

Hidden Translators: The Invisibility of Translators and the Influence of Lawyer-Linguists on the Case Law of the Court of Justice of the European Union

Karen McAuliffe

University of Birmingham

***Abstract.** Since the mid-1990s, when Lawrence Venuti published his book *The Translator's Invisibility*, there has existed, in the field of literary translation, a debate on the (in)visibility, power and influence of translators on literature and academic theory. This paper shifts that debate to the field of legal translation, focusing on the role of and work done by lawyer-linguists at the Court of Justice of the European Union (ECJ) in terms of their (in)visibility in the process of text production of that court and in the texts themselves. Data presented here demonstrate that, in the ECJ itself, as in other fields, translation tends to be “a largely misunderstood...practice” (Venuti, 2008: vii), but that recent shifts in dynamics within that institution are leading to changes in perceptions of translation and more ‘visibility’ for translators in the process of production of that court’s case law, although they remain largely invisible in the context of the texts themselves. However, the invisibility of translators in this context necessarily leads to a certain amount of power and influence on the texts they produce. Since those texts, in particular judgments of the ECJ, are intended to have force of law and to be applied uniformly throughout the 28 EU member states, that power and influence is not insignificant. This paper analyses some examples of such ‘influence’ on ECJ case law, and thus on EU law more generally. If we are to develop a full and nuanced understanding of the case law of the ECJ, the power of translators should not be ignored.*

Keywords: Translation, Legal Translation, Court of Justice of the European Union, ECJ, EU Translation, Lawyer-Linguists, Legal Translators, Law and Language, EU Institutions, EU Law.

Resumo. Desde que Lawrence Venuti publicou seu livro, intitulado *The Translator's Invisibility*, em meados dos anos 90 do século XX, tem vindo a discutir-se, na área de tradução literária, a (in)visibilidade, poder e influência do tradutor na literatura e na teoria acadêmica. Este artigo desloca o debate para a área de tradução jurídica, focando no papel e no trabalho feito pelos juristas revisores no Tribunal de Justiça da União Europeia (TJUE), em termos de sua (in)visibilidade

no processo de produção textual do Tribunal e nos próprios textos. Os dados aqui apresentados revelam que, tanto no próprio TJUE, quanto nas demais áreas, as traduções tendem a ser “uma prática... amplamente mal compreendida” (Venuti, 2008: vii), mas que as recentes alterações na dinâmica dentro dessa instituição estão levando a mudanças nas percepções da tradução e mais ‘visibilidade’ para os tradutores no processo de produção de jurisprudência daquele tribunal, embora permaneçam, em grande parte, invisíveis no contexto dos próprios textos. Contudo, a invisibilidade dos tradutores neste contexto conduz necessariamente a um certo volume de poder e influência sobre os textos por eles produzidos. Uma vez que esses textos, em particular julgamentos do TJUE, se destinam a ter força de lei e a serem aplicados uniformemente dentro dos 28 Estados-membros da UE, esse poder e influência não são insignificantes. Este artigo analisa alguns exemplos de tais ‘influências’ na jurisprudência do TJUE e na legislação da UE em geral. Para que consigamos compreender completamente e de forma focada a jurisprudência do TJUE, não podemos ignorar o poder dos tradutores.

Palavras-chave: Tradução, Tradução jurídica, Tribunal de Justiça da União Europeia, TJUE, Tradução na UE, Juristas revisores, Tradutores jurídicos, Direito e Linguagem, Instituições da UE, Legislação Comunitária.

Introduction

This paper analyses the role of and work done by lawyer-linguists at the Court of Justice of the European Union (ECJ) in terms of their (in)visibility in the process of text production at that court and in the texts themselves. Although translation (along with the other stages of text production at the ECJ) is not readily visible when reading (authentic) judgments of that court, it clearly plays a significant role in the production process and necessarily has an impact on the texts produced. The importance of that role and the power and influence of legal translators is somewhat at odds both with how their role may be generally perceived and their invisibility in the texts they translate. Such power and influence should not be ignored if we hope to develop a full and nuanced understanding of the case law of the Court of Justice.

In 1995 Lawrence Venuti published *The Translator’s Invisibility: A History of Translation* in which he claimed that “domesticating practices” in the field of translation and society more generally, where ‘fluency’ is considered the most important quality for a translation, contribute to the invisibility of translators. That invisibility, according to Venuti, belies the power of translators, and in *The Translator’s Invisibility* he charts the impact of translations throughout the ages¹, claiming that, because foreign literature is historically largely accessed through translation, evolutions in literature and academic theory are often influenced by translators. Venuti’s theory caused something of a stir among scholars in the then fledgling field of translation studies, many of whom were extremely critical of his methodology and analysis (e.g. Bjork 1997), but he did begin a debate about the question of the visibility of translators, which continues today. Venuti himself published an updated version of his book and theory in 2008, in which he acknowledges critiques and alternative approaches to his theory developed by scholars such as Baker (2000), Tymoczko (2000) and Pym (1996). However, he maintains that “translation continues to be a largely misunderstood and relatively neglected practice” (Venuti, 2008: vii). While the ongoing debate concerning the (in)visibility, power and

influence of translators is interesting and not without significance, most of the work in this area focuses on translators of literary texts. However, literary translation makes up just a small part of today's global translation industry. Such questions of (in)visibility, power and influence assume a new significance in the context of other translation types such as scientific, or military translation, or 'political' translation in the field of regional or world governance etc. In this regard, consideration of such questions in the field of legal translation is particularly important. Arguably, legal translators are more invisible than most – translation is largely viewed as an administrative or mechanical task in the legal arena (Šarčević, 2000). Yet legal translation permeates a huge majority of our interactions and the transactions that we carry out on a daily basis, from online shopping to telephone contracts. Furthermore, the intense process of globalisation in the latter half of the 20th century has meant that world legal systems and international organisations rely on legal translation in order to function. Nowhere is this more obvious than in the European Union (EU), a supranational organisation that produces laws, applicable across all of its 28 member states, in 24 official languages.

This paper focuses on one particular EU institution – the ECJ – and on the invisibility and potential power of its translators (lawyer-linguists – see *infra*). The following sections detail the role of those lawyer-linguists, their invisibility and their own role perceptions before going on to analyse some examples of the influence that they may have on the case law of that court.

Methodology

This paper is based on fieldwork research, interviews and participant observation, carried out at the ECJ between 2002 and 2013. The interview sample for the paper consisted of 78 interviews in total (56 lawyer-linguists; 5 judges; 3 advocates general and 14 référendaires). Participant observations involved observing the interactions among lawyer-linguists and between those lawyer-linguists and members of the Court and their référendaires, both in professional contexts such as meetings, seminars etc. and more informal contexts such as Court social functions, coffee breaks, lunchtimes etc.; engaging to some extent in those activities; interacting with participants socially, and identifying and developing relationships with key stakeholders and gatekeepers. Such methods are not always regularly used in EU legal studies. However, without having recourse to such a range of methodological tools one cannot hope to properly analyse the issue of (in)visibility of lawyer-linguists and their translations in the case law of the ECJ. It would not, for example, be possible to fully investigate the 'checking' role performed by the Court's lawyer-linguists (see discussion of EU waste management cases below) without having recourse to interview and participant observation data². To overcome any inherent bias in the data obtained through participant observation, the findings were triangulated with existing literature concerning the ECJ, concepts developed in translation theory literature and with the findings of comparable studies carried out in other EU institutions.³

The Indeterminate Nature of (Legal) Translation

Approximation in Translation

Scholarship on the theory and practice of translation dates back to at least 46 BC (when Cicero produced his *Libellus de Optimo Genere Oratorum*). In spite of that rich history,

however, translation theory is still developing today. The field of translation studies deals with themes such as functionalism (Nord, 1997), translation and norms (Chesterman, 1999; Schäffner, 1999; Toury, 1995), Venuti's invisibility of the translator and cultural untranslatability (Catford, 1965; Popovic, 1975) as well as the centuries-old debate of literal versus free translation⁴. A central concept in translation theory is the notion of equivalence: how to render a source text equivalently in the target text⁵. Equivalence in translation is inextricably bound with the notion of translatability. While few translation theorists claim that all meanings of a concept in one language are always translatable, most now agree that the very nature of language means that any concept occurring in one language can be rendered in *some form* in another language. As Hjelmslev (1969: 109) states:

In a language, and only in a language, we can work over the inexpressible until it is expressed.

