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# New Insights into the Semantics of Legal Concepts and the Legal Dictionary

Martina Bajčić

John Benjamins Publishing Company

New Insights into the Semantics of Legal Concepts  
and the Legal Dictionary

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## **Volume 17**

New Insights into the Semantics of Legal Concepts and the Legal Dictionary  
by Martina Bajčić

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# List of abbreviations

BGB	Bürgerliches Gesetzbuch (German Civil Code)	IATE	InterActive Terminology for Europe
CCA	Croatian Competition Act	IT	Italian
CCPA	Croatian Civil Procedure Act	HTSUS	Harmonized Tariff Schedule of the United States
CCPA1	Croatian Criminal Procedure Act	GTT	General Terminology Theory
CESL	Proposal for a Common European Sales Law	LOIS	Lexical Ontologies for Legal Information Society
CJEU	Court of Justice of the European Union	LSP	Language(s) for Specific Purpose
DCFR	Draft Common Frame of Reference	LTS	Legal Taxonomy Syllabus
DE	German	NL	Dutch
EC	European Community	RC	related concept
ECHR	European Convention on Human Rights	SC	starting concept
ECR	European Court Reports	SF	subfield
ECTHR	European Court of Human Rights	SL	Slovene
EEC	European Economic Community	SV	Swedish
EN	English	TEU	Treaty on European Union
ES	Spanish	TFEU	Treaty on the Functioning of the European Union
EU	European Union	UNESCO	The United Nations Educational, Scientific and Cultural Organisation
FR	French	VCLT	Vienna Convention on the Law of Treaties



# Introduction

The 21st century is marked by interdisciplinarity. Worn-out misconceptions about linear approaches and clear-cut scientific domains have been cleared away, making room for cross-disciplinary approaches drawing on two or more different domains. The resulting interdisciplinarity and multidisciplinary enable a particular phenomenon to be untangled from different perspectives, which in turn leads to a deeper appreciation of the phenomenon and streamlines the scientific process more effectively. While some disciplines were quick to reap the benefits of applying interdisciplinary approaches, others are still waiting to make a leap into interdisciplinarity. As regards lexicography, it is still in a transitional period, albeit the academic community has long realised that lexicography should not be relegated to applied linguistics or limited to linguistics only. This claim is echoed by contemporary lexicography scholars Sandro Nielsen and Sven Tarp (2009: IX-XI) who acknowledge that academics have started to develop “general and specific theoretical principles that could explain the nature of dictionaries and help lexicographers to develop new and improved dictionaries“, however, lexicography still needs to find its place in the research world. Moreover, Nielsen and Tarp (*Ibid.*) are right to conclude that the true object of lexicography is the dictionary whose purpose is to help users solve problems they encounter in communicative, cognitive and operative situations. With this in mind, lexicography should do more in terms of utilizing the interdisciplinary potential of other disciplines bearing in mind the user and in case of specialized lexicography the domain that is the object of study. The latter must be considered when looking for an adequate theoretical and methodological approach to the making of a dictionary. In the case of specialized lexicography, it is impossible to separate “the style from the substance”. By the same token, to fully grasp the challenges of compiling a dictionary of law, we must first come to grips with the field of law. To this purpose, the book addresses both legal and linguistic issues.

Exposing the existing lexicographic practice and tools to debate requires a revised notion of the dictionary of law as a dictionary of concepts which frame legal knowledge. Future legal dictionaries should therefore aspire to be repositories of legal knowledge, portraying the law in the dictionary by means of concepts in an intuitively graspable way. That is to say, the structure of concepts in a dictionary

should parallel the way concepts are conceptualized and interconnected in the mind. At the same time, in order to engage in the formidable task of drafting legal dictionaries we must first understand the role and the meaning of legal concepts in the field of law. To put it differently, we need to consider what legal concepts mean to lawyers and find ways to translate how legal knowledge is conceptualized by lawyers into a legal dictionary. Maintaining that concepts, not words, are used to express legal knowledge, the study of law centres on legal concepts. It is thus not surprising that the methodology of legal science and legal reasoning uses the tools of formal logic. In fact, legal reasoning has borrowed many notions developed by the Aristotelian logic, which by the way, has been described as the logic of concepts (*Begriffslogik*, Bund, 1983). Among these notions are analogy, syllogisms and the definition. Arguments by analogy are often deployed in legal reasoning. What more, the Anglo-American system of *stare decisis*, i.e. the principle that precedent as decision by a higher court should be followed by the lower courts rests on the idea of analogy. This adherence to precedent goes back to Aristotle and the philosophical tradition according to which justice or fairness requires that like cases be treated alike (Golding 1984). In the adjudication of cases the argument of analogy is often used in order to enable the application of law to different circumstances. For example, a judge has compared a steamer carrying passengers to an inn making the point that the law which applies to the relationship between the innkeeper and the guest should also apply to the relationship between the proprietor of the steamer and the passenger. Arguing that the passenger procures and pays for his room for the same reason that a guest at an inn does, by analogy he considered the steamer to be a floating inn, since the concept of inn allows for the application of the relevant law. Likewise, the definition is pertinent to the field of law and constitutes an indispensable part of legal dictionaries, as argued in this book, despite the fact that defining legal concepts is a complex task.

As the book unfolds, other aspects in which law, language and terminology studies intersect and interact will be portrayed. Although legal concepts and legal dictionary are of primary concern, the book covers a range of other topics such as legal interpretation, European Union (hereinafter: EU) law, comparative law and legal translation, specialized knowledge transfer as well as cognitive linguistics which, in one way or the other, have ramifications for the making of a legal dictionary. One issue in particular reappears in regard to all of these domains, namely *conceptualization*. We interpret conceptualization as posing the biggest challenge to the transfer of legal knowledge. In consequence, the difference in conceptualization exacerbates legal communication and legal translation, and in turn legal lexicography. Leaving aside the problem of conceptualization makes it impossible to give a realistic account of the law in a dictionary. What more, within the domain of EU law as the main area of our interest, the issue of conceptualization must

be observed against the backdrop of multilingualism and conceptual autonomy. United in linguistic diversity which reflects in 24 official languages, the EU is marked by interpretive autonomy of its legal concepts. While the idea of one EU legal language is a myth, thanks to conceptual autonomy it is possible to conceptualize EU concepts within one unique EU discourse. In this regard, the features of multilingualism and conceptual autonomy must be accounted for in a dictionary of EU law.

Departing from this background, the book proposes a new approach to the understanding of legal concepts and calls for a rethinking of the traditional notion of legal dictionary. In light of the evident importance of concepts for the study of law, it seems fit to start this interdisciplinary study with a chapter on terminology as a discipline which studies concepts and terms and thus offers a suitable platform for an analysis of legal concepts with the view of elucidating most important findings of terminology studies for the making of multilingual dictionaries of law. Despite the fact that terminology has matured into an established discipline of enormous potential that is applied in almost every scientific field and domain, its application in legal studies is lagging behind. The ambition of the present book is to fill this gap by paving the way towards *Legal Terminology Studies*.

## Outline

Chapter 1 sets the interdisciplinary tone of the study and familiarizes the readers with terms, concepts and other basic notions of the discipline of terminology that will be used throughout this book. A conscious effort is made to explain why terminology matters for the field of law. Every law student should be familiar with fundamental legal concepts and the terms in which to express those concepts. However, as law students and legal translators soon realize, legal terms can be used quite loosely and sometimes one term denotes several distinct concepts, as is often the case with concepts of European Union law. This undermines the need for clarity of expression in law and exact legal reasoning. Maintaining that the linguistic discipline of terminology which tries to analyse, document and describe the concepts of a specific discipline, can be of valuable assistance in providing a better understanding of legal concepts, this Chapter presents an overview of its development, outlining different theoretical approaches and methodologies. Putting the spotlight on logical and ontological relationships, it is explained how they correlate with legal methodology and examined to what extent they can contribute to the terminological description of legal concepts. The Chapter clarifies the distinction between term and concept which has bearing on legal lexicography. Finally, attempt is made to single out those aspects of terminology that may be of interest



for this interdisciplinary study and to sketch a theoretical framework that can be taken as the platform from which to embark upon the making of legal dictionaries.

Chapter 2 makes the claim that law must be accessible so that everyone can find, read and understand relevant legal information. However, accessibility does not guarantee understanding of the law. A person interested in property law may find the relevant property law provisions, but still have difficulties making sense out of them. Not only is the law phrased in complex legalese, but it also possesses an inherent logic of its own, one often impenetrable by non-lawyers. The meaning of legal language goes beyond the language and encompasses a non-linguistic level. Arguing that greater weight should be put on legal concepts and the link between language and the law, rather than upholding the dichotomy between specialized and general language, the Chapter first takes a closer look at special features of legal concepts such as vagueness and indeterminacy. It surveys different takes on the problem of vagueness and indeterminacy of both law and its concepts, in order to reach conclusions that will facilitate the integration of vague indeterminate legal concepts into the legal dictionary. Attention is further devoted to the problem of polysemous legal terms. The Chapter draws on the propositions of cognitive linguistics and terminology studies to dispel with the old-fashioned and often inadequate treatment of such terms in legal dictionaries.

