discourse and terminology. Likewise, they assist members with cases before the Court of Justice, generally by providing a lawyer to act to defend individuals. So, here too there is a legal role though this time in connection with court cases. Throughout these processes, interpretation is a key skill, and expert knowledge is required for this purpose. The expertise includes identifying when an issue falls within the scope of EU law and language, or the law of a national system and its language, or under international law and its language.

This brings us to translation contexts. The wide range of texts and terminology points towards specialised domains of texts to be translated. The EU linguistic regime indicates that texts may arise in any EU language, as well as non-EU languages

in the case of staff employed around the world. That said, the everyday practicalities of staff committee work points towards translation between French and English. In the case of the ECB the language is English. In the case of the Court of Justice, the language is mainly French. We might expect, as circumstances arise, that there is a need for translation into those languages at times from potentially any other language.

With respect to trade unions, the translation picture is also reflected in the terminology range and types of text. Some trade unions publish parallel pages bilingually in French and English, so they need translation between those languages. Others publish in English, and yet other publish together in French and English without formal translation between them.

When it comes to who does translation, the main question is whether the institution offers the assistance of its translation department, or whether it is left to the representative body to do its own translation either through voluntary work or paying for translators, though we do not have information on this last point. The picture presented varies from context to context. Nonetheless, for everyone there is a shared set of tools and materials available insofar as the EU institutions make their official texts available in the 24 languages which can be accessed through the Europa website<sup>54</sup> and EUR-Lex.<sup>55</sup> They also provide guides on how to write in each language, in particular the Interinstitutional Style Guide,<sup>56</sup> the Joint Practical Guide,<sup>57</sup> and the Manual of Precedents of the Council,<sup>58</sup> as well as the IATE terminology database.<sup>59</sup> One can pose the question as to how far do these apply to trade unions and staff associations? In answer, staff associations should be included as they are official administrative organs, but trade-unions are not subject to them as they are separately constituted. This must be nuanced, however, as if a text worked on is a draft EU text it will be subject

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<sup>54</sup> <http://europa.eu> (accessed on 28 May 2019).

<sup>55</sup> <https://eur-lex.europa.eu/homepage.html?locale=en> (accessed on 28 May 2019).

<sup>56</sup> <http://publications.europa.eu/code/en/en-000500.htm> (accessed on 3 June 2019).

<sup>57</sup> <https://publications.europa.eu/en/publication-detail/-/publication/3879747d-7a3c-411b-a3a0-55c14e2ba732> (accessed on 28 May 2019).

<sup>58</sup> <https://publications.europa.eu/en/publication-detail/-/publication/431ccffd-00c2-491a-b423-ce709af0d6c3/language-en> (accessed on 28 May 2019).

<sup>59</sup> <https://iate.europa.eu/home> (accessed on 28 May 2019).

to the applicable rules, and the guides and manuals are generally aimed at enhancing good style and practice. In a word: not binding but very helpful in practice.

## **Conclusion**

Legal-linguistic profiling of organisations, as set out in Robertson (2018), is a tool for enquiry and an aid to mapping. It has been applied here to EU staff representation bodies. However, before an analysis of the bodies can be undertaken it is first necessary to identify who they are. This process has been implemented through an analysis of EU legislative texts starting from abstract concepts represented as linguistic terms. This has been undertaken as a legal-linguistic task. Examining the legal texts setting out the roles, duties and obligations of the bodies under study also serves the purpose of mapping out relevant terminology fields and providing background information about staff committees whose documents are confidential and not accessible to the public.

In order to learn about institutional staff committees and trade unions, a set of questions was asked of institutions by email. Responses received have been presented and observations made on them in accordance with headings used for legal-linguistic profiling. Institutional staff committee websites are not accessible to the public, and so it has not been possible to access or comment on their translation and language dimensions directly. Instead, reliance has been placed on the indirect information provided in the replies to the questions. The information has shown that EU employment terminology figures prominently, but additional areas that do not fall directly within the scope of EU law and language also arise.

Staff committees are part of an institution, but trade unions are created by staff members, apparently in accordance with local law. This introduces an extra-EU legal and linguistic dimension and the potential for linguistic mixing, ambiguity and hybridity, especially if we think that writers are likely to be non-native speakers. The terminology range of staff-representation bodies is wide. They tend to limit their texts to two or a single language. They have translation needs, primarily into, and between, French and English.

Sometimes the institutions provide translator support, but sometimes they do not. Translation is largely undertaken within the staff representation bodies or by members of trade unions on a voluntary basis, it seems. There is a wide range of genres of texts, ranging from “political” to “personal” and passing through “legal”. Each has its specific challenges, and translators of staff representation texts need to be agile and to adapt to a diversity of subject matter, genres and discourse styles. Mastering this diversity is the key challenge to ensuring a quality translation product.

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# **EPISTEMIC MODALITY: A CORPUS-BASED ANALYSIS OF EPISTEMIC MARKERS IN EU AND POLISH JUDGMENTS<sup>1</sup>**

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**Abstract:** The aim of this paper is to establish the repertoire and distribution of verbal and adverbial exponents of epistemic modality in English- and Polish-language judgments passed by the Court of Justice of the EU (CJEU) and non-translated judgments passed by the Supreme Court of Poland (SN). The study applies a model for categorizing exponents of epistemicity with regard to their (i) level (high-, medium- and low-level of certainty, necessity or possibility expressed by the markers; primary dimension), (ii) perspective

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(own vs. reported perspective), (iii) opinion (based either on facts or beliefs) and (iv) time (the embedding of epistemic markers in sentences relating to the past, present or future) (contextual dimensions). It examines the degree of intra-generic convergence of translated EU judgments and non-translated national judgments in terms of the employment of epistemic markers, as well as the degree of authoritativeness of judicial argumentation, and determines whether the frequent use of epistemic markers constitutes a generic feature of judgments. The research material consists of a parallel corpus of English- and Polish-language versions of 200 EU judgments and a corpus of 200 non-translated domestic judgments. The results point to the high salience and differing patterns of use of epistemic markers in both EU and national judgments. The frequent use of high-level epistemic markers boosts the authoritativeness of judicial reasoning.

**Keywords:** epistemic modality; corpus study; judgments; Court of Justice of the European Union; Supreme Court of the Republic of Poland.

### **MODALNOŚĆ EPISTEMICZNA – ANALIZA KORPUSOWA WYKŁADNIKÓW MODALNOŚCI EPISTEMICZNEJ W WYROKACH UNIJNYCH I KRAJOWYCH**

**Abstrakt:** Celem pracy jest ustalenie zasobu i dystrybucji czasownikowych i przysłówkowych wykładników modalności epistemicznej w angielsko- i polskojęzycznych tłumaczeniach wyroków Trybunału Sprawiedliwości UE (CJEU) i nietłumaczonych wyrokach Sądu Najwyższego RP (SN). W badaniu wykorzystano model kategoryzacji wykładników modalności epistemicznej pozwalający na ich klasyfikację ze względu na (i) intensywność (wysoką, średnią bądź niską, tj. stopień pewności, konieczności albo prawdopodobieństwa wyrażany przez poszczególne wykładniki; wymiar podstawowy), (ii) perspektywę (własną bądź przytaczaną), (iii) opinię (opartą na faktach albo przekonaniu), a także (iv) czas (przeszły, teraźniejszy, przyszły) (wymiary kontekstowe). Badanie miało na celu ustalenie wewnątrzgatunkowego stopnia dopasowania tłumaczonych wyroków unijnych do nietłumaczonych wyroków krajowych pod względem występowania wykładników modalności epistemicznej, określenie stopnia autorytatywności argumentacji sędziowskiej oraz stwierdzenie, czy częste występowanie wykładników stanowi cechę gatunkową wyroków. Materiał badawczy obejmuje równoległy korpus 200 wyroków unijnych przetłumaczonych na język angielski i polski oraz korpus 200 wyroków krajowych. Wyniki badania wskazują na istotną wagę wykładników o wysokiej intensywności zarówno w wyrokach unijnych, jak i krajowych. Stwierdzono, że częste użycie wykładników modalności epistemicznej o

wysokiej intensywności podnosi poziom autorytatywności argumentacji sędziowskiej.

**Słowa kluczowe:** modalność epistemiczna; badanie korpusowe; wyroki; Trybunał Sprawiedliwości Unii Europejskiej; Sąd Najwyższy.

## 1. Introduction

The overall aim of this paper is to investigate how epistemic modality is employed by judges in EU judgments translated into English and Polish and non-translated Polish judgments. In particular, it aims to construct a catalogue of markers of epistemic modality specific to judicial language and analyze their distribution. The application of a model for categorizing exponents of epistemicity with regards to their (i) level (primary dimension), (ii) perspective, (iii) opinion and (iv) time (contextual dimensions) serves the purpose of establishing the degree of intra-generic convergence of translated EU judgments and non-translated national judgments in terms of the employment of epistemic modality markers, with particular attention paid to the degree of authoritativeness of EU and Polish judges' argumentation. Lastly, the study aims to establish whether the frequent use of exponents of epistemic modality may be perceived as a distinctive feature of the genre of judgments issued within the EU legal system and the legal system of Poland as an EU Member State.

The idea to conduct an in-depth study of markers of epistemic modality arose after the observation made in the course of the analysis of the lists of top 100 words and top 50 content words created using the non-sampled EU and domestic corpora within the framework of the Polish Eurolect project<sup>2</sup> (cf. Section 3). The lists showed an unusually high frequency of occurrence<sup>3</sup> of the impersonal modal

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<sup>2</sup> For more information, please consult <https://eurolect.ils.uw.edu.pl/>.

<sup>3</sup> In the non-sampled corpus of 897 CJEU judgments (issued in the period of 2011–2015) the modal verb *należy* [(one) must/should] appears 4192 times per million words (pmw), being the 20<sup>th</sup> most frequent word in the corpus, whereas in the non-sampled corpus of 2564 Polish judgments (issued in the same period) it appears 1150 times pmw, being the 88<sup>th</sup> most frequent word in the corpus.

verb *należy*<sup>4</sup> [(one) must/should, with the pronoun *one* referring to the speaker/writer or representing people in general]:

(1) *Należy również zauważyć, iż z utrwalonego orzecznictwa Trybunału wynika, że wyrok wydany przez Trybunał w trybie prejudycjalnym wiąże sąd krajowy w zakresie dotyczącym wykładni lub ważności rozpatrywanych aktów instytucji Unii przy rozstrzyganiu sporu w postępowaniu głównym (...).* [It **must** also be borne in mind that it is settled case-law of the Court that a judgment in which the latter gives a preliminary ruling is binding on the national court, as regards the interpretation or the validity of the acts of the EU institutions in question, for the purposes of the decision to be given in the main proceedings (...).]<sup>5</sup> (CJEU C-62/14)

(2) *W wyroku należy więc określić konkretne czynności (zachowania), które pozwany powinien przedsięwziąć w celu usunięcia skutków naruszenia.* [Therefore, the judgment **should** specify the specific actions (behavior) that the defendant should take to remove the effects of the infringement.] (SN II CSK 747/13)

The frequent use of this modal in the frame *należy* \*, *że* [(it) must/should \* that] strengthens the impersonal character of judgments, but, at the same time, does not express any direct deonting meaning, but rather epistemic. According to the Great Dictionary of Polish [WSJP], the modal verb *należy* [(one) must/should] conveys the speakers's (writer's) conviction that the action expressed by the verb in the infinitive following that modal is natural and obvious in a given situation (cf. entry *należy* in WSJP). Bralczyk (1978: 48) perceives the verb as increasing the degree of universal, self-evident nature of the proposition expressed with its help, thus potentially raising the audience's willingness to accept a given proposition. Used by the courts, the verb refers to the self-evident nature of the courts' propositions made based on the interpretation of (primary and secondary) legislation and existing case-law. The same pertains to the synonymous (but generally less frequent) impersonal modal verb *trzeba* [(one) should/must]:

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<sup>4</sup> Excluding occurrences carrying the meaning *to belong to sth/sb*.

<sup>5</sup> Parallel sentence from the English-language version of the C-62/14 judgment.

(3) *W tym względzie zgodnie z orzecznictwem przypomnianym w pkt 46–51 niniejszego wyroku należy ustalić wartość sprzedaży, którą **trzeba**<sup>6</sup> uwzględnić (...).* [In that regard, it is important, in accordance with the case-law referred to in paragraphs 46 to 51 above, to determine the value of sales to be taken into account (...).] (CJEU C-231/14 P)

(4) *Decydujące więc znaczenie **trzeba** przypisać normalnemu, funkcjonalnemu związkowi podejmowanych przez podmiot gospodarczy czynności z realizacją zadań stanowiących przedmiot jego działalności.* [The decisive significance **must** be attributed to the normal, functional relationship of the activities undertaken by the economic entity with the implementation of tasks that are the subject of his activity.] (SN V CSK 295/14)

Based on the above, it was determined that a thorough corpus-based investigation into the nature of epistemic modality and its exponents in EU and domestic judgments would further benefit the description of the genre. For want of space, the study is limited to verbs and adverbs which have been observed to express explicit epistemic meanings.

## 2. Epistemic modality and related studies

There are various types of modality, for instance, deontic, epistemic and evidential modality (cf. Palmer 2001), hence it is difficult to design a consistent methodology regarding the identification of strictly epistemic markers. This warrants a preliminary description of the basic types of modality. Deontic modality is used to express obligation and permission (Palmer: 7–10), e.g. *mieć obowiązek* [to be required to] (Matulewska 2010: 77), whereas epistemic modality is used to state judgments about the factual status of the proposition with regard to possibility, necessity, or certainty, e.g. *niewątpliwie* [undoubtedly], *z pewnością* [with certainty],

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<sup>6</sup> In this case the verb has no equivalent in the English-language version of the same judgment, as illustrated in the translation.

*zapewne* [probably], and evidential modality is used to indicate the source of evidence for the factual status of propositions in the case of the latter, e.g. *podobno* [apparently], *jakoby* [purportedly], *widocznie* [evidently] (Wiemer 2006: 9, after Żabowska 2008: 378). Exponents of deontic modality are, therefore, easily recognizable and can be readily told apart from epistemic and evidential markers, the distinction of which is more problematic. The pertinent question here is whether a combined examination of epistemic and evidential markers of modality can be justified.

Only recently Polish linguists have started to draw their attention to the seemingly obvious connection between epistemic and evidential modality (cf. Stępień 2008, Żabowska 2008). In this analysis, I examine evidential markers as a sub-class of epistemic markers (cf. Żabowska 2008, Rozumko 2017: 76)<sup>7</sup>. As regards markers belonging to the class of verbs, I perceive verbs such as: *uznawać* [to accept], *stwierdzać* [to note/find], *twierdzić* [claim], *sądzić* [to believe], *brać/wziąć pod uwagę* [to take into account], and *uważać, że* [consider] (cf. Danielewiczowa 2002) as markers of epistemicity, however, it must be noted that they possess a substantial evidential element, as they are oftentimes used to report on other speakers' propositions (reported perspective, cf. Section 4). Such verbs may also be regarded as primarily epistemic due to the fact that knowledge obtained by the speaker (writer) from someone else becomes their own source of knowledge after confronting the obtained information with one's own reasoning, thoughts, assumptions, etc. (Żabowska 2008: 382–383).

In the present study, verbal and adverbial exponents of epistemic markers (including evidential markers as a sub-class of epistemic modality) either (1) express the courts' attitude or stance towards the validity of the propositional content with regard to possibility, necessity, or certainty based on evidence, reasoning, or beliefs and attitudes (cf. Bralczyk 1978, Palmer 1979, Nuyts 2001, Danielewiczowa 2002), or (2) identify the source of knowledge by which the court forms a proposition. Exponents of epistemic modality are also gradable alongside an epistemic continuum of high-, medium-, and low-level and categorizable according to the three

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<sup>7</sup> Wiemer (2006: 10) assumes that most evidential markers in Polish contain an epistemic element.

contextual dimensions of perspective, opinion and time (cf. Bralczyk 1978, Grzegorzczkova 1998: 44, 2001: 132-133, Huddleston & Pullum 2002: 768, Halliday and Matthiessen 2004, Rubin 2010, Cheng and Cheng 2014, cf. Section 4).

So far, there have not been many large-scale studies conducted on corpora of judicial texts, in particular judgments. However, it is worth mentioning a few of the most influential ones, in order to set the context for this study. In the Polish research, there are several works by researchers who investigated epistemic modality – the most comprehensive one is Szczyrbak's (2017) chapter on the use of modal adverbs of certainty for argumentative purposes in a parallel corpus of English and Polish language versions of Opinions of Advocates General, in which she concludes that both of the language versions display divergent visibility levels of their authors and rhetorical force. There are also several papers written by Goźdz-Roszkowski (2017a, 2017b) in which he studies stance-related head nouns (e.g. *fact*, *belief*, *notion*) followed by a nominal complement in the form of *that*-clause in two comparable legal settings: the opinions handed down by the US Supreme Court and the judgments issued by Poland's Constitutional Tribunal. He concludes *inter alia* that facts expressed with the semantic sequence *fact that* are used to make epistemic and evaluative judgments and that nouns found in the *N that* pattern are used to perform various discourse functions. He also states that evaluation plays a central role in judicial writing and that these nouns are also used to signal sites of contention. Together with Pontrandolfo (2014), he also analyzes evaluative adjective patterns in American and Italian judgments delivered by supreme courts. His study shows that adjectives also frequently carry epistemic meaning. Examples of such adjectives extracted from the current corpora include, for instance, *ewidentny* [evident], *sluszny* [right], and *nieistotny* [irrelevant].

There are also other works on the topic which are authored by foreign researchers – the most notable one is Cheng and Cheng's (2014) paper on implicit/explicit and subjective/objective epistemic modality in Hong Kong's and Scotland's judicial discourse, in which epistemic markers are also classified into high-, median-, and low-level. Zajnilović's (2015) paper on the lexical marking of epistemic modality in summaries of the European Court of Human Rights judgments proposes a set of criteria for the identification of modal and evidential values of lexical verbs, i.e. the degree of commitment

to the truth-value of the proposition, subjectivity, performativity and interactions in the epistemic-evidential domain. Kanté (2010), similarly to Goźdź-Roszkowski (2017a, 2017b), also studies head nouns (e.g. *fact, allegation, evidence, view*, etc.) acting as modal stance markers in various types of noun complement clauses on a linguistic corpus comprising papers from the Journal of English Linguistics and a legal corpus made up of transcriptions of courtroom interactions and reports. Kanté confirms that nouns used to govern complement *that*-clauses involve modality and lend themselves to a modal classification, allowing the speaker/writer to express a personal position on the propositional content. There are also several works by Mazzi, who focuses on the reportive verb *to hold* which signals authoritative stance taken by the court or equally authoritative reported argumentation of another court in judgments delivered by the Court of Justice of the EU, the House of Lords (UK) or Ireland's Supreme Court (Mazzi 2007b), as well as attitudinal qualification in the judicial discourse of CJEU and Irish Supreme Court judges in the form of hedges (e.g. *it would be*) and boosters (e.g. *undoubtedly, clearly, indeed, no doubt, it must be held that*), which constitute tools used by the speaker/writer to express tentative or strong commitment to their own propositions (Mazzi 2015).

The present study furthers the existing research by focusing on the trichotomous division of epistemic markers into high-, medium-, and low-level markers and studying their distribution in translated EU judgments and non-translated national judgments.

### **3. Material**

The present study is based on a sampled version of a corpus of EU judgments translated into Polish and English and non-translated Polish SN judgments which was compiled within the framework of the Polish Eurolect Project at the turn of 2015 and 2016 (cf. Biel 2016). The sampling procedure was used, in order to keep the number of generated concordances within manageable boundaries. As a result of the sampling procedure, both EU corpora contain ca. 22% of all texts comprised in the original corpus of translated judgments, i.e. 897 judgments, whereas the sampled corpus of non-

translated domestic judgments contains ca. 8% of all texts found in the original corpus of non-translated judgments, i.e. 2564 judgments.

The judgments issued by the Court of Justice were downloaded in the corresponding Polish- and English-language versions from the CJEU's on-line repository of judgments<sup>8</sup>, whereas judgments passed by the Polish Supreme Court were downloaded from the Court's own case-law database<sup>9</sup>. All judgments in the respective corpora were issued in the period from 2011 to 2015, so as to guarantee representativeness and comparability of both EU and domestic case-law. In each of the corpora, there are 40 judgments from each year of the publication period. They also contain the same number of texts (200); however, in this case this requirement has led to differing sizes of the EU corpora and the domestic corpus, as the latter contains a markedly lower number of tokens than both EU corpora.

