

The Role of EU Legal English in Shaping EU Legal Culture

Bajčić, Martina

Source / Izvornik: **International Journal of Language & Law (JLL), 2018, 1, 8 - 24**

Journal article, Published version

Rad u časopisu, Objavljena verzija rada (izdavačev PDF)

<https://doi.org/10.14762/jll.2018.008>

Permanent link / Trajna poveznica: <https://um.nsk.hr/um:nbn:hr:118:217176>

Rights / Prava: [In copyright](#) / [Zaštićeno autorskim pravom.](#)

Download date / Datum preuzimanja: **2024-11-12**

PRAVRI

Pravni fakultet Faculty of Law



Sveučilište u Rijeci
University of Rijeka

Repository / Repozitorij:

[Repository of the University of Rijeka, Faculty of Law](#)
[- Repository University of Rijeka, Faculty of Law](#)

uniri DIGITALNA
KNJIŽNICA

DIGITALNI AKADEMSKI ARHIVI I REPOZITORIJI

The Role of EU Legal English in Shaping EU Legal Culture

Martina Bajčić*

Abstract

There is no denying that a change in the languages and cultures of European law is taking place. Indeed, many scholars speak of a hybridization of legal languages in the EU under the influence of EU legislation (e.g. Koskinen, 2000; Mori, 2011) and the emergence of a new European legal culture due to the Europeanisation of law (Graziadei, 2015). Exploring the interfaces of law, language and culture in the EU, this paper places emphasis on the role of English as a *lingua franca* in the EU in conceptualizing a common EU legal culture. The alleged neutrality of English and the importance of neutral terminology in EU legal drafting are examined against the backdrop of autonomous concepts of multilingual EU law. Arguing that the relationship of EU and national legal culture should not be framed in terms of opposites, but rest on the ideas of integration and synthesis, the author draws an analogy between the concepts of EU legal culture – construed as “law in action” – and EU citizenship, underlining the important role of the Court of Justice of the EU in shaping EU law and developing autonomous concepts.

Keywords

EU law and language, legal culture, neutral terms, EU legal English as a *lingua franca*

Note: This is part of the JLL special issue “EU Legal Culture and Translation” edited by [Sosoni & Biel 2018](#).

* *Martina Bajčić*: Faculty of Law, University of Rijeka (Croatia), martina@pravri.hr. The author expresses her gratitude to the editors and reviewers for their helpful comments on this article, and acknowledges support of the Croatian Science Foundation under the project no. IP-2013-11- 5709 “Perspectives of maintaining the social state: towards the transformation of social security systems for individuals in personalized medicine”.

1. Introduction:

Interfaces of Law, Language and Culture in the EU

While it is true that both law and language may be viewed as universal symbols of a community, each language as well as each legal system bears the local stamp of a particular culture and tradition.¹ This paradox forbears special ramifications for the functioning of multilingual EU law. For one thing, EU law can be viewed both as community law and as a particular legal system which happens to be expressed in 24 different, locally coloured languages. Can the latter be treated as community-type languages though?

Let us consider a hypothetical example. Does a German *Rechtsanwalt* “read” a paragraph of the German civil code concerning the transfer of property by means of a valid will in German and the EU Succession Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession² – also in German – in the same way? Does the fact that the two texts are seemingly embedded in different legal systems (namely, one in local German national law and the other in supranational EU law) manifest in distinct legal conceptualizations? And does a French *avocat* reading the same EU regulation in French conceptualize it in the same way as the German lawyer? In other words, is there a community-type of language (in all 24 official languages and not just English) that furthers what can be described as a shared and collective EU conceptualization? Both legal and linguistic considerations come into play in this context.

If we endorse the view that discourse communities are communities of people who link up in order to pursue common objectives (Kjær, 2015: 97), then the German and the French lawyer speaking about the same EU law may be said to belong to the same discourse community. However, to what extent this imagined community of lawyers shares a common, transnational legal culture in the sense of “values, judicial knowledge, practices etc.” (Michaels, forthcoming) is debatable.

Although the notion of legal culture has long been scrutinized by legal scholars, there is no agreement as to what exactly the term means. For some authors, legal culture refers to a simple extension of the law as living law; others equate the term with legal tradition or legal family, whereas some find it includes legal ideology, and legal terminology *inter alia*.³ Generally, the term legal culture refers to factors that go beyond

¹ The symbiosis of language and community rests on the idea that the community makes us what we are through language, and through language we make the community what it is (Berman, 2015: 47).

² EU Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, p. 10–34. Available at data.europa.eu/eli/reg/2012/650/oj.

³ For a critical account of legal culture see Michaels (forthcoming).

legal rules, such as values, standards, judicial knowledge or living law, and is often studied in close connection to language. For Robertson (2015: 35), the shared culture of the EU is founded on the primary treaty texts which are negotiated and signed by the Member States.⁴ In what follows I will try to explore the link between legal culture (in a narrow sense of “law in action”) and language by applying both legal and linguistic approaches. Conceptualizing a shared European legal culture as “law in action”, sheds light on the role of language, and EU legal English in particular, in shaping EU law.

Reflecting on the relationship between law, language and culture in the EU, the following section outlines the two main schools to the modern study of law and language. Emphasis is put on a cognitive linguistics view of legal language. The second section shifts the focus to the phenomenon of legal English as a community-type of language and the repercussions of its present unprecedented use on the global level. Special attention is devoted to EU legal English as a new genre and to the notion of neutrality. The third section attempts to provide answers to the questions posed in the introduction of this paper by drawing a parallel between the concepts of EU citizenship and EU legal culture, while highlighting the important role of the Court of Justice of the EU (hereinafter: CJEU).

