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## **DEGREES OF LINGUISTIC CONVERGENCE IN THE TRANSLATION OF EU LEGAL TEXTS**

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### ***Abstract***

*EU legal discourse became a well-contoured expression of language use in legal contexts and has evolved as a mixture of laws, cultures, ethnicities, and linguistic backgrounds. Within the European Union, legal translations are highly specific and should be governed by the principle of equal authenticity of the language versions and of the processed texts. This paper aims to review some degrees of legal-linguistic convergence in the conversion of texts issued in the European Union legislation, with main focus on the comparison of the language versions of EU legal acts showing multi-faceted equivalence expressed as convergence, pseudo-convergence, divergence, pseudo-divergence, dynamic correspondence, and convergence per conventionem. Based on the analysis carried out, we are going to see that legal equivalence may be achieved using several linguistic devices and translation mechanisms. We envisage qualitative research methodology focusing on collecting and analysing textual data, addressing the research aims and objectives.*

**Keywords:** equivalence; EU legislation; legal convergence; legal translation; linguistic convergence.

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### ***1. Introduction***

First of all, it is acknowledged that the EU legal discourse symbolises a unique expression of language usage in legal settings that has been contoured as a mixture of laws, different cultures, ethnicities, and linguistic backgrounds, wherefore its translation is characterised by high specificity due to the principle of equal authenticity of language versions and of the processed texts (the source and target texts). In the same train of ideas, legal translation is different from other specialised translations as its subject field is always embedded in a particular domestic legal system. At the same time, legal translation in the multilingual EU context is more or less different from domestic legal translation as the EU law represents a separate legal system anchored in the Treaty on European Union. The multicultural space of the European Union is characterised by a diverse set of backgrounds and cultures, with linguistic and cultural diversity, and therefore the languages spoken in its member states are a key component of its cultural heritage. Such being the case, although the task of the Court's Directorate-General for Translation may seem relatively straightforward – translating documents “coming in” into French and those “going out” into all of the EU official languages –, the process behind such a task is more complicated than it may seem. Admittedly, the purpose of the current paper is to investigate some degrees of legal-linguistic convergence in the translation of legal scripts produced in the European Union, mainly focusing on the analysis of the language versions of EU legal acts and other documents issued by EU institutions or bodies, showing multifarious ways of achieving equivalence.

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## 2. Legal linguistic principles used for EU-legal texts interpretation

In the analysis of legal discourse, attention is still paid to the importance of legal-linguistic convergence between the language variants of EU legislation. Convergence generally means strengthening, consolidating and merging supranational cooperation, and the phenomenon of convergence consequently applies to law as well. However, there are multiple conditions shaping legal integration. The legal traditions of member states, the relevant cultural areas, constitutional traditions and ethical values portraying the legal thinking tend to be a binding agent connecting the European legal culture. These prerequisites illustrate the significance of the convergence of legal cultures in obtaining a uniform understanding and interpretation of the law. For this purpose, the creation, interpretation and application of EU law should be made in accordance with the idea of integration, as a consequence of the globalization process. Identifying and analysing the points of convergence and divergence in the translation and interpretation of language variants of the member states' law is an essential first step in the willingness of harmonizing European law.

Given the official multilingualism in the supranational context of the European Union (Art. 217 ECC, Art. 227 EAC, Art. 55 TEU), the comparison of the language versions of legal acts and other specialised documents shows convergence, pseudo-convergence, divergence, pseudo-divergence, parallelisation or equivalence, dynamic correspondence, language specific knowledge or convergence *per conventionem* (Blanke, Mangiameli, 2013, 1461ff), (Burr, 2013, 1461ff), (Groot, 2002, 222ff). Throughout the next sub-sections of this paper, we will try to throw out into full relief several targeted manifestations concerning these parameters of equivalence – in its manifold expressions – with regard to plurilingual variants of EU legal discourse sequences.