The general consensus in translation studies, therefore, is that most concepts and texts can be translated within certain limits. It should be remembered that languages are multi-layered expressions of human cultures and are, as Keenan (1978) claims "efficient in that they are imprecise". It follows that any successful or efficient translation must be accordingly imprecise.

The emphasis in general translation theory today has shifted from interlingual transfer (where the focus is on obtaining the maximum degree of linguistic equivalence: reproducing as closely as possible the literal, surface meaning of the original text), to cultural transfer (where the focus is on translation as a process of negotiation between texts and between cultures). Indeed, any consideration of translation must involve an acknowledgement of the relationship between language and culture:

No language can exist unless it is steeped in the context of culture; and no culture can exist which does not have at its centre the structure of natural language".
(Lotman and Uspenski, 1978: 211)

Languages and cultures are highly complex historical phenomena, which are constantly in a state of evolution. As Sapir (1957: 69) states:

No two languages are ever sufficiently similar to be considered as representing the same social reality. The worlds in which different societies live are distinct worlds, not merely the same world with different labels attached.

Translation between languages, therefore, involves not only the transfer of 'meaning' at a linguistic level, but also the transfer of extra-linguistic meaning, tied up with a particular concept in a particular culture or human system. Within translation studies there appears to be an implicit understanding and acceptance of the limits of both language and translation and of the fact that there is ordinarily no *full* equivalence through translation, only degrees of equivalence (Basnett, 2004: 22): all translation is in fact an approximation of sorts.

Legal Translation

There is a tendency for legal texts to be considered as 'special-purpose' texts for the purposes of translation, and thus they are often placed in the same bracket as scientific or technical texts. Special-purpose texts are usually informative texts, written in a 'special' language, the terminology and syntax of which is specific to the particular subject-area.

Scholars in the field of special-purpose languages maintain that, since the content of such texts is independent of cultural context and is interpreted according to a common system of reference, perfect communication of that content is possible in translation (Sager, 1990: 100). It is easy to see why many include legal texts under that definition of special-purpose texts since legal texts are indeed written in a special 'legal language', usually reserved for communication between lawyers or specialists in a particular area of the law. However, unlike texts of the natural sciences, legal texts do not have "a single agreed meaning independent of local context" (Steiner, 1998: 326). As Šarčević (2000: 9) states:

Bound to a particular legal system, each language of the law is a product of a specific history and culture.

Therefore, unlike the technical languages of engineering, mathematics or medicine for example, there is no universal legal language or even terminology. Each legal system in the world today has a particular vocabulary or unique legal language used to express concepts; that language has its own specific techniques for expressing and interpreting rules and is linked to a view of the social order, within the relevant state, region or organisation, which determines the way in which the law is applied and shapes the actual function of law in that society⁶. Thus, since the meaning of legal texts is determined primarily by legal context, they should not be placed on the same footing as other special-purpose texts, for which a common terminology exists across languages within subject-areas, and which can be translated by a simple process of inter-lingual substitution.

Didier (1990: 9) defines legal translation as:

L'opération de transfert d'un message juridique émis dans une langue et dans un système juridique, vers une autre langue et un autre système juridique⁷.

That definition encapsulates the generally accepted definition of legal translation – the translation of concepts from one legal system to another⁸. Thus legal translation is concerned with comparative law and the incongruency of legal systems: elements of one legal system cannot simply be transposed into another legal system (Šarčević, 2000: 12–14). Consequently, it seems that legal translation must contain an element of approximation. Indeed many lawyers acknowledge this and submit that equal meaning and exact translations between legal texts are illusions that cannot be achieved in practice (Didier 1990: 235; Gémar 1995: 154). Therefore, while legal texts should not be treated in the same way as special-purpose texts, translated texts *which have the force of law* must also be considered distinct from other text types, because their translation is concerned with *legal* transfer as opposed to *cultural* transfer. Legal transfer is concerned with the *effects* of the translated text: a translation of a legal text should produce the same effects in the target legal system as it does in the source legal system (Šarčević, 2000: 72). In practice, achieving a target text that expresses the precise meaning and achieves the legal effects intended by the author of the source text is extremely difficult, as it is largely dependent on the rules and methods of interpretation applied by the receiver of the target text (see *infra*).

The translations of judgments of the ECJ have force of law where those translations are declared the 'authentic' versions of the judgment (see *infra*). The translators responsible for producing those translations must therefore strive to achieve that almost impossible task described above. The following section describes who those translators are and considers the question of their (in)visibility.

Translators at the Court of Justice of the European Union

The translators at the ECJ are known as ‘lawyer-linguists’. The distinction in EU institutions between translator and lawyer-linguist is significant both in terms of the work done in each role and the salary paid – lawyer-linguists, who have legal qualifications, are paid on average 28% more than translators⁹. The lawyer-linguists at the ECJ are responsible for all of the translation that takes place within that institution¹⁰. Article 42 of the ECJ’s Rules of Procedure states: “The Court shall set up a language service staffed by experts with adequate legal training and a thorough knowledge of several official languages of the European Union”. Until relatively recently the interpretation of that rather vague criterion of ‘adequate legal knowledge’ tended to vary slightly from one recruitment ‘competition’ to the next¹¹. In the past it has included holding a degree ‘with a law component’ or having a ‘professional legal qualification’. However, even in the Court’s early days, when the criteria were more broadly defined, the majority of lawyer-linguists tended to be law graduates and to have been qualified to practice law in their respective states¹². Nowadays, in order to qualify for a competition to recruit lawyer-linguists, candidates are usually required to hold a law degree in their main language. Recruitment competitions comprise written translation exams, tests assessing candidates’ verbal, numerical and abstract reasoning skills, competency based interviews and group exercise assessments¹³. The most common route to becoming a lawyer-linguist appears to be via a legal education, coupled with a love of and a flair for languages. The vast majority of the 56 lawyer-linguists interviewed for the present study had legal backgrounds: two had joined the translation directorate of the ECJ immediately following graduation from university, but most of those interviewed had worked in a legal field prior to coming to the Court (either practicing law in their respective member states or in international law firms, working as legal consultants for various companies as legal academics, or in the case of one German lawyer-linguist, working in a member state’s judiciary). With regard to their language skills, the majority of those interviewed had learned at least one of their foreign languages in school (second-level education) and combined that with private study of further languages; a quarter also had third-level language qualifications (including some who studied ‘law and language’ degrees) and a small number had bilingual upbringings and learned further languages through independent study. Very few (only three of the 56 interviewed) had any experience of translation prior to working at the Court of Justice. Thus, the translating aspect of the role of lawyer-linguist appears to be one largely learned ‘on the job’. While that does, of course, have benefits in terms of developing institutional translation norms and maintaining the consistency of the house style, it also runs the risk that translation ‘guidelines’ are interpreted as hard and fast rules of (ECJ) translation:

“I had no experience of translation prior to coming [to the ECJ], but that makes it easier to follow the rules of translation here, which are quite strict”. (lawyer-linguist)

This leads to the development of a distinct ‘house style’ of translation at the Court of Justice. While that in itself is no bad thing, and inevitable in any organisation, that style of translation does perpetuate both the invisibility of the Court’s translators, and the hidden power or influence that they may have on the texts produced. How is the role of lawyer-linguists viewed by others involved in producing the case law of the Court of Justice?