Table 1. Corpus design

<b>Corpus name</b>	<b>Time depth</b>	<b>Texts</b>	<b>Tokens</b>
PL-EU Court of Justice judgments	2011-2015	200	1,027,533
EN-EU Court of Justice judgments (reference corpus no. 1)	2011-2015	200	1,200,329
PL-DOMESTIC Supreme Court judgments (reference corpus no. 2)	2011-2015	200	465,409

The results (frequencies of occurrence) were normalized to one million words to further ensure their comparability<sup>10</sup>.

<sup>8</sup> <http://curia.europa.eu/juris/recherche.jsf?language=en>

<sup>9</sup> [http://www.sn.pl/orzecnictwo/SitePages/Baza\\_orzeczen.aspx](http://www.sn.pl/orzecnictwo/SitePages/Baza_orzeczen.aspx)

<sup>10</sup> In order to verify whether the application of the PL-DOMESTIC corpus with a total of 465,409 tokens did not skew the results due to having a lower number of tokens than each of the EU corpora, another version of the former corpus was created, which had a total of 1,285,755 tokens (500 texts). Several randomly chosen exponents of modality frequently occurring in the PL-DOMESTIC corpus (cf. Section 5) were

## 4. Methodology

Two main criteria were used to create an extensive list of possible exponents (markers) of epistemic modality. Firstly, the markers were required to qualify the truth-value of propositions in an explicit manner, thus revealing the perspective and attitude of the epistemic subject as regards the possibility, necessity, or certainty (cf. Bralczyk 1978, Danielewiczowa 2002). Secondly, the markers needed to belong to two groups of word classes, namely verbs and adverbs (or particles)<sup>11</sup>.

Prior to conducting the distributional analysis, it was necessary to create an extensive (but certainly not all-inclusive) list of possible exponents of epistemicity to be found in the language of judgments. The basic list was created with the help of the on-line corpus tool Sketchengine (Kilgariff et al. 2014), which was used to create two lists of verbs and adverbs<sup>12</sup> based on automatically lemmatized versions of the respective corpora. Then, the lists were examined with respect to the presence of any epistemic meaning by analyzing the context of use of individual verbs and adverbs, and words carrying such meaning were put on a search list to be later fed into Wordsmith Tools 7.0 (Scott 2017). In order to verify the lists, obtained Wordsmith Tools 7.0 was also used to create lists of top 3000 words, one for every corpus. These lists were also examined in respect of words expressing epistemic meaning. On top of that, the lists of possible epistemic markers were supplemented by exponents found in the literature, *inter alia* the works of Bralczyk 1978, Rytel 1982, Grochowski 1986, Tutak

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also searched for using the domestic corpus with 500 texts. It was observed that the normalized frequencies obtained using the corpus of 200 domestic judgments and the corpus of 500 domestic judgments converge at a very similar level, thus not distorting the results and allowing for comparability of the domestic corpus (with a total of just 465,409 tokens) and the EU corpora.

<sup>11</sup> This study is limited to two word classes due to space constraints, however, future analyses should also take into account other word classes, such as adjectives and nouns (cf. Pontrandolfo and Goźdz-Roszkowski 2014, Goźdz-Roszkowski 2017a, 2017b), as they have also been observed to carry various shades of epistemic meanings.

<sup>12</sup> The respective commands used for this purpose are as follows: `.*-v` for verbs and `.*-a` for adverbs.

2003, Wierzbicka 2006, Danielewiczowa 2002, 2008a, 2008b, Żabowska 2008, 2013, Rozumko 2013, 2016, 2017, Grochowski, Kisiel and Żabowska 2014, Warchał 2015, and the Wielki słownik języka polskiego PAN [WSJP] which was used to verify the epistemic status of certain problematic exponents<sup>13</sup>. English equivalents of Polish markers were identified using a parallel sub-corpus of 10 PL-EU and 10 EN-EU judgments in AntPConc (Anthony 2017). The list of epistemic markers was then used to search the corpora and to categorize the identified markers in terms of their level (primary dimension) and to examine the three contextual dimensions of individual exponents, that is perspective, opinion, and time. The model used to manually categorize verbal and adverbial epistemic markers has originally been developed by Rubin (cf. Rubin, Kando and Liddy 2004, Rubin 2006, 2010) and used to categorize explicit epistemic markers of (un)certainty found in news articles – in the present analysis, it still comprises four perspectives, with the main difference being that the primary dimension, Level, does not contain five different levels (absolute, high, moderate, low certainty and uncertainty, cf. Rubin 2010: 536) or four (absolute, high, moderate, and low, cf. Rubin, Kando and Liddy 2004), but only three, which are discussed below.

The figure below presents the dimensions used to classify epistemic markers found in EU and Polish judgments (cf. Figure 1).

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<sup>13</sup> Entries in the WSJP dictionary contain a separate “meaning” category which can be used to substantiate the epistemicity of problematic markers. Markers conveying various shades of epistemic meaning are usually described as *wyrażenia epistemiczne* [epistemic expressions] or *wykładniki oceny prawdziwości sądu* [exponents of the truth-value of propositions].

Figure 1. Primary dimension and contextual dimensions

<b>LEVEL</b>	<b>PERSPECTIVE</b>	<b>OPINION</b>	<b>TIME</b>
<b>High</b>	Court's perspective	Factual information	Past
<b>Medium</b>	Reported perspective: 1) participants to the proceedings, witnesses, referring courts, etc.		Present
<b>Low</b>	2) institutions, experts, lower instance courts, case-law, etc.	Beliefs and attitudes	Future

The primary dimension in Rubin's model, that is the Level, is the most important one. It allows categorization of markers along a gradual epistemic continuum, in which (absolute) certainty (or necessity, possibility) occupies one end of the spectrum (high level) and uncertainty (or lack of necessity, possibility) occupies the other one (low level); medium-level markers express neither (absolute) certainty nor (absolute) uncertainty (Rubin 2010: 535). Each epistemic marker undergoes categorization to only one category marking its level. It needs to be borne in mind, however, that the boundaries between the different shades of epistemic meaning are rather subjective, meaning that various exponents could theoretically be categorized differently from one language speaker to another one<sup>14</sup>. Therefore, it is important to recognize that the results presented in this paper are not to be perceived as final and exhaustive, but need to be verified and expanded further in other study configurations. The next three dimensions are strictly contextual – their role is to categorize markers in terms of the expressed perspective, opinion and time, out of which the former two are most

<sup>14</sup> This could potentially be remedied by double peer categorization, at the end of which the results would be compared and problematic exponents discussed by two researchers.

significant considering the genre at hand. The Perspective describes the source expressing explicit epistemic meanings and there are two main perspectives, that of the court issuing the judgments (the writer) (C) and the reported perspective, which has been further sub-divided into either participants to the proceedings, witnesses, referring courts, etc. (P), or institutions and experts, lower instance courts, case-law, etc. (I) (cf. Shethar 2002: 183). The Opinion (originally termed as Focus, cf. Rubin 2010: 536) divides the way in which epistemicity is expressed using factual information (facts) (F) and beliefs and attitudes (A). The role of the last contextual category, that is the Time, consists of categorizing the markers according to the time referred to by the propositions of which they are a part, namely past (T), present (P) and future (F).

## **5. Distribution of epistemic markers**

Quantitative data on the distribution of markers include their total distribution in the corpora as well as the total number of occurrences with actual modal meaning, which was determined based on the analysis of concordances of each marker. Columns termed Perspective, Opinion, and Time provide further quantitative data on the perspective expressed with the help of the epistemic markers, fact/belief dichotomy, and temporal relations, respectively (cf. Section 4). The results include only those types of epistemic verbs which occur more often than five times per million words (pmw), however, in the case of high-level verbal and adverbial markers it was necessary to apply a higher threshold of 50 occurrences pmw to limit the overall high total number of types of markers with more than 5 occurrences pmw. Consequently, all idiosyncratic occurrences were eliminated and are not displayed below.

### **5.1 Distribution of epistemic verbs**

As it has already been established (cf. Section 1), both the EU corpus of judgments translated into Polish and the corpus of non-translated

national judgments exhibit a high distribution of two non-inflectional, impersonal and synonymous verbs, namely *należy* [(one) must/should] and *trzeba* [(one) should/must]. This finding has led to the identification of a host of other possible verbal markers of epistemicity (cf. Tables 2, 3, 4) (cf. Section 4). Table 2 presents high-value markers which are the most frequent ones in all the corpora.

Table 2. High-level verbal markers of epistemicity in EN-EU, PL-EU and PL-DOMESTIC corpora (>50 NF)

HIGH LEVEL	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
EN-EU										
<i>to consider</i>	742	<b>709</b>	709	0	0	709	0	129	578	2
<i>it must * that</i>	463	<b>457</b>	457	0	0	457	0	0	457	0
<i>it should * that</i>	442	<b>442</b>	442	0	0	442	0	0	442	0
<i>to note</i>	432	<b>432</b>	432	0	0	432	0	37	395	0
<i>to find</i>	481	<b>414</b>	407	0	7	414	0	328	85	1
<i>to hold</i>	380	<b>380</b>	379	0	1	380	0	184	196	0
<i>to take into account</i>	354	<b>354</b>	348	0	6	354	0	33	317	4
<i>to claim</i>	311	<b>306</b>	302	0	4	306	0	61	245	0
<i>to observe</i>	320	<b>298</b>	298	0	0	298	0	166	132	0
<i>to point out</i>	205	<b>205</b>	205	0	0	205	0	72	133	0
<i>to indicate</i>	189	<b>174</b>	167	0	7	174	0	142	32	0
<i>to recall</i>	147	<b>132</b>	132	0	0	132	0	16	116	0

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<i>to conclude</i>	332	<b>128</b>	128	0	0	128	0	51	77	0
<i>to bear in mind</i>	125	<b>125</b>	125	0	0	125	0	0	125	0
<i>to maintain</i>	255	<b>112</b>	112	0	0	112	0	10	102	0
<i>to understand</i>	77	<b>77</b>	77	0	0	77	0	2	75	0
<i>to infer</i>	58	<b>58</b>	56	0	2	58	0	12	46	0
<b>TOTAL</b>	<b>5313</b>	<b>4803</b>	<b>4776</b>	<b>0</b>	<b>27</b>	<b>4803</b>	<b>0</b>	<b>1243</b>	<b>3553</b>	<b>7</b>
<b>PL-EU</b>										
<i>należy *, że</i> [(it) must/should * that]	1076	<b>1076</b>	1076	0	0	1076	0	0	1076	0
<i>uznawać</i> [to accept]	545	<b>545</b>	541	0	4	545	0	422	84	39
<i>stwierdzać</i> [to note/find]	531	<b>530</b>	527	0	3	530	0	422	108	0
<i>wskazywać</i> [to indicate]	408	<b>407</b>	407	0	0	407	0	196	211	0
<i>twierdzić</i> [to claim]	394	<b>394</b>	394	0	0	394	0	35	359	0
<i>brać/wziąć pod uwagę</i> [to take into account]	329	<b>329</b>	328	0	1	329	0	47	282	0
<i>uważać, że</i> [to consider]	328	<b>328</b>	320	1	7	328	0	1	327	0
<i>podkreślać</i>	177	<b>177</b>	154	0	23	177	0	73	104	0

[to emphasize]										
<i>utrzymywać</i> [to maintain]	170	<b>167</b>	167	0	0	167	0	15	152	0
<i>zauważać</i> [to notice/observe]	153	<b>153</b>	135	0	18	153	0	80	73	0
<i>przypominać</i> [to recall]	111	<b>111</b>	110	0	1	111	0	48	63	0
<i>wykluczać, żeby</i> [to rule out that]	102	<b>102</b>	100	0	2	102	0	12	90	0
<b>TOTAL</b>	<b>4324</b>	<b>4319</b>	<b>4259</b>	<b>1</b>	<b>59</b>	<b>4319</b>	<b>0</b>	<b>1351</b>	<b>2929</b>	<b>39</b>
<b>PL-DOMESTIC</b>										
<i>uznawać</i> [to accept]	877	<b>877</b>	877	0	0	877	0	832	39	6
<i>wskazywać</i> [to indicate]	868	<b>844</b>	844	0	0	844	0	632	213	0
<i>przyjmować</i> [to assume]	589	<b>556</b>	556	0	0	556	0	380	176	0
<i>stwierdzać</i> [to note/find]	578	<b>516</b>	516	0	0	516	0	494	17	4
<i>należy</i> *, <i>że</i> [(it) must/should * that]	309	<b>309</b>	309	0	0	309	0	15	294	0
<i>podkreślać</i> [to emphasize]	211	<b>211</b>	48	6	157	211	0	159	52	0
<i>wiedzieć</i> [to	114	<b>114</b>	104	6	4	114	0	88	26	0

know]										
<i>brać/wziąć pod uwagę</i> [to take into account]	110	<b>110</b>	110	0	0	110	0	13	97	0
<i>wykluczać, żeby</i> [to rule out that]	88	<b>88</b>	80	2	6	88	0	13	75	0
<i>twierdzić</i> [to claim]	86	<b>86</b>	84	0	2	84	2	45	41	0
<i>trzeba</i> *, <i>że</i> [(it) should/must * that]	75	<b>75</b>	75	0	0	75	0	0	75	0
<b>TOTAL</b>	<b>3905</b>	<b>3786</b>	<b>3603</b>	<b>14</b>	<b>169</b>	<b>3784</b>	<b>2</b>	<b>2671</b>	<b>1105</b>	<b>10</b>

It is worth noting that the concentration of modal markers expressing actual epistemic meaning in EN-EU judgments amounts to ca. 90% of all tokens of the above verbs. In the two remaining corpora, i.e. in PL-EU and PL-DOMESTIC, the level of concentration is much higher, 99% and 97%, respectively. Another striking observation concerns the distribution of the pattern involving the modal verb *należy* \*, *że* [(it) must/should \* that], which is strongly overrepresented in the PL-EU corpus as compared to the PL-DOMESTIC corpus (by ca. 71%). It may be assumed that the pattern *należy* \*, *że* [(it) must/should \* that] in the PL-EU corpus compensates the low frequency of the almost synonymous pattern *trzeba* \*, *że* [(it) should/must \* that]. In the EN-EU corpus, on the other hand, the patterns *it must* \* *that* and *it should* \* *that* have an almost equal distribution. The high salience of these patterns enables judges to raise the perceived level of authoritativeness of their argumentation. Overall, high-level markers are overrepresented in EU judgments, with the PL-EU corpus having ca. 12% more tokens of epistemic markers than the PL-DOMESTIC corpus. Within the Eurolect, EN-EU judgments have ca. 11% more tokens than corresponding PL-EU judgments. As regards the first contextual dimension, the Perspective, the vast majority of markers can be attributed directly to the court

in the case of all three corpora, with only 0.5%, 1%, 4%, respectively, being attributable to institutions, experts, lower instance courts, case-law, etc. (I). Occurrences of markers being attributable to participants to the proceedings, witnesses, referring courts, etc. (P) are only marginal in all the corpora. When it comes to the second dimension, the Opinion, virtually all marker tokens in the corpora are based on factual information. Data concerning the last contextual dimension, the Time, show that the majority of marker tokens in the EU corpora are embedded in sentences referring to the present, whereas in the domestic judgments most of them are embedded in sentences referring to the past.

Medium-level markers of epistemicity occur considerably less frequently than high-level markers, both with regard to the total number of types and tokens in the corpora (cf. Table 3).

Table 3. Medium-level verbal markers of epistemicity in EN-EU, PL-EU and PL-DOMESTIC corpora (>5 NF)

MEDIUM LEVEL	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>EN-EU</b>										
<i>to appear</i>	27	<b>27</b>	27	0	0	27	0	0	24	3
<i>to seem</i>	17	<b>17</b>	17	0	0	17	0	0	17	0
<i>to believe</i>	15	<b>15</b>	13	0	2	15	0	5	10	0
<i>to suspect</i>	12	<b>12</b>	11	0	1	12	0	1	11	0
<i>to suppose</i>	11	<b>9</b>	9	0	0	9	0	0	8	1
<i>to anticipate</i>	32	<b>7</b>	7	0	1	7	0	0	0	7
<b>TOTAL</b>	<b>113</b>	<b>87</b>	<b>84</b>	<b>0</b>	<b>3</b>	<b>87</b>	<b>0</b>	<b>6</b>	<b>70</b>	<b>11</b>
<b>PL-EU</b>										
<i>[komuś] wydaje się, że [it seems to [sb] that]</i>	92	<b>92</b>	90	0	2	92	0	0	91	1

<b>TOTAL</b>	<b>92</b>	<b>92</b>	<b>90</b>	<b>0</b>	<b>2</b>	<b>92</b>	<b>0</b>	<b>0</b>	<b>91</b>	<b>1</b>
<b>PL-DOMESTIC</b>										
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Furthermore, the disproportions between the individual corpora are more pronounced than in the case of high-level markers, with the highest type/token ratio being observed in the case of English-language CJEU judgments and Polish-language CJEU judgments, with non-translated domestic judgments exhibiting only one type of a medium-level marker. In the PL-DOMESTIC corpus, the marker *[komuś] wydaje się, że* [it seems to [sb] that] has only a normalized frequency of 4 occurrences pmw, therefore, it is not shown in Table 3.

Low-level verbal markers of epistemicity are the least frequent in the corpora, with no types having been found in the PL-EU corpus (cf. Table 4). The EN-EU corpus contains only one type of a low-level marker, of which only ca. 7% of occurrences have been found to carry modal meaning.

Table 4. Low-level verbal markers of epistemicity in EN-EU, PL-EU and PL-DOMESTIC corpora (>5 NF)

LOW LEVEL	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>EN-EU</b>										
<i>to doubt</i>	76	5	5	0	0	5	0	0	5	0
<b>TOTAL</b>	<b>76</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>0</b>
<b>PL-EU</b>										
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>PL-DOMESTIC</b>										
<i>budzić wątpliwości</i>	32	32	32	0	0	32	0	0	32	0

[to raise doubts]										
<b>TOTAL</b>	<b>32</b>	<b>32</b>	<b>32</b>	<b>0</b>	<b>0</b>	<b>32</b>	<b>0</b>	<b>0</b>	<b>32</b>	<b>0</b>

Epistemic verbs, as it was the case with adverbs and particles, were grouped into high-, medium-, and low-level units according to the court's commitment to the proposition (as regards certainty, necessity, or possibility). What was found out in the process of the analysis is that both EU and Polish judges do not use verbs in the first person singular and that they state their reasoning with regard to cases they hear on behalf of the court as a whole, which certainly raises the overall perceived level of authoritativeness as well as collective authorial presence.

Table 5. Summary of verbal epistemic markers in the EN-EU, PL-EU and PL-DOMESTIC corpora

	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>HIGH LEVEL (&gt;50 NF)</b>										
EN-EU	5313	<b>4803</b>	4776	0	27	4803	0	1243	3553	7
PL-EU	4324	<b>4319</b>	4259	1	59	4319	0	1351	2929	39
PL-DOMESTIC	3905	<b>3786</b>	3603	14	169	3784	2	2671	1105	10
<b>MEDIUM LEVEL (&gt;5 NF)</b>										
EN-EU	114	<b>87</b>	84	0	3	87	0	6	70	11
PL-EU	92	<b>92</b>	90	0	2	92	0	0	91	1
PL-DOMESTIC	0	<b>0</b>	0	0	0	0	0	0	0	0
<b>LOW LEVEL (&gt;5 NF)</b>										
EN-EU	76	<b>5</b>	5	0	0	5	0	0	5	0

<b>PL-EU</b>	0	0	0	0	0	0	0	0	0	0
<b>PL- DOMESTIC</b>	32	32	32	0	0	32	0	0	32	0
<b>EN-EU - Total</b>	<b>5503</b>	<b>4895</b>	<b>4865</b>	<b>0</b>	<b>30</b>	<b>4895</b>	<b>0</b>	<b>1249</b>	<b>3628</b>	<b>18</b>
<b>PL-EU - Total</b>	<b>4416</b>	<b>4411</b>	<b>4349</b>	<b>1</b>	<b>61</b>	<b>4411</b>	<b>0</b>	<b>1351</b>	<b>3020</b>	<b>40</b>
<b>PL- DOMESTIC - Total</b>	<b>3937</b>	<b>3818</b>	<b>3635</b>	<b>14</b>	<b>169</b>	<b>3816</b>	<b>2</b>	<b>2671</b>	<b>1137</b>	<b>10</b>

If we compare the total distribution of analyzed epistemic verbs in the language of translated EU judgments and non-translated Polish judgments, we will observe that EU judges employ ca. 13% more epistemic markers in the case of PL-EU judgments and ca. 22% more markers in the case of EN-EU judgments. The most important difference in the frequency of occurrence concerns the distribution of the frame *należy* \*, *że* [(it) must/should \* that] which contains the non-inflectional, impersonal verb *należy* [(one) must/should]. With regard to the second dimension, the Perspective, both courts express predominantly their own views, only rarely citing, e.g. institutions and experts, lower instance courts, case-law, etc. (I) or the parties to the proceedings, witnesses, referring courts, etc. (P), however, it needs to be noted that the Polish Supreme Court recalls the views expressed in case-law or by lower instance courts ca. three times more often than the Court of Justice in Polish-language judgments. When it comes to the third dimension, the Opinion, which divides expressions of certainty, necessity, or possibility into ones which are expressed on the basis of factual information or personal attitudes, it can be observed that both courts rely almost virtually on facts, and not on beliefs or attitudes (either own or reported). With regard to the fourth dimension, the Time, which was used to simply verify whether epistemic markers are embedded in sentences referring to the past, present or future, it was observed that the domestic court uses epistemic verbs to recall past events more often than the EU court, whereas the EU court discusses present events more often than the domestic court. Epistemic verbs are used to discuss future events only very rarely by both courts.