1.1. Contemporary Law and Language Schools

Investigating the intricacies of EU legal language and legal culture, one cannot rely on linguistic analysis alone, although the latter provides valuable explanations as to identifying differences in syntax, text type and genre or terminology of EU legislative texts, in contrast to national law texts. Fascinating work has been done in this regard by corpus linguistics and translation scholars (see Biel, 2014) generating useful findings. Providing an understanding of the nature of EU law and its give-and-take with national laws of Member States also requires a consideration of the ways the special features of EU law influence language.

In addition to the typical account of legal language scrutinizing formal features such as style and syntax, the categories of concept, conceptual structure of a domain, and the use of language in a particular domain merit attention as well. This appears especially important for the study of English in transnational use in the EU context. To study legal language as a silo-like notion in contrast to general language implies that national legal languages are “individually unique entities” (Kjær, 2015: 99), but legal language and culture cannot be neatly separated. Arguing for an integrated approach to law and language,⁵ we do not support the view that specialized languages are only

⁴ “They have a double function since they are rooted in the legal culture and language of international law, but they create the legal system and culture of EU law” (Robertson, 2015: 35).

⁵ Note that Goźdz-Roszkowski (2011: 3) points out how the term “legal language” has been often used as a convenient label for a generalized functional variety or register of modern English, ignoring the great variety of

varieties of general languages. To remind ourselves, cognitive linguistics considers language in relation to other cognitive capacities of human beings, emphasizing that language, thought and experience are deeply intertwined. Placing the focus on meaning and conceptualization as the process of understanding concepts as parts of wider conceptual structures is important from the perspective of this paper which concentrates on the issues of legal culture, language and community in the multilingual EU context. With this in mind, it is essential to study the use of language in a domain by taking into account the domain's specific features and extralinguistic information conveyed by concepts and terms. This extralinguistic information is couched in legal knowledge and streamlines the process of legal conceptualization. To that extent, it is instrumental for the understanding of “legal culture” and legal language.

Lawyers have also underlined the need for a holistic approach to the study of law relying on other disciplines. In the 1960s, American jurists turned to the methods and insights of other disciplines not only to enhance their legal formulations, but also to

“refigure the roots and routes of legal analysis, to render more holistic and realistic our appreciation of law in community, in context, in concert with politics, social sciences, and other disciplines” (Witte & Manzer, 2015: 15).

It is interesting to note that since the birthing process of an interdisciplinary approach to the modern study of law and language, two main schools were developed: the rhetorical-humanistic and the linguistic. According to Witte & Manzer (2015: 27–32), exemplary of the rhetorical-humanistic school, which has no foundations in linguistics, are James Boyd White and Milner Ball. On the other hand, Lawrence Solan and Peter Tiersma are some of the representatives of the linguistic school. While some scholars have questioned the merit of the former school of the law and language movements, White's work deserves credit for emphasizing the role of language and dialogue in making community.⁶ The 1984 conference on hermeneutics and law at the University of Southern California and its hefty Southern California Law Review issue marked an important early start of the rhetorical-humanistic school of the law and language movement (Witte & Manzer, 2015: 27). Following in these footsteps, White's *The Legal Imagination* as a collection of literary excerpts, legal texts and exercises was designed to

“help students understand the rhetorical aspects of legal practice and the moral and humane motives that should inform a humanistic practice of the law” (Witte & Manzer, 2015: 28).

legal language and its constant evolution. Despite the fact that the nature of legal language has been recognized as heterogeneous, comprehensive and empirically-grounded studies of variation in legal language remain scarce (Goźdz-Roszkowski, 2011: 5). Preference is here given to the term “law and language studies”, rather than *legal language*, *legal linguistics*. *Linguistique juridique*, also known as *jurilinguistique*, designates research into legal language based on modern linguistics, while the corresponding German term, Rechtslinguistik is sometimes associated with research involving philosophy of language (see Mattila, 2006: 8).

⁶ In *Justice as Translation* (1990: 267), White posited that law is a place for reciprocal exchange and engagement: “Human community and language lives through this process of reciprocal interaction, response, and translation.”

The representatives of the second school of law and language tried to show the contemporary relevance of linguistics to legal scholarship. Much research within the linguistic school has been devoted to improve the conduct of trials before juries (see the work of Stygall, 2016, for instance) or to offer linguistic analyses of judicial reasoning and the importance of language in law in general (see the work of Tiersma & Solan, e.g. *The Oxford Handbook of Language and Law*, 2016; Gibbons, 1994; Bhatia, 1993; Bowers, 1989). Legal studies can benefit from linguistic analysis in that studying the use of language within a domain offers insight into the domain's conceptual structure (see Bajčić, 2017: 29), which reinforces the argument that language cannot be divorced from extralinguistic knowledge, i.e., the conceptual knowledge activated by it. In the parlance of cognitive linguistics, meaning is construed as conceptual structures. Therefore, understanding a legal concept presupposes understanding the extralinguistic legal knowledge activated by the concept in question. For the purpose of this paper we may refer to the latter process as legal conceptualization.

1.2. Conceptualizing EU Legal Culture

Observed from this perspective, to speak of a hybrid pan-European culture grounded in EU law and *ius commune* of Europe implies that the former is conceptualized as a supranational legal culture common to all EU citizens. Accepting the importance of this extralinguistic context for the perception of EU legal culture in line with cognitive linguistics, a common EU legal culture does not necessarily suppress the elements of national Member States cultures. If the common European legal system can be observed as a subsidiary system that does not render the existing national legal systems obsolete (Weigand, 2008: 250), then we can speak of a co-existence of national and EU legal cultures. As will be elaborated in subsequent sections, it is possible to pursue an analogy to EU citizenship in this context – as an important concept of EU law and a means for strengthening common bonds within the EU. Just like EU citizenship does not replace national citizenship, but rather complements it, EU legal culture is seen as additional to the national legal cultures of Member States.