Invisibility in the work of the lawyer-linguists

Lawyer-linguists are responsible for the translation of the judgments of the Court of Justice, as well as all of the various other internal and outgoing documents which require translating, such as orders, opinions (of the Court and of advocates general in particular cases), references for preliminary rulings and other notices for actions submitted to the Court etc. Thus they play a large role in the production of that institution's 'output', and most importantly its case law. However, they, along with the others involved in that production process, remain invisible to the outside world since the case law is presented as a single 'voice' of the Court¹⁴. Although judgments are *prima facie* drafted by a single judge rapporteur, producing a judgment is in fact a multi-stage process, involving input from multiple actors throughout that process (McAuliffe, 2012, 2013). The role of the judge rapporteur is to manage the case and, following the relevant Chamber's secret deliberations¹⁵, write the judgment. The judge is assisted in this task by personal legal assistants, known as *référéndaires*. In reality, it is the *référéndaires* who draft both a preliminary report¹⁶ and the first version of a draft judgment. Certain cases will also require an advocate general's opinion on how he/she thinks the Court should rule¹⁷. In cases that include an opinion, the judge rapporteur and his/her *référéndaire(s)* must wait to receive that opinion before beginning to draft the substance of the judgment, although in some straightforward cases some of the preparatory work can be done at an earlier stage. The draft judgment is then discussed by the judges of the relevant chamber in secret deliberations and any necessary amendments to the text are made. The final version of the judgment is then (re)drafted by the relevant *référéndaire* and, eventually, delivered by the Court as a single coherent text. Thus, even before we begin to take account of the role of translation in the process, we can see that there are many 'invisible' contributors to ECJ judgments. With regard to the role of translation: a case can be brought before the ECJ in any one of the 24 official languages of the European Union¹⁸, and each case has an official 'language of procedure'¹⁹. Unlike EU legislation, which is 'authentic' in every language version in which it exists, with regard to ECJ judgments only the version of the judgment in the language of procedure is considered to be 'authentic'. For practical purposes, the ECJ works in a single language: French. When an application is lodged before the Court (in any of the 24 official EU languages), all of the relevant documents are translated into French. The preliminary report and draft judgment are written in French. That draft judgment is deliberated on in French and the final judgment is drafted in French. Only when the French language original version of the judgment is finalised is it translated into the language of procedure and the other EU official languages²⁰. Only the version in the language of procedure, more often than not a translation of the original French, is considered 'authentic'.

The translation service is organised into separate 'translation divisions' for each of the official EU languages²¹. Since French is the internal working language of the Court and thus the language of deliberation and the language in which all internal documents are drafted, it has a special role at the Court. The French language division must translate the application plus all of the procedural documents of the case, from the language of procedure into French. The French language division translates all opinions not drafted in French, but never translates judgments, since judgments are always drafted in French²².

The translation system, which has been in use at the Court since May 2004, is, on paper at least, actually a mixed translation system, incorporating both direct and pivot translation. Although direct translation is used whenever possible, given the Court's ever-increasing workload (Harmsen and McAuliffe, 2014), pivot translation (i.e. translation from one language to another through an intermediary or 'pivot' language) is the norm. Documents in certain languages are translated into a particular 'pivot language' and then from that pivot language into the other EU official languages, and *vice-versa*²³. There are five pivot languages: French, English, German, Spanish and Italian. Because French is the working language of the Court, the French translation division provides translations from all EU official languages when necessary²⁴. Each of the other four pivot language divisions are 'partnered' with a number of other EU official languages²⁵.

A judgment of the ECJ is thus a collegiate document: the final version is not only completed by a chamber of judges in secret deliberations, but the entire process involves multiple 'authors' working in a language that, for most, is not their mother tongue. That process also includes many layers and permutations of translation between 23 of the 24 official EU languages²⁶. What is more, the final version of the judgment, signed by the judges, is usually a translation. However, the lawyer-linguists, who produce those translations and who give the Court its 'voice' remain largely invisible to those who read and use the judgments. Furthermore, that invisibility also seems to extend, to a certain extent, to the perception of lawyer-linguists within the Court itself.

It is clear that the members of the Court, and their *référéndaires*, are acutely aware of the essential role played by the lawyer-linguists in the production of the case law of that Court, and are appreciative of their work:

[Lawyer-linguists are] essential cogs in the machinery of the Court, without whose work in the background the production of a multilingual jurisprudence would be impossible. (Judge)

Some of those members and *référéndaires* interviewed (9 out of 22) showed an awareness of the nature and complications of translation and legal translation in particular, holding the role of lawyer-linguist in very high esteem:

Translation is retaining the thought process – thinking along with the author.
(Judge)

However, others from this group showed a general lack of awareness of the nature of the lawyer-linguists' role. For those members and *référéndaires*:

... The translators' job is purely linguistic... (Judge)

... The only true 'lawyer-linguists' at the Court are the *lecteurs d'arrêts* whose job is half-way between a linguistic job and a legal one...²⁷ (*Référéndaire*)

Some general (mis)conceptions about translation (see Berglund 1990, Kaseva 2000) are clearly evident within the Court, for example a number of those interviewed commented that "anybody who is gifted at languages and knows how to use a dictionary" should be able to render any word, phrase or sentence from one language directly and with exact equivalence into another. Many of the *référéndaires* interviewed considered translation to be an administrative task, and certainly not a creative or even engaging one:

... You have to have a vocation to become a translator – how else could you spend all day every day translating work done by others? (*Référéndaire*)

When questioned on their perceptions of the influence that lawyer-linguists may have on the texts produced, all of the members and *référéndaires* interviewed, responded in the same way: stating that there can be no question of influence on the part of lawyer-linguists since their job is to “simply translate the words that the Court has written”. The implication being that translation is a fairly mechanical process which, if done correctly, shouldn’t be visible in the target text. There is also a clear perception, on the part of those members and *référéndaires* interviewed, of the separation of roles between lawyer-linguists on the one hand and the cabinets on the other:

While we are always very grateful for remarks from translators, at the end of the day they are doing different jobs [from those who work in the cabinets] (Référéndaire)

[The lawyer-linguists] shouldn’t feel any responsibility as lawyers – they should only be concerned about finding the right words to translate the case law of the Court... (Référéndaire)

While they may have legal qualifications or even be qualified to practice law, when they begin work at the translation service of the Court of Justice, lawyer-linguists are much more linguists than lawyers... (Référéndaire)

Translators don’t have time to look at a case as a legal problem – they view it only as a document for translation – any legal analysis they do can only be superficial since they do not have any in-depth knowledge of what a particular case is about. They can point out problems with the meaning of a document, but not with the legal reasoning (interviewee’s emphasis) (Référéndaire)

These (mis)perceptions are certainly felt by lawyer-linguists. Many of those interviewed for this study commented that, at times, they feel invisible within the process of producing the Court’s case law, or that they feel as though they are viewed as “a translation machine”. Almost all of those interviewed pointed out that they felt that the members and their staff thought about translation “only when something goes wrong”. Lawyer-linguists are also acutely aware that they are viewed as “mere translators” by many who work in the cabinets of the Court. Whereas lawyer-linguists’ own role perceptions are much more complex.