## 5.2 Distribution of epistemic adverbs in the corpora

Table 6 focuses on high-level adverbial markers with more than 50 occurrences pmw which are overall less frequent in all the corpora.

Table 6. High-level adverbial markers of epistemicity in the EN-EU, PL-EU and PL-DOMESTIC corpora (>50 NF)

HIGH LEVEL	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>EN-EU</b>										
<i>actually</i>	144	<b>144</b>	138	6	0	144	0	49	94	1
<i>clearly</i>	112	<b>112</b>	108	2	2	112	0	6	106	0
<i>in fact</i>	107	<b>107</b>	107	1	0	107	0	26	81	0
<i>indeed</i>	107	<b>107</b>	106	0	0	107	0	21	85	1
<i>essentially</i>	101	<b>101</b>	101	0	0	101	0	19	82	0
<i>necessarily</i>	93	<b>93</b>	93	0	0	93	0	8	78	7
<b>TOTAL</b>	<b>664</b>	<b>664</b>	<b>653</b>	<b>9</b>	<b>2</b>	<b>664</b>	<b>0</b>	<b>129</b>	<b>526</b>	<b>9</b>
<b>PL-EU</b>										
<i>zasadniczo</i> [essentially]	304	<b>303</b>	303	0	1	304	0	22	280	1
<i>w istocie</i> [essentially]	229	<b>229</b>	226	2	1	229	0	15	212	2
<i>rzeczywiście</i> [admittedly]	167	<b>167</b>	167	0	0	167	0	81	82	4
<i>faktycznie</i> [in fact]	88	<b>88</b>	84	0	4	88	0	26	62	0
<i>wprawdzie</i> [indeed]	63	<b>63</b>	63	0	0	63	0	0	63	0

<i>oczywiście</i> [obviously]	60	<b>60</b>	54	5	1	60	0	3	57	0
<b>TOTAL</b>	<b>911</b>	<b>910</b>	<b>897</b>	<b>7</b>	<b>7</b>	<b>911</b>	<b>0</b>	<b>14</b> <b>7</b>	<b>75</b> <b>7</b>	<b>7</b>
<b>PL-DOMESTIC</b>										
<i>wprawdzie</i> [indeed]	183	<b>183</b>	173	6	4	183	0	12	62	0
<i>niewątpliwie</i> [undoubtedly]	176	<b>176</b>	176	0	0	176	0	52	12	5
<i>oczywiście</i> [obviously]	129	<b>129</b>	129	0	0	129	0	30	95	4
<i>w istocie</i> [essentially]	122	<b>122</b>	118	0	4	122	0	56	62	6
<i>zasadnie</i> [reasonably]	84	<b>84</b>	78	2	4	82	2	60	21	2
<i>rzeczywiście</i> [admittedly]	71	<b>71</b>	67	0	4	71	0	38	32	0
<i>faktycznie</i> [in fact]	67	<b>67</b>	65	0	2	67	0	33	30	0
<i>w zasadzie</i> [in principle]	67	<b>67</b>	63	0	4	67	0	11	56	0
<b>TOTAL</b>	<b>899</b>	<b>899</b>	<b>869</b>	<b>8</b>	<b>22</b>	<b>897</b>	<b>2</b>	<b>40</b> <b>2</b>	<b>48</b> <b>3</b>	<b>1</b> <b>2</b>

PL-EU and PL-DOMESTIC judgments have a very similar distribution of high-level markers carrying epistemic meaning (a high degree of convergence). EN-EU judgments, on the other hand, have ca. 27% less tokens of high-level markers. As regards the first contextual dimension, the Perspective, the vast majority of markers can be attributed directly to the court in the case of all three corpora, with only fewer than 1% being attributable to institutions, experts, lower instance courts, case-law, etc. (I) in the case of both EU corpora and ca. 2,5% in the case of the PL-DOMESTIC corpus. Occurrences of markers being attributable to participants to the proceedings, witnesses, referring courts, etc. (P) are only marginal in all the corpora, with only ca. 1% being present in the EN-EU corpus and less than 1% in the two remaining corpora. When it comes to the second contextual dimension, the Opinion, practically all tokens

in the three corpora are based on factual information, with the exception of two occurrences of *zasadnie* [reasonably] found in the PL-DOMESTIC corpus which were found to refer to beliefs and attitudes. The last contextual dimension, the Time, shows that the majority of marker tokens in the EU corpora are embedded in sentences referring to the present, whereas in the domestic judgments most of them are also embedded in sentences referring to the present, however, almost as many are found in sentences referring to the past.

Table 7, which presents data on the distribution of medium-level epistemic markers, shows that the EN-EU corpus contains virtually no such markers.

Table 7. Medium-level adverbial markers of epistemicity in EN-EU, PL-EU and PL-DOMESTIC corpora (>5 NF)

MEDIUM LEVEL	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>EN-EU</b>										
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>PL-EU</b>										
<i>najwyraźniej</i> [evidently]	7	7	7	0	0	7	0	2	5	0
<i>prawdopodobnie</i> [probably]	7	7	4	0	3	7	0	1	6	0
<b>TOTAL</b>	<b>14</b>	<b>14</b>	<b>11</b>	<b>0</b>	<b>3</b>	<b>14</b>	<b>0</b>	<b>3</b>	<b>11</b>	<b>0</b>
<b>PL-DOMESTIC</b>										
<i>niejako</i> [so to speak]	19	19	19	0	0	19	0	4	15	0
<i>zapewne</i> [probably]	11	11	11	0	0	9	2	7	2	2
<b>TOTAL</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>0</b>	<b>0</b>	<b>28</b>	<b>2</b>	<b>11</b>	<b>17</b>	<b>2</b>

Each of the two remaining corpora contain two types of medium-level markers, with the PL-DOMESTIC corpus having a two times higher distribution.

Table 8. Low-level adverbial markers of epistemicity in EN-EU, PL-EU and PL-DOMESTIC corpora (>5 NF)

LOW LEVEL	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>EN-EU</b>										
<i>allegedly</i>	47	<b>47</b>	47	0	0	47	0	33	14	0
<i>possibly</i>	19	<b>19</b>	19	1	0	19	0	2	16	2
<b>TOTAL</b>	<b>67</b>	<b>67</b>	<b>66</b>	<b>1</b>	<b>0</b>	<b>67</b>	<b>0</b>	<b>35</b>	<b>30</b>	<b>2</b>
<b>PL-EU</b>										
<i>rzekomo</i> [allegedly]	30	<b>30</b>	30	0	0	31	0	21	10	0
<i>jakoby</i> [purportedly]	27	<b>27</b>	22	5	0	28	0	6	22	0
<b>TOTAL</b>	<b>57</b>	<b>57</b>	<b>52</b>	<b>5</b>	<b>0</b>	<b>59</b>	<b>0</b>	<b>27</b>	<b>32</b>	<b>0</b>
<b>PL-DOMESTIC</b>										
<i>jakoby</i> [purportedly]	34	<b>34</b>	15	13	6	34	0	13	4	0
<i>rzekomo</i> [allegedly]	9	<b>9</b>	9	0	0	9	0	3	1	0
<b>TOTAL</b>	<b>43</b>	<b>43</b>	<b>24</b>	<b>13</b>	<b>6</b>	<b>43</b>	<b>0</b>	<b>16</b>	<b>5</b>	<b>0</b>

Low-level epistemic markers, on the other hand, are distributed very evenly across the corpora, each of which has two types of synonymous markers (cf. Table 8). EU judges use *rzekomo* [allegedly] and *jakoby* [purportedly] alternately, whereas national judges exhibit preference for the marker *jakoby* [purportedly].

Table 9. Summary of adverbial epistemic markers in the EN-EU, PL-EU and PL-DOMESTIC corpora

	Tokens	Modal	Perspective			Opinion		Time		
			C	P	I	F	A	T	P	F
<b>HIGH LEVEL (&gt;50 NF)</b>										
EN-EU	664	<b>664</b>	653	9	2	664	0	129	526	9
PL-EU	911	<b>911</b>	897	7	7	911	0	147	757	7
PL-DOMESTIC	899	<b>899</b>	869	8	22	897	2	402	483	12
<b>MEDIUM LEVEL (&gt;5 NF)</b>										
EN-EU	0	<b>0</b>	0	0	0	0	0	0	0	0
PL-EU	14	<b>14</b>	11	0	3	14	0	3	11	0
PL-DOMESTIC	30	<b>30</b>	30	0	0	28	2	11	17	2
<b>LOW LEVEL (&gt;5 NF)</b>										
EN-EU	67	<b>67</b>	66	1	0	67	0	35	30	2
PL-EU	57	<b>57</b>	52	5	0	59	0	27	32	0
PL-DOMESTIC	43	<b>43</b>	24	13	6	43	0	38	5	0
<b>EN-EU - Total</b>	<b>731</b>	<b>731</b>	<b>719</b>	<b>10</b>	<b>2</b>	<b>731</b>	<b>0</b>	<b>164</b>	<b>556</b>	<b>11</b>
<b>PL-EU - Total</b>	<b>982</b>	<b>982</b>	<b>960</b>	<b>12</b>	<b>10</b>	<b>984</b>	<b>0</b>	<b>177</b>	<b>800</b>	<b>7</b>
<b>PL-DOMESTIC - Total</b>	<b>972</b>	<b>972</b>	<b>923</b>	<b>21</b>	<b>28</b>	<b>968</b>	<b>4</b>	<b>451</b>	<b>505</b>	<b>14</b>

If we compare the total distribution of analyzed epistemic adverbs in the language of translated EU judgments and non-translated Polish judgments, we will observe that they are almost equally represented in both PL-EU and PL-DOMESTIC judgments. They are, however, underrepresented in EN-EU judgments by ca. 25%. With regard to the first and second contextual dimension, that is the Perspective and the Opinion, both courts express

predominantly their own views on the basis of factual information. In the case of the third contextual dimension adverbial exponents of epistemicity behave similarly to verbal markers in the case of both EU corpora; in the case of the PL-DOMESTIC corpus there is a noticeable difference in that regard, as adverbs are embedded mostly in sentences referring to the present, but almost equally frequently in sentences referring to the past. Epistemic adverbs are used to discuss future events only very rarely.

## **7. Conclusions**

The expression of epistemic modality is indispensable to judicial justification and reasoning across legal systems and languages. The results of the corpus-based analysis confirm that both EU and Polish judges rely heavily on epistemic verbs and adverbs to provide justification based on facts rather than beliefs and attitudes, while rarely reporting other parties' stance. The highest degree of convergence has been determined in the case adverbial epistemic markers; on the other hand, verbal markers are overrepresented in Polish-language versions of EU judgments as compared to non-translated Polish judgments (cf. Tables 5 and 9). Despite the limitations imposed on this study it was possible to determine that there occurs a transfer of certainty between the judges and the primary and secondary audience of the judgments (Salmi-Tolonen 2005: 61), as frequently occurring high-level markers of epistemic modality act as linguistic tools which help the courts to present non-negotiable interpretation of the law, while presenting their propositions as having a high-level of commitment to their truth-value, thus raising the overall level of authoritativeness and rhetorical force of judgments.

Further research should refine the presented model for categorizing epistemic markers by further adapting it to the genre (cf. Rubin 2010), analyze other word classes, such as adjectives and nouns (cf. Pontrandolfo and Goźdz-Roszkowski 2014, Goźdz-Roszkowski 2017a, Goźdz-Roszkowski 2017b). Furthermore, it should be borne in mind that manual categorization of epistemic markers based on the examination of their context of occurrence

(concordances) is a time-consuming endeavor, therefore, studies examining the nature of epistemicity in judgments could be conducted on corpora of fragments of judgments comprising exclusively justifications, so as to potentially limit the number of exponents expressing reported perspective and focus on the courts' own perspective. In addition, special attention should be paid to the subjective nature epistemic markers, which impedes any attempts at categorizing epistemic markers according to their level.

In general, the high salience of epistemic markers in the language of judgments confirms their importance to the genre, thus raising them to the status of a generic feature (cf. Coulthard and Johnson 2010: 10).

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# **THE TRANSPOSITION OF INTERNATIONAL CRIMINAL LAW CONCEPTS INTO NATIONAL JURISDICTIONS: THE CASE OF GENOCIDE**

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**Abstract:** This article discusses preliminary findings of a study on the transposition of the legal concept of genocide into 131 national jurisdictions. The specificities of this transposition into national criminal systems, as well as those related to the international legal definition of genocide, are described in the first part. The communicative situations in which the concept of genocide has been transposed are then examined in order to show their scope and breadth, and to which extent they contribute to the transformation of the concept of genocide. Trends related to the object of transformation in the definition and their effect on meaning are subsequently outlined. The findings point to a situation where, despite having been the object of multiple consensus at the international level, the concept of genocide has been transformed by the vast array of domestic

legal languages and legal systems into which it has been transposed and thereby reinforce the relation between the configuration of the language and law, and the difficulty of translation.

**Keywords:** legal translation; jurilinguistics; transposition; international criminal law; genocide.

### **LA TRANSPOSITION DES CONCEPTS DU DROIT PÉNAL INTERNATIONAL DANS LES JURIDICTIONS NATIONALES : LE CAS DU GÉNOCIDE**

**Résumé :** Le présent article fait état de quelques résultats préliminaires d'une étude sur la transposition du concept juridique de génocide dans 131 juridictions nationales. Y sont d'abord exposées les particularités de la transposition de ce concept dans les systèmes criminels des États, ainsi que celles de la définition internationale de génocide. L'article présente ensuite les situations de communication dans lesquelles le concept de génocide a été transposé dans le but d'en montrer toute la portée et la diversité, ainsi que la mesure dans laquelle elles contribuent à la transformation du concept de génocide. En dernière analyse, nous exposons quelques tendances liées à l'objet des transformations dans la définition de génocide, ainsi que leurs effets sur le sens du concept. Nos résultats mettent en lumière un concept qui, malgré avoir fait l'objet de plusieurs consensus au niveau international, se transforme sous l'effet de la grande diversité de langages et systèmes juridiques dans lesquels il est intégré et renforcent l'argument selon lequel il existe un lien entre la difficulté de traduire et la configuration entre langage et droit.

**Mots-clés:** traduction juridique; jurilinguistique; transposition; droit penal international; genocide.

### **PRZENIESIENIE KONCEPCJI MIĘDZYNARODOWEGO PRAWA KARNEGO NA JURYSDYKCJE KRAJOWE – PRZYPADK LUDOBÓJSTWA**

**Abstrakt:** Artykuł przybliży wstępne badania nad przeniesieniem prawnej koncepcji ludobójstwa na 113 jurysdykcji. W pierwszej części uwzględni się uwarunkowania tego przeniesienia w systemach karnych jak i powiązań z międzynarodową definicją prawną ludobójstwa. Przeanalizowano sytuacje komunikacyjne, w których uwypuklił się koncept ludobójstwa by ukazać ich zakres i rozległość jak i określić, w jakim stopniu przyczyniły się one do przeformułowania koncepcji ludobójstwa. Ustalenia wskazują na sytuację, w której pomimo ludobójstwa na szczeblu międzynarodowym

koncepcja ludobójstwa została przekształcona przez wachlarz krajowych języków prawnych i systemów prawnych, do których została transponowana, a tym samym wzmocniła relację między konfiguracją języka i prawa a trudnością tłumaczenia.

**Słowa kluczowe:** tłumaczenie prawne i prawnicze; juryslingwistyka; transpozycja; międzynarodowe prawo karne; ludobójstwo.

## **Introduction: From the International Legal Definition of Genocide to Its Domestic Versions<sup>1</sup>**

The legal concept of genocide<sup>2</sup> has evolved in a process that involves three major phases: creation of the legal concept by the international community, transposition of the international concept into national legal languages and systems by means of translation, and interpretation of the concept by national courts. In this article, the focus will be on the first two phases. The concept as created by the international community will be presented as the source text. It is followed by an overview of domestic definitions of genocide (target texts) in 131 national jurisdictions, along with key contextual aspects underlying their domestic transposition and potentially affecting the global concept. Relations between contextual aspects and shifts will be drawn in order to substantiate if and to which extent context affects the transposition and translation process and its results. Foremost, the paradigm of transposition and translation of the concept of genocide is briefly contextualised.

The production of multilingual international legal texts and their transposition into domestic systems fall under the scope of legal translation (Prieto Ramos 2011: 204). Even if its role is often downplayed if not squarely ignored (Öner and Banu Karadağ 2016: 334), legal translation is a key component of the negotiation between

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<sup>1</sup> The author wishes to thank Fernando Prieto Ramos and Jean-Claude Gémard for their significant suggestions on earlier drafts of this paper.

<sup>2</sup> For the purpose of this study on the large-scale and self-reliant transposition of the concept of genocide and its subsequent effects on the meaning of genocide, the concept of genocide is confined to the field of law.

the international language and law, on the one hand, and national languages and laws on the other hand (Šarčević 1997: 64).

Legal translation is a ‘special and specialised area of translation activity’ (Cao 2007: 7) and it is generally admitted that it differs from ‘general’ translation in three main aspects (Cao 2007; Gémar 1995a; Harvey 2002; Šarčević 1997): 1) specificities of text-type and genre (Prieto Ramos 2014a), 2) functions of legal texts (Dullion 2007; Nord 1991); and 3) legal meaning being conveyed (Cornu 2005). All these aspects are closely related and

“what matters most for legal translation is the characterization of groups of texts corresponding to specific varieties or styles of legal language, and this is generally a question of text producers and purposes in communicative situations” (Prieto Ramos 2014a: 263).

In the case of the transposition of the legal concept of genocide into 131 national jurisdictions, text-type and function are stable. At the national level, the concept of genocide is transposed in legislative texts (i.e. in a criminal code or an implementation law) whose function is instrumental (Nord 1991). Target texts are of the same type and share the same function as the source text. Given their stability in the context at hand, text-type and function have been discarded from our study as they do not provide insight into how and why the concept of genocide evolves. Instead, the focus is placed on legal meaning conveyed and contexts of implementation.

Šarčević points that for many, translation mainly consists in ‘transcoding a message from one language into another, whereby the primary goal was to preserve the meaning of the message’ (1997: 55). In legal translation, the message is made up of the text, but also, of equal importance, of the intent (1997: 55) and because ‘a text derives its meaning from one or more legal systems, legal translation is essentially a process of translating legal systems’ (1997: 229). If many strategies are readily available to transcode the text and the intent from one legal system to another, that historically span from a strictly literal approach to a co-drafting approach (1997: 24), ‘[n]o translation technique is a priori more adequate than another’ (Prieto Ramos 2014b: 124). In a given context and for a given task, the adequate strategy will be determined through a thorough analysis of legal pragmatic considerations, including the communicative

situation and macro-context (2014b: 122–23).

This study covers 131 domestic definitions of genocide. It is thus not realistic to perform a thorough analysis of all legal aspects involved in each context of implementation. Yet, in order to contribute to our understanding of the scope and breadth of contexts in which the definition of genocide has been transposed, two aspects have been identified in each domestic context: legal language and legal system.

It is generally accepted that the configuration of language and law has direct consequences on the degree of difficulty of translation (e.g. Gémar 2002b: 168; de Groot 1987: 798–800; Tabory 1980: 146; Wagner and Gémar 2015: 2). For instance, de Groot identifies five degrees of difficulty of legal translation based primarily on the extent of affinity between legal systems and secondarily on the extent of affinity between legal languages: 1) legal systems and legal languages closely related (easy); 2) legal systems closely related and few similarities between legal languages (somewhat easy); 3) within a uniform system (somewhat easy); 4) different legal systems and hardly related legal languages (difficult); 5) different legal systems and linguistically related legal languages (very difficult) (1987: 798–800). Another example is Gémar's classification of legal translation based on cultural, linguistic and legal aspects: 1) unilingual States with one legal system (e.g. Brazil, France, Mexico, Netherlands); 2) two or more legal languages with one legal system (e.g. Switzerland); 3) two or more legal languages and legal systems (e.g. Belgium, Canada, India) (2002: 168). All in all, the configuration of the law and the language has to be taken into account as it may condition the transformation of the legal meaning from the source text to target texts, particularly when the concept is the subject of universal transposition through multiple system-bound channels, rather than as part of a single institutional translation process of a unique instrument.