Shifting the focus to the language of courts and statutory interpretation, Chapter 3 analyses legal interpretation as an important correlation between language and the law. Assuming that courts often grapple with the meaning of concepts, the following question is posed: To what extent does the practice of statutory interpretation have a bearing on the linguistic approach to legal concepts and especially the making of legal dictionaries? In an attempt to answer this question, the Chapter analyses real-life legal cases and draws conclusions on how the category of meaning is dealt with in the field of law. It finds that the legal conceptualization of meaning can be of use for the making of legal dictionaries. Special attention is devoted to the teleological or purposive method of interpretation. Finally, by analysing selected case law, the role of the (extra)linguistic context in interpretation is explained. By exploring how the terminological approach can contribute to a better understanding of legal interpretation, the latter too is observed in a different light.

Chapter 4 examines EU legal concepts through the lens of conceptual autonomy. As a distinctive feature of EU law, conceptual autonomy sheds a new light on the problem of conceptualization in law. We will first examine general aspects of conceptual autonomy. After that, it is studied how indeterminate concepts *compensation for use*, *arrival time* and *undertaking* are conceptualized at the EU level on hand of selected case law. Scrutinizing settled case law is instrumental for gaining a better understanding of EU legal concepts, as well as for investigating to

what extent the Court's approach to establishing meaning of EU legal concepts is compatible with cognitive linguistics' approach to meaning.

Making the claim that the multilingual nature of EU law affects understanding of EU legal concepts, Chapter 5 examines EU legal concepts through the lens of multilingualism, as another key feature of EU law. By analysing how the CJEU copes with language differences in practice, it is examined to what extent the guidelines established by the Court in such cases can be of interest for multilingual legal lexicography. Before that, the concept of equal authenticity is clarified. Finally, the Chapter elucidates the ensuing consequences of multilingualism on legal lexicography and translation in the EU context.

Chapter 6 departs from the assumption that since a legal dictionary is often consulted during the process of legal translation, it should be able to cope with the challenges of legal translation. Therefore, understanding legal translation is basic to understanding legal lexicography. Issues such as equivalence and non-equivalence reappear in the process of compiling a legal dictionary and must be accounted for. This Chapter assumes that such issues have to be first theoretically accommodated within the sphere of legal translation in order to be successfully resolved in a legal dictionary. With a view to suggesting what can be termed practical guidelines or best practices for both legal translation and legal lexicography in the EU context, the second part of the Chapter analyses existing legal dictionaries and term banks. Concentrating on individual examples, it makes critical assessments and suggestions for future legal dictionaries. As a recurrent topic of this book, conceptualization is also addressed from the viewpoint of legal translation scholarship, in particular from the perspective of comparative law as a legal field most related to legal translation.

Chapter 7 questions the status quo of contemporary lexicographical tools, highlighting the need to reinvent the dictionary in light of new technologies and scientific advances. Due to the fact that legal dictionaries are imperfect to say the least, it is examined what can be done to improve their quality and reliability. Likewise, this Chapter addresses general matters pertaining to legal terminography and the role of theory in dictionary making. While the lack of a theoretical approach is still a cause of concern for terminography and lexicography in general, the integration of theory into the practice of dictionary making is instrumental for enhancing the quality of dictionaries. Considering that lexicography and terminography are often thrown into the same basket, the distinction between the two disciplines is clarified. Addressing that question offers opportunities to clear away common misconceptions that delegitimize terminography as a sister discipline of terminology. This Chapter claims the opposite; terminography has the attraction of vindicating traditional lexicography, wherefore it proposes a theoretical model for the making of multilingual legal dictionaries titled cognitive terminography.

Special attention is also paid to the problem of dictionary definitions and the role of definitions in law. It is argued that the definition deserves a place in the legal dictionary, provided it is adapted to the dictionary's function and form. It is proposed that indeterminate legal concepts be defined by means of teleological definitions. The latter can accommodate the open-ended nature of legal concepts and bypass the problem of demarcation and classification of concepts into legal fields (typical of vague concepts such as *reasonable person*, *undertaking* etc.). The findings from statutory interpretation are thus integrated into terminology theory offering a truly interdisciplinary framework and methodology that fit the special needs of the field of law and can cope with the vagueness of legal concepts in practice.

Chapter 8 demonstrates on hand of examples why the proposed approach called cognitive terminography is our best bet when it comes to compiling legal dictionaries and how it circumvents the problem of achieving reliable dictionary representation of concepts – which the traditional linear dictionary fails to do. The advantages of the proposed approach are illuminated on a dictionary model of EU law. For this purpose a multilingual corpus based on EU tax law has been compiled. The Chapter explains the methodology used for the making of the proposed model, while providing concrete terminographic solutions for a more realistic description of vague legal concepts. Examples of selected EU law concepts will be cited in order to illustrate the advantages of the proposed model over traditional lexicographic tools. Allowing for more flexibility than traditional definitions, teleological definitions are illustrated on hand of selected EU legal concepts. Relying on the main insights into the semantics of legal concepts, the Chapter provides clear pointers for professional work of dictionary authors and a way of solving terminographic problems in the field of law.

By way of conclusion Chapter 9 recapitulates the main findings of the book. Suggesting the way forward for future research into the making of legal dictionaries, it makes a plea for customized and digitalized lexicography.

# Terms, concepts and other conundrums

### 1.1 Introduction

Mark Twain once said that the difference between the right word and the almost right word is the difference between lightning and a lightning bulb. Put simply, the choice of words we use matters and affects the intended meaning of our utterances. Using the right word is of particular importance in law. Maintaining that “a word not carefully chosen can change the intended meaning” (Beveridge 2002: 69), the wrong choice of words can have serious consequences and lead to undesired legal effects. Depending on the terms used to convey a category, different statutes or legal provisions shall apply to it. It follows that the law is dependent on language and words to express legal concepts which produce a desired legal effect. Unsurprisingly, it has been suggested that the study of law starts with a dictionary (Smith 2014). Nevertheless, law is not a discipline of words, but of concepts. For not words or terms, but concepts frame legal knowledge and are in turn of living and dynamic meaning which cannot be understood without taking into account the extralinguistic context. Because of this, a legal dictionary must incorporate the extralinguistic context in which legal concepts are used and interpreted in order to enable a clear and reliable account of the field of law.

Departing from that background, the main objective of this Chapter is to familiarize the readers with terms, concepts and other basic notions of the discipline of terminology that will be used throughout this book. A conscious effort is made to explain why *terminology* matters and in particular why it matters for the field of law. Every law student should be familiar with fundamental legal concepts and the terms in which to express those concepts. However, as law students and legal translators soon realize, legal terms can be used quite loosely and sometimes one term denotes several distinct concepts, as is often the case with concepts of EU law. This undermines the need for clarity of expression in law and exact legal reasoning. Considering that terminology tries to analyse, document and describe the concepts of a specific discipline (Sandrini 2014: 142), it is claimed that it can be of valuable assistance in providing a better understanding of legal concepts. That said, lawyers first need to become conscious of the possibilities of terminology studies in their daily work and research in order to truly realise those possibilities.

The Chapter therefore presents an overview of the development of terminology, outlining different theoretical approaches and methodologies within terminology theory (section 1.3.). By concentrating on the notions of logical and ontological relationships (section 1.4.), it is explained how they contribute to the terminological description of legal concepts. Section 1.5. clarifies the distinction between term and concept which has bearing on legal lexicography. At the same time, distinguishing concept from term provides a better understanding of legal interpretation, especially in multilingual judicial reasoning. Finally, attempt is made to single out those aspects of terminology that may be of interest for legal studies and to map out a terminological theoretical framework that can be applied to the making of legal dictionaries. To facilitate ease of reading all the Chapters refer to real life legal cases and provide numerous examples of legal concepts in different languages.