As mentioned above, within the field of translation studies, legal translation is often classified incorrectly as special-purpose translation. Lawyers who have written on translation have often been equally misleading by presenting legal translation simply in terms of terminological problems. This misconception came through frequently in interviews with those who worked in the cabinets of the Court of Justice. However, in spite of the emphasis placed on “preserving the letter of the law” (Šarčević, 2000: 5), as discussed above, legal translation involves much more than terminology.

Although the role of lawyer-linguist at the ECJ may seem purely linguistic or translation-related, upon closer analysis it becomes apparent that it is far more complex and difficult to define. In order to be able to translate legal concepts from one language to another, lawyer-linguists need a comprehensive knowledge not only of their own legal systems but also the legal systems of other member states, as well as a thorough understanding of the law of the European Union and the case law of the ECJ. They are, at the end of the day, responsible for dealing with legal issues that may arise because of

linguistic ambiguities in texts. While dealing with the classic problems of translation on a daily basis, the lawyer-linguists at the ECJ also appear to be trying to balance a dual professional identity – that of lawyer and linguist. The following section sets out this struggle and the complexity of translation.

The Role of Lawyer-Linguists

The title ‘lawyer-linguist’ brings to mind two very different professions: lawyers and translators. A vast literature exists on the subject of ‘lawyers’ – who they are, what they do, their role definitions, as well as on the concept of ‘the legal profession’. While such role definitions and concepts of legal professions may differ between states and legal orders, those legal orders nonetheless have many legal professional norms in common (see, for example, Abel and Lewis 1995, Abel and Lewis 1988a, Abel and Lewis 1988b). Such norms relate to the need to remain faithful to ‘the law’ or the effort to avoid an uncertain rule of law²⁸ and are referents for lawyers’ behaviour²⁹. In order for ‘the law’ to function it has to be considered definite, precise and deliberate. Lawyers’ role definitions are thus grounded in a specific, positive concept. A similar literature exists concerning the profession of translators (see, for example: Fraser and Titchen Beeth 1999, Goulet 1966, Mossop 1983). That literature focuses on concepts relating, to a greater or lesser extent, to what Venuti termed the translator’s invisibility: the power of the translator (Kaseva, 2000; Martin, 2001), the translator as author (Hermans, 1996; Mossop, 1983; Venuti, 1995, 2008) and the limitations of constraints on the translator (See, for example: Colomer 1996; Leonardi 2000; Steiner 1998.). Underlying those translator role perceptions is the implicit (and in many cases explicit) acknowledgement of the indeterminate nature of translation³⁰. Indeed, the role of the translator is defined by the indeterminate nature of the act of translation. Translation is considered a process of negotiation and translators as mediators (Eco, 2003; Mossop, 1983): their work is, at best, a compromise³¹. The contradictions between the two professions are significant. On the one hand, lawyers are defined relative to a definite and determinate concept of ‘the law’; on the other hand, translators’ role definitions are based on the acceptance of the indeterminate nature of language and translation (McAuliffe, 2015). The two professions, and their respective professional norms, appear to be incompatible, yet, in the context of the lawyer-linguists at the ECJ, they are brought together³².

Interestingly, not a single one of the 56 lawyer-linguists interviewed for this paper was content to describe themselves as ‘translators’. Those who did initially refer to themselves as translators immediately qualified their statement by pointing out that as translators of judicial texts, with law degrees, they are “much more than simply translators” and that having a legal qualification “set [them] apart from ‘mere’ translators”. The majority of those interviewed feel that translators without a legal qualification would not be able to follow the line of (legal) argument of a judicial document. Most also claimed that the job would hold no interest for them “if the law element wasn’t there as well as the translation element”, that they would not enjoy being “just a translator”. But what exactly does that job entail?

From the interviews carried out for this study, it is clear that the lawyer-linguists at the ECJ take their responsibility as translators very seriously indeed. All of those interviewed highlighted a myriad of issues specific to translation (of any text type) such as poor language/grammar/sentence construction in source texts, insufficient background

information etc. Texts that originate externally do cause certain problems, but interestingly the vast majority of lawyer-linguists interviewed consider the most difficult and weakest texts to be those drafted within the Court – in particular judgments. One of the biggest difficulties, cited by almost every lawyer-linguist interviewed, is caused by the fact that those drafting the judgments are working in French, a language which for most is not their mother tongue (McAuliffe, 2013, 2015, 2011). Because of this, excessive reliance tends to be placed on stock phrases, frequently causing the meaning of texts to be obscured. According to the majority of the lawyer-linguists interviewed, the French used in those judgments can be “opaque”, “very abstract” or simply “wrong” and:

...Stylistically it is often rendered tedious by a ‘stream-of-clichés’ approach, and by the insertion of meaningless links, for example: ‘à cet égard’; ‘d’une part/d’autre part’; ‘dès lord que’...

One lawyer-linguist likened the drafting of judgments to constructing a toy house from Lego building bricks with:

...Gobbits of words being borrowed from previous cases and inserted into new judgments... [while] the grammatical structure of the French allows this to be done without changing the original wording, it is not always possible to anticipate which passages will become ‘Lego building bricks’ and in any case, even where it is possible, it may not be possible to mimic the French sentence structure. Inevitably this leads to inelegant translation and ‘Eurospeak’.

While the lawyer-linguists at the ECJ do take their responsibilities as translators very seriously, it is clear from the interviews that they also feel responsibility as lawyers, since they are effectively giving the ECJ its ‘voice’. Many of those interviewed feel that their work is indeed akin to an exercise in comparative law:

In order to be able to translate a legal term from one language to another in which that translation will also have force of law, the lawyer-linguist must be able to understand both the concept in the source language and the meaning of that concept within the relevant legal system as well as the legal system of the country in which the target language is spoken.

Even those who would not go that far, agree that some form of legal training is necessary in order to be able to grasp a concept from a legal system other than one’s own and subsequently express that concept in one’s own language (lawyer-linguists at the ECJ translate solely into their own mother tongues):

...Someone might be able to explain a legal concept to you, but without legal training you would not be able to subsequently translate that concept into the relevant legal language...

In sharp contrast to the comment from members of the court and their *référéndaires* above, the majority of lawyer-linguists interviewed pointed to the control function they fulfil in the production of judgments:

Lawyer-linguists... have a different view of the judgment from the *référéndaires* or judges. Lawyer-linguists are much more focused on specific things, which the cabinets don’t focus on. For example, [drafters of judgments] are sometimes afraid to overuse a word and so will use a different one without realising that there may be subtle or even not so subtle legal differences between the words.

Thus lawyer-linguists are responsible for dealing with legal issues that arise because of linguistic ambiguities. In the eyes of these lawyer-linguists:

Our job is not so much a linguistic one, and certainly not mere translation, but is a legal one. (interviewee's emphasis)

The strict separation of roles as perceived by those who work in the cabinets of judges and advocates general (see *supra*) is also not always as clear as it may first seem.