Studying EU legal culture in connection to the issue of legal conceptualization might benefit from an integrated approach to law and language following the broad trajectory of the rhetorical-humanistic movement, but, at the same time, applying state-of-the-art linguistics tools to the study of law and language in the EU. The following section shifts the focus to legal English examining the consequences of an increased use of international legal English and EU legal English in particular.

2. United in English

With 24 official languages, EU multilingualism is challenging in many ways. Looking through the legal lens, multilingualism in the EU falls into three different categories: the original (authentic) languages of the Treaties, the official languages of the EU and the working languages of the EU (Mańko, 2017: 1). And although each EU institution lays down its own rules on multilingualism, English is not only the “unofficial working language for drafting and for political negotiations”, but also “the pseudo-source language for most of the Union’s translations” (Felici, 2015: 124). While in the past French and English were used to the same extent as drafting languages, a publication of the Directorate-General for Translation shows that 72.5 percent of legislative texts in 2008 were drafted in English (see European Commission 2009). What is more, English clearly dominates as the second language among Europeans, since 38 per cent know English as a second language.⁷ Not only is English today the most widely learned foreign language, but it has a dominant position in science, technology, research, diplomacy and international organisations, in mass media entertainment, among others. An increased use of English in the education systems has become a reality at European higher-learning institutions which offer courses in English to Erasmus students.⁸ Philippon (1992: 6) is right in saying that the variety of domains in which English has a dominant position is indicative of its functional load.

In the words of a former judge at the Court of First Instance of the European Communities (renamed into the General Court with the Treaty of Lisbon in 2009)⁹: “Fortunately or unfortunately, ‘international English’ is a fact of life.” (Bellamy, 1998: XIX). The reasons that have resulted in the to date unparalleled role of English are multifold. According to Rossini (1998: xxi), English became the language of business and finance as a result of the UK's traditional role in banking and commerce and later owing to the rise of the US in capital and commodities' markets. Eventually, English emerged as the preferred foreign language for cross-cultural situations because it was the most commonly known language (Rossini 1998: xxi). International English is used for cross-cultural communication by native speakers of English and bilingual users (see McKay, 2002: 132) and can be defined as:

“the English language, usually in its standard form, either when used, taught, and studied as a *lingua franca* throughout the world, or when taken as a whole and used in contrast with American English, British English, South African English etc.” (McArthur, 1998: 301 cited in Forche, 2012: 461–462).

⁷ English is followed by French (12 percent), German (11 percent), Spanish (7 percent) and Russian (5 percent) (Mańko, 2017: 2). There seems to be an increasing number of people becoming English-bilingual in the younger generation (Forche, 2012: 451).

⁸ Investigating the emergence of Euro-English, Forche (2012: 473) suggests that young mobile Europeans may influence future institutionalization of English as a decontextualized *lingua franca*, while Baaij (2018) proposes formalizing the primacy of English in the EU by recognizing English as institutional *lingua franca*.

⁹ See the Treaty on the Functioning of the EU, Official Journal C 115/47 of 9 May 2008.

In the EU context, an ever increasing role of English as a transnational *lingua franca* can be brought into correlation with a growing need of the enlarged, fragmented Union for a common means of communication.

With respect to English as a legal language, a distinction is usually made between English of the principles of law in the UK, English of the principles of law in the US as well as English used in other English-speaking legal cultures. As Berman (2015: 115)¹⁰ aptly observes, although English and American law have a historical relationship of parent and offspring, there are striking differences between them, despite their use of identical words. Even if legal systems have common features including parallel legal terms and concepts, these do not comprise a (shared) legal history.

Since the shift from Latin to Law French at around 1300, French was used as a legal language in England until the 17th century (see Tiersma, 2016: 21). Observed from the viewpoint of today's hyperpresence of English in legal settings, it is intriguing that the rise of English as a legal language in England was not appreciated by all. Some feared that, if the law were expressed in English, ordinary people might try to act as their own lawyers, and failing to properly understand the law, would "fall into destruction" (Tiersma, 1999: 28–29).

2.1. International Legal English in Lieu of Translation

While people do not necessarily try to act as their own lawyers, many do try to use English to the end of avoiding translation, "a necessary and expensive evil" (Way, 2016: 1016). This is not inconceivable for, as we have seen, English is spoken as a second language by most Europeans. Consequently, on many occasions today, parties to a contract, for example, choose English as the contract language, even though it's not the mother tongue of either of the parties. In this context, Schippel (2018: 14) stresses that the intentionally conventionalized discourse within which the communication occurs is in fact what renders the use of a shared *lingua franca* easy, and not a shared background of a particular discursive structure of knowledge.

Not only is English today the dominant language on the global level;¹¹ its use may also represent a partial substitution for translation (cf. Várady, 2015: 179), despite sensible warnings as the one sounded by Way (2016: 1016):

"Although it is true that in non-English-speaking countries the passive level of English among professionals in most fields has evolved sufficiently for most of them to consider reading texts in English without a translator's help, rarely are they proficient enough to produce a text in English."

¹⁰ By way of illustration Berman points to different conceptualizations of the term *crime*. Though defined similarly in English and American legal dictionaries, what actually constitutes a crime is different in the two countries; the procedure for investigating and trying crimes are different, as are the punishments and attitudes of society toward crime (Berman 2015: 115).

¹¹ For a critical overview of traditional stances on "world English" and "global English" as a kind of general English used in cross-cultural communication see Felici (2015: 123).

Needless to say, the quality of drafting may be questionable and the cost-saving factor due to avoided translation may backfire in the form of later disputes arising in connection to vague, unclear wording of the contract at hand. Difficulties may arise because the drafters i.e., parties who are non-native speakers of English, are actually thinking in terms of their own language. In the EU context, Felici (2015: 124) points to the fact that EU English remains a vehicular language drafted by non-native speakers. Because of this, syntax, stylistic features and drafting conventions of one's own language may be imported into the EU English (Felici 2015: 124). On that point Várady (2015: 180) speaks of an anchor language as the deeper, invisible layer. While the anchor language remains hidden, the original is in fact a translation. For instance, one contract drafted in English included the following wording: "put the contract to peace" (to borrow Várady's example, 2015: 180). However, what was actually meant in the hidden anchor language is "to suspend". To resolve such ambiguities one must resort to the anchor language. In the cited example the anchor language was Bosnian in which one may say *staviti u mirovanje* for "suspending a contract". The wording in question led to a dispute, since one party interpreted the phrase to mean "suspend" and the other "terminate".