## 1.2 From Google to a General Theory of Terminology

Ever wonder why *google* is called *google* or why the famous Apple computer is called *Macintosh* and not *bicycle*?<sup>1</sup> Questions such as these are targeted by the discipline of terminology. To put it simply, the reason why *google* is called *google* is a matter of terminology. A plausible explanation seems to be that *google* comes from *googol*, a large number equal to 1 followed by 100 zeros, which would imply the numbers of results of google online searches. The term *googol* was introduced and popularized by the American mathematician Edward Kasner in the 1940s.<sup>2</sup> Today, *google* has found its way into every language and is used not only as a noun (to denote the most popular internet search engine Google), but also as a verb (to google meaning to conduct online searches), adjective (google search) etc. Needless to say, some terminological choices are made with conscious efforts. This is especially the case with brand names or marketing slogans. By the way, the name of the famous company Apple is an example of an arbitrary mark, that is, a mark whose term is in common usage and has no direct semantic relation to the product or

---

1. According to Walter Isaacson, author of the bestselling biography of Steve Jobs, Jef Raskin, who was in charge of the Macintosh project suggested the name Macintosh (after his favourite apple variety), while Jobs himself suggested it be named *bicycle* (Isaacson 2011). As regards the spelling, Raskin insisted the name *Macintosh* was not misspelled. The spelling was intentionally altered not to phonetically infringe on the trademark already owned by McIntosh Laboratory.

2. However, *googol* was apparently coined in 1938 by the mathematician's 9-year-old nephew Milton Sirota. Available at: [www.wikipedia.org/wiki/Edward\\_Kasner](http://www.wikipedia.org/wiki/Edward_Kasner) (accessed 1 October 2014).

service. Today it is safe to say that the term is marked by salient distinctiveness by consumers all over the world.<sup>3</sup> Considering that people are impervious to terminology and the ways in which information is framed, choosing appropriate terms is of paramount importance when it comes to naming new products or expressing political ideas.<sup>4</sup> The meaning of words is scrutinized in terms of how people understand and perceive them. In this sense, the term *YouTube* can be said to be synonymous with freedom of expression, as can be adduced from a recent legal case that will be discussed in Chapter 3.

On the other hand, terminological choices may also be the result of a conceptual metaphor or metonymy, whereas diachronic studies into terminological variation offer valuable insight into the changing perception of our realities. For instance, back in the 1960s, illegal immigrants from Mexico to the United States were called *wetbacks*. Apparently, the immigrants crossed the border between Texas and Mexico Rio Grande by swimming across the river and getting wet in the process, which led to the creation of this ethnic slur. It should be mentioned that the term *illegal* started to be used after the *bracero* program – aimed at importing Mexican workers to the U.S. – was abolished in the 1960s.<sup>5</sup> In the 1970s the term *undocumented* coexisted together with *illegal*. In fact, President Carter used them as synonyms. In order to conform with the modern-day norm of political correctness as a quest for civility, today the term *unauthorized* is used (see for example 8 U.S. Code, § 1324a). To the same end the U.S. government has undertaken efforts to replace *mental retardation*, *mentally retarded*, *idiot* and *feeble-minded* in statutes and regulations with the term *intellectual disability*.<sup>6</sup> Although trivial, the cited examples paint a picture of different interactions between terminology and other domains.

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3. In addition to arbitrary marks, other types include generic, descriptive, suggestive and fanciful (for example KODAK). Terminology evidently plays an important role in trademark law. See e.g. Hotta, S and M.- Fujita. 2016: 478–489)

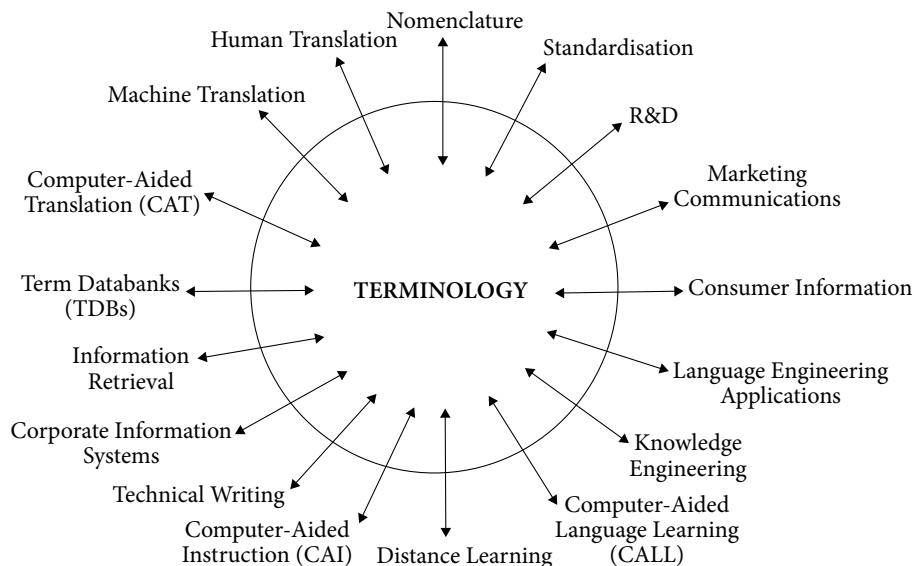
4. During the Croatian presidential elections in 2014/2015, there was much talk about the term *građanstvo*. Though this term may be translated into English by the term ‘citizenship’, it has an additional connotation in Croatian connected to townspeople, as opposed to the people living outside of towns. Hence, in the light of the fact that the presidential candidates kept using the term *građani* when addressing the public, some folks took offence as they felt the latter term implied only townspeople. The use of the phrase “dear citizens”, made them feel left out. Though this argument seems to be stretching it a bit too far, language is a lot like politics and sports. No matter how much or how little people know, they have strong opinions about it.

5. The *bracero* (Spanish for ‘manual laborer’) program was initiated in 1942 by a series of laws and diplomatic agreements. The program ended in 1964.

6. Available at: <https://www.federalregister.gov/articles/2013/08/01/2013-18552/change-in-terminology-mental-retardation-to-intellectual-disability> (accessed 1 November 2014).

Put simply, words do matter. The described changes in the terminology are telling of the changes to the wider social context and social perception. In light of these considerations and for many other reasons terminology is not just a modern buzzword, but truly a discipline in demand. As Temmerman and Kerremans (2004) note:

More than ever before terminology as a discipline is growing into multidisciplinary. On the one hand, it is inspired by new developments in other disciplines like computational linguistics, artificial intelligence or database management. On the other hand, it can be at the service of other disciplines.



**Figure 1.** Different applications of the discipline of terminology<sup>7</sup>

Therefore, in one way or the other terminology and its different facets form part of every discipline. Its methods and principles are employed whether to ensure easier knowledge transfer, knowledge engineering, artificial intelligence or to the end of creating term databanks, computer-aided translation programs etc., as the above Figure 1. illustrates. Similarly, terminology is of significance for companies and organizations which must manage their knowledge and protect their corporate identity (see Najera and Brändle 2012: 300–309). When it comes to translation, the role of terminology cannot be overemphasized. Not only must translators be able to understand specialized knowledge units and link them to concepts in the same or different language, but also store the knowledge acquired in a useful way (Faber

7. Source: <http://www.computing.surrey.ac.uk/ai/pointer/report/section1.html>. (accessed 1 October 2015).

2012: 3). Acquiring skills to deal with the terminology that encodes expert knowledge in the specialized domain is hence essential for translators of specialized texts.

Despite the growing interest into terminology studies, its application in the field of law is lagging behind.<sup>8</sup> This is especially true in respect of legal concepts and legal interpretation. Thus far, neither has been on the research agenda of linguistic or legal scholars, which is surprising in light of the fact that legal interpretation and terminology studies have a lot in common, for both deal with the meaning of concepts. In order to fill this research gap, the following chapters juxtapose the legal and the linguistic approaches to the meaning of concepts. By concentrating on the analogies between the two, valuable conclusions are drawn which can be applied to legal translation and the making of legal dictionaries as well. With this in mind, it is argued that the application of terminology studies to the field of law can contribute to a better understanding of legal interpretation and the study of legal concepts which forms an integral part of legal translation and legal dictionaries. Before that, we will explain the basic notions of terminology.

### 1.2.1 Wüster's idealized vision of terminology

It is impossible to discuss terminology without mentioning the name of Eugen Wüster (1898–1977). Not only was he a pioneer in terminological work, he also deserves credit for bringing the study of specialized languages to a higher level. Long convinced of an alleged inferiority of specialized language in relation to the general language, it took linguists quite a long time to develop a scientific interest in specialized languages. Regarded merely as a special case of general language, specialized language was not considered worthy of serious study (Faber and López Rodríguez 2012: 11). Wüster's work led to the emergence of the new discipline of terminology as early as in 1930s. However, it was his *The Machine Tool, an Interlingual Dictionary of Basic Concepts* of 1968, a systematically organized French and English dictionary of standardized terms that set the trail for the terminological description of data with the view of standardization and inspired the General Theory of Terminology (hereinafter: GTT). The basic goals of this new discipline were:

1. to strip away polysemy from the specialized language by means of terminology standardization;
2. to convince all users of specialized languages of the advantages of language standardization; and
3. to establish terminology as a fully-fledged discipline enjoying the status of a science (Cabr   2003: 173).