The translators work on a judgment or opinion after it has been finalised. Their job is to focus only on translating that text, not to look at the legal argumentation which has already been decided. [référéndaire]

Until 2004, the opinions of advocates general were, by convention, written in their own mother tongues³³. In general, référéndaires tended to share the same mother tongue as the advocate general for whom they worked. Thus, historically, the vast majority of those référéndaires tended to work on and draft opinions in their own languages. Since just before the 2004 enlargement, however, a number of advocates general at the ECJ have been drafting their opinions in one of the pivot languages³⁴. This initiative was introduced in 2002 by the then Head of the Translation Directorate, Alfredo Calot-Escobar. The new convention meant that some advocates general, who in the past would have drafted their opinions in their own languages, are now working in a language that is not their mother tongue. This new initiative also instigated a new role for lawyer-linguists from pivot language translation divisions: providing linguistic assistance to the advocates general and référéndaires who are drafting those opinions. That linguistic assistance can range from proof-reading to extensive revision or editing of a text, or even working alongside the référéndaire/advocate general during the early stages of drafting. Thus lawyer-linguists are now involved in a much earlier stage of the production process than historically. This 'linguistic assistance' role certainly makes the lawyer-linguists more visible in the eyes of the référéndaires/advocates general with whom they are working:

...Being involved in the drafting stage of advocates general's opinions makes me feel very much like a lawyer – I get the chance to show the référéndaires and advocates general that I am more than just a translator and they appreciate our skills much more...

Editing advocates general's opinions that are drafted in [the pivot languages] makes me feel much more a part of the Court of Justice and not just an administrative cog in the wheel...

However, questions of the role of lawyer-linguists and their influence on the text continue to be raised in the context of this 'linguistic assistance':

What is the role of the lawyer-linguist where a référéndaire has certain linguistic difficulties in [the relevant pivot language]? To spend hours in discussions with the référéndaire about what he/she really wants to say? Or to suggest various things for that référéndaire to choose from? In that case, who is really writing the opinion?

It is clear from the above that the struggle to successfully merge the two professions of lawyer and translator sets those who work in the ECJ's translation service apart from both:

[The lawyer-linguists at the ECJ] are walking a tightrope, continuously trying to balance their responsibilities as linguists with their responsibilities as lawyers.

It is also clear, however, that in their attempts to balance that dual professional identity, lawyer-linguists at the ECJ do contribute to the shaping of the texts that they translate. The following section investigates some instances where such contributions, although largely invisible in the final texts, are significant.

The Hidden Influence of Translators at the ECJ

Venuti's claim that 'fluency' is considered one of the most important qualities of a 'good' translation does not always fit with the translation methodologies employed by lawyer-linguists at the ECJ. Many of the factors of production of the case law of that court, such as the nature of the law under scrutiny, the influence of the French language on the style of judgments, the particular French used in the Court etc. as well as the element of translation, result in a case law that can appear stilted and unnatural in its language³⁵. Rather than domesticating practices focused on 'fluency' as observed by Venuti, translation at the ECJ tends to be literal. Such literal translation can be difficult for lawyer-linguists to produce: from a linguistic point of view they want to avoid producing texts that "read as translations", and from a legal point of view they may be tempted to use the obvious or closest legal equivalent in the target language. However, it can sometimes be very important to produce a literal translation, for example, so as not to resolve an ambiguity where the Court has wanted to preserve one. The difficulty is that, since the deliberations of chambers are secret, and since the lawyer-linguists are not involved in discussions about particular cases, they have no way of knowing whether an ambiguity in a judgment in the drafting language (French) is intentional.

If you've been here long enough you'll see your chickens coming home to roost! Often you see a word or a phrase that sounds very clumsy and you translate it using something that's not quite literal, but sounds neater in [the target language] and then a few years later the phrase comes back to you in another case and you realise you shouldn't have translated it the way you did in the first place, because you've resolved an issue that shouldn't have been resolved at that time.

We tend to translate very literally at the Court, even though the translation may sound very awkward – the idea is to preserve ambiguity where [the members of the Court] want it. Often the wording of a judgment is a compromise formula, as a result of disagreement in the deliberations and must therefore be translated very literally.

This difficulty with translating ambiguity represents the issue at the very core of the lawyer-linguist's role: the reconciliation of the notions of 'law' and 'translation' (McAuliffe, 2011, 2013, 2015). If approximation in translation is inevitable, as most of the lawyer-linguists interviewed believe, how can the uniformity of EU law across 28 member states be assured?

...As in any kind of translation, it is impossible to transpose exact equivalents when translating legal texts from one language to another.

Sometimes it is virtually impossible to translate the ambiguities or levels of ambiguity in judgments:

Translating ambiguity is a real problem because in some cases in some languages you have to be more precise and therefore will lose some or all of the ambiguity...in other languages you may even increase the ambiguity. (interviewee's emphasis)

Such divergences in the relative ambiguity of texts are particularly significant in the case of judgments the authentic version of which is in a language other than French. An authentic version of a judgment that is less ambiguous or more precise, (or vice versa), than the original language version that has been deliberated over by the judges³⁶, could have widespread implications:

... If the translation of a judgment ends up more [or less] precise than the French original, and that translation is the authentic language version of the judgment, then presumably lawyers and courts in the relevant member states – and perhaps even in other member states – will follow the authentic language version assuming that it is the correct version.

In their book *The Court of Justice of the European Communities*, Neville Brown and Tom Kennedy highlight the *Santillo* case³⁷ as an example of such divergence in ambiguity between different language versions of a judgment (Brown and Kennedy, 2000). In that case a preliminary ruling was sought on whether a lapse of time could render a “recommendation to depart” invalid under Council Directive 64/221³⁸. The Court, in the English language version of the judgment (which was the authentic version in that case), provided a criterion in terms of whether the lapse of time “is liable to deprive” such a recommendation of its validity. Brown and Kennedy point out that the French language version of the judgment (i.e. the original version that was drafted) was more precise, employing the words “est de nature à priver”, and that the ambiguity of the English language version of that judgment “may have misled the [UK] Divisional Court and the Court of Appeal in their application of the ruling” (Brown and Kennedy, 2000: 284) (See also Barav 1981). Brown and Kennedy actually classify this discrepancy between the language version as a mistranslation that slipped through the “safeguards” in place at the ECJ (such as having translations checked by the judge whose native tongue is that of the language of the case). In fact, the discrepancy between the language versions in the *Santillo* case is more likely to have been a result of approximation in translation than a mistake that managed to go unnoticed by the relevant judge. It is, however, certainly an example of the impact that translation can have and of the influence of the invisible translators on that case law.

Such influence can be most problematic with regard to the application of EU law at member state level, as can be seen in the 2005 *Replica Sports Kit* cases before the UK Competition Appeal Tribunal³⁹. In these cases the applicants sought to rely on the wording of the English language judgment of the ECJ (General Court) in the *Cimenteries* case⁴⁰. A concerted practice is defined in paragraph 1852 of that judgment, the English language version stating:

It is sufficient that by its statement of intention the competitor should have eliminated... uncertainty as to the conduct to expect of the other on the market⁴¹.

The French language version of that definition states:

Il suffit que, à travers sa déclaration d'intention, le concurrent ait éliminé... l'incertitude quant au comportement à attendre de sa part sur le marché” (it is sufficient that by its statement of intention the competitor should have eliminated... uncertainty as to the conduct to expect of him on the market)

According to the French language version, for a concerted practice to exist, it is sufficient that two competitors meet and that one receives information about the likely conduct of the other; whereas the English language version implies that one has to indicate its own conduct to the other⁴². The *Cimenteries* case was relatively unusual, in that there were nine languages of procedure and therefore nine equally authentic language versions of the judgment (Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish)⁴³. As a result the UK Competition Appeal Tribunal compared four of those language versions of the judgment (French, German, Italian and Spanish) and concluded that they were “translated slightly differently” from the English language version⁴⁴, and that the French language version was indeed the ‘correct’ version. The *Replica Sports Kit* cases ultimately led to the reconciliation, at member state level, of discrepancies between different language versions of an ECJ judgment. That reconciliation was based to a large extent on the fact that there were a number of authentic versions of the judgment in question. However, would the ruling of the Competition Appeal Tribunal have been any different had the English language version of the *Cimenteries* case been the only authentic version of that judgment? There is, of course, a requirement, set out in the *CILFIT* case that national courts compare language versions of EU legislation in order to interpret such legislation correctly⁴⁵. Leaving aside the argument put forward by the present author and many others that it is unrealistic to expect national courts to be able to compare up to 24 different language versions of legislation (McAuliffe, 2011; Kjaer, 2010)⁴⁶, one could argue that such requirement of comparison also extends to ECJ rulings where there is more than one authentic language version of a judgment. It would be difficult, however, to extend that argument to the majority of cases in which there is only one language of procedure and where the Court has specifically declared one (translated) language version of the judgment to be ‘authentic’. Under Article 267 of the Treaty on the Functioning of the European Union (TFEU) member state courts and tribunals may refer questions to the ECJ on matters concerning the interpretation of EU law. However, the danger is that if a member state court or tribunal reads only one (e.g. the authentic) language version of a judgment and finds that version to be clear and precise then some questions will never be referred to the Court of Justice, thereby increasing the risk that the application of EU law will not, in fact, be uniform.