## 1. Source Text: International Legal Definition of Genocide

The legal concept of genocide has been chosen as the source text for this study for three main reasons: it is stable, it is relatively new and it is defined.

The term and the concept of genocide were coined by the Polish-Jewish lawyer Raphael Lemkin. In *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (1944), he proposed the following definition of genocide:

“A co-ordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.” (1944: 79)

Lemkin’s definition served as one the foundations of the *Convention on the Prevention and Punishment of the Crime of Genocide* adopted in 1948,<sup>3,4</sup> which encompasses the first legal definition of genocide:

### *Article II*

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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<sup>3</sup> Adopted by the United Nations General Assembly Resolution 260 (III) on 9 December 1948 (retrieved from: [https://treaties.un.org/doc/Treaties/1951/01/19510112%2008-12%20PM/Ch\\_IV\\_1p.pdf](https://treaties.un.org/doc/Treaties/1951/01/19510112%2008-12%20PM/Ch_IV_1p.pdf), accessed 13 February 2019).

<sup>4</sup> As of today, there are 151 State parties to the Convention and 41 signatories (UN Treaty Collection, Convention on the Prevention and Punishment of the Crime of Genocide. Paris, 9 December 1948, retrieved from: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_en), accessed 26 June 2019).

- (a) Killing members of the group;
  - (b) Causing serious bodily or mental harm to members of the group;
  - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - (d) Imposing measures intended to prevent births within the group;
  - (e) Forcibly transferring children of the group to another group.
- (*Convention for the Prevention and Punishment of the Crime of Genocide*, art. II)

Despite frequent calls for amendments (Schabas 2010: 536 - 40), the international community has agreed upon the definition of genocide numerous times and over time. Indeed, the international community has reused, *verbatim* or with limited changes, the Genocide Convention definition in numerous treaties<sup>5</sup>, including 50 years later in the *Rome Statute of the International Criminal Court*<sup>6</sup>. Given its stability at the international level, it can be expected that the concept of genocide will suffer limited shifts when translated into national legal languages and legal systems.

Ever since the adoption of the Genocide Convention, 131 States have integrated the definition of genocide into their criminal system in order to exercise jurisdiction over such crime, and it has been applied in more or less 40 cases around the world (Rikhof 2009: 26–38). Hence, given its relative novelty and limited application thus far, it is still feasible to explore the meaning of genocide in all its national forms and in its entire scope, from its genesis to its finality.

The fact that the concept of genocide has been defined is another important factor. Besides providing textual boundaries in which to observe shifts (Chesterman 2005: 26), legal definitions are yet another guardian of meaning stability. Generally speaking,

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<sup>5</sup> Notably in the *Updated Statute of the International Criminal Tribunal for the Former Yugoslavia* (adopted by the United Nations General Assembly Resolution 955 of 8 November 1994, art. 3, retrieved from: <http://www.legal-tools.org/doc/b4f63b/>, accessed 8 December 2018) and the *Statute of the International Criminal Tribunal for Rwanda* (adopted by the United Nations General Assembly Resolution 827 of 25 May 1993 and as amended by Resolution 1877 of 7 July 2009, art. 4, retrieved from: <http://www.legal-tools.org/doc/8732d6/>, accessed 8 December 2018).

<sup>6</sup> Adopted at the Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998 (retrieved from: <http://www.legal-tools.org/doc/7b9af9/>, accessed 14 February 2019).

legal definitions ‘promote clarity by reducing indeterminacy and help achieve consistency’ (Šarčević 1997: 153). As far as their translation is concerned, legal definitions leave little room for creativity (1997: 158). As for legal definition of international crimes, including genocide, they are regarded as ‘hard rule’<sup>7</sup> that are universal in application (Van Sliedregt 2012:854) and scholars in the field of law recommend to ‘align to, or even incorporate, the (*exact*) definition of international crimes’ (2012: 849–50).

The assumption is that if this stable, new and well-defined concept is no longer universal in its domestic forms, a much greater transformation of other international concepts transposed at the national level could be inferred by extrapolation. In sum, the Genocide Convention contains the original meaning of genocide as agreed upon by the international community. It is the source text against which domestic definitions of genocide are being compared.

## **2. Target Texts: Domestic Definitions of Genocide**

In 2012, Amnesty International (AI) reported to the Sixth (Legal) Committee of the United Nations (UN) General Assembly that 118 UN Member States (out of the 193) had implemented the definition of genocide into their national criminal law (2012: 13). In order to have an accurate picture of the current state of implementation of the definition of genocide, we reviewed the criminal law of the 75 UN Member States that had not transposed the definition in 2012. As of November 2018, a total of 131 States have criminalised genocide. Below is a list of those States.

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<sup>7</sup> As opposed to soft rules, forum-specific norms and national rules: “The first tier of ICL [international criminal law] contains ‘hard’ rules that are universal in application, e.g., crime definitions. The second tier relates to so-called forum-specific norms, e.g., distinct rules of procedure and evidence. The third category of ICL concerns the general part of domestic law where ICL, rather than imposing a single uniform approach, allows and constrains a ‘margin of state discretion to apply local law to the prosecution of ICL offences’. The fourth tier consists of ‘default ICL’ in case there is no appropriate or available domestic law to apply. [...] Universality is found in the core of universally binding law.” (Van Sliedregt 2012: 854)

Table 1. List of States that have transposed the definition of genocide<sup>8</sup>.

Albania	Cyprus	Kyrgyzstan	<b>Samoa</b>
Andorra	Czechia	Latvia	<b>Senegal</b>
<b>Ant. and Barb.</b>	Denmark	<b>Lesotho</b>	Serbia
<b>Argentina</b>	<b>Djibouti</b>	Liechtenstein	<b>Seychelles</b>
Armenia	<b>Dominica</b>	Lithuania	<b>Singapore</b>
<b>Australia</b>	<b>Dom. Rep.</b>	<b>Luxembourg</b>	Slovakia
Austria	<b>Ecuador</b>	Macedonia	Slovenia
Azerbaijan	<b>El Salvador</b>	<b>Mali</b>	<b>Solomon Isl.</b>
<b>Bahamas</b>	Eritrea	<b>Malta</b>	<b>South Africa</b>
Bangladesh	Estonia	<b>Mauritius</b>	South Korea
<b>Barbados</b>	Ethiopia	<b>Mexico</b>	<b>Spain</b>
Belarus	<b>Fiji</b>	Moldova	Sudan
<b>Belgium</b>	Finland	Mongolia	Suriname
<b>Belize</b>	<b>France</b>	Montenegro	Sweden
<b>Bolivia</b>	Georgia	<b>Nauru</b>	<b>Switzerland</b>
B. and Herz.	Germany	Netherlands	Tajikistan
Brazil	<b>Ghana</b>	<b>New Zealand</b>	Timor-Leste
Bulgaria	Greece	<b>Nicaragua</b>	<b>Togo</b>
<b>B. Faso (x2)</b>	<b>Grenada</b>	<b>Niger</b>	<b>Tonga</b>

<sup>8</sup> State names as per ISO 3166-1 (retrieved from: <https://www.iso.org>, accessed 22 June 2018).

<b>Burundi (x2)</b>	<b>Guatemala</b>	Norway	<b>T. and Tobago</b>
Cabo Verde	<b>Guinea</b>	Oman	Turkey
Cambodia	Guinea-Bissau	<b>Panama</b>	Turkmenistan
<b>Canada (x2)</b>	<b>Honduras</b>	<b>P. New Guinea</b>	<b>Tuvalu</b>
<b>C. African Rep.</b>	Hungary	<b>Paraguay</b>	<b>Uganda</b>
<b>Chad</b>	Indonesia	<b>Peru</b>	Ukraine
<b>Chile</b>	Iraq	<b>Philippines</b>	UAE
<b>Colombia</b>	<b>Ireland</b>	Poland	<b>UK</b>
<b>Comoros</b>	Israel	Portugal	<b>United States</b>
<b>Congo</b>	Italia	<b>Rep. D. Congo</b>	<b>Uruguay</b>
<b>Costa Rica</b>	<b>Jamaica</b>	Romania	Uzbekistan
<b>Côte d'Ivoire</b>	Kazakhstan	Russian Fed.	Viet Nam
Croatia	<b>Kenya</b>	<b>Rwanda (x2)</b>	<b>Zimbabwe</b>
<b>Cuba</b>	<b>Kiribati</b>	<b>Saint Lucia</b>	

The group of 71 States marked in bold forms the corpus of this study, which accounts for a total of 75 domestic definitions of genocide<sup>9</sup>. This corpus has been drawn solely on the basis

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<sup>9</sup> There are two definitions for Burkina Faso, Burundi, Canada and Rwanda. Burkina Faso and Burundi have two definitions of genocide in force (Burkina Faso: *Loi N° 043/96/ADP du 13 Novembre 1996 portant Code pénal*, art. 313 and *Loi N° 052-2009/An du 03 décembre 2009 portant détermination des compétences et de la procédure de mise en œuvre du Statut de Rome relatif à la Cour pénale internationale par les juridictions Burkinabè*, art. 16; Burundi: *Loi N° 1/05 du 22 avril 2009 portant révision du code pénal*, art. 195 and *Loi n° 1 / 004 du 08 mai 2003 portant répression du crime de génocide, des crimes contre l'humanité et des crimes de guerre*, art. 2). Canada has a French and an English

of a language criterion. It is justified by practical reason, but also concealed strategic motives.

The method calls for the investigation of the concept in its natural languages<sup>10</sup>. It is not realistic to expect sufficient knowledge of the 76 languages in which the definition of genocide has potentially been translated into. Therefore, the corpus of national definitions comprises only legal definitions translated into official languages in which we are proficient: English, French and Spanish.

Those 3 languages are prevalent in the overall state of implementation of the definition of genocide. Amongst the 176 potential definitions of genocide in force in the world today,<sup>11</sup> almost half of them (42.6%) are written in English, in French or in Spanish. As shown in the figure below, they are the only 3 languages with a high occurrence level in the overall state of implementation of the definition of genocide.

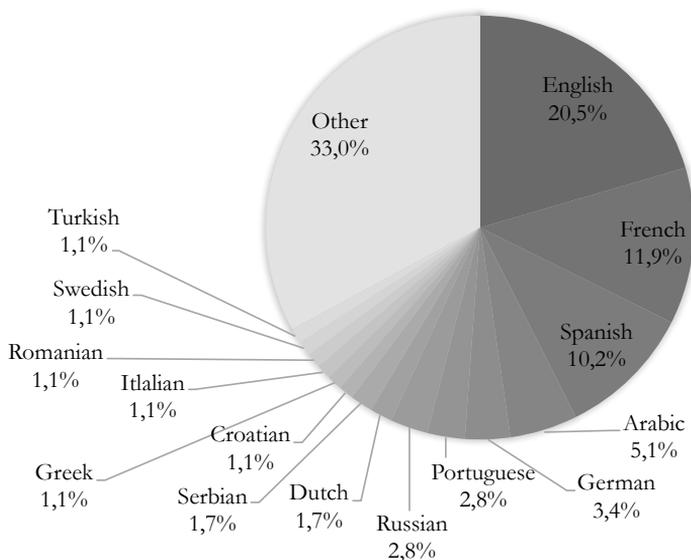
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definition (*Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, para. 4(3)). Two of the three official languages of Rwanda are English and French (*No. 01/2012/OL of 02/05/2012, Organic Law instituting the penal code*, art. 114). Like Canada, Mauritius is bilingual English and French, but it has not translated its definition into French (*Act No. 27 of 2011, The International Criminal Court Act*, Schedule Part II). Like Rwanda, Seychelles is trilingual with English and French as two of its official languages, but its definition of genocide is only available in English (*Genocide Act 1969 (Overseas Territories) Order, 1970 (updated through June 2012)*, Schedule to the Genocide Act).

<sup>10</sup> This study is focused on official languages as reported by Juriglobe (retrieved from: <http://www.juriglobe.ca>, accessed 9 March 2018). Any domestic definition in non-official language (for instance translation into English for information purpose [e.g. Switzerland <https://www.admin.ch/gov/en/start/federal-law/classified-compilation.html>, accessed 13 February 2019]) has been discarded given that they have no legal force and can not be interpreted by national courts.

<sup>11</sup> Assuming that all unilingual States have one legal definition of genocide, that all bilingual States have two legal definitions of genocide, and so on. However, as seen for Mauritius and Seychelles (infra. 6), it is possible that States do not use all of their official languages in their legislative activities, hence the expression 'potential definitions of genocide in force in the world today'.

Figure 1. Languages of the 176 potential definitions of genocide worldwide.



Not only are those languages salient, but they are also highly visible. They rank on the top 3 of the global Calvet Barometer and amongst the top 6 on both scales of source language and target language for translation<sup>12</sup>. Regarded as *lingua franca* in legal activities, they also have an historical value (Mattila 2012: 38). English and French are the official working languages of numerous international organisations (2012: 40), and are sometimes considered to be ‘more equal’ than other languages (2012: 44). As for Spanish, it is an official language of most intergovernmental institutions and it accounts for an extended linguistic community (2012: 52).

These 3 languages provide a basis for comparative analysis within the ‘same’ language. Indeed, the source text has been adopted in all UN languages, including English, French and Spanish. The transposition process qualifies as intralingual (Jakobson 1959: 233), which corresponds to the highest degree of difficulty on de Groot’s scale (different legal systems and *linguistically related legal languages* [very difficult]) (1987: 800).

Despite their similarities or common origin (Mattila

<sup>12</sup> Retrieved from: <http://wikilf.culture.fr/barometre2012/>, accessed 13 February 2019.

2012: 177), legal languages are rarely identical. Legal French of France is not identical to that of Canada or Burkina Faso. The same scenario applies to legal systems. If it is true that former or actual territorial dependencies have adopted, to some extent, the legal system of settlers, they have also retained part of their customary law and intertwined them in such ways that the result is inextricable (Scassa 1997: 251–54). It also holds for any movement of the law across boundaries, for instance the German Civil Code adopted by China, Greece and Japan; the literal application of the Swiss Civil Code in Turkey; the adoption of the Code de Napoléon in all conquered territories, etc. (Öner and Banu Karadağ 2016: 336, note 4). As law is a social phenomenon (Šarčević 1997: 13), it is bound to grow apart from its origin (Gémar 1995b: 31) and to acquire its ‘own life’ (Sirois 2000: 538). As a result, legal languages and systems are unique and scarcely sustain no harm when crossing linguistic and legal boundaries (Gémar 2008: 327).

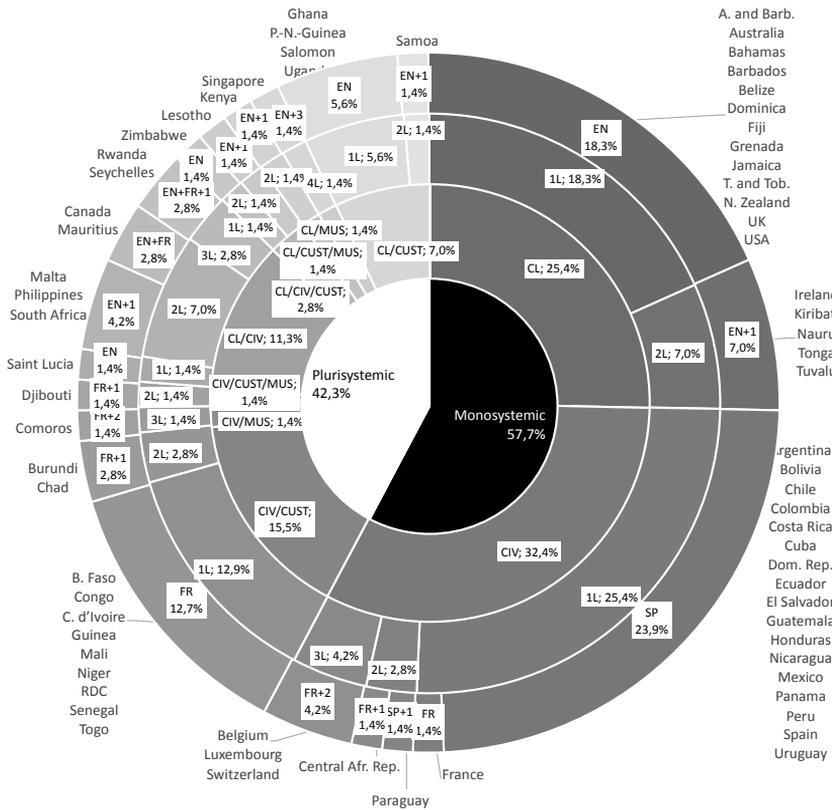
In sum, the paradigm at hand potentially accounts for 131 unique configurations of language and law, which is ultimately more important in the determination of the representativeness of the corpus than any other factor. A lack of diversity would only provide insights into how the concept of genocide has shifted when transposed into a few contexts (e.g. group of civil law or unilingual States), whereas highly diverse contexts of implementation provides a better picture of the extent to which it might evolve when transposed worldwide. In determining the representativeness of the corpus, the emphasis has therefore not been so much on the need to represent each and all linguistic and legal systems accurately, but rather on the need to include the broadest range of communicative situations.

All in all, the language criterion is strategic in the sense that it focuses the analysis on high occurrence languages with high visibility whilst providing a basis for intralingual comparison in a very diverse set of contexts. And ultimately, that is why the limitation of three languages is not so much an obstacle after all.

### 3. Diversity of Language and Law Configurations

The diversity of the corpus in terms of legal and linguistic configurations covered is illustrated in the figure below.

Figure 2. Communicative situations of the corpus<sup>13,14</sup>.



<sup>13</sup> The following abbreviations are used in the figure: CL (common law), CIV (civil law), CUST (customary law), MUS (Muslim law), 1L (unilingual), 2L (bilingual), 3L (trilingual), 4L (quadrilingual), EN (English), FR (French) and SP (Spanish).

<sup>14</sup> Percentages have been calculated per level (per circle) and rounded so that there are slight discrepancies from one level to the next (e.g. in the third circle, 9 States CIV/CUST+1L equals 12.9% and in the fourth circle, 9 States of CIV/CUST+1L/FR = 12.7%).

In the middle circle, the corpus of 71 States is divided into 2 groups: monosystemic States and plurisystemic States. There are slightly more monosystemic States (57.7%) than plurisystemic States (42.3%).

The second circle further divides the primary groups by type of legal system. On the right side, monosystemic States are divided in two groups: the CIV tradition with 23 States (32.4%) and the CL tradition with 18 States (25.4%). On the plurisystemic side, a first section clusters States that have a mixed legal system influenced in part by CIV. They primarily belong to the CIV/CUST group (15.5%). A second section accounts for States with a mixed legal system influenced in part by CL, including 5 States with a CL/CUST system (7%). The last plurisystemic section accounts for States with a mixed legal system influenced by both CL and CIV traditions: 8 out of 10 States of that group have a CL/CIV system (11.3%). In sum, there are 3 major trends related to legal systems: 1) CIV (32.4%); 2) CL (25.4%); 3) CIV/CUST (15.5%).

The third circle indicates the language situation. More precisely, it indicates if States have 1, 2, 3 or 4 official languages. Overall, there are 46 unilingual (64.8%), 18 bilingual (25.4%), 6 trilingual (8.5%) and 1 quadrilingual (1.4%) States. It comes to no surprise that the dominant group in 4 out of 5 legal situations is unilingual: 25.4% of the CIV group are unilingual; 18.3% of the CL group; 12.9% of the CIV/CUST group; and 5.6% of the CL/CUST group. The only exception is the group of plurisystemic States with both CL and CIV influence: 8 out of 10 States are bilingual (7%). In sum, there are 3 major trends related to the configuration of the legal and linguistic situations: 1) CIV+1L (25.4%); 2) CL+1L (18.3%); 3) CIV/CUST+1L (12.9%).

The external circle indicates the distribution of the 3 languages retained (EN, FR and SP). States from the monosystemic CL group and the plurisystemic group composed in part of CL are heavily influenced by the EN language (18.3% and 5.6% respectively). To some extent, the EN language is also salient in the plurisystemic group of States with both CL and CIV influence: 2 unilingual EN (2.8%), 4 bilingual EN+1 (5.6%), 2 bilingual EN+FR (2.8%) and 2 trilingual EN+FR+1 (2.8%) States. On the opposite side, the group of monosystemic CIV States are influenced by the SP language (23.9%). Lastly, French is salient

in the plurisystemic group of States with CIV influence: 9 unilingual FR (12.7%), 3 bilingual FR+1 (4.2%) and 1 trilingual FR+2 (1.4%) States. In sum, the overall trends related to the configuration of EN, FR and SP by legal and linguistic situations are: 1) CIV+1L/SP (23.9%); 2) CL+1L/EN (18.3%); and 3) CIV/CUST+1L/FR (12.7%).