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8. An exception in this respect is the work of Peter Sandrini (1996) and Katia Peruzzo (2014).



With the view of achieving a monosemic, i.e. a one-to-one relationship between term and concept, GTT placed great emphasis on differentiating terms from concepts. In order to enable precise unambiguous communication between experts of a field, it is essential that one term denotes only one concept. Wüster was a staunch proponent of standardization of national and international terminology in technical sciences and his theory arose from his practical work in that field.<sup>9</sup> As a matter of fact, terminology developed much later in social and humanistic sciences (Cabr   1999: 17), while experts from other fields barely expressed interest in terminology. The fact that W  ster’s work was confined to the technical science must be taken into consideration by all vocal critics of his insisting on a monosemic relationship between term and concept (which has been brought into question by a number of recent terminology theories, acknowledging that specialized languages are not free from polysemy). Note that the *univocity* principle constitutes a major principle that applies to legal drafting. Drafters of legal texts are admonished to always use one word for one concept following the principle: “same word, same meaning, different word, different meaning”, albeit, this is not always the case as we shall see throughout the following chapters.

Nonetheless, it is not entirely wrong to claim that W  ster conjured up an idealized theory of what terminology should be in order to enable unambiguous communication among experts, rather than of what it truly is, as Cabr   (2003: 167) notes. For, if his theoretical premises are closely related to the methodology of technical language and terminology, the question arises whether they are applicable to other specialized languages. While W  ster’s premises can be regarded as providing a useful point of departure, like other linguistic frameworks, they too need to be adapted to a particular object of study. In other words, it must be examined which terminology theory is most adequate for a particular domain. It is unrealistic to expect that one universal approach could be developed to meet the needs of every domain, just as there is no universal translation theory applicable to every type of translation. What works for literary translation, might not prove apt for specialized translation and vice versa. Different domains have different characteristics, techniques and principles to which basic premises and methods of terminology have to be adapted.

### 1.2.2 A terminological clarification

In this book the term *terminology studies* or *terminology* refers to a linguistic discipline that studies terms, concepts and the conceptual structure of a field.

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9. An engineer by profession, W  ster expressed great interest for information science as well. It is interesting to note that he was fluent in Esperanto.

Preference is given to the term *terminology studies*, since *terminology* refers not only to a study of terms and concepts, but also to the structured set of terms of a particular field, i.e. its specialized vocabulary which acts as the basis for conceptual knowledge of the field.<sup>10</sup> Likewise, considering that several different theoretical proposals and approaches to the discipline of terminology have been developed over the years, ranging from the prescriptive GTT to modern descriptive terminology theories, we use the term *terminology studies* throughout this book.<sup>11</sup> Accordingly, the term *legal terminology studies* denotes a branch of terminology studies applied to the field of law.

At the outset it should also be noted that the term *terminography* refers to the applied sister discipline of terminology studies, which deals with the making of terminographic dictionaries and databases. It involves gathering, systematizing, and presenting terms from a specific branch of knowledge or human activity (Cabr  1999: 115). Accordingly, *legal terminography* deals with the making of legal terminographic tools. Note that the term legal lexicography is used in the same sense, while the ways in which lexicography and terminography differ are illuminated in Chapter 7. Chapter 8 discusses the application of the principles and methods of terminology studies to the making of legal dictionary of multilingual EU law.

It is instructive to point out that the first terminology theory was prescriptive, which is not surprising in view of the fact that it aimed for standardization. Realizing that a prescriptive theoretical proposal as GTT falls short in terms of epistemological adequacy and a realistic description and representation of conceptual knowledge of every field, later theories arising in reaction to GTT were descriptive, as shall be seen in the second part of this Chapter.

Today, there is an increasing tendency to infiltrate premises from Cognitive Linguistics into terminology.<sup>12</sup> This tendency is reflected in accentuating the importance of the conceptual structure and extralinguistic context for the terminological description of meaning. In this sense, the interests of cognitive linguistics and terminology coincide to a certain extent. Both focus on the conceptual reference of terminological units, the structure of scientific domains and specialized

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10. On top of that, the term *terminology* designates an iPad app for exploring the English language. This backs the claim that terminology means many things to many people (Sager 1994: 7).

11. W ster himself used the term *Allgemeine Terminologielehre* which was the title of his seminal work: *Die allgemeine Terminologielehre – Ein Grenzgebiet zwischen Sprachwissenschaft, Logik, Ontologie, Informatik und den Sachwissenschaften* (1974). His followers introduced the term *General Theory of Terminology*, while Cabr  (2001: 175) uses the term *extended general theory* to refer to GTT of W ster's numerous successors. Temmerman (2007) uses the term *Traditional Terminology Theory*.

12. For an overview on cognitive linguistics see Croft and Cruse (2004).

knowledge representation. This renders cognitive linguistics “an attractive linguistic paradigm for the analysis of specialized language and the terminological units that characterize it” (Faber 2012: 1), whereas the implementation of its premises into terminological description can facilitate knowledge representation and knowledge transfer, both of which are central to legal lexicography. As the notion of *conceptual structure* is referred to throughout this book, it merits some clarification. Over the years the notion has become the Holy Grail of linguistics. Within Conceptual Semantics, Ray Jackendoff (2011) uses this term to denote a mental representation (as an extralinguistic level). A word is hence regarded as a part of the language/thought interface and part of the conceptual structure. For our purpose, conceptual structure is deemed to represent the extralinguistic context which is paramount for understanding the meaning of a concept. In fact, we assume that a concept cannot be understood isolated from its conceptual structure. Because of this, a dictionary must also find ways to accommodate the conceptual structure, in addition to the linguistic structures as the linguistic representations of concepts.

### 1.3 Different takes on terminology and terminology work

By now it is clear that there is a wide range of approaches to the theory and practice of terminology. Readers should be aware that there are different ways in which terminology can be conceived depending on different functions it aims to fulfil and different domains to which it is applied. Accordingly, field specialists perceive terminology differently from language planners or end-users of databases (for more see Cabré 1999: 11). Pursuant to the general aims of the traditional or general terminology theory, we can identify three main orientations in terminology: terminology adapted to the linguistic system, translation-oriented terminology and terminology oriented to language planning (Auger 1988, quoted in Cabré 1999: 12–14).<sup>13</sup> The latter two orientations can be considered applied terminology work aimed at improving and simplifying translation. Terminology adapted to the linguistic system is important for it gives shape to the theoretical

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13. Terminology oriented to the linguistic system is represented by three main terminology schools: Vienna, Prague and Moscow. As Cabre (1999: 13) notes, the Vienna school of terminology arose out of the need of technicians and scientists to standardize the terminology in their fields to the end of ensuring efficient communication and knowledge transfer among specialists. Building on Wüster’s work, the Vienna school developed a set of principles and methods that laid the foundation for later theoretical work. The Czech school advocated a functional linguistic approach to the description of specialized languages, whereas the Russian school was mainly interested in the standardization of concepts and terms (Cabré 1999: 13).

groundwork of terminology and methodological principles governing its application (Cabr   1999: 13).

Terminology work aimed at translation was developed in support of translation in bilingual or multilingual areas or countries such as Qu  bec and Belgium. It is worth noting that for a long time Canadians have led the way in the development of legal translation and standardization of legal terminology.<sup>14</sup> As a matter of fact, the oldest postgraduate study programme in legal translation is offered at the University of Ottawa. Furthermore, the terminology work of this type is conducted by multilingual international bodies such as the United Nations, UNESCO, EU and accounts for the first step in the creation of terminology databases (TERMIUM in Canada or EURODICAUTOM in the EU). Such terminology work serves a twofold purpose; not only does it raise the quality of translations, it also facilitates translator's work. In the translation of scientific and technical texts, translators must be able to quickly attain the background domain knowledge in order to understand the concepts that are to be rendered into another language. As Faber (2012: 3) notes:

understanding a terminology-rich text requires knowledge of the domain, the concepts within it, the propositional relations within the text, as well as the conceptual relations between concepts within the domain.

Therefore, it is instrumental for translators to be acquainted with the basic premises of terminology work, especially if they work in a multilingual environment.