The influence of the Court’s invisible translators can also act as an important ‘check’ on the correct application of EU law. This ‘checking’ or ‘gatekeeper’ role is both legal and linguistic in nature, but it will never be visible in the final text of a judgment. One example of such ‘checking’ was highlighted in the Order of the Court in the *Saetti and Frediani* case⁴⁷. The issue here centred around the use of the terms ‘réemploi’ and ‘réutilisation’ in French and ‘reuse’ in English. The French term ‘réemploi’ and the English term ‘reuse’ in the context of waste disposal are defined in various legislation and papers on the EU waste management hierarchy as referring to a substance/object that is used again *for the same purpose* as that for which it was originally used⁴⁸. The primary meaning of the term ‘reuse/réemploi’ is the repeated use of non-hazardous wastes (e.g. paper, glass etc.) in their original form⁴⁹. ‘Reuse/réemploi’ can also refer to the use of non-hazardous products as part of a recovery operation (e.g. use as a fuel to generate energy)⁵⁰. The *Saetti and Frediani* case centred on the réutilisation, as fuel, of petroleum refining by-products, which are toxic and classified as hazardous waste and therefore cannot be ‘reused’ (except as part of a recovery operation)⁵¹. The industries in ques-

tion in that case were burning those by-products and harnessing and using the energy produced by that act as fuel – claiming that this was a recovery action. In the French language version of the Order in question (i.e. the language in which it was originally drafted), the term “réutilisation” is used to describe such use. Since that word is different from “réemploi” as used in Directive 75/442, the drafter of the Order felt that there should be no problem. However, while the French term “réutilisation” can be translated into English as “recuperation” or “recovery”, the far more usual translation would be “reuse”, which would, in fact, be problematic (in particular since the authentic language version of most cases before the ECJ concerning waste management is English). The “réutilisation” of the toxic waste referred to in the order is not “reuse” in the context of a product being used again for its original purpose: rather if it is considered a waste, it would be re-use as part of a recovery operation (and thus subject to very strict regulation). However, if the Court were to use “reuse” in English with reference to toxic substances that would normally be considered hazardous, one might reasonably assume that the substances in question are not to be considered hazardous (and can therefore be disposed of without having to conform to the special criteria under Council Directive 75/442/EEC⁵²). In this case, the lawyer-linguist responsible for translating the order in question spotted the potential legal problem caused by this linguistic issue, which simply had not been (and potentially could not be) conceived by the person drafting the order. In performing her translation in this case, the lawyer-linguist had to draw upon not only her expertise as a linguist but also her expertise in EU environmental law, bringing her knowledge in each field together to solve the problem. She chose to translate the drafter’s “réutilisation” in English as “further use”, thereby avoiding what she viewed as the potential consequences of employing the term “reuse”:

...The use of that one little word could completely change the hierarchy of waste management in the European Union. Industries could potentially bring an action claiming that the substances in question in those cases cannot be hazardous because they are being ‘reused’ within the meaning of [Council Directive 75/442/EEC].

Such examples demonstrate that although those who translate ECJ judgments remain largely invisible in the final texts of those judgments, their role and indeed influence on the production of that Court’s case law can be significant. That influence, or indeed the power, of the lawyer-linguists at the ECJ should not be underestimated. The translation process and the input of translators, although invisible in the final texts, are an extremely important part of the production of the ECJ’s multilingual jurisprudence. The dynamics of translation should, therefore, play a role in our understanding of the case law of that court.

Conclusion

The above analysis highlights the relative invisibility of lawyer-linguists in the production of the judgments of the ECJ, and within those texts themselves. However, recent research carried out by the present author seems to demonstrate a shift in dynamics within the Court of Justice, brought about fundamentally as a result of the 2004 and 2007 enlargements. While enlargement was as much a pretext as a cause for some changes that had been mooted for years⁵³, there have been some notable shifts as a consequence of enlargement since 2004 (McAuliffe, 2010). First, as mentioned above, the advocates

general and their *référéndaires* who require ‘linguistic assistance’ in drafting their opinions necessarily work much more closely with lawyer-linguists than they would have in the past. This appears to have resulted in a general shift in perception with regard to the translation service, and for many *référéndaires* this has led to a greater appreciation of the role of lawyer-linguists:

...Until I had to rely on the lawyer-linguists for help with drafting I never gave...the translation service a second thought, let alone been [sic] aware that that [department] is made up of fellow lawyers. (interviewee’s emphasis) [AG’s *référéndaire*]

...Because they are also lawyers, the translator at the Court of Justice can point out not only linguistic mistakes, but mistakes in the meaning of a legal text where there is a lack of clarity. [AG’s *référéndaire*]

Secondly, out of necessity, due to the huge influx of new staff at the Court of Justice, staff training at that institution became much more structured following the 2004 enlargement. This has meant not only that new recruits to all departments of the Court are now more likely to learn about the workings of the court in a structured way, but also that they tend to get to know colleagues from other departments during the course of such training in a way that was not always possible in the past, and so the work of lawyer-linguists and others involved in producing the Court’s case law necessarily becomes more ‘visible’ within the Court itself (McAuliffe, 2010).

Thus, it appears that the lawyer-linguists may be becoming more visible in the process of production of ECJ case law within the Court itself. However, given the nature of the multilingual collegiate judgments produced by the Court it is likely that they/their work will remain invisible in the context of the texts themselves.

There are some instances where the translator of a judgment, or their translation, is in fact visible to an extent in the text of that judgment. In such cases the translator deliberately translates a text in such a way as to highlight linguacultural differences between those multilingual judgments of the ECJ and texts produced within the relevant target language culture (e.g. national court judgments). By so doing, the translator aims to highlight the distinct nature of EU law and the EU legal order and alert readers and those using such case law to the fact that they are not dealing with their own national legal language, but with a new and distinct EU legal language (McAuliffe, 2011).