The figure shows that, despite being limited to 3 languages, the corpus provides 3 clusters of States with similar linguistic and legal configurations, as well as 18 less frequent or ‘marginal’ configurations, including 14 configurations limited to 1 or 2 States.

#### 4. Identification of Shifts in Target Texts

To explore the transposition and translation process and its effects, shifts have been identified in target texts, along with their effect on the meaning (broader, constraint or no effect on meaning). Two examples of domestic definitions are provided below. Objects of shifts are underlined, and are followed by a label in-between brackets identifying its effect and classification as follows: + (broader meaning), – (constraint meaning) and Ø (no effect on meaning)<sup>15</sup>, LEG (conceptual shift), LEX (lexical shift), SYN (syntactic shift) and STY (stylistic shift). Numbers following each label refer to Table 1 (following examples) which provides a brief description of each shift.

##### Source Text 1. Lesothan Definition of Genocide.

art. 93. A person [–SYN1] [ØSTY2] commits an offence of genocide [ØLEX3] if [–STY4] by his or her [ØSTY5] act [ØSYN6] or omission [+LEG7] he or she commits [–STY8] any of the following acts with intent to destroy, in whole or in part, a national, ethnic [ØLEX9], racial, religious group or any other identifiable group [+LEG10] [+LEG11] -- [ØSTY12]

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<sup>15</sup> Effects are determined in the context of the domestic text and legislation. For instance, in the Lesothan example (1), the third shift (genocide → offence of genocide) has no effect on the global meaning of genocide. On the contrary, the seventh shift (act → act or omission) expands the concept because in the original definition (or other dispositions of the text in which it is defined) does not provide explicitly for the possibility of genocide to be committed by omission.

- (a) **k**illing [ØSTY13] members of the group;
  - (b) **c**ausing serious bodily or mental harm to members of the group;
  - (c) **d**eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - (d) **i**mposing measures intended to prevent births within the group;
  - and** [-STY14]
  - (e) **f**orcibly transferring children of the group to another group.
- (Act No. 6 of 2012, Penal Code Act, 2010, art. 93)

Source Text 2. South African Definition of Genocide.

Part 1: GENOCIDE:

‘genocide’ means any of the following **conduct** [ØLEX1] [ØSYN2] committed with intent to destroy, in whole or in part, a national, **ethnic** [ØLEX3], racial or religious group, as such:

- (a) **K**illing members of the group;
  - (b) **c**ausing [ØSTY4] serious bodily **harm** or mental **harm** [-STY5] to members of the group;
  - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - (d) imposing measures intended to prevent births within the group;
  - or** [+STY6]
  - (e) forcibly transferring children of the group to another group.
- (No. 27 of 2002: Implementation of the Rome Statute of the International Criminal Court Act, 2002, vol. 445, Cape Town 18 July of 2002, art. 1)

Table 2. Brief explanation of shifts identified in Lesothan and South African definitions of genocide.

<i>Lesotho</i>	<i>South Africa</i>
[-SYN1] acts committed → persecutor commits	[ØLEX1] act → conduct
[ØSTY2] focus on act → focus on persecutor	[ØSYN2] singularisation
[ØLEX3] genocide → offence of genocide	[ØLEX3] ethnical → ethnic
[-STY4] statement → condition	[ØSTY4] uppercase → uppercase and lowercase
[ØSTY5] no gender → male or female persecutor	[-STY5] harm → harm and harm
	[+STY6] act1; act2; act3; act4; act5 → act1; act2; act3; act4; or act5]

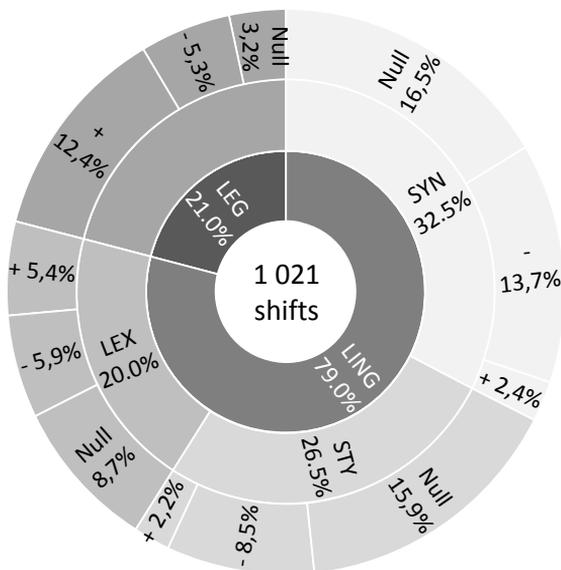
<p>[ØSYN6] singularisation</p> <p>[+LEG7] acts → act or omission</p> <p>[-STY8] acts committed → a person commits if he or she commits</p> <p>[ØLEX9] ethnical → ethnic</p> <p>[+LEG10] national, ethnical, racial or religious criterion → or any other identifiable group</p> <p>[+LEG11] as such → Ø</p> <p>[ØSTY12] colon → m-dash</p> <p>[ØSTY13] uppercase → lowercase</p> <p>[-STY14] act1; act2; act3; act4; act5 → act1; act2; act3; act4; and act5</p>	
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## 5. Trends: Object and Effect of Shifts in Translation

A total of 1,021 shifts and their effect have been identified in the corpus of 75 definitions. Such data provide insight into diverse phenomena, including translation trends, object of shifts and movement of the meaning. In other words, they show how the concept has been modified, what has been modified (the form or the substance) and the effect of those modifications on the meaning (broader, constraint or stable meaning).

For example, Figure 3 shows the distribution of shifts by object and effect.

Figure 3. Distribution of shifts by object and effect on meaning<sup>16</sup>.



Amongst the 1,021 shifts, 21% (214) are LEG shifts and 79% are LING shifts, including LEX, SYN and STY shifts. For every LEG shift, there are more than 3 LING shifts. LING shifts are further divided by components: 20% of the 1,021 shifts are related to LEX, 32.5% to SYN and 26.5% to STY. The proportion of LEG shifts (21%) is similar to that of LEX shifts (20%) and overall there are slightly more SYN (32.5%) and STY (26.5%) shifts.

In the outskirts circle, we distributed shifts by effect. Almost half of all shifts have no effect (all 'Null' sections) on the meaning (44.3%). Shifts with constraining effect (all '-' sections) cover 33.4% of all shifts and the remaining 22.3% broaden the meaning (all '+' sections).

Most LEG shifts have a broadening effect (12.4%) and very few of them have no effect (3.2%). On the opposite side, most SYN and STY shifts have no effect (16.5% and 15.9% respectively) and fewer have an expanding effect (2.4% and 2.2% respectively).

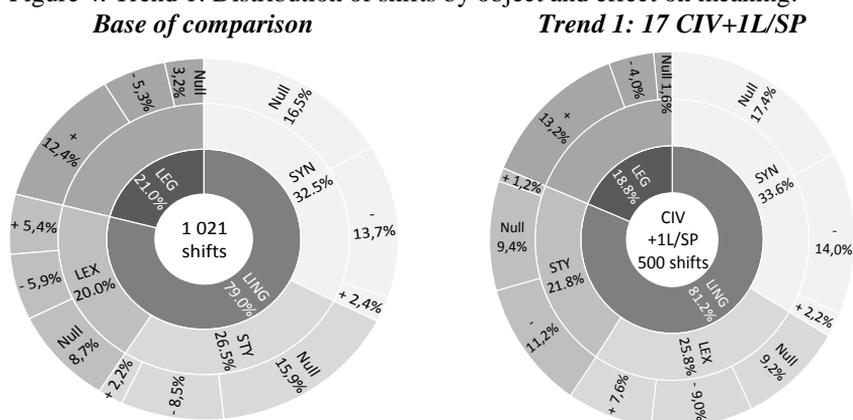
<sup>16</sup> The following abbreviations are used in this figure and the followings: LEG (legal shift), LING (linguistic shift), LEX (lexical shift), SYN (syntactic shift) and STY (stylistic shift), + (broadening effect), - (constraining effect) and Null (no effect).

As for LEX shifts, there are slightly more shifts without effect, but the distribution is more equal: 8.7% without effect, 5.9% with a constraining effect and 5.4% with a broadening effect.

## 6. Trends: Object and Effect of Shifts by Context

In the next figures, data on shifts and effect observed in the 3 dominant groups of States (as reported in Figure 2, that is: CIV+1L/SP; CL+1L/EN; CIV/CUST+1L/FR) are compared against the overall distribution of shifts by object and effect on meaning (Figure 3).

Figure 4. Trend 1: Distribution of shifts by object and effect on meaning.



Generally speaking, this group replicates trends identified in the overall account. Perhaps to some extent, this group of 17 States defines those general trends. Indeed, the only significant discrepancy is related to STY shifts. In the overall account, most STY shifts had no effect on the meaning (15.9%), whereas in trend 1, STY mostly have a constraining effect (11.2%).

What is more surprising thus is the number of shifts in trend 1. Indeed, this group represents 22.6% of the corpus (17 definitions out of 75), yet it covers 49% of all shifts identified (500 shifts out of 1,021). There is an average 29 shifts per definition, compared to 13.6 for the base of comparison.

Given this high number of shifts, we conclude that this group of States has largely and for the most part adapted the definition of genocide<sup>17</sup>.

Figure 5. Trend 2: Distribution of shifts by object and effect on meaning.



This second group of States represents 17.3% of the corpus (13 definitions out of 75). We identified 87 shifts<sup>18</sup> for an average of 6.7 shifts per definition. It is a significant drop from the average number of shifts per definition set at 13.6 for the base of comparison and that of the previous trend (29).

This group follows more or less the first level of division (LEG and LING), but in the LING breakdown, we observe fewer SYN shifts (-10.7 points) and more LEX and STY shifts (+5.3 and +9.1 points, respectively).

At the effect level (external circle), it is worth mentioning that 60.9% of all shifts have no effect (all 'Null' sections). They are dominant in all groups of shifts, except in the SYN group, where there is a tied with shifts with constraining effect (10.3%). Additionally, it is worth noting that most LEG shifts have no effect

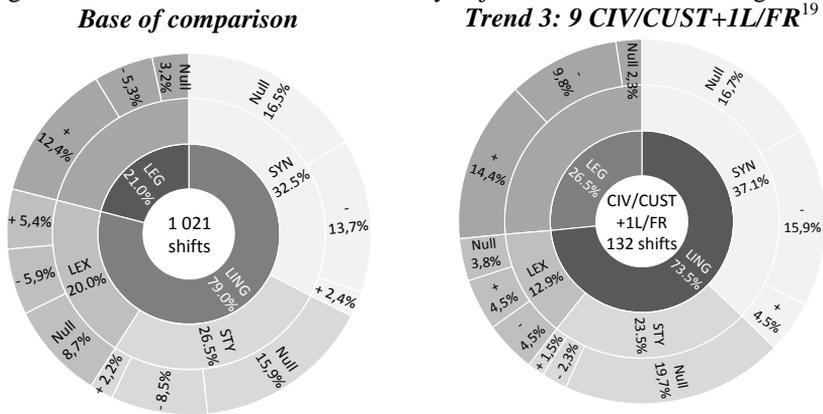
<sup>17</sup> With the exception of Argentina – two shifts (*Ley 26.200, Corte Penal Internacional, 13 de diciembre 2006, art. 2*) and the Dominican Republic – no shift (*Código Procesal Penal de la República Dominicana, as amended, July 19, 2002, art. 49*).

<sup>18</sup> It is worth noting thus that 26 of the 87 shifts are contained in the definition of the United States (*Genocide Convention Implementation Act of 1948, as amended. 18 U.C.S., §1091*).

(9.2%), whereas in the overall perspective, there are very few LEG shifts without effect (3.2%).

Overall, we could conclude that this group has integrated a fair number of shifts, but that a vast majority do not have any effect on the meaning.

Figure 6. Trend 3: Distribution of shifts by object and effect on meaning.



In this last analysis, we identified 132 shifts in 10 definitions<sup>20</sup>. It is an average of 13.2 shifts per definition, which is similar to the overall average (13.6). At the first level (LEG and LING), we observe an increased number of LEG shifts (+6.5 points), which translated primarily by an increased number of LEG shifts with constraining effect (+4.1 points). On the LING side, there are fewer LEX shifts (-7.1 points), slightly fewer STY shifts (-3 points) and more SYN shifts (+4.6 points).

On the effect side, 42.5% of all shifts have no effect (all ‘Null’ sections), 32.5% have a constraining effect (all ‘-’ sections) and 24.9% have an expanding effect (all ‘+’ sections), which corresponds to the base of comparison. Nonetheless, we identified slightly fewer SYN shifts with a constraining effect (-2.2 points),

<sup>19</sup> There are nine States, but ten definitions because of Burkina Faso (see note 13).

<sup>20</sup> Two of the nine definitions cover 31 and 26 shifts respectively: *Loi N° 043/96/ADP du 13 Novembre 1996 portant Code pénal*, art. 313 (Burkina Faso) and *Loi N° 2003-025 du 13 juin 2003 modifiant la loi N° 61-27 du 15 juillet 1961, portant institution du Code Pénal*, art. 281.1 (Niger).

fewer LEX shifts without effect (-4.9 points), much less STY shifts with a constraining effect (-6.2 points) and an increased number of STY shifts without effect (+4.2 points).

Overall, this group stands somewhere in between a literal approach (i.e. fewer LEX shifts) and an adaptation approach, including a significant increase of LEG shifts with constraining effect.

## **Concluding Remarks**

As highlighted by the analysis of the preliminary results of our study on the transposition of the legal concept of genocide into 131 national jurisdictions, the recommendation for an ‘exact’ integration of the crime of genocide (‘exact’ alignment [Van Sliedregt 2012: 849 -50]) is by no means the rule. Preliminary results demonstrate the scope and complex dimensions of the large-scale self-reliant transposition and translation process of the concept of genocide into domestic legal languages and systems and its effects on the global concept of genocide. By coupling shifts, effects and communicative situations, translational trends will be further analysed, taking into account specific political factors that may influence translational decisions, and the question of how judges will interpret domestic definitions and deal with discrepancies. Only then will we be able to know with more precision how, why and to which extent States have collectively transformed the meaning of genocide, which they have in principle all agreed upon.

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**FACING TRANSLATION ERRORS  
AT INTERNATIONAL ORGANIZATIONS:  
WHAT CORRIGENDA REVEAL ABOUT  
CORRECTION PROCESSES  
AND THEIR IMPLICATIONS  
FOR TRANSLATION QUALITY**

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**Abstract:** Corrigenda issued by international organizations provide a most relevant source for the analysis of translation errors and what they reveal about institutional translation quality control and correction processes. This study examines corrigenda published in three settings (the European Union institutions involved in law-making, the United Nations and the World Trade Organization) in three years over a decade: 2005, 2010 and 2015. It reviews the procedures used to introduce translation corrections in these institutions

before presenting the results of the quantitative and qualitative analysis of translation-triggered corrigenda in two target languages, French and Spanish, per setting, year, genre, error type and severity. A distinction is made between content reformulation corrections and minor formal corrections for the comparison of diachronic changes and semantic impact levels of corrected errors between the institutions considered. The findings confirm that minor formal errors may have meaning-distorting effects that are as serious as content reformulation errors; when this is not the case, they rarely trigger single-correction corrigenda. The UN recourse to “reissues for technical reasons” for translation corrections and the growing number of corrigenda to EU legal acts and their implications for translation quality assurance and legal certainty are further contextualized and discussed drawing on both corpus analysis and consultations with institutional informants.

**Keywords:** corrigenda; translation errors; translation corrections; translation quality assurance; institutional translation; international organizations; EU institutions; legal certainty.

#### **W OBLCZU BŁĘDÓW TŁUMACZENIOWYCH W INSTYTUCJACH MIĘDZYNARODOWYCH: CO SPROSTOWANIA MÓWIĄ O PROCESIE DOKONYWANIA POPRAWEK I ICH WPLYW NA JAKOŚĆ PRZEKŁADU**

**Abstrakt:** Sprostowania wydawane przez organizacje międzynarodowe stanowią najistotniejsze źródło analizy błędów w tłumaczeniu oraz tego, co ujawniają na temat instytucjonalnej kontroli jakości tłumaczeń i procesów korekty. W niniejszym badaniu przeanalizowano sprostowania opublikowane przez trzy instytucje (Unię Europejską zaangażowaną w stanowienie prawa, ONZ i Światową Organizację Handlu) na przestrzeni dekady w latach: 2005, 2010 i 2015 r. Najpierw dokonano przeglądu procedur zastosowanych do wprowadzenia poprawek do tłumaczeń w tych instytucjach. Następnie przedstawiono wyniki analizy ilościowej i jakościowej sprostowań tłumaczeń w dwóch językach docelowych, francuskim i hiszpańskim, według instytucji, roku, gatunku, rodzaju błędu i jego wagi. Wprowadzono rozróżnienie między zmianami wpływającymi na treść komunikatu a drobnymi poprawkami formalnymi w celu porównania zmian diachronicznych i rodzaju zmian semantycznych, wynikających z korekty błędów wprowadzanych przez poszczególne instytucje. Ustalenia potwierdzają, że drobne błędy formalne mogą mieć równie poważne skutki, zniekształcające znaczenie, jak błędy zmieniające treść komunikatu; w wypadkach odmiennych rzadko dochodzi do wydania jakiegokolwiek sprostowania błędu. Autor kontekstualizuje i omawia podejście ONZ do „ponownego publikowania z przyczyn technicznych tekstów” uwzględniających poprawione błędy tłumaczeniowe

oraz rosnącą liczbę sprostowań aktów prawnych UE i ich konsekwencje dla zapewnienia jakości tłumaczeń oraz pewności prawa w oparciu o analizę korpusu i konsultacje z informatorami instytucjonalnymi.

**Słowa kluczowe:** sprostowania; błędy tłumaczeniowe; korekty przekładu; zapewnienie jakości przekładu; przekład instytucjonalny; organizacje międzynarodowe; instytucje Unii Europejskiej; pewność prawa.

## **1. The significance of corrigenda in institutional translation studies**

As noted by Byrne (2007: 3), “[t]he sheer volume and diversity of translation work which takes place throughout the world each year means that there are potentially dozens, if not hundreds, of possible implications” of faulty translations. He illustrates the “real and potential” consequences of “inappropriate, incorrect, ambiguous or otherwise defective translations” (Byrne 2007: 2) with examples of errors in translations of legal, political and commercial texts. He provides a list of EU directives that establish requirements for accurate and clear translations of technical documentation in order to address the problem of “faulty translations” of operating instructions raised by Council Resolution 98/C 411/01 of 17 December 1998 on operating instructions for technical consumer goods. One of the examples of errors examined is drawn from the German translation of an EU directive itself (Byrne 2007: 6). In a study conducted for the European Commission’s Directorate-General for Translation (DGT) a few years later, further examples of errors detected in specific language versions of several EU regulations were analyzed to illustrate their potential legal consequences, including changes in product labelling or in the scope of certain provisions (European Commission 2010: 148-149).

Considering the high volume of translations they produce, it is no surprise that institutional language services are particularly exposed to undetected mistakes, as no workflow can guarantee infallible (i.e. error-free) multilingual text production (see e.g. Drugan 2013). While quality assurance measures taken by these professional services significantly reduce the risk of errors, as a general rule, factors such as time pressure and insufficient quality control (increasingly associated with outsourcing of documents and over-reliance on machine

translation) can contribute to translation issues being overlooked in the process. It is no coincidence either that the higher exposure of the EU institutions, owing to their increasing number of official languages and the direct applicability of their legislation (see e.g. Strandvik 2018), has prompted earlier and more explicit actions on the matter than in other institutional contexts. As acknowledged in the *Empowerment to correct errors, including minor errors, in translations of acts adopted by the Commission* in 2008 (SEC(2008) 2397), immediately after the major EU enlargements of 2004 and 2007, “[t]he increase in the number of language versions of the texts adopted by the Commission” (from 10 in 1995 to 20 in 2004 and 23 in 2007) “has also led to an increase in the risk of translation errors. Consequently, there has been an increase in the number of corrections of translation errors adopted by the Commission” (European Commission 2008: 3) and, therefore, an increase in the number of corrigenda issued to this end. Soon after, in its study *Quantifying Quality Costs and the Cost of Poor Quality in Translation*, the DGT highlighted not only the financial implications of translation errors for the EU due to the cost of processing corrigenda (and even dealing with court cases), but also the potential impact on the reputation of the EU institutions, and the serious risks in terms of legal certainty, including for citizens and companies (European Commission 2012). This latter question is especially delicate in the case of meaning-changing corrigenda of legislative texts with retroactive effects (on the legal implications, see Bobek 2009, 2011).