As we have seen, the widespread use of international legal English in business transactions and day-to-day legal affairs, which has become a fact of life, may lead to problems because of the drafters' lack of proficiency in English and in legal English respectively. A corollary of poor knowledge of legal English is the presence of anchor language in a legal text, which makes the original in fact a translation.

We shall now take a closer look at the use of legal English in the EU, highlighting some of the reasons which led to its rise. Special attention is devoted to what will be called the neutrality phenomenon as a salient feature of EU legal English.

2.2. EU Legal English and Neutral Terms

The EU legal drafting preference for neutral terms, whenever possible, rather than national law terms, is well known. Sometimes, neutral terms can be the result of the use of English borrowings (e.g. *franchising*, *factoring*) or of loan translations in other languages. Neologisms are also often created in English first and then rendered in other languages as lexical equivalents or borrowings (Mattila, 2016: 36). The increased use of English in continental legal contexts makes it necessary to create English neologisms to express new EU institutions or to consolidate English equivalents of terms designating old institutions, wherefore Mattila (2016: 36) concludes that

"a new variant of legal English is being created which includes a number of terms which do not exist in common law English, along with a number of common law terms which are used with a more or less distinctive Continental meaning".

Robertson (2012: 1233) likewise regards EU legal English as a new genre. Often described as "a new legal order of international law" (see Čavoški in this volume), EU law

was in need of its own (deculturalized) terminology to describe new legal concepts. Efforts to create new and uniform terminology to achieve greater harmonization have to some extent led to a new variety of a neutralized English. The latter is increasingly taking on the role of a *lingua franca* in the EU (see Felici, 2015). Nevertheless, Felici (2015: 129) thinks that EU legal English cannot be regarded as norm developing, because it has not evolved into a uniform drafting style. In fact, EU English style guides seem to base their instructions on the standard usage of Britain and Ireland (e.g. English Style Guide, 2017: 1).

EU law as a hybrid legal order *sui generis*, or “tertium comparationis juxtaposing and combining very different legal systems, cultures and styles” (Jopek-Bosiacka, 2011: 26), was influenced by the civil-law traditions of German and French law at least at the beginning of the European integration. Not only was French the main drafting language in the early days of the EU, but the first EU English texts were translations from French (Felici, 2015: 127), since the UK joined the European Economic Community in 1973, when English was introduced as an official language of the European Community. Felici (2015: 127) hence claims that the continental legal tradition and Romance languages shaped the drafting style and terminology in the EU. The latter was further strengthened by means of drafting guidelines issued by the EU institutions, most notably the Joint Practical Guide (European Union 2015). Among the goals promoted by the Guide, as already stated, is the avoidance of terms closely linked to the national legal systems of the Member States. Observed through the lens of legal history, English, as the language of common law, could be said to offer a neutral tool to frame the civil-law traditions of EU law. Likewise, some scholars claim its relatively neutral, indefinite semantics enables a level-playing field for ensuring the protection of national interests, while being politically correct (Felici, 2015: 128).

“ELF seems to be the sort of English that best serves the Union’s needs in terms of providing acultural neutral expressions, ensuring efficiency, promoting uniformity of all language versions, translation memories and facilitating political negotiations” (Felici, 2015: 138).¹²

However, in addition to the initial influences of French and German civil law, EU law was also influenced by UK common law (Mattila, 2006: 107). It is therefore questionable, first, to what extent English meets the needs of the Union for a flexible language without cultural connotations, and second, to what extent it furthers the goal of establishing a new European legal culture.

At first glance there appears to be a link between the use of neutral terms and uniform application of EU law in 24 official languages. In keeping with the Joint Practical Guide (European Union 2015: 19), country-specific legal terms should be avoided in EU legal drafting, as they may lead to translation problems. As Šarčević (1997: 255) asserted, neutral terms are usually broader in meaning than technical terms and, as such, frequently used in multilingual, multilateral instruments. Another advantage of neu-

¹² Felici (2015) uses the term *English as a Lingua Franca* (abbreviated as ELF) for English used in the EU.

tral terms is their potential for diplomatic leverage, insofar as the less specific words, the higher the chances for a compromise (Felici, 2015: 128). This is especially important for achieving conceptual autonomy of EU law. Having a peculiar terminology of its own is important for the functioning of the EU in view of the fact that “legal concepts do not necessarily have the same meaning in Community law and in the law of the various member states”.¹³ It is important to emphasize that the above independence of terms underscores the independence of the underlying concepts. For the EU to function as a supranational legal order, its concepts must also be interpreted at a supranational level (Engberg, 2015: 170), which renders EU concepts autonomous, as has been emphasized in CJEU’s case law.

Some EU law concepts are of indeterminate meaning lacking statutory definitions. In this regard the Court of Justice of the EU plays an important role as it establishes the meaning of such indeterminate concepts in cases of disputes. It does so by balancing the purpose of a regulation at issue and EU’s interests, while weighing the facts of the case at hand. The question remains if establishing the meaning of such indeterminate concepts is influenced or simplified by the fact that they are conveyed by neutral, new terms.