### 2.1 Convergence and pseudo-convergence

To begin with, the ideal equivalence relationship in multilingual legal texts is expressed by convergence. The fact that language versions must be convergent in terms of contents (semantics), legal consequences and textual structure (articles, sentences etc. in the legal sense) may be a challenge in what concerns the EU law. Within a sentence – the basic unit of a legal text –, there is no attempt at a parallel morphosyntactic structure, as the morphosyntactic rules of the language in question, idiomaticity and traditions determine the formulation. We can look into, for instance, the English version “who could suffer retaliation” versus the French “qui risquent de faire l’objet de représailles” and the Romanian “care ar putea suferi represalii” equivalents. Furthermore, in terms of lexical categories, content words (noun, verb, adjective, adverb) have lexical meaning, while function words (article, pronoun, particle) have grammatical function, adpositions (preposition/postposition) and conjunctions are in-between. In the comparison of the French variant “contribuer à la résolution”, the lexical category is expressed by a noun, while in the Spanish version “contribuir a resolver”, the lexical category is expressed by a verb. This also reflects a case of convergence.

Pseudo-convergence (also called *apparent convergence* or *de facto divergence*) actually refers to “false friends”, often with regard to *latinisms* which are frequently found in many European languages, as well as in English. For example, the English term “extraterritoriality”, term from foreign and international criminal law, meaning “enforcement beyond territory”, and the French term “extraterritorialité” versus the Italian term “extraterritorialità” meaning “exempted from jurisdiction of host country”, translated as “exterritoriality” in English. Italian equivalent of “extraterritoriality” (EN) and “extraterritorialité” (FR) would be “estensione della sovranità nazionale” (IT).

### 2.2 Divergence and pseudo-divergence

Other manifestations of (non)equivalence in the translation of EU legal texts are expressed by divergence and pseudo-divergence (also expressed as *apparent divergence*, *de facto convergence*). There are several types of divergences across languages versions, namely lexical, terminological and conceptual, syntactic (scope, coordinators, modality, word formation, dependent phrases or clauses),

coherent (consistency in sense relations, reference tracking, recurrence vs. substitution, relations, intertextuality). In this regard, the relationship lexicology – terminology shows interaction of general languages among each other, with two-fold languages for special purposes, namely (1) national legal languages of Member States, especially with respect to pluricentric languages (French, German, Dutch, Greek, Swedish, English); and (2) supranational (EU) legal languages, especially with respect to negotiation language English (Eurolect).

Concerning national legal languages, pseudo-divergence refers to the so-called “false friends” like, for instance, the English term “extraterritoriality” (enforcement beyond territory) versus the Italian term “extraterritorialità” (exempted from jurisdiction of host country), the French term “repetition” (restitution claim) versus the English term “repetition”, and the French term “peine” versus the Spanish term “pena” (taxonomy and types of sanctions). Similarly, with respect to EU legal language, may we take for example the German term “kind” (a person younger than 14 years old or kinship term) versus the European term “child” (a person younger than 18 years old). Other examples may refer to distinctive coinage of EU legal language, as “unjust enrichment”, expression used in Common Law, versus “unjustified enrichment” (in theory), mainly used in the EU legal discourse.

Another example of pseudo-divergence is found in Article 34.1 ECFR: “The Union recognises and respects the entitlement to social security benefits and social service providing protection (...)”. The English legal language uses the expression “entitlement to social security”, unlike Romance languages that use “droit d’accès”, “drept de acces” etc. Similarly, “(...) the Union recognises and respects the right to social and housing assistance so as to ensure a *decent existence* for all those who lack sufficient resources” (Art. 34.3 ECFR) versus the French expression “existence digne” (reversed order). In terms of syntax, ambiguities are of two types, i.e., structural ambiguity and scope ambiguity. In Table 1, the French term “gravement” is quite ambiguous, meaning “seriously guilty” or “made himself seriously”, while the English term “serious” is non-ambiguous. This example reflects a case of divergence.