These concerns also apply to other institutional translation services, and are particularly serious when dealing with binding instruments or sensitive policy documents. Given the implications for translation quality and professional reputation, the attention devoted so far to corrigenda in Translation Studies seems clearly insufficient. Yet, in a field in which quality is, above all, associated with the lack of errors, the analysis of mistakes and corrections emerges as a key aspect of both assessment and competence development. In the area of institutional translation, and in international organizations in particular, error analysis is not only essential for professional development as a translator, but also for systemic processes of quality control, monitoring, appraisal and training.

This study will shed light on what corrigenda reveal about the most common errors detected and corrected in institutional translations over a recent decade: between 2005 and 2015. It draws on the

LETRINT corpora,<sup>1</sup> which cover all multilingual text production in English, French and Spanish over this period in three settings: the European Union (EU), the United Nations (UN) and the World Trade Organization (WTO). After a review of the procedures used to introduce corrections in these settings (Section 2), more details on corpus and methodology will be provided (Section 3) before presenting the results of the quantitative and qualitative analysis of translation-triggered corrigenda in two target languages, French and Spanish, according to various parameters: setting, year, genre, error type and severity (Section 4). Finally, the implications of our findings from the perspective of translation quality assurance will be discussed in the conclusions (Section 5).

## **2. How do institutional translation services deal with corrigenda?**

In order to contextualize our analysis, we will briefly examine how international organizations deal with translation errors after the adoption and publication of official documents. The correction of international legal instruments in general is governed by Article 79 of the 1969 Vienna Convention on the Law of Treaties (VCLT), which establishes that:

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:
  - (a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
  - (b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or (c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

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<sup>1</sup> These corpora have been built as part of the project “Legal Translation in International Institutional Settings: Scope, Strategies and Quality Markers” (LETRINT), led by the author and supported by the Swiss National Science Foundation through a Consolidator Grant.

According to para. 3 of the same Article, the above also applies “where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.” In practice, the most common way to correct errors introduced during the translation process is through corrigenda.

Based on a comparative analysis of the internal guidelines on the issuance of corrigenda and consultation with institutional informants, several commonalities and differences have been identified between the contexts examined. The way corrections are handled may vary depending on how serious the error is, and on whether it is found in the original version or the other language versions. For instance, in the case of European Commission’s legal acts, the Secretary-General deals with corrections in the first case,<sup>2</sup> while the DGT processes requests in the latter case through its dedicated Corrigenda Team, in cooperation with the Legal Service and the directorates-general (DGs) who authored the document (European Commission 2012: 29-30). This is possible since 2008 under the above-mentioned Empowerment Decision SEC(2008) 2397,<sup>3</sup> which establishes three cumulative conditions:

- the error concerns only one or more language versions other than the original version;
- the error is easily recognisable in the text concerned or is found beyond doubt to be serious when a comparison is made with the version in the original language;
- the error is caused by the mistranslation or omission of one or more elements of the text without, however, affecting the substance of the text as a whole. In particular, errors affecting the overall conclusion of the act (e.g. state aid “is” instead of “is not” authorised) and errors

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<sup>2</sup> By a decision of 1977 (SEC(1977) 2532/1, PV(1977) 438), the Commission delegated to the Secretary-General the adoption of corrections of “obvious errors”, understood as “easily recognisable in the text (for example, spelling mistake, typing error, printing error, an error in a calculation, missing text, meaningless text)” (cited in European Commission 2008: 3). This definition of “obvious errors” is maintained in the recent decision of 2017 (C(2017) 4898 final): “easily recognisable errors in the text (e.g. spelling, typing or printing errors, mathematical errors or the omission of one or more words or of part of the text)” (Commission Decision of 12.7.2017 on delegation of the power to correct obvious errors in Commission acts, p. 2).

<sup>3</sup> Completed by *Commission Decision subdelegating the power to correct errors, including minor omissions, in translated versions of acts adopted by the Commission* (C(2010) 3031), from the Member of the Commission responsible for Education, Culture, Multilingualism and Youth to the DGT.

relating to a key word in the act which are repeated throughout the text are excluded from this empowerment (European Commission 2008: 3).

The distinction between “easily recognisable” or “serious” errors, on the one hand, and mistranslations or omissions “affecting the substance of the text”, on the other, is most relevant. If the Legal Service finds an error to be substantial, a correcting act must be prepared and adopted through “a procedure similar to that followed for the adoption of a text containing errors” (European Commission 2008: 3), whether these affect the original or other language versions.

In the EU Council and the European Parliament, all corrections of legal acts published in the Official Journal are handled by their lawyer-linguists (from the Council’s Directorate for the Quality Legislation and the Parliament’s Directorate for Legislative Acts). The rectification process is governed by Council document R/2521/75 (JUR 149) of 1975, which is largely inspired by the VCLT principles. In this process, only non-obvious errors may require the adoption of a new act rather than a corrigendum after consultations with the relevant EU and national authorities. With regard to this process, the “Procedure for Adopting Corrigenda” set out in the *Manual of precedents for acts established within the Council of the European Union* specifies that a corrigendum “is made to those parts of the text that are so lacking in form as to be incomprehensible, as well as to errors liable to produce undesired legal effects (obvious typing or language errors that are unimportant should not be corrected by a corrigendum)” (Council of the EU 2015: 176). In the case of acts adopted under the ordinary legislative procedure (previously, co-decision procedure), draft corrigenda must obtain the agreement of the European Parliament, which handles corrections in accordance with Rule 231 of the institution’s Rules of Procedure.

At the Court of Justice of the EU (CJEU), rectification orders are issued if the error is found in the authentic language of the case. If it is detected in another language version, the correction can be introduced in a footnote that refers to the modified paragraphs. In this judicial context, however, what attracts more attention is how divergences between different language versions of legal acts surface in Court cases and call for multilingual interpretation of EU law (see e.g. Dengler 2010, Baaij 2012, Prieto Ramos and Pacho Aljanati 2018). Indeed, this subject is beyond the scope of our study and deserves separate investigation.

In the *United Nations Editorial Manual Online*, a distinction is made between corrigenda and reissues. The second category, “reissue for technical reasons”, was formally recognized as a text category on 16 March 2010 under a revised section “Corrigenda and reissues”,<sup>4</sup> although it had been practiced since long before (examples are already found as early as the late 1970s). In the 1983 *United Nations Editorial Manual*, a “corrigendum” was defined as “a document issued to correct an error or errors in the text of an existing document or publication (that is, one that has been distributed), whether for substantive or for technical reasons” (United Nations 1983: 145). Reissues for technical reasons were not listed as “special types of texts” together with “corrigenda and errata” (headings of the 1983 Manual), but they were addressed in a less prominent position as part of an introductory chapter on “document symbols”, as follows:

On the rare occasions when it is deemed necessary to reissue a document in its entirety because of a technical error such as serious misprints or errors resulting from the malfunctioning of a machine, complete texts of corrected documents may be issued under the original symbol followed by an asterisk and a corresponding footnote reading “Reissued for technical reasons”. The symbol element “Rev.” is not used in such cases since it might seem to imply a substantive change in the document. (United Nations 1983: 14)

In principle, neither corrigenda (currently defined as documents “issued to correct an error or errors in a document or publication that has already been issued”, without the previous reference to substantive or technical reasons) nor “reissues for technical reasons” are used “merely to correct minor typographical errors”.<sup>5</sup> Both categories are issued only in the languages to which corrections apply, but only corrigenda are published as separate documents (i.e. with their own symbol) specifically to explain the corrections. In documents reissued for technical reasons, an asterisk is added to the original symbol and a footnote is inserted to indicate that the new version is motivated by technical reasons (“Reissued for technical reasons on [date]”), without specifying them, except for “reissues to correct a symbol” or to “change to a dual symbol”, where a second sentence is added to the general formula: “[...]; previously issued under the symbol [original

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<sup>4</sup> See list of updates at: [http://www.dgacm.org/editorialmanual/list\\_updates.htm](http://www.dgacm.org/editorialmanual/list_updates.htm).

<sup>5</sup> [http://www.dgacm.org/editorialmanual/ed-guidelines/types\\_documents/corrigenda.htm](http://www.dgacm.org/editorialmanual/ed-guidelines/types_documents/corrigenda.htm). This has applied to corrigenda since before (see United Nations 1983: 145).

symbol]”.<sup>6</sup> However, the asterisk is excluded from subsequent references to the document, and the original version is withdrawn and replaced by the corrected version, which means that the exact nature of the changes is untraceable unless the specific reasons for the reissue are further investigated. As confirmed by UN informants, in compliance with the current *Editorial Manual*, errors introduced during the translation process qualify as a “technical reason” for reissue of a document, together with editing and text processing errors, as opposed to substantive errors by the submitting office, which should normally be corrected through corrigenda. Even if, according to the same sources, the distinction is not always clear-cut and strictly followed in practice, the scope and prominence of reissues for technical reasons have evolved since 1983, when these were reserved for rare cases of serious misprints or machine malfunctioning, and other “technical reasons” not considered “substantive” were also tackled through corrigenda. To illustrate recent translation-triggered “reissues for technical reasons”, the following corrections were detected through the comparison of the original version (retrieved from cached webpages) and the reissued versions:

Example 1 (EN): “(c) They are not marked in accordance with the provisions of this instrument; [...]”

Initial FR: “(c) Elles sont marquées conformément aux dispositions du présent instrument; [...]”

Reissued FR: “(c) Elles ne sont pas marquées conformément aux dispositions du présent instrument; [...]” (emphasis added)

(UN working group report A/60/88 of 2005)

Example 2 (EN): “[...] if a Member State determines that a DPRK diplomat, governmental representative, or other DPRK national acting in a governmental capacity, is working on behalf or at the direction of a designated individual or entity, or of an individual or entities assisting in the evasion of sanctions or violating the provisions of resolutions [...].”

Initial ES: “[...] si un Estado Miembro determina que un diplomático, representante gubernamental u otro nacional de la RPDC que se desempeñe en carácter oficial está actuando en nombre o bajo la dirección de una persona o entidad designada, facilitando la evasión de sanciones o contraviniendo las disposiciones de las resoluciones [...].”

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<sup>6</sup> [http://www.dgacm.org/editorialmanual/ed-guidelines/types\\_documents/corrigenda.htm](http://www.dgacm.org/editorialmanual/ed-guidelines/types_documents/corrigenda.htm).

Reissued ES: “[...] si un Estado Miembro determina que un diplomático, representante gubernamental u otro nacional de la RPDC que se desempeñe en carácter oficial está actuando en nombre o bajo la dirección de una persona o entidad designada, o de una persona o entidad que facilite la evasión de sanciones o contravenga las disposiciones de las resoluciones [...]” (emphasis added)

(UN Security Council Resolution 2270 of 2016)

In the case of the WTO, corrigenda are issued “when the corrections to be made to the original document, whether substantive or non-substantive, can be explained easily” (internal note *Revision, Corrigendum, Addendum, Supplement – Meaning and Use*). They are circulated in any or all of the Organization’s three official languages.

Despite the relevance of severity in dealing with corrections at all the above institutions, the criteria to assess and classify mistakes are not always explicit or shared between legal and language services. Nonetheless, in the case of translations, as reflected in Empowerment Decision SEC(2008) 2397, it is presupposed that the greater the deviation is from the intended meaning of the original text, the more substantial and serious the potential impact, especially when binding texts are affected. At the other extreme, minor typographical errors, as specified in the UN editorial guidelines, might not be enough to publish a correction.

### **3. Corpus and methodology**

Our analysis will concentrate on corrections of translation-triggered issues, i.e. explicit corrections of errors or omissions that were introduced during the translation process, and were detected after publication and deemed relevant to issue corrigenda, regardless of the more or less substantial impact on the meaning. As the main purpose of the study is to quantify and classify these issues with a view to identifying and discussing potential patterns in error types, our corpus is composed of all corrigenda published in French or Spanish as target languages in the three institutional settings of the study in 2005, 2010 and 2015. As mentioned above, they were extracted from the LETRINT corpora. In the case of the EU, the source selected is EUR-Lex, not only because it is the main database of EU legal texts, including the

translations of the three institutions involved in the ordinary legislative procedure (the European Commission, the Council of the EU and the European Parliament), but also because a preliminary test with corrigenda retrieved from the other repositories used in the LETRINT project (the European Council Document Register, the European Parliament Public Register of Documents and the Register of Commission Documents) yielded few additional data, and these often referred to preparatory documents (cover notes, proposals, agendas, etc.). As to the UN and the WTO, the main source repositories consulted are the UN's Official Document System (ODS) and the WTO Documents Online, respectively.

The three translation languages selected are those common to all the settings analyzed. They are considered in their most frequent directionality, i.e. translation of English language original texts into French and Spanish. For this reason, among others, documents from the International Court of Justice (ICJ) and the CJEU were not included in this study. In the latter institution, the use of French as procedural language and the variation of formats used to introduce corrections (rectification orders and footnotes) would have required a separate study.

From a diachronic perspective, the period examined is of major relevance to observe changes in translation correction trends and their potential connection with technology advances, quality assurance measures and other institution-specific developments. For example, in the case of the EU, the first year of the corpus (2005) is the one following the massive EU enlargement of 2004, while the second year (2010) comes after the 2007 enlargement and the 2008 empowerment of the DGT for processing certain corrigenda. At the UN, 2010 also saw the more formal recognition of reissues for technical reasons as a text category in its *Editorial Manual*. Since the error types that originate these documents are not fully traceable because their original versions are unavailable after being replaced, as mentioned above, they were excluded from the quantitative analysis of corrections. However, the official formulation reproduced in the footnotes of these corrected versions made it possible to retrieve all reissues for technical reasons of 2005, 2010 and 2015 (see Table 3 in Section 4.1). Despite the lack of precise information on the motivations for these reissues, they must be considered when reviewing quantitative findings on UN corrigenda.

The following metadata were registered and analyzed: setting, year, target language, error type, genre and degree of severity. Whereas the more general data could be extracted from the LETRINT corpora, error types had to be defined for the categorization of corrections. An initial list of common error types in translation assessment was gradually refined through the analysis of the corrigenda compiled. The final list includes two groups of error types from the perspective of translation decision-making:

- (1) Content reformulation corrections associated with mistranslations or incomplete translations, normally perceived as serious translation errors:
  - unjustified omission
  - unjustified addition
  - opposite meaning
  - incorrect terminology
  - incorrect meaning or inaccuracy (not included above)
- (2) Minor formal corrections of errors mostly associated with details overlooked in the translation process:
  - reference (e.g. legislation or provision number)
  - proper name (e.g. body, person, programme, acronym)
  - figure
  - date
  - concordance or cohesion issue (e.g. number and gender agreement, word repetition)
  - spelling or typographical error<sup>7</sup>

This distinction cannot be entirely correlated with specific levels of severity or risk, as the second group of errors may also have serious consequences (e.g. a wrong figure or a spelling mistake that may change the meaning significantly) (see Section 4.4). Yet, this group can

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<sup>7</sup> The risk of some minor errors being occasionally introduced in the typesetting process of certain texts, i.e. re-typing or printing errors not caused by translators or revisers, albeit extremely rare, would need to be considered as a factor for errors introduced until the early 2000s in particular. However, according to our analysis of workflows, corpus components and feedback from institutional informants, this factor would not affect our assumptions regarding translation-triggered spelling or typographical errors for the 2005-2015 period under examination. Very few texts from previous decades were subject to corrigenda issued in this period, and the potential impact of typesetting errors in this study would thus be too insignificant to attempt to isolate them through further research.

be more clearly linked to lack of attention to detail, as opposed to a stronger connection of the first group of errors with inappropriate research, analysis and reformulation decision-making in the translation process. The above classification is only partially similar to Bobek's legal distinction with regard to EU legislative corrigenda. He distinguishes between: (a) "purely formal corrigenda" or "genuine corrigenda" that "rectify typographic mistakes and omissions, obvious flaws in writing or type-setting", e.g. "omitted letters, small instead of capital letters at the beginning of a sentence, incorrect internal references caused by a typing mistake, wrongly type-set sentences or paragraphs, and so on"; and (b) "meaning-changing corrigenda [...] that substantively alter the content of the legal norm", e.g. "narrowing or broadening of notions in a legal text, changing the nature of a list of conditions to be fulfilled (from enumerative to exhaustive), turning positive sentences into negative ones, or even plainly rewriting of substantive parts of a piece of EC legislation" (Bobek 2009: 951). In practice, however, based on the guidelines reviewed in Section 2, we can expect most corrections leading to corrigenda, except for minor typographical errors (which often do not suffice to motivate a corrigendum), to have some degree of semantic impact (see Section 4.4).

Our specific error categories align, to a large extent, to those used for evaluation purposes at the DGT (which, in turn, are more elaborate than the taxonomies used at other organizations<sup>8</sup>): mistranslation; unjustified addition; unjustified omission or non-translation; reference documents / material not used; norm sources or job-specific instructions not adhered to; wrong or inconsistent EU usage or terminology; clarity, register and text-type conventions; punctuation; grammar (Strandvik 2017: 126). Our corpus yielded more nuance in the case of formal correction categories, as well as "opposite meaning" as a specific type of semantic distortion, whereas three DGT categories (job-specific instructions, reference documents and clarity or text-type conventions) did not seem to lead to corrigenda or may be associated with other errors such as incorrect terminology (as a result of inconsistent use of reference material or non-adherence to conventions).

As in the case of the WTO (for the entire period covered), the DGT shared its data of registered corrigenda for 2010 and 2015, but without any classification of errors. Nonetheless, these data were

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<sup>8</sup> As per internal forms consulted.

very useful for verifying the overall coherence of the trends elicited by our own results.

As in any categorization work, the risk of overlap and borderline cases emerged as a challenge. For instance, in a corrigendum to Commission Regulation (EU) No 316/2014 in Spanish, the correction of “licenciante” in lieu of “licenciatario” (for the English original “licensor”) in Article 1(1), point (p), could qualify as opposite meaning. However, whenever a terminological issue was the origin of a semantic deviation, this more specific error type prevailed for categorization. Further examples of error types will be provided in Section 4.

## **4. Findings on correction patterns**

The results of our combined quantitative and qualitative analyses will be presented from more general to more specific. An overview of the number of corrigenda and corrections will be followed by the breakdown of the main genres where they were found, the error types and their degrees of severity.

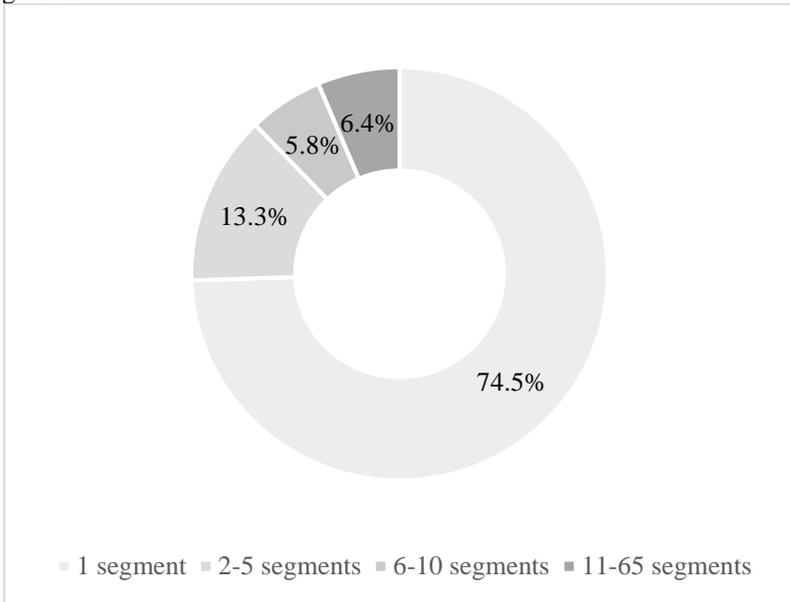
### **4.1. Overall number of corrigenda and corrections**

Corrections were discriminated by translation directionality in order to exclude original drafting problems and concentrate exclusively on errors introduced in the translation process. For the sake of consistency and comparability in the quantitative analysis, errors were counted using corrected sentence-level segments as units, regardless of how corrections are presented in each corrigendum. This is particularly relevant in the case of segments where more than one lexical unit is modified to correct a single mistranslation. By the same token, when a term or formulation is harmonized in several segments, the error corrected is counted only once, as a single translation decision.