Indeed, there are many examples of new terms which denote new concepts of EU law. Some of them appear unusual to a native speaker’s ear. Let us consider terms *account preservation order* or *enforcement order*. The European Account Preservation Order has been introduced by the EU Regulation 655/2014 in order to enable prompt action on behalf of the Member States to basically freeze the debtor’s accounts within the banks on their territory and help protect a creditor’s claim.¹⁴ Greatly simplified, the European Account Preservation Order makes debt recovery easier. The procedure for issuing European Account Preservation Order represents an alternative to existing legal procedures in the Member States. Its key advantage is the surprise effect, for the procedure is not only quick, but operated without informing the debtor (*ex parte*). The application forms for the European Account Preservation Order are available online.

As far as the English term *preservation order* is concerned, we may indeed speak of an unmarked form devoid of cultural specificity, as Felici (2015: 127) puts it.¹⁵ In contrast to a *freezing injunction*, which is used in the UK, or a *bank account seizure warrant* found in the US, a *preservation order* does not bear a local stamp. But there is another vital point to be considered here: how is this concept rendered in other EU languages? Do other

¹³ Case 282/81 *Srl CLIFIT and Lanificio di Gavardo SpA v Ministry of Health* [1982] ECR 3415, para. 19.

¹⁴ EU Regulation 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189/59, 27 June 2014. Available at data.europa.eu/eli/reg/2014/655/oj.

¹⁵ Felici (2015: 127) names *internal market*, *pigmeat*, *sheepmeat*, and *planification* as examples of new terms devoid of cultural specificity. In her opinion, the use of EU legal English simplifies translation, as it is easily adapted to other EU languages and promotes uniformity of all language versions (Felici, 2015: 131–138). As the same time, the broad terms of ELF can be ambiguous and result in different translations and in turn different interpretations, as Felici (2015: 138) concludes.

languages follow the same practice of introducing new, neutral terms to denote such novel concepts of EU law, or resort to terms of national law?

Account preservation order is rendered in German by *Beschluss zur vorläufigen Kontopfändung*.¹⁶ Unlike account preservation, *Kontopfändung* is used in the German Civil Procedure Code (*Zivilprozessordnung*)¹⁷. If we take a look at other EU language versions of this Regulation, it is evident that some of them use national law terms as well.¹⁸ Note that the abovementioned *enforcement order* from Regulation 805/2004 has been rendered in German by *Vollstreckungstitel*, again a national law term.¹⁹ While the term *preservation order* or *enforcement order* may sound peculiar (in this context) to a UK lawyer, German or French terms are unlikely to bewilder German or French lawyers.

Observed in this light, it could be argued that the neutral English terms contribute to the goal of a distinct EU legal conceptualization more than national law terms in other languages. However, this brings into question the usefulness of the preference for neutral terminology in furthering uniform application and interpretation of EU law, if some languages do not resort to neutral terms to denote concepts of EU law.

Further understanding of the multilingualism implications and the role of language in the interpretation of EU law is gained by considering the important role of the CJEU. In case of interpretive doubt about a wording or term of a legislative provision, the CJEU establishes its meaning, without giving preference to one term over another. As pointed out by Mańko (2017: 7), a “correct interpretation of EU law requires it to be placed in context, in particular of other pieces of EU legislation, and with regard to the objectives of EU law.” In other words, teleological and systemic methods of interpretation often take precedence over linguistic methods of interpretation. As previously discussed (Bajčić, 2017; 2014), in cases of interpretive doubt and divergences between the language versions, more weight is put not on the terminological level, but on the underlying conceptual level. This would imply that, in essence, it is irrelevant whether the German term is a national law term or a neutral term as long as it is conceptualized as EU law, i.e. interpreted autonomously at the supranational EU level.²⁰ For the purpose

¹⁶ Available at data.europa.eu/eli/reg/2014/655/oj (accessed 1 September 2017).

¹⁷ *Zivilprozessordnung, Abschnitt 6*. Available at www.gesetze-im-internet.de/zpo (accessed 1 September 2017).

¹⁸ At least this appears to be the case for terms in French, Italian, Slovenian and Croatian: FR *d'ordonnance de saisie conservatoire des comptes bancaires*; IT *l'ordinanza di sequestro conservativo su conti bancari*; SL *nalog za zamrznitev bančnih računov*; HR *nalog za blokadu računa*. All available at data.europa.eu/eli/reg/2014/655/oj (accessed: 1 September 2017).

¹⁹ The English term *enforcement order* which is a neutral term devoid of cultural specificity found in terms such as writ and execution has been translated into Croatian by *ovršni nalog*, and not *naslov* (see Bajčić, 2017: 133). The latter term corresponds to a broader concept known in German as *Titel*. The fact that German, French, Italian, Spanish, Dutch, Swedish *inter alia* use *Titel, titre, titolo, título, titel, titel*, brings into question the EU preference for neutral terms.

²⁰ Regarding EU law as a separate legal order which lives alongside national and international law, Robertson (2012: 50) speaks of a matrix in which terms are capable of undergoing a shift in meaning in each of the different legal orders. For him, however, the matrix is primarily legal.

of the above Regulation, both the English term *account preservation order* and the German term *Beschluss zur Kontopfändung* should denote the same EU concept.

3. From EU Citizenship to EU Legal Culture

EU law is practiced by lawyers coming from different Member States. Their different education and experience coloured by national laws will influence their conceptualization of EU law. To overcome this legicentrism, they would have to learn to think in neutral EU meta-categories grounded in EU legal culture and allowing for a uniform conceptualization of EU law. As Graziadei (2015: 25) concludes, having uniform legislation without a uniform referential system is bound to fail. How important is terminology for the achievement of this conceptual uniformity of EU law? It is worth dwelling on this point for a moment. We live in an era of heightened political correctness which sometimes ironically leads to the “euphemism treadmill” in Steven Pinker’s words²¹. Many examples can be found of deliberate changes to terminology with a view to not only avoiding negative connotations of certain terms, but also changing the social attitudes. The rationale seems to be that, by changing the terminology, the perception of the underlying concepts changes accordingly. For instance, what used to be known as home relief, and later social welfare, is today called TANF, i.e., temporary assistance to needy families.²² The introduction of gender-neutral terminology could also be observed in this light. Whether or not gender-neutral terms trigger a change in the perception of people, or whether TANF is less demeaning or pejorative than home relief or social welfare is another matter. Often, the trend of hyper politically correct terms is only camouflage, unless it fosters change in social perceptions, i.e. the attitudes of people toward the concept in question. Following the same line of argument, a change in legal terminology does not necessarily entail a change in the conceptualization of the law:

“A change in the language used to frame the law does not *per se* entail a change in the law; it does only when it involves a change in the referential system” (Graziadei, 2015: 26).²³

To draw a parallel to the EU context, changing EU terminology to effectuate changes to EU legislation should be accompanied by a modification to the “law in action”.