**Table 1. Directive 2004/18/EC, Art. 45(2)(g) → divergence**

French	English
[...] qui s’est rendu <b>gravement</b> coupable de fausses déclarations [...]	[...] is guilty of <b>serious</b> misrepresentation [...]

Source: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32004L0018>; <https://eur-lex.europa.eu/legal-content/FR/ALL/?uri=CELEX%3A32004L0018>.

In the relation clausal nexion – complex sentence, a complex sentence arises from the nexion of several clauses, either by way of coordination (clauses of equal level, independent of each other) or by way of subordination (subordinates are subordinated to and dependent on matrix clauses). Both coordination and subordination may be encoded with (syndetic) or without (asyndetic) conjunctions. Subordinate clauses are either complements or adverbials to their matrix clause predicate.

**Table 2. Council Regulation (EC) No 1164/94, Annex II, Art. H(2) (as amended)**

EN	FR
2.   At the end of the period set by the Commission, the Commission shall, subject to the respect of due procedure, if no agreement <i>has been reached</i> <b>within three months</b> , taking into account any comments made by the Member State, decide to:	2. À l’expiration d’un délai fixé par la Commission, dans le respect de la procédure applicable, en l’absence d’accord et compte tenu des observations éventuelles de l’État membre, la Commission <i>décide</i> , <b>dans un délai de trois mois</b> : »

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31994R1164>; <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A31994R1164>.

In Tabel 2 we find another case of divergence: an adverbial Prepositional Phrase that encodes a deadline (bold print) modifies the predicate of the subordinate clause (italic print) in the cited version. In the French version, however, it modifies the predicate of the matrix clause (italic).

### 2.3 Equivalence, dynamic equivalence (correspondence) and formal equivalence

A relevant example of equivalence is represented by the term “informed” found in the content of Article 3 (2) lit. a ECFR (EU Charter of Fundamental Rights), and translated as “éclairé” (FR) and “în cunoștință de cauză” (RO) in Romance languages (see Table 3).

**Table 3. Art. 3 (2) lit. a ECFR**

EN	FR	RO
a) the free and <b>informed</b> consent of the person concerned, according to the procedures laid down by law;	a) le consentement libre et <b>éclairé</b> de la personne concernée, selon les modalités définies par la loi ;	(a) consimțământul liber și <b>în cunoștință de cauză</b> al persoanei interesate, în conformitate cu procedurile prevăzute de lege.

Source: <https://fra.europa.eu/en/eu-charter/article/3-right-integrity-person?page=1>; <https://fra.europa.eu/fr/eu-charter/article/3-droit-lintegrite-de-la-personne?page=1>; <https://fra.europa.eu/ro/eu-charter/article/3-dreptul-la-integritate-al-persoanei?page=1>.

Dynamic equivalence and formal equivalence (Nida, 1968) represent two translation approaches that are used to achieve distinct levels of literalness between the source and target text. Basically, dynamic equivalence refers to sense-for-sense translation (i.e., translating the meanings of phrases or whole sentences) paying attention to readability, whereas formal equivalence refers to word-for-word translation (translating the meanings of words and phrases in a more highlighted literal way), maintaining literal fidelity. The methods used in formal equivalence are inclined to accentuate fidelity to the lexical details and grammatical structure of the source language, while the methods of dynamic equivalence tend to achieve a more natural result, paying less attention to literal accuracy. A case of dynamic correspondence is found in different language versions of the Preamble, recital 2 ECFR (see table 4).

**Table 4. Preamble, recital 2 ECFR**

EN	FR
Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; (...)	Consciente de son patrimoine spirituel et moral, l'Union se fonde sur les valeurs indivisibles et universelles de dignité humaine, de liberté, d'égalité et de solidarité ;

Source: <https://fra.europa.eu/en/eu-charter/article/0-preamble>; <https://fra.europa.eu/fr/eu-charter/article/0-preamble>

### 2.4 Language specific knowledge or convergence per conventionem (by convention)

Language specific knowledge refers to the special case of convergence *per conventionem* meaning that the entire construction, the context or a convention can cancel out an apparent divergence. A case of convergence *per conventionem* is found in Article 6 ECFR (Table 5).