Table 1. Number of corrigenda ordered by number of corrected segments per document

Corrected segments (per doc)	2005 corrigenda							2010 corrigenda							2015 corrigenda							Total
	EU		UN		WTO			EU		UN		WTO			EU		UN		WTO			
	ES	FR	ES	FR	ES	FR	Sub-total	ES	FR	ES	FR	ES	FR	Sub-total	ES	FR	ES	FR	ES	FR	Sub-total	
1	15	18		15	3	4	55	30	33	4	8	3	3	81	66	51		1	1	2	121	257
2		2		2			4	1	5		1			7	6	6					12	23
3	1					1	2	3	2					5	3	1		1			5	12
4		1		2			3		1					1	1	1					2	6
5		1	1				2		1					1	1	1					2	5
6-10	2	2		2			6	3	2		1			6	4	2			2		8	20
11-65				1			2	7	2					9	4	3	2	2		1	12	22
Total	18	24	1	22	3	5	73	44	45	5	10	3	3	110	85	65	2	4	3	3	162	345

Figure 1. Distribution of groups of corrigenda per number of corrected segments



The first results (Table 1 and Figure 1) show that an overwhelming majority of corrigenda contain a single correction (almost 75%), and that the number of corrigenda decrease as the number of errors per text increase: 13.33% of corrigenda include 2 to 5 corrections, 5.8% contain 6 to 10 corrections, and 6.38% include between 11 and 65. This last figure was the maximum number of translation-triggered errors corrected in a single corrigendum. Three

other EU documents (one from 2010 and two from 2015) were excluded from the calculations because they contained a disproportionate number of corrections and it soon became apparent that these corrigenda were issued to replace document versions initially published by mistake. These cases would not qualify as corrections of translation decisions, but as changes derived from mistakes in the processing of documents. Their inclusion would have distorted the analysis of translation error patterns.

Table 2. Number of corrigenda and corrections (corrected segments)

Docs (D) & corrected segments (C)	2005						2010						2015						Total							
	EU		UN		WTO		EU		UN		WTO		EU		UN		WTO		#D	#C						
	#D	#C	#D	#C	#D	#C	#D	#C	#D	#C	#D	#C	#D	#C	#D	#C	#D	#C								
ES	18	36	1	5	3	3	22	44	44	200	5	9	3	3	52	212	85	221	2	74	3	13	90	309	164	565
FR	24	48	22	90	5	7	51	145	45	99	10	19	3	3	58	121	65	263	4	48	3	28	72	339	181	606
Total	42	84	23	95	8	10	73	189	89	299	15	28	6	6	110	333	150	484	6	122	6	41	162	647	345	1170

Figure 2. Changes in number of corrigenda in each setting

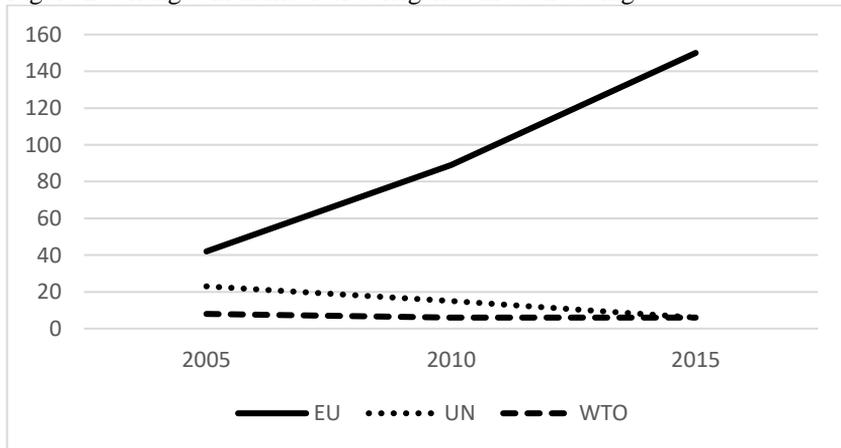


Table 3. Reissues for technical reasons at the UN

Language of reissue	2005	2010	2015	Total
FR	18	49	92	159
ES	7	8	31	46
ES & FR	5	11	32	48
Total	30	68	155	253

The statistics also confirm clear trends in each institutional setting (see Table 2 and Figure 2). In the EU, there is a marked increase of both corrigenda and corrections, from a total of 42 corrigenda and 84 corrected segments in 2005 to 150 and 484, respectively, in 2015. This trend is comparable for both target languages, even if the ratio of corrected segments per corrigendum may vary per year. This means that fewer corrigenda in one language may correct more segments in total than corrigenda in the other target language in a particular year (e.g. the case of Spanish in 2010 and French in 2015). At the WTO, figures are very low and stable, with between 6 and 8 corrigenda per year, evenly distributed per language. In contrast, the UN registered a remarkable downward trend, from 23 corrigenda in 2005 to 6 in 2015, including a systematically higher proportion of corrigenda in French. This is partly explained by the fact that some corrections were found in documents that are translated into French but not into Spanish, including 13 corrigenda of texts on technical regulations issued by the United Nations Economic Commission for Europe (UNECE) (7 in 2005 and 5 in 2010).

Coincidentally, in both the WTO and the UN, there was a peak in the number of corrected segments per document in 2015, but no trend can be inferred from these data. Furthermore, in the case of the UN, as noted in Section 3, the number of corrigenda must be read in conjunction with the number of reissues for technical reasons. In fact, recourse to this procedure grew exponentially over the period examined (see Table 3). Reissues for technical reasons available only in French and/or Spanish (none of them produced to correct symbols or to change dual symbols) more than doubled every five years, from a total of 30 in 2005 to 68 in 2010 and 155 in 2015. While the number of translation-related errors corrected (and their translation directionality) cannot be determined within this group of documents, it can be assumed that a proportion of their growing number was triggered by translation issues.

The above quantitative findings are not meant to be exhaustive but rather indicative of overall trends. They are a first step to further investigating the nature and potential impact of corrigenda from a more qualitative angle. For a more nuanced analysis of quantitative patterns as an indicator of error frequency and quality control effectiveness, the data must be examined in the light of total translation volumes and other extra-textual factors.

## **4.2. Correction density per genre**

As previously argued, the main aim of the quantitative analysis is not to calculate precise indexes of translation error incidence in each institution, something that language services are better positioned to monitor. In the case of the DGT, a “correction rate” is used as one of the “result indicators” about the objective of “delivering high quality translation and editing services” (DGT 2016: 9).<sup>9</sup> In this comparative study, given the significant differences in translation volumes between institutions, an effective and highly reliable way of addressing the question of error incidence was by examining the density of corrigenda and corrections per translation volume of the affected genres. Two ratios were calculated:

- (1) ratio of corrigenda to textual units (ratio 1), i.e. the average number of corrigenda per target language and total number of original texts of the genre examined; and
- (2) ratio of corrections to translation volumes (ratio 2), i.e. the average number of corrections (as per corrected segments) made per target language and million words of original text of the genre in question.

By adding the total volume of words as reference point (and not only the number of documents, as in the case of the DGT’s correction rate), a more balanced account of the density of corrigenda could be described considering the level of exposure to errors (i.e. the larger the volume of text translated, the higher the risk of overlooking mistakes). For example, in the case of WTO dispute settlement panel reports, only one corrigendum was issued for the 31 texts of the genre in the three years of the corpus, resulting in a higher ratio 1 (1.61%) than the genre that registered the largest number of corrigenda, notifications by Members States, with 4 corrigenda in a total of 7320 documents (or a ratio 1 of 0.03%). However, the total translation volumes of these two genres (5.92m versus 5.32m, respectively) are not as divergent as their numbers of texts (31 versus 7320), which means that the panel reports’

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<sup>9</sup> This “correction rate” is defined as the “ratio between the number of translations formally corrected during one year and the number of translations of the same year and the preceding two years that can be subject to such corrections”; and the target for 2016-2020 is to keep it under 0.5% (DGT 2016: 9).

ratio 2 (0.08 corrections per target language and million words of original text) is almost five times lower (and impressively low by all standards) than that of notifications (ratio 2 of 0.38 corrections per million words). All other WTO corrigenda in our corpus apply to genres with less than one million words of original text volume, and do not exceed two corrigenda per genre.

Table 4. Corrigenda and correction density ratios of UN genres with high translation volumes

	TRANSLATION VOLUME (ORIGINAL TEXT)		CORRIGENDA			
	#D	Total words	#D	#C	Ratio 1	Ratio 2
UN body report	714	8,049,047	9	113	0.63%	7.02
Special rapporteur report	199	2,049,287	2	10	0.50%	2.44
Agenda	1,347	1,448,801	2	6	0.07%	2.07
Activity report	227	1,364,125	1	1	0.22%	0.37
Financial report	110	1,628,530	1	1	0.45%	0.31
Budget	366	4,075,111	2	2	0.27%	0.25
Report of the Secretary-General	1,214	9,008,674	2	3	0.08%	0.17

Table 5. Genres of UN reissues for technical reasons (excluding genres with less than 10 reissues)

	2005	2010	2015	Total
Resolution	4	22	23	49
Report of the Secretary-General	3	8	16	27
Budget	-	7	13	20
Agenda	2	2	12	16
Letter	4	4	6	14
General Assembly committee report	3	-	7	10
Country programme	-	-	10	10

In the case of UN genres, error incidence could only be analyzed in an approximate way, by calculating their corresponding ratios and verifying the genres affected by reissues for technical reasons as a very general indication (see Section 2). Table 4 shows that all genres with more than 100 texts and one million words of translation

volume present very low numbers of corrigenda.<sup>10</sup> Various types of reports are the most represented genres, while resolutions are, by far, the most frequently reissued for technical reasons (49 reissues over the three years of the corpus, followed by 27 reissues of reports of the Secretary-General) (see Table 5).

Table 6. Corrigenda and correction density ratios of EU genres with high translation volumes

	TRANSLATION VOLUME		CORRIGENDA			
	#D	Total words	#D	#C	Ratio 1	Ratio 2
Regulation	3,708	6,965,847	156	587	2.10%	42.13
Commission Regulation	3,410	5,348,620	105	474	1.54%	44.31
Council Regulation	213	1,030,885	22	50	5.16%	24.25
Regulation of the European Parliament and of the Council	85	586,342	29	63	17.06%	53.72
Decision	2,031	4,560,837	33	38	0.81%	4.17
Commission Decision	1,107	3,391,274	18	19	0.81%	2.80
Decision of the European Council	849	1,087,614	14	18	0.82%	8.27
Decision of the European Parliament and of the Council	75	81,949	1	1	0.67%	6.10
Directive	208	1,200,722	50	106	12.02%	44.14
Council Directive	22	111,379	9	13	20.45%	58.36
Directive of the European Parliament and of the Council	52	588,739	37	77	35.58%	65.39
Commission Directive	134	500,604	4	16	1.49%	15.98
Commission communication / notice	585	2,398,606	7	27	0.60%	5.63
International agreement	163	1,458,156	3	11	0.92%	3.77

Corrigenda and correction density ratios for EU genres point to higher error incidence in directives and regulations, followed by Commission communications or notices, decisions and international agreements. In the last three genres (or rather a subgenre in the case of the latter, decisions of the European Parliament and of the Council), as well as for Commission directives, corrigenda were not found in every

<sup>10</sup> UNECE amendments to technical regulations, precisely the UN genre with the highest number of corrigenda in the corpus (13), were excluded from the calculation of average ratios, as they are only translated into French.

year of the corpus. Table 6 includes subgenres of three key types of legal acts, as well as other genres with more than 100 texts and one million words of translation volume covered by the corpus. Some variations between subgenres are significant, particularly the high correction density ratios of directives and regulations of the European Parliament and of the Council in comparison to other subgenres.

Table 7. Changes in corrigenda and correction density ratios of EU genres with high translation volumes

	2005		2010		2015	
	Ratio 1	Ratio 2	Ratio 1	Ratio 2	Ratio 1	Ratio 2
Regulation	0.63%	11.47	2.52%	42.89	10.09%	98.02
Commission Regulation	0.57%	12.75	1.90%	41.96	7.77%	128.27
Council Regulation	1.25%	2.73	11.96%	82.58	8.51%	30.55
Regulation of the European Parliament and of the Council	3.85%	57.36	10.61%	24.21	26.92%	77.98
Decision	0.30%	2.21	0.76%	3.24	1.34%	6.09
Commission Decision	0.34%	2.06	0.74%	2.27	1.56%	3.80
Decision of the European Council	0.23%	3.36	0.73%	5.07	1.24%	11.93
Decision of the European Parliament and of the Council	0%	0	1.19%	10.95	0%	0
Directive	5.42%	16.80	3.33%	17.36	50.00%	126.97
Council Directive	15.00%	51.46	6.25%	17.70	62.50%	165.40
Directive of the European Parliament and of the Council	11.90%	11.38	7.14%	4.71	88.24%	223.30
Commission Directive	0.96%	5.04	2.21%	26.98	0%	0
Commission communication / notice	0%	0	1.02%	11.98	1.81%	3.76
International agreement	0%	0	0%	0	3.85%	13.39

Table 8. Years of publication of corrigenda and corrected documents

Year of document corrected by corrigendum	Year of corrigendum		
	2005	2010	2015
1978	1		
1992			1
1993			1
1997		2	
2001	1	1	
2002			3
2003	2	2	
2004	14	1	3
2005	15		
2006		3	6
2007		1	2
2008		8	7
2009		25	9
2010		20	2
2011			5
2012			3
2013			8
2014			36
2015			31
Total	33	63	117

Table 9. Overall corrigenda and correction density ratios of high-volume EU genres per year

	TRANSLATION VOLUME		CORRIGENDA			
	#D	Total words	#D	#C	Ratio 1	Ratio 2
2005	3,288	5,515,626	40	82	0.61%	7.43
2010	2,204	6,580,897	81	282	1.84%	21.43
2015	1,203	4,487,645	128	405	5.32%	45.12

Diachronic changes (see Table 7<sup>11</sup>) show a general upward trend, with a few exceptions. However, annual correction density ratios must be interpreted with caution, as some indicators are affected by a disproportionate number of corrections of legal acts from earlier years, especially in 2015. Table 8 provides the breakdown of corrected acts and their years. As a methodological caveat, it would be impossible to predict the exact number of corrigenda that legal acts from a particular year may accumulate after their publication. However, most corrigenda refer to texts of the same or the previous year, and the proportion of corrected documents of this and other previous years is expected to be offset by further corrections of texts of the current year in subsequent years. The years of corrected texts in 2010 and especially 2015 deviate from this assumption,<sup>12</sup> but this slight deviation is due to the sustained detection of errors in texts published after 2005, which, in turn, also confirms the correction trends identified in this study. Likewise, Table 9 corroborates the increasing level of error density as per the accumulated yearly totals for genres with large translation volumes, well above indicators obtained for the other institutions (albeit partial in the case of the UN). The possible causes for these results will be further discussed in the last section, whereas the analysis of specific error incidence levels per genre and year would require further scrutiny beyond the scope of this paper.

### **4.3. Error types**

With a view to studying the most common types of errors corrected, all corrigenda containing between one and five corrections, i.e. 303

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<sup>11</sup> With the entry into force of the Lisbon Treaty on 1<sup>st</sup> December 2009, legal acts such as Council framework decisions were discontinued, while others, such as implementing regulations, were introduced. Therefore, not all legal act subgenres are found in all the years of the corpus. These were excluded from ratio calculations, since they would not be supported by sufficient translation volumes. The same applies to two 2015 corrigenda to a 2002 Decision of the Council and the Commission, for which there was no associated translation volume in the corpus.

<sup>12</sup> The most extreme case identified is that of the 2015 corrigenda to directives of the European Parliament and of the Council, which all refer to directives of previous years: 13 to 2014 directives, 22 to 2004-2013 directives and 1 to a 1997 directive.

documents accounting for 87.83% of the total number of corrigenda (see Table 1), were analyzed in detail. A total of 388 corrections were verified and classified according to the error categories that emerged from the corpus analysis, as listed in Section 3. This number of corrections was considered statistically sufficient and highly representative of the translation issues detected and deemed to be worthy of a corrigendum. The inclusion of corrigenda issued for higher numbers of corrections (i.e. above five) would have not helped to discern the most frequent causes of corrigenda as in the case of corrigenda issued for single or few corrections.

Table 10. Groups of error types per year and organization

	EU				UN				WTO				Total
	2005	2010	2015		2005	2010	2015		2005	2010	2015		
Content reformulation corrections	25	68	136	229	19	14	4	37	5	5	2	12	278
Minor formal corrections	24	26	35	85	13	5	-	18	5	1	1	7	110
Total	49	94	171	314	32	19	4	55	10	6	3	19	388

Figure 3. Changes in groups of error types (totals)

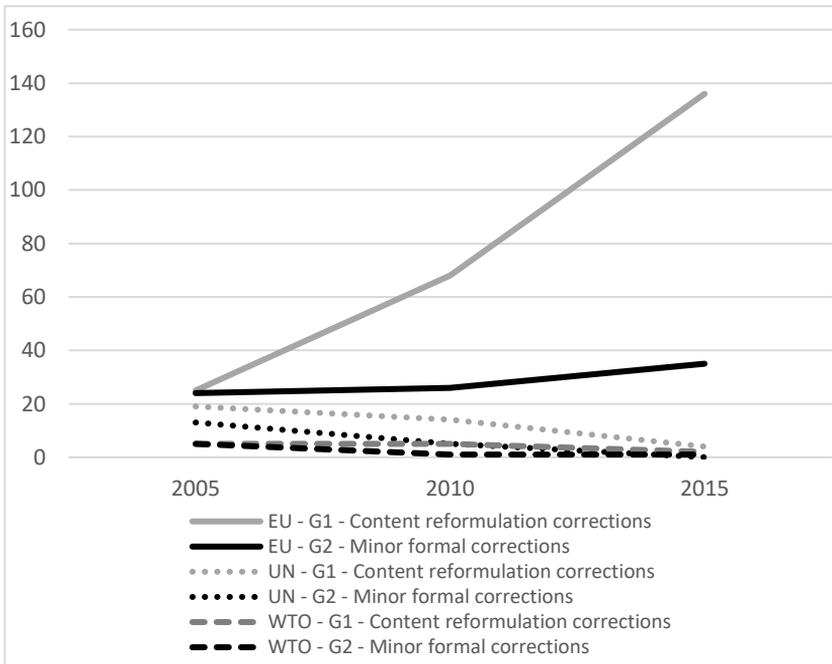
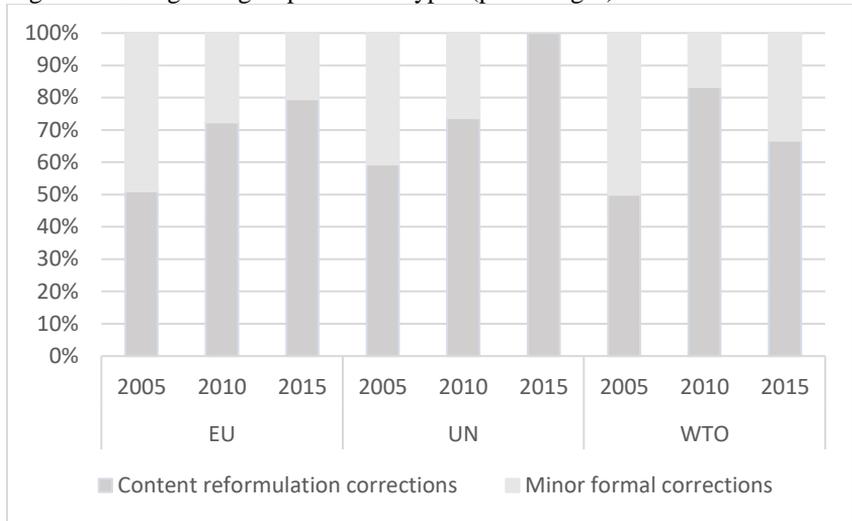


Figure 4. Changes in groups of error types (percentages)



A first diachronic examination of error types (Table 10 and Figure 3) points to a higher frequency of content reformulation corrections (correction group 1 or “G1”) compared to minor formal corrections (correction group 2 or “G2”). This trend intensifies over the 2005-2015 period, especially at the EU, from almost equal proportions in 2005 to almost 80% of errors of the first group in 2015 (see Figure 4).

However, once again, only EU figures are statistically robust to identify diachronic patterns of specific error types (Table 11 and Figures 5 and 6). Among content reformulation corrections, mistranslations that result in semantic inaccuracies are the main error category in all the institutions, followed by semantic distortions caused by incorrect terminology, unjustified omissions, unjustified additions and opposite meaning. The frequency order of error types is identical at the EU and the UN, with similar incidence levels in French and Spanish. In the EU corrigenda, the growth of all error types within the group of content reformulation corrections is equally pronounced, with a combined increase from 25 corrected errors in 2005 to 136 in 2015.