One of the advantages of having a new variant of legal English to express EU law is that it does not disguise preconceptions of a legal system and is hence a useful tool for

²¹ Steven Pinker introduced this term in his 2003 published book *The Blank Slate* to refer to the process whereby words introduced to replace offensive terms over time become offensive themselves.

²² See acf.hhs.gov/ofa/programs/tanf (accessed 4 September 2017).

²³ Graziadei (2015: 26) gives the example of the French abandoning Latin in favour of French to draft their civil code. The change in the language didn’t change the law at first simply because a new linguistic sign, namely *faute*, was introduced for *culpa*.

furthering EU legal culture and uniform interpretation of EU law. However, as we have seen, this by itself is no safeguard of uniform interpretation, for sometimes other languages do not use system-neutral terms, or the CJEU must intervene to determine the meaning of a concept, even if it is couched in a neutral term (see case law on the meaning of “undertaking” in EU competition law).²⁴ Instead, what is needed is a shift in the “law in action” as well as in the awareness of European lawyers about the importance of a common discourse which can contribute to a common EU legal culture. This requires a common set of concepts shared by all those involved in the application of EU law (Graziadei, 2015: 28).

In our opinion, the CJEU has an important role to play in this respect, most notably by developing autonomous concepts. The idea of EU law as a supranational legal order with autonomous concepts has a central character in the argumentation of the CJEU (Engberg, 2015: 171). The potential role that the CJEU may play in the creation of “a discourse community of legal specialists communicating across differences in languages” (Engberg, 2016: 181) is illustrated on the example of EU citizenship. Although Robert Menasse, author of the “first EU novel”, once said he could conceive a Europe without nations,²⁵ the novel concept of EU citizenship sheds a new light on the notions of nation, nationality and identity. EU citizenship was first introduced into EU law in 1992 by the Treaty on European Union.²⁶ By virtue of Article 20 of the Treaty on the Functioning of the European Union, EU citizens enjoy the rights and are subject to the duties provided for in the Treaties. It is important to emphasize that EU citizenship does not replace national citizenship, but is additional to it as a “common bond transcending Member State nationality”.²⁷

Legal scholarship has been tackling the question whether Union citizenship could assume the primary role in determining the rights and legal status of nationals of Member States.²⁸ CJEU’s settled case law shows that the notion of EU citizenship is gaining currency, especially in connection to social benefits.²⁹ The interaction of the principle of non-discrimination, on the one hand, and citizenship and fundamental economic freedoms on the other, is also likely to further develop this concept, and

²⁴ Here are some cases in which the CJEU discussed the concept of undertaking: C-159/91 *Poucet v. Assurances Generales de France and Pistre*; C-160/91(17/02/1993) *FENIN v. Commission* C-205/03 (15/07/2006) ECR I-6295; *Höfner and Elser v. Macrotron GmbH* C-41/90 (23/04/1991) ECR I-1979.

²⁵ “Ich kann mir ein Europa ohne Nationen vorstellen.” His novel *Die Hauptstadt*, 2017, has been labelled as the first EU novel, and awarded the German book prize for 2017 (“*Deutscher Buchpreis 2017*”).

²⁶ Treaty on European Union, signed at Maastricht on 7 February 1992, Official Journal of the European Communities, C 191 of 29 July 1992.

²⁷ Opinion of Advocate General Jacobs delivered on 19 March 1998, Case C-274/96, *Criminal proceedings against Horst Otto Bickel and Ulrich Franz*, EU:C:1998:115, para 23.

²⁸ See, for example, Tryfonidou (2016), Shaw (2011), Kosakopoulou (2009).

²⁹ See for example, case C-140/12, *Pensionsversicherungsanstalt v Peter Brey*, EU:C:2013:565; case C-313/13, *Elisabetta Dano and Florin Dano v Jobcenter Leipzig* EU:C:2014:2358; case C-67/14, *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others*, EU:C:2015:597; case C-299/14, *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others*, EU:C:2016:114.

more recently, its repercussions on the right to use minority languages (see Bajčić & Martinović, 2017). Serving as a catalyst for change in the evolution of EU law, the CJEU can stretch the meaning of this concept in different directions reaffirming its role in shaping EU law and developing conceptual autonomy. In other words, through its case law the concept “grows” into “law in action”.

The citizenship/nationality relationship could be extrapolated to the one between the EU and Member State legal culture. Just as EU citizenship does not suppress or replace Member State nationality, neither does EU legal culture suppress national legal cultures. The relationship of EU and national legal culture should not be framed in terms of opposites, exclusion and otherness, but rest on the ideas of integration and synthesis; a coexistence of EU and national legal culture. To a certain extent, this is enabled by the autonomy of EU law and its autonomous concepts. However, this is not to say that one common language and uniform terminology denoting autonomous concepts are prerequisites for the existence of a shared European legal culture. As already pointed out, in the EU context, another factor, among others, plays an important part in building community and, needless to say, a common discourse, namely, the CJEU. For, without the CJEU’s case law in which the concept of EU citizenship has often been used to further free movement and non-discrimination, it would remain “law in books”. Owing to the CJEU, the concept grows in substance and scope and is turned into “law in action”, or broadly speaking, EU legal culture. Whether or not the CJEU’s case law will trigger a growing awareness of the benefits of EU citizenship and make people feel as EU citizens more and more, in addition to being nationals of their Member States, remains to be seen.