To summarize this short overview of the development of terminology studies, it is important to differentiate applied terminology work aimed at standardization and language planning from terminology theory. For failure to do so, terminology studies have for a long time been marginalized from other linguistic disciplines and perceived as an auxiliary discipline, which has to resort to methods of other disciplines such as ontology and linguistics in order to describe terms and concepts. W  ster (1974: 143) even spoke of a competition between terminology and linguistics. His attempts to make terminology into an independent discipline have actually weakened its position. Claiming that in terminology, unlike in other linguistic disciplines, one proceeds from application to theory, and that terminology work starts from the concept, while linguistics is interested in the content of the word (*Wortinhalt*), W  ster maintained terminology's autonomy in relation to linguistics. What more, rather than studying flecion and syntactic rules, the true interests of terminology are concepts and the lexicon (W  ster 1985: 1–2). It should be added that at W  ster's day, terminological research was synchronic only, in consonance with the goal of terminology standardization, whereas

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14. See the work of Jean-Claude G  mar (1995).

recent theoretical proposals (e.g. Sociocognitive Terminology) involve diachronic research as well.

In spite of GTT's evident shortcomings and a rather idealized vision of specialized language, Wüster took great pains to put terminology on its feet. Furthermore, he persevered on the importance of semantics and meaning for terminology. Having regarded specialized languages to be languages of concepts, that is of purpose, he deemed meaning to be the central problem of specialized languages (Wüster 1953: 12). This account constituted the first step towards a desperately needed growing-together of semantics and terminology. With the emergence of cognitive linguistics and the integration of its insights into modern terminology theories, the prominence of semantics for terminology finally received due attention. It stands to reason that the cognitive understanding of the importance of conceptual structure for meaning has done wonders for the description of concepts. It not only enabled a more realistic terminological description of concepts, but also a more adequate approach to their translation.

#### 1.4 Logical and ontological relationships vs. legal reasoning

In the previous section attention has been drawn to those aspects of terminology that set translation-oriented terminology work apart from other areas of terminology activity. Under this heading we will explain the fundamental distinctions between logical and ontological relationships which are important for the terminological description of concepts, and legal concepts in particular. Likewise, in this context it is vital to point to the close relationship that exists between the legal science on the one hand, and logic, on the other. This relationship reflects most notably in legal reasoning (in German: *juristische Methodenlehre*) which to a certain extent uses the tools of formal logic. Although legal scholars argue that legal reasoning is not the same as logic or scientific reasoning, or ordinary decision making for that matter (Ellsworth 2005: 685), it has borrowed many notions developed by the Aristotelian logic, like subsumption, analogy, syllogisms and the definition. The latter are discussed in greater detail later on, whereas the following sections reflect on the usefulness of classic logical and ontological relationships for the study of law. Before that, let us briefly consider the two main types of reasoning in law: deductive and analogical. Deductive or rule-based reasoning is basically syllogistic insofar as the decision maker begins an argumentation with a specific set of facts and then looks at the law that applies to those facts and reaches a verdict. Resting on the principle of similarity, analogical or case-based reasoning which lies at the heart of the Anglo-American legal tradition, presupposes examining the patterns of decisions in earlier related cases (*Ibid.*, 686–687).

Owing to an unrelenting scholarly discussion as to what legal reasoning really is, legal scholars have ventured a number of different theories including but not limited to Legal Formalism and Legal Realism.<sup>15</sup> The basic idea of formalism is that there is a pyramid of rules with a very few fundamental “first principles” at the top; from which mid-level and finally a large number of specific rules is derived (Ellsworth 2005: 688). In contrast, legal realists rejected the “vain daydream disconnected from the real world” view by virtue of which law is “a self-contained logical system providing for the scientific, deductive derivation of the right answer in all new cases” (Ellsworth 2005: 690). Instead of observing the law as a self-contained and self-serving system, legal realists postulate that the law reflects historical, social, cultural, political, economic and even psychological forces, while the behaviour of individual legal decision makers is a product of these forces (*Ibid.*).

#### 1.4.1 Logical relationships

Logical relationships are based on similarities between concepts (Cabr   1999: 100). While concepts can share one or two characteristics, one concept can be more generic and the other more specific. In this species-genus relationship, the specific concept will have at least one additional characteristic that differentiates it from the generic concept. This relationship is called logical subordination (Cabr   1999: 100). In genus-species relationship, the specific concepts are included in the generic concept. The latter relationship of inclusion is important in the search for legal translation equivalents, as will be discussed in Chapter 6. Similarly, if two specific concepts are subordinated to the same generic concept, the specific concepts are said to be in a relationship of logical coordination (*Ibid.*). For example, concepts *subsidiary company* and *parent company* are subordinated to the generic concept of *company* as their superordinate concept.

#### 1.4.2 Ontological relationships

Before we define ontological relationships, it is important to explain the terminological understanding of ontology. It should also be noted that ontologies are dealt with in more detail later on in this book (Chapters 7 and 8). First of all, a distinction is to be made between *Ontology* written with an upper-case letter (as an area of philosophy or metaphysics which deals with the nature of being) and an *ontology* (as a conceptualization of a specific field) written with a lower-case letter. An ontology deals with describing terms, concepts and the conceptual relations that

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15. Note that legal realism was a precursory to further independent currents: Critical Legal Studies, Law and Economics and the Law of Society Movement.

exist in a particular field. In this respect, ontologies are helpful in the representation of knowledge, whereas terminologists use ontological resources to establish the conceptual framework for term databases and dictionaries.

Ontological relationships are based on proximity or contact in space and time. Such relationships include proximity or the so-called *Beieinander-Beziehungen* (Wüster 1974: 161) and *Bestandsbeziehungen*. The latter can be described as meronymic (part-whole) and hyponimic (whole-part) relationships. These relationships denote that something is a part of a whole and create concept ladders (*Bestandsleiter*, Wüster 1974: 161), for instance: *state-county-city-municipality*. In contrast to logical relationships, within these ladders a category can only occupy one instantiation. Something is either a county, or a state, but cannot be both at the same time.

Establishing logical and ontological relationships enables the creation of a taxonomic or hierarchical structure of a subject field. Within a hierarchical structure concepts can be coordinated, subordinated or superordinate to one another. Understanding these relationships between concepts is extremely important within the sphere of law and in turn, for legal translation. Translation equivalents are often only partially equivalent and may be in a subordinate or a superordinate relationship. Elucidating these relationships between potential equivalents will help legal translators to determine the most appropriate equivalent and cope with the conceptual incongruence between legal concepts of different legal systems. As regards the organization and representation of legal concepts in a dictionary, it is important to include the most adequate ontological conceptual relationships into a dictionary bearing in mind the domain of study. The selected relationships in a dictionary must reflect the conceptual knowledge system of a particular domain in order to enable a believable context-rich representation of concepts, as shall be seen in the second part of the book.

## 1.5 The concept vs. term quandary

What's in a name? That which we call a rose,  
By any other name would smell as sweet.  
(Shakespeare, *Romeo and Juliet*)

Another important feature of terminology studies is the distinction made between term and concept. The basic difference between term and concept may be explained in the following way. It was Edward Sapir (1921: 84), the author of the seminal linguistics book *Language*, who said that it would be impossible for any language to express every concrete idea by an independent word. But this does not

mean that one cannot conceptualize the idea, even though it has no corresponding word. Think, for instance, of the German term *Schadenfreude* which expresses a feeling not foreign to speakers of English, although it has no English equivalent, or of legal terms *equity* or *common law* which have no counterparts in other languages. While there are concepts without corresponding terms, there can be no terms without corresponding concepts, “for the existence of the word bears testimony to the existence of the thing”.<sup>16</sup> The term/concept distinction bears ramifications for legal translation and legal terminography, and is linked to the issue of conceptualization, a recurrent topic of this book. A single term can denote two or more different concepts which are conceptualized differently. For example, the German legal term *Verfügung* denotes different concepts in different legal fields (the law of succession and administrative law). The term *Anspruch* is most often used to denote a concept of the law of property (*ius real*, *ius in rem*), as well as a concept of the law of obligations. Likewise, the term *proportionality* is used both in national law and in EU law (Bajčić 2011: 81–93). These two domains act as dynamic contexts in which the term *proportionality* realizes its special meanings. Therefore, the term’s national law meaning differs from its EU meaning.

In order to further clarify the term/concept distinction, we will refer to a recent legal case in which the Court of Justice of the EU pointed to the different conceptualizations of a single term. The case in question *Backaldrin* concerned the meaning of the German term *Kornspitz* and whether it constitutes a trademark.<sup>17</sup> More specifically, the question was raised as to how this word is perceived by end users and sellers. Generally speaking, linguistic tools are often employed in trademark disputes. Linguistics are resorted to in resolving issues such as “do the marks mean the same thing”, so once a court had to decide whether *Healthy Choice* and *Health Selections* mean the same thing (*ConAgra v. Hormel*).<sup>18</sup> In answering such

16. „What a fearful thing is it that any language should have a word expressive of the pleasure which men feel at the calamities of others; for the existence of the word bears testimony to the existence of the thing. And yet in more than one such a word is found. ... In the Greek *epikhairekakia*, in the German, ‘Schadenfreude’” (Trench 1852).