The success of such strategies depends, however, on the interpretation of those texts at the national level. Šarčević claims that it is up to the judiciary of a multilingual jurisdiction to reconcile any differences between various language versions of multilingual legal instruments “by ascertaining the common meaning of all the parallel texts and ensuring that each text is interpreted and applied in accordance with the uniform intent” (Šarčević, 2000: 74). Šarčević is here referring to the interpretation of multilingual legislation rather than judgments themselves and certainly the ECJ has attempted to do just that over the past half-century, (in particular though the extensive use it has made of the procedure for reference for a preliminary ruling under Article 267 TFEU)⁵⁴. The teleological interpretative approach adopted by the ECJ has often been attributed to “language problems” (Usher, 1981: 225–228), i.e. to the fact that there will always be linguistic divergences between texts, but the ‘common meaning’ will nonetheless remain constant (one EU legal language, expressed in 24 linguistic forms). The Court itself accepted that

fact in *Case 61/72 Mij PPW International v Hoofdprodukschap boor Akkerbouwprodukten* when it stated:

No argument can be drawn either from any linguistic divergences between the various language versions [of an EU legislative text], or from the multiplicity of the verbs used in one or other of those versions, as the meanings of the provisions in question must be determined with respect to their objective.⁵⁵

Although the ECJ in that case was referring to the EU's multilingual legislation, interview data indicates that the same principle would apply at that court in cases of divergences between different language versions of its own case law⁵⁶. However, the ideal situation of automatic comparison of different language versions of multilingual legal instruments in order to determine their 'common meaning', before beginning any interpretation process, is a relatively rare occurrence. As Šarčević (2000: 74) states:

...Judges frequently consult the other language version(s) only in the event of alleged textual inconsistencies and/or an ambiguity or unclarity in the text of the language of proceedings.

This appears to also be the case with regard to the interpretation of ECJ case law at the national level, where it is practically impossible to compare 23 different language versions of either EU legislation or ECJ case law. How then can the uniform interpretation of multilingual law, within a supranational legal order as large as the EU, be ensured?

The ECJ has, of course, attempted to cover all eventualities, by strictly applying the rule that a national court or tribunal, against whose decisions there is no appeal, must refer questions of interpretation of EU law, in cases pending before them, to the ECJ under Article 267 TFEU, (unless the correct application of the rule of EU law in question is so obvious as to leave no room for reasonable doubt)⁵⁷. The Court has also held that, before such courts decide not to refer a question for a preliminary ruling, they must be convinced that the matter is equally obvious to other member state courts and to the ECJ itself⁵⁸. In his essay *Approaches to Interpretation in a Plurilingual Legal System*, which was written on the brink of the largest EU enlargement to date, Francis Jacobs (2003), an advocate general at the ECJ between 1988 and 2005, claims that such a requirement was rather exacting even in 1982, when the then European Economic Community had only seven official languages, and he questions to what extent it can actually be possible following the 2004 enlargement:

...To expect a Portuguese court to be satisfied that a matter is obvious to an Estonian court, or a Hungarian court to verify that the same interpretation flows from the Dutch or Greek version of a regulation?... even if the relevant court is in a position to perform such a task, how is it then to proceed when the language versions conflict? (Jacobs, 2003)

However, Jacobs concludes that the purposive or teleological approach adopted by the Court of Justice, in its interpretation of EU law over many years, should provide enough guidance for member state courts to ensure that interpretation of the multilingual legislation of the EU is uniform throughout that Union:

The result of such an approach is to make less significant textual discrepancies between different language versions of [EU] provisions, and to make it unnecessary in the normal case for national courts to feel constrained to examine umpteen different language versions. It will be more useful to focus on the way in which the Court generally approaches provisions of the type in issue, as national courts have often shown themselves well able to do. (Jacobs, 2003)

In spite of such reassurances, however, the question remains whether all those who use EU law on a daily basis, (national courts, practitioners in the national and European arenas, legal academics etc.), will adopt the same purposive, teleological approach to the interpretation of every provision and rule of EU law, regardless of its apparent clarity in their own language. When it comes to multilingual law, lawyers are primarily concerned with its interpretation and application. However, the situational factors of text production cannot simply be ignored. In the case law of the ECJ such situational factors include the role and influence of its lawyer-linguists. The question of whether shifts in dynamics within the Court of Justice, and more ‘visibility’ for lawyer-linguists and their work in the sense of Venuti’s thesis, would have an impact on the case law itself remains to be answered. This and other research questions are currently being explored in the ERC-funded research project ‘Law and Language at the European Court of Justice’⁵⁹. What is clear, however, is that the invisibility of the ECJ’s lawyer-linguists belies their power in terms of the production of that court’s case law. This should not be ignored if we wish to have a full and nuanced understanding of that case law, and of EU law more generally.

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Notes

¹ *The Translator’s Invisibility* does not in fact provide a history of translation, and Venuti has been criticised for his methodology in choosing a small number of western literary translators on which he bases his analysis in that book. See e.g. Bjork (1997).

² Although some of the data used in this paper have appeared in previous papers by the present author, the analysis of those data in light of Venuti’s thesis on the (in)visibility of translators is novel and adds a new element to critiques of institutional and EU translation as well as to the body of work by the present author.

³ In particular those carried out by Marc Abélès and Irène Bellier, on the European Parliament and Commission. See e.g. Bellier and Wilson (2000), Bellier (2000), Bellier (1997), Abélès (2004) and Abélès *et al.* (1993).

⁴ An in-depth discussion of such themes and debates is beyond the scope of the present paper. For an introduction to the field and these themes see Catford (1965), Pym and Turk (2001) and Robinson (2001).

⁵ Again, a discussion of the concept and types of equivalence is beyond the scope of this paper. For an introduction to this field see Nida (1964), Newman (1994), Kenny (2001), Koller (1995) and Toury (1980).

⁶ See David (1985). Note that although the EU is made up of 28 member states, it technically has only one ‘legal language’ which happens to be expressed in 24 linguistic forms. The only problem is how to guarantee that interpretation at member state level really is uniform.

⁷ The act of transmitting a legal message created in one language and one particular legal system into another language and another legal system (my translation).

⁸The definition of translation within supranational legal systems, such as the EU legal order, is rarely dealt with in discussions on legal translation.

⁹Lawyer-linguists are currently recruited to the EU institutions with a starting grade of AD7.1, which corresponds to a basic salary of €5612.65 per month. Translators recruited to the EU institutions start at grade AD5.1, corresponding to €4384.38 per month basic salary (Staff Regulations of Officials of the European Union [as amended – OJ L 287, 29.10.2013, p. 15–62] 2014). Figures correct as of Dec 2015 – see <http://www.europa.eu/epso> or http://ec.europa.eu/dgs/translation/workwithus/staff/permanent/index_en.htm for further info.

¹⁰With the exception of a small number of press releases, which are sometimes translated by administrators within the Court's Press and Information Division.

¹¹To apply for a job as a lawyer-linguist, one must pass a 'competition'. Open competitions are organised at regular intervals in accordance with language needs and competition notices are published in the Official Journal of the European Union. Until relatively recently the ECJ had autonomy over its recruitment competitions, however, since 2002 those competitions have been organised centrally by the European Personnel Selection Office (EPSO), with the first EPSO competition for lawyer-linguists taking place in 2003.

¹²The few exceptions to this general rule tended to be individuals from the UK or Ireland, where the route to becoming a lawyer can be more flexible than it is in the civil law jurisdictions of other member states and where, historically, one can choose from a vast array of degrees with varying law components.

¹³Prior to the involvement of EPSO in the recruitment process, competitions for posts as lawyer-linguists consisted of written translation exams and an interview.

¹⁴AG opinions are not included in the case law of the Court in this context since, unlike judgments and orders of the Court, opinions are not legally binding. However, the role of lawyer-linguists in the production of some AG opinions is discussed in more detail below.

¹⁵Cases before the ECJ are dealt with by Chambers of 3 or 5 judges. The Court may also sit as a Grand Chamber of 15 judges or as a full court. The deliberations of all chambers are secret and the final judgments produced are collegiate documents.

¹⁶The content and structure of the preliminary report tends to vary from judge to judge. However it usually includes a brief introduction setting out the point of the case, a summary of the legal and factual background and the submission of the parties and observations and recommendations of the judge rapporteur.