At the same time, achieving a common conceptualization of EU legal concepts will depend on the willingness of EU legal practitioners to work together towards a shared culture grounded in the ideas of integration, synthesis and not dualism, or opposites. As Clifford Geertz (2001: 224) keenly put it, “What is a culture if it is not a consensus”, rendering the functioning of a community of EU legal practitioners hence contingent on a consensus among its members (cf. Weigand, 2008; Kjær, 2003). By developing autonomous concepts, the CJEU has marked an important first step into this direction.

4. Concluding Remarks

This paper has explored the notion of EU legal culture in connection to EU legal English and neutral terminology. Special attention has been devoted to the conceptualization and meaning of concepts observed from the dual perspective of law and language, as well as to the role played by the CJEU in shaping EU law and developing autonomous concepts. By applying cognitive linguistics tools, the notion of EU legal culture has been portrayed as “law in action” emerging through the described interpretive ac-

tivity of the CJEU, assuming that autonomous concepts allow for a distinct conceptualization of EU law and national law and similarly, a co-existence of national and EU legal culture.

Despite the ever increasing role of English on the global and the EU level, upholding the cognitive linguistics view that language cannot be divorced from extralinguistic knowledge brings the idea of an acultural, neutralized variety of English in the EU into question. Albeit from the perspective of its historical development, English is seemingly more detached from the continental civil law systems (than German or French), EU law has been influenced by common law as well. In consequence, this undermines the claim that English, as the language of common law, offers a neutral tool for framing EU legal order as a predominantly civil legal system. What is more, the role of EU legal English should be observed in light of the consideration that the EU's preference for neutral terms in legal drafting is not always followed by all EU languages.

In conclusion, building unity in the diversity of EU legal culture remains dependent on the interactive forces of law and language on the one hand, and “law in action” on the other.

References

- Baaij, C. J. W. (2018). *Legal Integration and Language Diversity. Rethinking Translation in EU Lawmaking*. Oxford: University Press.
- Bajčić, Martina (2017). *New Insights into the Semantics of Legal Concepts and the Legal Dictionary*. Amsterdam/Philadelphia: John Benjamins. DOI: [10.1075/tlrp.17](https://doi.org/10.1075/tlrp.17).
- Bajčić, Martina & Martinović, Adrijana (2017). EU Citizenship, Free Movement and the Use of Minority Languages in Court Proceedings. *Collected Papers of Zagreb Law Faculty*, 67(1), 107–129.
- Bellamy, Christopher (1998). Foreword. In Rossini, *English as a Legal Language*. Den Hague/London/Boston: Kluwer Law International.
- Berman, Harald J. (2015). *Law and Language. Effective Symbols of Community*. Cambridge: Cambridge University Press.
- Biel, Łucja (2014). *Lost in the Eurofog: The Textual Fit of Translated Law*. Frankfurt am Main: Peter Lang. DOI: [10.3726/b11383](https://doi.org/10.3726/b11383).
- Bhatia, Vijay K. (1993). *Analyzing Genre. Language Use in Professional Settings*. Harlow: Longman. DOI: [10.1017/S0272263100013668](https://doi.org/10.1017/S0272263100013668).
- Bowers, Frederick (1989). *Linguistic Aspects of Legislative Expression*. Vancouver: University of British Columbia.
- Engberg, Jan (2015). Autonomous EU Concepts - Fact or Fiction? In Šarčević (Ed.), *Language and Culture in EU Law: Multidisciplinary Perspectives* (pp. 169–182). Farnham: Ashgate.
- Engberg, Jan (2016). Word Meaning and a Globalized Legal Order. In Tiersma & Solan (Eds.), *The Oxford Handbook of Language and the Law* (pp. 175–185). Oxford: Oxford University Press.
- European Commission (2009). *Translating for a Multilingual Community*. Authored by Directorate-General for Translation (DGT). DOI: [10.2782/13772](https://doi.org/10.2782/13772).
- European Commission (2017). *English Style Guide: A handbook for authors and translators in the European Commission*. Available at ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf.