17. Case C-409/12 *Backaldrin Österreich The Kornspitz Company GmbH v Pfahnl Backmittel GmbH* [2014] ECR not yet available; judgment of 6 March 2014.

18. *Conagra, Inc., v George A. Hormel, & Company*, 990 F.2d 368 (8th Cir. 1993). ConAgra, the producer of *Healthy Choice* microwave lunches, challenged the trademark of its competitor, Hormel, producer of a similar microwave lunch called *Health Selections*. There was another case which centered on the meaning of the prefix „Mc-“. Before the trial, McDonalds hired an advertising firm to survey the public’s perception of the Mc- prefix (see Shuy 2016: 459). The results of the survey showed that people associate terms *reliable*, *prepackaged*, *consistent*, *fast*, *processed*, *simplified*, *uniform*, *cheap* and *easy* with McDonalds. In other words, this is how they conceptualize McDonalds.



questions, trademark lawyers sometimes rely on dictionaries or engage linguists who serve as quality control experts (see Shuy 2016: 452). In the *Backaldrin* case, the Court held that the term *Kornspitz* denotes only a generic concept from the perspective of consumers. However, for bakers, the term *Kornspitz* is perceived as a common name in the trade of that specific bakery product (bread rolls oblong in shape with a point at both ends). Despite the fact that it is registered as a trademark, the Court maintained it has lost its distinctive character for end consumers (who do not attribute the product to a specific brand), though not for bakers. Therefore, the Court (wilfully or not) correctly acknowledged the importance of conceptualization for the meaning of a term in accord with cognitive linguistics.

### 1.5.1 Legal vs. linguistic conceptualization

This example aptly describes the distinction between term and concept and the importance of conceptualization and meaning for the field of law. At the same time, it seems to raise the following question: Is there a difference between legal and linguistic conceptualization? To answer this it must first be explained how conceptualization is understood from the linguistic perspective. As the key semantic notion of cognitive linguistics, conceptualization accounts for processes of meaning construal operation. These processes are manifested in language by means of cognitive capabilities such as understanding, structuring, categorizing. For some linguistics scholars (e.g. Lakoff 1987), meaning as this cognitive processing *is* conceptualization. On the other hand, Langacker (1991: 5; 1999: 5) first used the term conceptual imagery, and later construal in the sense of human capability to understand one conceptual content in different ways. To simplify, conceptualization can be equated as the process of understanding a concept within its conceptual structure. In this sense, it is inseparable from the category of meaning and occupies the central position in semantic research. Therefore, conceptualization is what promotes a term to meaning.

It is often said that linguists engaging in a linguistic analysis of the law need to be aware that lawyers do not think in terms of the linguistic categories of syntax, phonology, semantics, speech acts, discourse analysis, or dialects at least not in the same way as linguists use them. “Lawyer’s training, concepts, and content cause them to think about and deal with categories such as trademarks, product liability, contracts, wills, copyright, defamation, bribery, murder, and other types of cases that they learned in law school.” (Shuy 2016: 449). In other words, lawyers are primarily concerned with legal concepts which frame legal knowledge. Notwithstanding that, the above mentioned linguistic categories and semantics in particular constitute an integral part of the operation of the law. Legal interpretation for that matter is contingent on the use of semantics. What more, legal

professionals resort to linguistic tools to denote legal concepts as they use a specialized terminology which is conceptualized within a particular legal system. Nevertheless, the difference in conceptualization between laymen and professionals puts a significant burden on smooth communication and knowledge transfer between them. Raising awareness of the problem of conceptualization in this respect accounts for the first step in achieving a more effective knowledge transfer and facilitating communication with non-professionals.

Let us consider the following example. For an attorney the term *tort* most probably evokes extralinguistic, i.e. legal knowledge, that is not evoked when a layperson uses the term. However, the term calls up different knowledge for an attorney practising law in the United States, than for an attorney practising law in France or Japan. Even if the latter have corresponding terms for the concept of tort in their languages, the terms evoke conceptually idiosyncratic categories. Conceptualization, thus, cannot be restricted to language only; it hinges on other extralinguistic elements such as the legal culture and legal system. That said, the above raised question can be answered in terms of degrees. While it is safe to claim that lawyers do think in special categories, the problem of legal conceptualization can and should nonetheless be resolved by employing linguistic tools, as this book sets out to do. Gaining insights into the semantics of legal concepts is of paramount importance in this respect.

To summarize, from the terminology studies perspective, terms can be described as linguistic units which denote concepts that in turn convey conceptual meaning within specialized domains (Faber 2012: 11). In the initial phase of GTT, concepts were conceived as abstract cognitive entities that refer to objects in the real world and are separate from their linguistic denotations (terms) (Faber and López Rodríguez 2012: 12). However, the prevalent perception today is that the linguistic and the extralinguistic level are intertwined, whereas terms should not be observed in separation from concepts. Furthermore, the distinction between term and concept is connected to the difference between the *onomasiological* and the *semasiological* approach to terminological description. While the former starts from the concept, the latter starts from the term, that is the linguistic denotation in the text. Generally speaking, terminology work is assumed to start from the concept. Nevertheless, modern terminology theories, such as Sociocognitive Terminology by Rita Temmerman (2000), advocate a semasiological approach which starts from the term and base their description on how terms are actually used in communicative contexts. This differentiation between the onomasiological and the semasiological approach merits special attention in the context of multilingual EU law. In order to achieve uniform application of EU law, it is necessary to assume that all 24 equally authentic EU language versions denote one and the same EU concept; namely a concept with an autonomous meaning delimited

under EU law. Yet, as linguists, we are aware of the contradiction pervading this assumption: As legal translation is inherently imperfect (Šarčević 2014: 47), it is impossible that 24 different language versions always convey the same meaning and refer to one and the same concept. For this reason, the Court of Justice of the EU must come to grips with the problem of conceptualization. Acting as “the lord of the words”, the Court must interfere to reconcile inevitable divergences between language versions by means of its teleological autonomous interpretation, which, as will be illustrated, emphasizes the importance of the concept.

## 1.6 Recent terminology theories

This section outlines recent trends in contemporary terminology theory.<sup>19</sup> During the 1990s strong tendencies surfaced to place terminology in a broader social, communicative and linguistic context. By moving the focus of interest to the conceptual network on which language is based, the cognitive shift in linguistics has pushed terminology away from Wüster’s General Theory of Terminology (Faber Benítez 2009). In fact, new insights in terminology are a result of the critique aimed at the traditional terminology coming from cognitive science, linguistics and communication science in the 1990s and 2000s (Cabré 2003: 171). New proposals to terminology can be grouped as either social and communicative terminology theories (Socioterminology and the Communicative Theory of Terminology) or as Cognitive-based theories of Terminology (Sociocognitive Terminology and Frame-based Terminology). Unsurprisingly, terminology scholars recognized that Cognitive Semantics, which is based on the premise that language structures reflect conceptual structures, has potential for the study of terms and concepts. In fact, both cognitive semantics and terminology target questions of semantics, cognition and categorization. The cognitive approach to meaning allows for a more realistic description and representation of terms and concepts, thus enabling terminology studies to finally move away from the GTT paradigm and its epistemological inadequacy. Therefore, some linguists perceive contemporary terminology to be primarily a linguistic and cognitive discipline (Faber Benítez 2009: 110).

Given the fact that terms are specialized knowledge units that designate our conceptualization of objects, qualities, states, and processes in a specialized domain, any theory of Terminology should be cognitively oriented, and aspire to psychological and neurological activity. (León Araúz et al. 2012: 110)

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19. For an extensive debate of contemporary mainstream terminology see Faber (2012).

Cabré's communicative theory of terminology signalled a growing-together of linguistics and terminology. It is especially important insofar as it accounts for the first theoretical proposal that questions the basic premises of GTT. Socioterminology as proposed by Gaudin (1993; 2003) attempts to account for terminological variation by applying sociolinguistic principles to terminology theory. Since neither of these proposals explicitly analyse semantic meaning, greater attention is here paid to cognitive-based theories of terminology and how they can contribute to a more realistic description of specialized knowledge units.