Table 11. Error types per organization, year and target language

Error type	EU						UN						WTO																
	2005		2010		2015		2005		2010		2015		2005		2010		2015												
	ES	FR	ES	FR	ES	FR	ES	FR	ES	FR	ES	FR	ES	FR	ES	FR	ES	FR											
Content reformulation corrections	10	15	25	34	68	72	64	136	229	2	17	19	7	7	14	4	4	37	2	3	5	2	3	5	1	1	2	12	278
Incorrect meaning / inaccuracy	1	6	7	12	9	21	24	44	72	2	6	8	4	4	4	12	2	1	3	2	1	3	2	1	3	1	1	7	91
Incorrect terminology	2	4	6	12	10	22	24	16	40	3	3	4	2	6	2	2	11	1	1	1	1	1	1	1	1	1	1	80	
Unjustified omission	3	1	4	5	8	13	11	20	31	5	5	1	1	2	1	1	8	1	1	1	1	1	1	1	1	1	1	3	59
Unjustified addition	3	3	6	1	5	6	7	5	12	2	2	1	1	1	1	1	4	1	1	4	1	1	1	1	1	1	1	28	
Opposite meaning	1	1	2	4	2	6	6	3	9	1	1	1	1	1	1	2	1	1	2	1	1	1	1	1	1	1	1	20	
Minor formal corrections	8	16	24	7	19	26	24	11	35	3	10	13	2	3	5	18	1	4	5	1	1	1	1	1	1	1	1	7	110
Reference	2	9	11	1	4	5	7	1	8	4	4	1	1	1	1	5	1	1	5	1	1	1	1	1	1	1	1	30	
Concordance / cohesion	1	2	3	3	6	9	6	5	11	2	2	1	1	1	1	3	1	1	3	1	1	1	1	1	1	1	1	27	
Proper name	1	1	1	2	2	4	6	2	8	3	3	1	1	1	1	4	1	1	4	1	1	1	1	1	1	1	1	18	
Figure	2	2	2	5	5	2	2	4	11	1	1	1	2	2	3	3	1	3	3	1	1	1	1	1	1	1	1	14	
Date	4	1	5	1	1	1	1	1	7	2	2	2	2	2	2	2	1	1	2	1	1	2	1	1	2	1	2	11	
Spelling / typographical error	1	1	2	1	1	2	3	3	7	1	1	1	1	1	1	1	1	1	1	1	2	2	1	2	2	1	2	10	
Total	18	31	49	41	53	94	96	75	171	5	27	32	9	10	19	4	4	55	3	7	10	3	3	6	1	2	3	19	388

Figure 5. Changes in error types at EU institutions (totals)

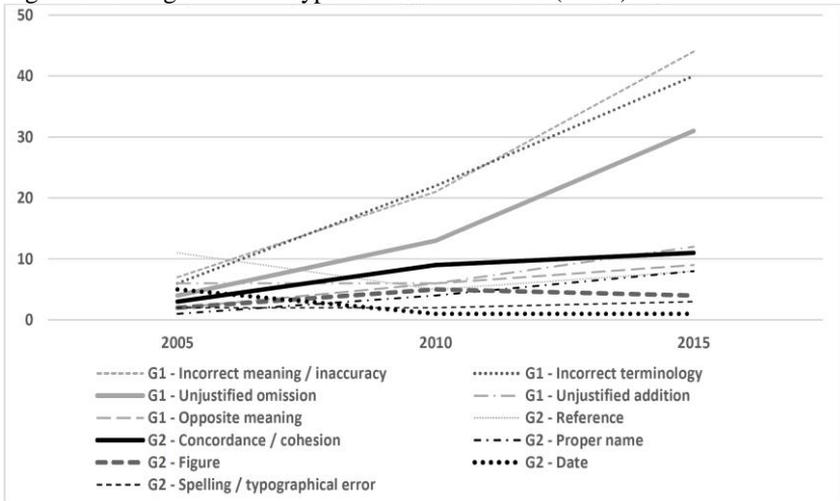
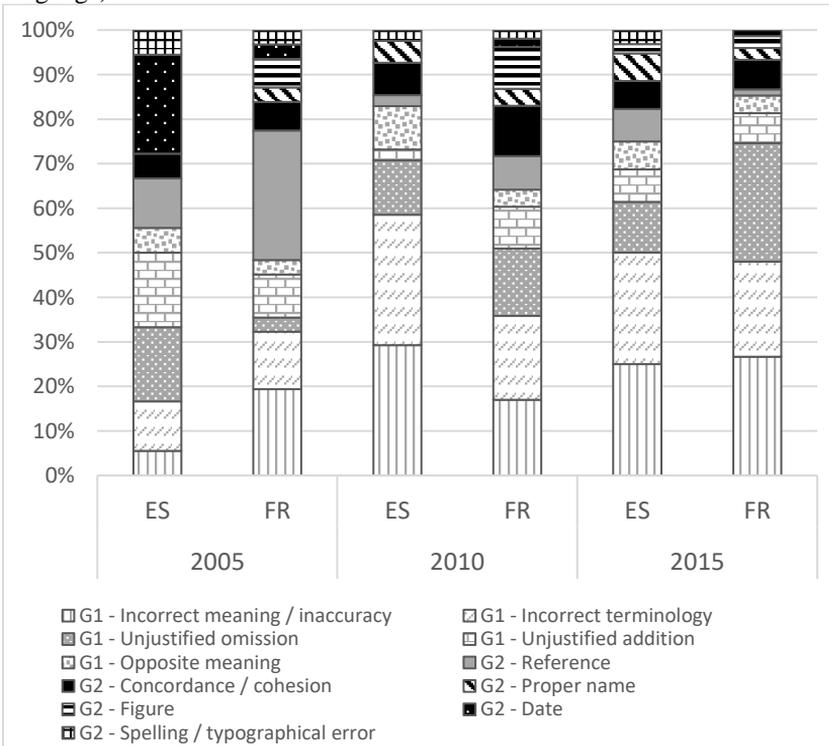


Figure 6. Changes in error types at EU institutions (percentages per year and language)



In contrast, minor formal corrections only grew slightly at the EU and decreased at the other two organizations. Error types of this group are more scattered than those of the first group. Overall, wrong references (e.g. numbers of provisions) are the most frequent formal error, followed by concordance and cohesion issues, mistakes in proper names, incorrect figures and dates. Finally, spelling and typographical errors are found at the bottom of the list. This seems to align to the general principle of avoiding corrigenda to correct very minor errors. In fact, in only two of the 11 cases of the last category, the spelling or typographical errors were the only reason for issuing their corresponding corrigenda (i.e. the only single-correction corrigenda in this subgroup) and they were precisely the only cases that entailed sensitive meaning distortions: a change of symbol in a formula (“–” instead of the original “×” in Annex IX of Commission Delegated Regulation (EU) 2015/1187 in Spanish) and an incorrect measurement unit (“10mW/kHz” instead of “10mW/MHz” in Commission Decision 2005/513/EC in French). In two other cases, the main reason was a spelling mistake in the name of the President of the European Parliament (“J Busek” in French and “J. Busek” in Spanish, instead of “J. Buzek”, in Regulation (EC) No 67/2010 of the European Parliament and of the Council). The second corrections in these corrigenda were a missing full stop after the date at the end of the text in French, and a missing article in the same date in Spanish, two problems that would not have probably been considered serious enough in isolation for a corrigendum to be issued. The other punctuation mistake detected in the corrigenda corpus (another missing full stop) is included in a list with two more serious reformulation corrections (corrigendum to Regulation (EU) No 652/2014 of the European Parliament and of the Council in Spanish).

#### **4.4. Severity of corrected errors**

The above examples recall a key question: to what extent are minor formal errors problematic in light of their impact on the intended meaning and the potential consequences of these meaning distortions? As suggested in Sections 2 and 3, in institutional contexts, and more generally, the severity of translation errors tends to be associated with

their impact on the semantic components of a text, such as central ideas or concepts. Institutional guidelines on corrigenda do not elaborate much on error severity, but associate minor formal corrections with obvious and unimportant errors. According to the DGT's tender specifications for outsourced translations (OMNIBUS-15) of 1<sup>st</sup> July 2016, errors are "classified according to their severity as 'low-relevance' or 'high-relevance' errors" (Strandvik 2017: 125), where the latter category is understood as an error that "seriously compromises the translation's usability" (DGT 2016: 11). In the case of legal documents, this means that serious errors may affect the scope or effects of the texts. Along these lines, to compare the severity of error types, each identified error was assigned a degree of semantic (or meaning deviation) impact according to the following scale:

- Level 0: no semantic impact, i.e. the error is obvious and does not affect the content of the segment. For example:
  - "Nada de lo dispuesto en el presente Convenio menoscabarán [...]” instead of “menoscabará [...]” (our emphasis) for “Nothing in this Convention shall affect [...]” (wrong subject-verb agreement in UN report A/59/766 in Spanish);
  - “déclaration de conformité avec ce critère” instead of “à ce critère” (our emphasis) for “declaration of compliance with this criterion” (incorrect preposition in Commission Decision 2005/360/EC in French).
  
- Level 1: limited semantic impact, i.e. the error causes a change in meaning but the affected element does not significantly impact the overall scope or effects of the text as a whole considering the relevance and context of the segment. For example:
  - “programme de travail pluriannuel” instead of “programme de travail annuel” for “annual work programme” (inaccuracy in Regulation (EU) No 1077/2011 of the European Parliament and of the Council in French);
  - “1º de septiembre de 2005” instead of “1º de septiembre de 2004” (error in the first of two references to the effective date of changes to a WTO schedule of tariff concessions in WT/Let/489 in Spanish).

- Level 2: serious semantic impact, i.e. the error may lead to a change in scope or understanding of important elements of the text, such as key concepts, definitions, conditions or deadlines, and may even involve legal, political or economic consequences. For example:
  - “carezca de ánimo de lucro” instead of “tenga ánimo de lucro” for “organised on a for-profit basis” (opposite meaning in Directive 2014/26/EU of the European Parliament and of the Council in Spanish);
  - “990,94 millions de dollars d’intérêts” instead of “990 941 dollars d’intérêts” for “\$990,941 in interest” (wrong figure in UN financial report A/65/5/Add.9 in French).

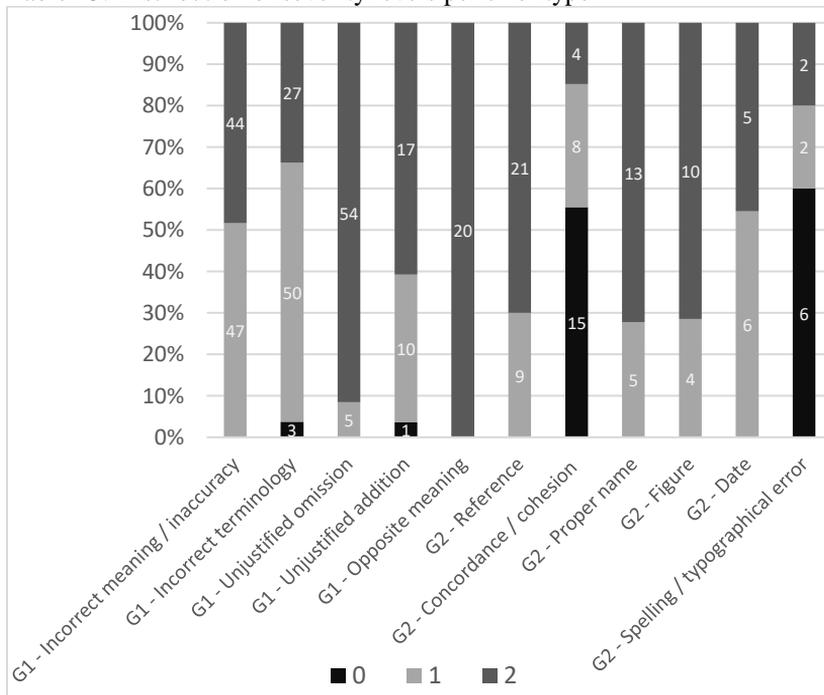
To limit subjectivity and ensure consistency in the application of this scale, the severity analysis was double-checked with a second validator and borderline cases (few) were further reviewed. Overall, as expected, the average impact score of content reformulation corrections (1.57) was higher than that of minor formal corrections (1.31), but not by far (see Table 12). The main differences between institutions are the higher impact level of the first group at the WTO (1.75), and of the second group at the UN (1.44 compared to 1.14 at the WTO). This seems to confirm that, as a rule, corrigenda concerning errors of low semantic impact are strictly avoided at the UN according to its editorial guidelines, in contrast with the explicit inclusion of “non-substantive” corrections in the WTO guidelines. Interestingly, the only typing error of level 0 severity identified in a UN corrigendum (“nos e” instead of “no se” in A/59/766/CORR.4 in Spanish) appears in a list with four other corrections. At the same time, reissues for technical reasons (not considered for the severity statistics) may correct errors of significant semantic impact, as illustrated in Section 2 (examples of opposite meaning and unjustified omission).

It is not surprising that spelling and typographical errors scored the lowest severity level (0.60) together with concordance and cohesion issues (0.59). Both concentrate the largest proportion of level 0 errors (see Table 13). However, a few mistakes of these types caused significant semantic distortions, such as the two typographical errors that triggered single-correction corrigenda in the EU (see Section 4.3).

Table 12. Severity of errors expressed in levels of semantic impact

	EU	UN	WTO	Overall
<b>Content reformulation corrections</b>	<b>1.56</b>	<b>1.54</b>	<b>1.75</b>	<b>1.57</b>
Opposite meaning	2.00	2.00	2.00	2.00
Unjustified omission	1.94	2.00	1.33	1.92
Unjustified addition	1.67	1.00	-	1.57
Incorrect meaning / inaccuracy	1.43	1.58	1.86	1.48
Incorrect terminology	1.29	1.27	2.00	1.30
<b>Minor formal corrections</b>	<b>1.29</b>	<b>1.44</b>	<b>1.14</b>	<b>1.31</b>
Proper name	1.62	2.00	2.00	1.72
Figure	1.64	2.00	-	1.71
Reference	1.71	1.80	1.00	1.70
Date	1.57	1.00	1.50	1.45
Spelling / typographical error	0.86	0.00	0.00	0.60
Concordance / cohesion	0.57	0.33	2.00	0.59

Table 13. Distribution of severity levels per error type



At the other extreme, the most serious semantic impact and the highest proportion of level 2 errors are found in content reformulation error types, with averages of between 2 (opposite meaning) and 1.48 (incorrect meaning or inaccuracy). Incorrect terminology scored an average severity level of 1.30, including more errors of limited than serious semantic distortion impact. Error types in the group of minor formal corrections, except for spelling or typographical errors and concordance or coherence issues, were often more serious, with average severity levels of between 1.45 (dates) and 1.72 (proper names). These findings serve to debunk ideas that systematically associate minor formal corrections on the textual surface with minor semantic impact and limited potential consequences.

## **5. Discussion and conclusions**

From procedural, pedagogical and managerial perspectives, corrigenda and the corrections they explain are of keen interest to institutional language services in a context in which (1) their reputation remains linked to expectations of quality, while (2) their exposure to scrutiny (and accountability) has been accentuated by enhanced text accessibility and search tools, and (3) their workflows have been adapting to growing trends in automation and outsourcing. Over the 2005-2015 period examined here, EU institutions have been the most explicitly concerned about correction processes, particularly as a result of the addition of official languages to the EU's directly applicable legislation, which accounts for a high proportion of translation work in that context. In contrast, the UN, with a much more limited production of binding instruments, has seen a parallel reduction of corrigenda and an increase in the number of reissues for technical reasons, which are also used to correct translation errors as illustrated in this study. Given the lack of traceability of the initial translation in these cases, the UN model of reissues would be impracticable for EU legislation due to the prevailing need to preserve transparency and legal certainty. Nonetheless, predictability, as a pillar of legal certainty, is challenged by the high number of EU corrigenda that introduce semantic adjustments with retroactive effects after the publication of EU legal

acts. This has been the object of criticism on the basis that “meaning-changing corrigenda are amendments in a material sense, which can be applied only prospectively, and even then, with due respect for acquired rights and the legitimate expectations of the individuals concerned” (Bobek 2009: 962).

The fact that the UN genres most frequently rectified by corrigenda and reissues for technical reasons are non-binding texts (e.g. reports, resolutions, agendas and budgets) and that the language of the original texts is normally indicated in UN documents provides more leeway for correction processes and reduces legal risks in that organization. The same applies to the WTO, with only three official languages, smaller translation volumes and very few corrigenda, all of them clearly identified as such for both substantive or non-substantive corrections. The most affected texts in this organization are notifications by Member States, but with an impressively low density of corrections.

Both legal and linguistic considerations are therefore key to interpreting our quantitative findings. The higher incidence of errors detected in EU documents actually means that the system as a whole is effective in handling an overwhelming volume of translation produced by several institutional languages services: errors that should have been spotted through quality control before publication are corrected *ex post*, thus preventing more serious consequences at a later stage. What represents an initial failure of quality assurance processes is subsequently repaired through corrective actions with the support of legal services. Considering the massive volume of EU translation and the challenges faced in that context since the mid-2000s (Strandvik 2018), the number of corrections can be deemed acceptable, while also providing a compelling reminder of the acute need for quality assurance in situations of strain and productivity pressure for language services.

The types and severity of errors corrected confirm that, in all the institutions examined, meaning-distorting content reformulation corrections are the most common, and on the increase, while minor formal corrections seem to be quantitatively stable and their semantic impact severity is often comparable to content reformulation errors. The only exceptions are spelling or typographical mistakes and grammar-related concordance or cohesion problems, such as overlooked repetitions (often “copy-paste errors”) and agreement between sentence components, more commonly attributable to insufficient attention or quality control. These error types, however, rarely trigger single-

correction corrigenda unless they have a significant semantic impact (e.g. wrong symbol or measurement unit in a formula). Two conclusions derive from these findings: (1) the nature of minor formal corrections on the textual surface cannot be systematically associated with obvious or unimportant errors; they might not be obvious to detect, and they may alter sensitive elements of the text; and (2) in their application of correction principles, language and legal services are guided by semantic impact severity regardless of the origin of the error, and hence irrelevant stylistic or typographical corrections are avoided as the sole reason to issue a corrective document.

As regards diachronic patterns, the soaring number of corrections in EU texts emerges as a matter of concern, and calls for specific attention. Apart from the high scrutiny and exposure of EU legal acts and the increasing number of EU languages, other systemic factors may partly explain the upward trend. One of them is the complexity of the ordinary legislative procedure introduced by the Lisbon Treaty, as also suggested by the correction ratios identified per genre and subgenre. The multiple readings of legislative proposals and the enlarged number of actors involved in the process may contribute to the risk of inaccuracies or inconsistencies. As highlighted by the DGT, an added factor behind the “increasing number of corrigendum requests in recently adopted legal acts” might be the heightened awareness of the corrigenda-handling process as a result of the DGT’s empowerment of 2008 (European Commission 2012: 31). This seems to be confirmed by the gradual increase in corrigenda to documents of a broader time spectrum in our 2010 and 2015 results. However, this only accounts for part of the overall growth of corrections.

From a translation management angle, the question arises whether and to what extent the adaptation of working conditions derived from post-enlargement resource constraints also had an impact on error patterns. More particularly, as elicited through interviews conducted at the same institutions, the EU outsourcing model privileging large translation service providers, rather than accredited individual external translators as in the UN and the WTO, entails higher risks to quality due to less predictable quality control needs for individual translations (Prieto Ramos 2017: 71). This outsourcing model would require reinforced quality assurance measures in order to reduce risks, something that DGT has recently addressed as part of its revamped *Quality Management Framework* (DGT 2014 in Strandvik 2018) and its *Translation Quality Guidelines* (DGT 2015). Other EU

institutions, such as the Council of the EU (see Hanzl and Beaven 2017), have also revised their quality assurance practices along similar lines. The impact of these new approaches is yet to be examined.

The same goes for the impact of new technological tools in all institutional language services. While some computer applications may help to detect errors and inconsistencies, the expansion of neural machine translation is also bringing rapid change to workflows and working methods. In a context in which institutional translation management models need to integrate these new variables (i.e. interaction between in-house and external human and machine inputs and outputs) into risk assessment equations and quality assurance policies, it will be critical to monitor trends in the nature and severity of errors spotted or unnoticed through the production chain. As regards translator training and professional development, the shift from traditional translation and revision profiles to specialized post-editors and quality controllers will only stimulate further interest in analyses of error types and how they surface in corrigenda.

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