- European Union (2015). *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*. Available at eur-lex.europa.eu/content/techleg/EN-legislative-drafting-guide.pdf (accessed: 29 August 2017).
- Felici, Annarita (2015). Translating EU Legislation from a Lingua Franca: Advantages and Disadvantages. In Šarčević (Ed.), *Language and Culture in EU Law. Multidisciplinary Perspectives* (pp. 123–141). Farnham: Ashgate.
- Forche, Christian R. (2012). On the emergence of Euro-English as a potential European variety of English – attitude and interpretations. *Jezikoslovlje*, 13(2), 447–478.
- Geertz, Clifford (2001). *Available Light: Anthropological Reflections on Philosophical Topics*. Princeton: Princeton University Press.
- Gibbons, John (Ed.) (1994). *Language and the Law*. London: Longman.
- Goźdz-Roszkowski, Stanisław (2011). Legal Language. *The Encyclopedia of Applied Linguistics*. Blackwell Publishing Ltd. DOI: [10.1002/9781405198431.wbealo678](https://doi.org/10.1002/9781405198431.wbealo678).
- Graziadei, Michele (2015). Law, Language and Multilingualism in Europe: The Call for a New Legal Culture. In Šarčević (Ed.), *Language and Culture in EU Law. Multidisciplinary Perspectives* (pp. 17–33). Farnham: Ashgate.
- Jopek-Bosiacka, Anna (2011). Defining law terms: A cross-cultural perspective. *Research in Language*, 9(1), 9–29.
- Kjær, Anne-Liese (2003). Convergence of European Legal Systems: The Role of Language. *Copenhagen Studies in Language*, 29, 125–137.
- Kjær, Anne-Liese (2015). Theoretical Aspects of Legal Translation in the EU: The Paradoxical Relationship between Language. Translation and the Autonomy of EU Law. In Šarčević (Ed.), *Language and Culture in EU Law. Multidisciplinary Perspectives* (pp. 91–109). Farnham: Ashgate.
- Kosakopoulou, Dora. (2009). *European Union Citizenship: The Journey Goes on*. In Ott & Vos (Eds.), *Fifty Years of European Integration: Foundations and Perspectives* (pp. 271–290). The Hague: T.M.C. Asser Press.
- Koskinen, Kaisa (2000). Institutional Illusions. Translating in the EU Commission. *The Translator*, 6(1), 49–65.
- Mańko, Rafał (2017). *Legal aspects of EU multilingualism*. EPRS, January, 2017. Available at www.europarl.europa.eu/RegData/etudes/BRIE/2017/595914/EPRS_BRI%282017%29595914_EN.pdf.
- Mattila, Heikki E.S. (2006). *Comparative Legal Linguistics*. Aldershot: Ashgate.
- Mattila, Heikki E.S. (2016). Legal Vocabulary. In Tiersma & Solan (Eds.), *The Oxford Handbook of Language and the Law* (pp. 27–39). Oxford: Oxford University Press.
- McKay, Sandra Lee (2002). *Teaching English as an International Language*. Oxford: Oxford University Press.
- Menasse, Robert (2017). *Die Hauptstadt*. Verlag: Suhrkamp.
- Michaels, Ralf (forthcoming). Legal Culture. In Basedow, Hopt & Zimmerman (Eds.), *Oxford Handbook of European Private Law*. Oxford: Oxford University Press.
- Mori, Laura (2011). Linguistic variation in legal Maltese: EU directives compared to national implementation laws. In Caruana, Fabri & Stolz (Eds.), *Variation and Change: The Dynamics of Maltese in Space, Time and Society* (pp. 109–127). Berlin: Akademie-Verlag.
- Pinker, Steven (2002). *The Blank Slate: The Modern Denial of Human Nature*. New York: Penguin Books.
- Phillipson, Robert (1992). *Linguistic Imperialism*. Oxford: Oxford University Press.
- Robertson, Colin (2012). EU legal English: common law, civil law or a new genre? *European Review of Private Law*, 20(5–6), 1215–1239.
- Robertson, Colin (2015). EU Multilingual Law: Interfaces of Law, Language and Culture. In Šarčević (Ed.), *Language and Culture in EU Law. Multidisciplinary Perspectives* (pp. 33–53). Farnham: Ashgate.
- Rossini, Christine (1998). *English as a Legal Language*. The Hague/London/Boston: Kluwer Law International.
- Šarčević, Susan (1997). *New Approach to Legal Translation*. The Hague: Kluwer.

- Schippel, Larisa (2018). Between Consensus and the Dissolution of Boundaries: On the Transculturality of Communicative Action. In Kučiš (Ed.), *Transkulturalität im mehrsprachigen Dialog* (pp. 5–25). Hamburg: Verlag Dr. Kovač.
- Shaw, Jo (2011). Citizenship: Contrasting dynamics at the interface of integration and constitutionalism. In Craig & de Búrca (Eds.), *The Evolution of EU Law* (pp.575–610). 2nd ed. Oxford: Oxford University Press.
- Stygal, Gail (2016). *Discourse in the US Courtroom*. In Tiersma & Solan (Eds.), *The Oxford Handbook of Language and the Law* (pp. 369–381). Oxford: Oxford University Press.
- Tiersma, Peter M. (1999). *Legal Language*. Chicago and London: University of Chicago Press.
- Tiersma, Peter M. (2016). A History of the Languages of Law. In Tiersma and Solan (Eds.), *The Oxford Handbook of Language and the Law* (pp. 13–27). Oxford: Oxford University Press.
- Tiersma, Peter M. & Lawrence M. Solan (Eds.) (2016). *The Oxford Handbook of Language and the Law*. Oxford: Oxford University Press.
- Tryfonidou, Alina (2016). *The impact of Union Citizenship on the EU's Market Freedoms*. Oxford and Portland, Oregon: Hart Publishing.
- Várady, Tibor (2015). Afterword: On Harold Berman, law, language, the tower of Babel, and Pentecost. In Berman & Várady (Authors) & Witte, Jr (Ed.), *Law and Language: Effective Symbols of Community* (pp. 163185). Cambridge: Cambridge University Press. DOI: [10.1017/CBO9781139519717.009](https://doi.org/10.1017/CBO9781139519717.009).
- Way, Catherine (2016). The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century. *International Journal of Communication*, 10, 1009–1029. Available at ijoc.org/index.php/ijoc/article/view/3580.
- Weigand, Edda (2008). Towards a Common European Legal Thinking: A Dialogic Challenge. In Petersen et al. (Eds.), *Paradoxes of European Legal Integration* (pp. 235–252). Aldershot: Ashgate.
- White, James Boyd (1990). *Justice as Translation: An Essay in Cultural and Legal Criticism*. Chicago: University of Chicago Press.
- Witte, John Jr. & Manzer, Christopher J. (2015). Introduction. In Berman & Várady (Authors) & Witte, Jr (Ed.), *Law and Language: Effective Symbols of Community* (pp. 1–36). Cambridge: Cambridge University Press.

Note: JLL and its contents are Open Access publications under the [Creative Commons Attribution 4.0 License](https://creativecommons.org/licenses/by/4.0/).



Copyright remains with the authors. You are free to share and adapt for any purpose if you give appropriate credit, include a link to the license, and indicate if changes were made.

Publishing Open Access is free, supports a greater global exchange of knowledge and improves your visibility.