To this end, sociocognitive terminology and frame-based terminology will be discussed in more detail in Chapter 7 in the context of knowledge representation systems. Both of these cognitive approaches build on cognitive semantics and concentrate on the cognitive potential of terminology in domain-specific language and are of interest for a study of legal concepts and legal dictionaries. At this point we will only briefly refer to Faber's frame-based terminology which adheres to the communicative situational perspective (see Faber 2012: 5). In line with the latter, terms can only be understood within the contexts in which they appear. Just like communicative theory of terminology and Temmerman's sociocognitive terminology, frame-based terminology goes beyond terms in a Wüsterian sense by analysing how terminological units acquire their specialized meaning, and the extent to which specialized situational settings have a hand in this (Faber 2012: 5). A lot has been done in the area of computer terminology as well (Ahmad 1998, Heid 1999, Bourigault, Jacquemin and L'Homme 1998, Pearson 1998; see Budin 2001). Computer terminology uses text corpora to model data and metadata for processing of terminological information. Methods of terminology management have also found application in the branch of artificial intelligence (Ahmad 2001: 809–844).

Bearing in mind that there is no universal theory of terminology that would be applicable to all domains, we believe that the specific features of a domain determine which terminology theory is most suitable for its description. That said, we argue in favour of cognitive-based theories of terminology. Integrating premises of cognitive semantics into terminology enables a better understanding of how concepts are conceptualized. This in turn offers a more integrated approach to their description, representation and finally translation, as recent proposals such as prototypes confirm. The latter allow for a more coherent structuring of concepts in a dictionary or a database, as shall be seen. In respect of the legal domain, it is assumed that most legal concepts are not fixed, but represent open-ended categories that can be compared to prototype structures with more or less central members. Departing from the premises of cognitive semantics, it is maintained that a concept is fully realized and understood only within its conceptual structure, which underlines the importance of extralinguistic knowledge for its conceptualization. By virtue of this approach, the context is taken as a source of domain knowledge

information on the concept (ISO 704). In light of these assumptions, we advocate the application of a cognitive terminological approach to the terminographic description of legal concepts. One of the principal propositions of this approach is giving preference to the onomasiological approach which emphasizes the importance of concept and conceptualization for the transfer of specialized knowledge. Accordingly, the topics of legal language, legal interpretation and legal dictionary will be studied through the prism of the cognitive terminological approach.

## 1.7 Summary

This interdisciplinary study departs from two premises. First, it is assumed that law and legal communication are complex. Not only is legal knowledge difficult to understand, but legal communication appears intransparent and obscure to non-lawyers. The reasons for this are discussed in detail in Chapter 2. Secondly, it is assumed that using linguistics, and especially the tools of terminology studies, can facilitate the transfer of legal knowledge and make legal communication more transparent. Making a plea for a *linguistisch aufgeklärte Rechtslehre* (Müller 2001: 11–25), this Chapter illuminated different facets of terminology and explained why terminology matters for law, arguing that its application to the legal field can provide a better understanding of legal concepts, legal interpretation and the law.

Terminology's charm lies in the fact that it interacts with other linguistic disciplines, as well as with logic and the law. As shall be seen in the following chapters, legal concepts take centre stage not only in legal interpretation, but also within legal translation and the making of legal dictionaries. The search for a theoretical approach to the latter subject matter must therefore depart from legal concepts. With this in mind, it is argued that terminology studies offer a wholesome and innovative theoretical and methodological framework to study legal concepts, their translation and dictionary representation. In a parallel way, legal studies may benefit from terminology studies, as it offers an attractive paradigm for explaining legal communication and specifically the courts' interpretive practices. In this respect it is important that lawyers become conscious of the possibilities of terminology studies in their daily work and research. Terminological know-how enables a deeper understanding of (their own and foreign) legal language and legal culture and leads to a better mastery of the legal practice. As can be concluded from the provided overview and critical analysis of terminology theories, terminology has not only evolved from a prescriptive to descriptive theory with a growing focus on the study of meaning; it has also matured into an established scientific discipline of enormous potential that is applied in every scientific field. In consonance with this, it is often said that there is no knowledge without terminology. And yet, its

application in legal studies is lagging behind. This book attempts to fill this gap by contributing to the use of terminology in the field of law.



# Investigating legal concepts, language and the law

## 2.1 Introduction

Law can be defined as a regime that orders human activities and relations through systematic application of the force of politically organized society (Garner 2007: 900). As such, law must be predictable so that people can forecast the legal consequences of their behaviour, and lawyers give clients advice about what they should do. Likewise, law must be flexible in order to adjust to different situations and changes in the society. Finally, law must be accessible so that anyone interested can find, read and understand it (Nedzel 2008: 2). This heightened need for the accessibility of law is what sets it apart from other domains. Unlike other fields of knowledge, the field of law should be understandable to experts and non-experts alike. After all, law affects everyone. However, the accessibility of law does not guarantee understanding of the law. A person interested in property law may find the relevant property law provisions, but still have difficulties understanding them. Not only is the law phrased in complex legalese, it also possesses an inherent logic of its own, one often impenetrable by non-lawyers. The meaning of legal language goes beyond the language and encompasses a non-linguistic level. It should be noted that in this Chapter (and throughout the book) meaning is studied from the point of view of cognitive linguistics. This basically means that: (1) meaning is seen as conceptual structures and (2) to understand a concept we must understand the (extralinguistic) mental knowledge activated by this concept (the conceptualization of a concept).

The described perception of meaning mirrors the way in which concepts are connected in the human mind and implies that knowledge too is structured cognitively. In this sense it can be concluded that not only meaning, but also knowledge is perceived as conceptual structures. In a similar vein, Engberg (2015: 175) rightly asserts that knowledge can be seen as interrelated concepts. The importance of the non-linguistic level for the meaning of law is especially evident in common law in which the emphasis is placed on the concrete, practical experience of case law, whereas rules alone as “mere forms of words, are worthless” (Nedzel 2008: 14). The differences between the civil legal systems and common law are discussed in this



Chapter too with a view to gaining a better understanding of the operation of law and the importance of legal concepts in general.

Departing from this background, the Chapter first defines specialized language (section 2.2.). It scrutinizes the dichotomy specialized/general language (section 2.3.), and puts the spotlight on the special relationship between law and language (section 2.4.). After that, focus is placed on legal terms and concepts (section 2.5.). The latter are examined through the lens of vagueness and indeterminacy as distinctive features of the law, not just language. One of the main tasks of legal lexicography is to come to grips with the problem of vagueness and indeterminacy of legal concepts, and consequently, with polysemous legal terms which have multiple references (section 2.6.). In these endeavours we will draw on the basic principles of terminology studies. As discussed in the previous Chapter, using the tools of a linguistic discipline that studies terms and concepts of a specific domain can be of great assistance for defining legal concepts.

## 2.2 Researching specialized languages

A specialized language is usually described as a language used within the boundaries of a particular domain and as such, stands in opposition to the everyday or general language. One of the objectives here is to examine to what extent a specialized language can be observed in contrast to general language. To evaluate that, different views of specialized language will be weighed against the main findings of cognitivism and legal studies. At the outset it is important to note that specialized languages can be approached in two ways: via semiotics and via natural languages (see Kocourek 1982). Rather than approaching specialized language as a semiotic system for transmitting and exchanging information that employs various codes, and not just human language, this study observes specialized language in relation to natural languages with emphasis on the relationship between law and language.

Research into specialized language that began in the 1960s focused primarily on the lexis, then syntax and text type, while existing studies of specialized language texts are generally restricted to highlighting salient aspects of scientific discourse (Faber 2012: 1). Today however, efforts are made to approach specialized language as a whole and place it within a richer extralinguistic context, assuming that an integrated approach which takes into account all aspects of language can render a more believable representation of a specialized language. This is the result of the growing influence of cognitive science on linguistics and the appreciation of its methodological tools for analysing specialized languages. Albeit many scholars have criticized the lack of a scientific approach to the study of specialized language

in the past (see for instance Bukovčan 2010), most acknowledge the need for collaboration between linguists and experts of a particular field.

Not long ago, the linguistic community frowned upon the study of specialized languages. Snubbed as being inferior to general language, specialized languages were considered to offer nothing new that has not already been discovered within the study of general language (Wüster 1953: 11). To the contrary, bearing in mind that each scientific field or domain has a specific conceptual structure and a set of specific concepts which reflect in its terminology, studying specialized languages – just like studying language in general – offers an insight into the conceptual domains in which they are used. This semantic load of terminological units renders specialized language worth studying in itself. As Faber (2012: 2) notes, these units “activate sectors of the specialized domain in question, highlighting configurations of concepts within the specialized field”. In other words, the terms denoting specialized concepts of a domain lead us into that domain’s conceptual structure and extralinguistic knowledge. Therefore, to understand a specific field or domain, one has to know its terms and the concepts behind the terms, which is especially important for the field of law. This is not to say that terminology in the sense of a specialized vocabulary is the most important aspect of specialized languages; nonetheless, it merits special attention in the context of specialized lexicography.