**Table 5. Art. 6 ECFR. TITLE II Freedoms. Right to liberty and security**

EN	FR
TITLE II. FREEDOM	TITRE II. LIBERTÉS
Right to liberty and security	Droit à la liberté et à la sûreté
Everyone has <i>the right to liberty</i> and security of person.	Toute personne a <i>droit à la liberté</i> et à la sûreté.

Source: <https://fra.europa.eu/en/eu-charter/article/6-right-liberty-and-security?page=1>; <https://fra.europa.eu/fr/eu-charter/article/6-droit-la-liberte-et-la-surete?page=1>

In addition, the English “shall”, a modal verb by origin, has come to be used in several different functions in legal texts. In most contexts, it is just a marker of traditional legal style of the enacting terms without further nuancing the modal signification of obligation. Most other languages use

indicative mood, present tense in these contexts by legal tradition, Spanish uses indicative future by legal tradition, and Swedish uses *ska* “shall” (Felici, 2012, 51-66). This represents a case of convergence by convention (a type of pseudo-divergence). Concurrently, types of convergence by convention can be illustrated by several syntagms like “decizie de returnare”, “décision de retour”, “decisión de retorno” (Noun + Preposition Phrase), extracted from the Article 3(4) of Directive 2008/115/EC, or by syntagms like “état de droit”, “estado de derecho”, “stat constitutional” or “stat de drept”, “stato costituzionale”, “rule of law”.

In terms of semantics, doublets occur for reasons of regiolect, poetical language, negatively connoted items, euphemisms, etymology. Legal doublets are standardised phrases used frequently in English legal language consisting of two or more words that are near synonyms as, for instance: “aid and abet”, “demise and lease”, “from now and henceforth”, “null and void”, “terms and conditions”, “ordered, adjudged and decreed”, “due and payable”, “heirs and successors”, “cease and desist”, “furnish and supply”, “deem and consider”, “goods and chattels”, “sole and exclusive” a.s.o. Their translational equivalents in other languages are generally single words – no divergence, no loss in meaning.

At the same time, word order follows individual rules in each language (language-specific). Some languages have rigid word orders, others have constituents ordered according to their information value, e.g., known from the context or the situation, newly introduced, highlighted (focused). For those reasons, sentence structure is necessarily and naturally different across the languages. For instance, the main rule in English is that the subject must be before the object (rigid word order), the main rule in Spanish is that all parts of the predicate stay together (adjacent) etc.

In terms of pronoun dropping parameter, the subject pronoun is obligatory in English, French and German (non-pro-drop), but in Spanish, Romanian, Italian etc., the overt subject pronoun is used only in contrastive or emphatic use (pro-drop). For example, “Il pleut” (FR) and “It is raining” (EN) versus “Plouă” (RO) expressing pro-drop (complete clause).

### **3. Conclusions**

The translation of EU legal discourse is particularised by high specificity as EU law represents a separate legal system. The European Union is characterised by its cultural and linguistic diversity, and the languages spoken in EU countries are an essential part of its cultural heritage. EU-legal translation represents a challenge for translators, as the same EU-language may be the source of a domestic national legal system and of EU legal system as a supranational system. As a consequence, the provisionally agreed texts are translated into the official languages and are subject to legal-linguistic verification before final approval aiming to ensure legal certainty and consistency between the different language versions for the purpose of uniform implementation. EU legal discourse had developed as a smorgasbord of laws, cultures, ethnicities, and linguistic backgrounds, so the translation of EU legal acts should be made considering the theory of equivalence, manifested as convergence, pseudo-convergence, divergence, pseudo-divergence, dynamic correspondence, and convergence by convention, so as to maintain the source text – target text authenticity. Throughout the paper, we have reviewed several cases of convergence and divergence in the conversion of legal texts issued in the European Union legislation and noticed that legal-linguistic equivalence can be obtained using various linguistic devices.

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