¹⁷Advocates General 'assist' the ECJ by giving an 'opinion' in certain cases, analysing the various legal questions raised in the case and discussing the application of EU law to the relevant legal issues. The Advocate General's opinion includes a recommendation on how he/she thinks that the Court should rule in the relevant case. An opinion is not given in every case before the ECJ. Since 2004, if a case raises no new questions of law, then an advocate general's opinion is not necessary.

¹⁸These are, in English alphabetical order: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish, Swedish.

¹⁹In direct actions, the language of procedure is chosen by the applicant, unless a defendant is a Member State or a natural or legal person holding the nationality of a Member State, in which case the language of procedure is the official language of that state. In references for a preliminary ruling under Article 267 TFEU the language of procedure is the language of the national court or tribunal making the reference (see Rules of Procedure of the ECJ of 25 September 2012 (OJ L 265, 29.9.2012), as amended on 18 June 2013 [OJ L 173, 26.6.2013]). Member States are entitled to use their own language in their written statements and observations and their oral submissions when they intervene in a direct action or participate in a preliminary reference procedure.

²⁰Although a case may be brought before the ECJ in Irish, at the time of going to press a derogation regarding the Irish language remains in place. Under this derogation the judgments of the ECJ are not required to be translated into Irish and to date no case has been brought before the ECJ in Irish.

²¹With the exception of the Irish language, for which there is a 'Cell' rather than a language division. At the time of going to press there is one person employed in the Irish Cell and Irish has never been used in submissions before the CJEU.

²²For details of which documents are translated into which language(s) in both direct and indirect actions before the ECJ see (McAuliffe, 2012, 2015).

²³This reduces the number of language combinations for translation from a potential 552 to a more manageable 134.

²⁴With the exception of Maltese and Irish. See *infra*, notes 25 and 26.

²⁵The German language division provides translations from Polish, Estonian, Finnish, Dutch, Bulgarian and Czech; the English language division from Lithuanian, Swedish and Danish; the Spanish division from Hungarian, Latvian, Portuguese and Croatian; the Italian language division from Slovak, Slovenian, Greek and Romanian. The French language division provides full language coverage. Since English is the second official language of both Malta and Ireland, it is assumed that the Maltese and Irish lawyer-linguists are able to provide English translations of documents in Maltese and Irish where necessary. For a more detailed explanation of the pivot translation system see McAuliffe (2008).

²⁶Although a case may be brought before the ECJ in Irish, at the time of going to press a derogation regarding the Irish language remains in place. Under this derogation the judgments of the ECJ are not required to be translated into Irish. To date no case has been brought before the ECJ in Irish.

²⁷*Lecteurs d'arrêt* are francophone lawyers whose job it is to read the draft judgments, in French, to ensure that they read fluently yet remain sufficiently clear and precise.

²⁸This notion of an obligation on the part of 'lawyers' to be faithful to 'the law' is an underlying theme in much of the literature concerning the sociology of legal professions. See e.g. Abel and Lewis 1995, 1988a,b

²⁹For a discussion of the relationship between the concept of professional norms and cultures and the behaviour of lawyers see, for example: Rosen 2001.

³⁰See *supra*.

³¹See *supra*.

³²It is relevant here to note the concept of 'professions of Europe', which refers to the professional culture that has arguably developed within EU institutions. Those working in EU institutions are engaged in a process of 'translating' cultural and professional norms from their own backgrounds and national environments, which, in turn allows those multilingual, multicultural organisations to function relatively efficiently. Discussion of this concept is beyond the scope of the present paper, but see further Gorgakakis 2002; McAuliffe 2015.

³³Over the years there have been some exceptions to that convention. For example in the 1970s Advocate General Warner drafted a number of his opinions in French rather than in English (see Usher 1981). However, it must be remembered that Advocate General Warner was bilingual. Thus, for him, drafting in French was unlikely to be problematic.

³⁴English, French, Spanish, German and Italian.

³⁵The ERC-funded project Law and Language at the European Court of Justice has demonstrated the existence of a Court language (based on a 'Court French'), which is a hybrid language much more formulaic than that used in national supreme or constitutional courts. See <http://www.llecj.karenmcauliffe.com> for more details and project outputs.

³⁶Although the precaution is often (but not always) taken to send the authentic (translated) version of a judgment for review to the member of the Court whose native tongue is that of the language of the case, that member may not necessarily have been in the Chamber of judges that decided the particular case, and therefore could not have a very precise awareness of the deliberations or potential ambiguities in the judgment which may have been deliberately preserved.

³⁷Case 131/79 *R v Secretary of State for Home Affairs, ex part Santillo* [1980] ECR 1585.

³⁸Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

³⁹Case numbers: 1019-1022/1/03 *Umbro Holdings Ltd v Office of Fair Trading; Manchester United PLC v Office of Fair Trading; Allsports Ltd v Office of Fair Trading; JJB Sports PLC v Office of Fair Trading* [2-5] CAT 22.

⁴⁰Case T-25/95 *Cimenteries CBR and Others v Commission* [2000] ECR II-491.

⁴¹My translation.

⁴²In the case before the UK Competition Appeal Tribunal there had been a meeting where the JJB witness claimed that he had received information about other competitors but did not tell them what he intended to do.

⁴³Sometimes cases will have more than one 'language of procedure' (if, for example there are multiple applicants or defendants holding nationalities from different member states). In such instances the judgment is considered equally authentic in each language of procedure.

⁴⁴Case numbers: 1021/1/03 and 1022/1/03 *Allsports Ltd v Office of Fair Trading* and *JJB Sports PLC v Office of Fair Trading* [2004] CAT 17, paragraph 159.

⁴⁵Case 283/81 *CILFIT v Ministry of Health* [1982] ECR 3415.

⁴⁶For an excellent analysis of instances when comparisons between different language versions of EU legislation tend to be carried out by national courts, and the methods employed in such comparisons see Derlén (2009); and for an interesting analysis of the method of interpretation of multilingual legislation by the ECJ see Solan (2014).

⁴⁷Order of the Court (Third Chamber) of 15 January 2004 in case C-235/02 *Criminal Proceedings Against Marco Antonio Saetti and Andrea Frediani* [2004] ECR I-1005.

⁴⁸See Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

⁴⁹The Directive also recognizes the term 'preparing for re-use' (Article 3(16)).

⁵⁰Council Directive 75/442/EEC of 15 July 1975 on Waste (OJ L 194, p. 39-41), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ L 78, p. 32-37). See in particular R1 in Annex II B of the Directive.

⁵¹See Council directive 75/442/EEC, Annex II B, operation R 9 (note: such hazardous waste must be disposed of under very specific and strict conditions).

⁵²In the case in question, the Court decided that, in fact, the waste by-product should not be considered a waste at all but rather an integral part of the production process, because it was to be used again, and fully, without further processing.

⁵³Such as the use of technology and updating of computer systems as well as the amendment of the Court's Rules of Procedure, which significantly changed the working methods of that institution.

⁵⁴Under Article 267 of the Treaty on the Functioning of the European Union, any court or tribunal of an EU member state may request the interpretation by the ECJ of a rule of EU law if it considered such interpretation necessary in order to rule in the case before it.

⁵⁵Case 61/72 [1973] ECR 301, paragraph 14

⁵⁶From the data collected to date, it is unclear as to what the relevant position may be of a translated 'authentic' version of a judgment in comparison with the original French version.

⁵⁷Case 283/81 *CILFIT v Ministry of Health* [1982] ECR 3415.

⁵⁸Case 283/81 *CILFIT v Ministry of Health* [1982] ECR 3415, paragraph 16.

⁵⁹For more information see: <http://www.llecj.karenmcauliffe.com>

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