So, what characterizes specialized language is that it is used in a specific field and has a specialized vocabulary in order to enable precise communication between field experts. This fact, among others, motivated Eugen Wüster to establish the discipline of terminology with a view to enhancing communication between field specialists by providing them with clear and unambiguous set of terms and concepts that will be used consistently. But what happens if two experts from different fields have to communicate? Assuming that each belongs to a unique discourse community and uses a different set of terms and concepts (which are embedded in different conceptual structures), problems in their communication are likely to occur. Note that discourse communities can be described as communities of people who link up in order to pursue common objectives.<sup>1</sup> Likewise, difficulties can beset the communication between lawyers practising in different branches of the law. It is not unusual that one and the same term denotes two different legal

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1. As regards the distinction between speech community and discourse community, the former share linguistic forms, cultural concepts as socio-linguistic groupings whose communicative needs are socialization or group solidarity. The latter form socio-rhetorical groupings whose communicative behaviour is dominated by functional determinants. (Kjær 2015: 97). The distinction between speech and discourse communities merits special attention in the context of EU law, for, according to Kjær, it allows for the creation of a common European legal discourse transgressing languages. To simplify, those who speak about the same things can belong to one discourse community even though they do not speak the same language.

concepts used in different legal fields (e.g. *proportionality* mentioned in Chapter 1), which can lead to misunderstandings, needless to say. What more, there are different levels of experts (Bowker 2003: 157).<sup>2</sup> Sometimes, even non-experts have to understand a specialized language, as is the case with legal language. With this in mind, the following part portrays different aspects in which legal communication affects non-lawyers. For instance, a party to a proceeding should by all means be able to understand a verdict or the power of attorney it is signing. To give an example, in the case *Chicago Health Clubs*,<sup>3</sup> the U.S. District Court had to decide whether an average person can understand the meaning of the following section of a consumer loan form:

[...] and to consent to immediate execution upon any such judgement and that any execution that may be issued on any such judgement be immediately levied upon and satisfied out of any personal property of the undersigned ... and to waive all right of the undersigned ... to have personal property last taken and levied upon to satisfy any such execution. (Charrow et al. 1985: 175–176)

The above Court decided that an average person should be able to understand the section in question, but it did not substantiate the decision. It could be argued that the text in question belongs to specialized communication, although it is addressed to non-experts, and that this is why lawyers are needed; namely to help non-experts understand their rights and obligations.

Such observations may appear prosaic, but European courts too have recently dealt with similar cases involving unfair contract terms and the question of whether such terms had been clear and understandable to the consumers signing loan contracts.<sup>4</sup> Leaving aside contracts and other legal documents, laypeople should be able to understand the language of the courtroom, as the words uttered in a courtroom can have direct effect on their lives. After all, courts are places of great power. In a court “a person’s liberty can be restricted or life taken or a person’s property lost” (Stygall 2016: 369). Another aspect of the courtroom language to be considered in this context is jury trials. In regard to the United States legal system, a defendant in a serious criminal case and parties in certain types of civil cases are entitled to a trial by jury. The jury consists of jurors, usually untrained in law, whose main task is to provide the common-sense judgment of the community

2. „[...] including true experts (e.g., people who have training or experience in the field), semi-experts (e.g., students or experts from a related field), and non-experts (e.g., technical writers or translators who are charged with producing texts for experts“ (Bowker and Pearson 2002: 157).

3. *Chicago Health Clubs*, 347 F.Supp. 955 [N.D. Ill. 1972],

4. See for example case C-243/08 *Pannon GSM Zrt. v Erzsébet Sustikné Győrfi* [2009] ECR I-04713.

(Marder 2016: 435). For this reason, a defendant may prefer a jury trial instead of a bench trial (in which the verdict is reached by the judge) (*Ibid.*). The problem with juries is that they are called upon to rely on legal language including complex legal concepts and vague phrases in deciding a case at hand. Even the instructions they receive are written in legalese, that is, for the target group of lawyers and not for laypeople. Jurors should hence possess some degree of legal literacy to be able to master their formidable task of deciding a case while applying the relevant legal provisions.<sup>5</sup> The points made here show that drafters of legal texts fail to consider that non-lawyers will also be on the receiving end.

There are of course other examples of specialized communication taking place between experts and non-experts. What more, in some situations experts will refrain from technical jargon in order to make their idea come across to the wider public. For instance, in connection to astronomical units of measure, most of us are familiar with the term *light years*. Interestingly, astronomers don't use this term except conversationally. Instead, they use a distance called the *parsec*, based on a universal measure the *stellar parallax*, which is equivalent to 3.26 light years (Bryson 2003: 216). But legal communication is different inasmuch as non-specialists must often read and rely on legal language to solve their day-to-day affairs and lives, which cannot be said for other types of specialized languages. This short discussion goes to show that although law affects every one of us, lawyers and judges often forget that the language they use should also be understandable outside their discourse community. What can be adduced from the above cited consumer loan form is that the words used in it sound arcane to laypersons who should be legally literate to make sense of the form. In this regard non-lawyers have two options: sharpen their legal literacy skills or hire an attorney and remain outlanders in the legislative jungle. Leaving the second option as an escape mechanism one can always resort to, we should nevertheless try to develop basic legal skills and acquire basic knowledge of the law. Exploring the terminological avenues of the law is certainly a good way to start.

### 2.2.1 Legal scholars and the study of language

As mentioned in the introduction to this Chapter, any study of specialized language should include experts, not just linguists. This is especially true of legal language. Not surprisingly, it was legal scholars who first began to study the language of the law (e.g. von Savigny 1802, Wank 1985). Reasons as to why linguists have

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5. *Legal literacy* is a term borrowed from James Boyd White (1987) "The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education." In *A Student's Guide to the Study of Law: An Introduction*, by L.H. LaRue. New York: Matthew Bender.

kept their distance from the language of the law so long have to do with the perception of specialized language as an inferior object of linguistic study. Another reason for the evident neglect of specialized language study was the lack of specialist know-how. As Bergenholtz and Schaefer (1994: 3) observe, specialized language and specialized lexicography have not been studied for a long time due to the lack of the required expert knowledge. What more, professor of legal linguistics Heikki Matilla (2006: 10) points out that linguists regard legal language from a greater distance than lawyers, who, by contrast see the language of their profession from the inside. Lawyers practicing comparative law have thus dealt with legal translation, considering it plays a vital role in conducting comparative studies of different legal systems. It is interesting to note that only few linguistics or translation scholars dared to explore the interdisciplinary field of law and language, as opposed to legal scholars.<sup>6</sup> Today, both lawyers and linguists are active in studies on law and language or legal linguistics. European legal linguistics in particular is gaining momentum as a true cross-disciplinary field contributing to the European legal integration.<sup>7</sup> Some legal scholars (see Cornu 2000: 41) consider legal linguistics to be a branch of legal science whose purpose is to investigate the choice of terms, quality of legislative texts or clarity of form. Despite a growing number of publications on law and language, linguists tend to focus on linguistic problems and lawyers on legal problems, whereas true interaction is rare (Šarčević 2009: 150, Engberg 2013: 9–25). This book aims to bridge this gap and capitalize on the interdisciplinary potential of the field of law and language.

### 2.3 The dichotomy between specialized and general language: The fiction of legal language

Specialized language used to be studied in contrast with general language, underlining the difference between general and specialized communication. In this context it is fitting to mention that Martin and van der Vliet (2003: 333) use the term *sublanguage*, and not *specialized language*, to denote a language that covers a specific field and is prototypically used among field specialists. According to Lehrberger (1982: 102), a sublanguage is characterized by a restricted field, lexical, syntactical and semantic restrictions, deviant rules of grammar, high frequency of certain constructions, text structure, use of symbols. In order to clear away some common misconceptions about the perception of specialized language and in turn

6. For a comprehensive study into the history of legal translation see Susan Šarčević's *New Approach to Legal Translation*, Chapter 2, 2000.

7. For more on the subject see Petersen et al. (eds.) 2008.

legal language, we will survey different views of the dichotomy specialized/general language.

Lexicography scholars Bergenholtz and Tarp (1995: 16–17) differentiate two views on the relationship between specialized language and general language. According to the first view, specialized language is part of the general language, whereas the second view holds that everything present in general language is also part of specialized language. Teresa Cabré, a reputed terminology scholar, summarizes three generally advocated views of specialized languages which she calls languages for specific purpose (hereinafter: LSP) (Cabré 1999: 61–62):

1. LSP is different from general language and consists of specific rules and units;
2. LSP is only a lexical variety of general language;
3. LSPs are pragmatic subsystems of language as a whole.

Furthermore, Cabré (1999: 63) distinguishes two views of specialization pertinent to LSP, namely specialization according to the field and specialization according to pragmatic circumstances (users, type of communication). As regards legal language, several pragmatic types of communication may be distinguished in accordance with different types of experts and legal settings. Likewise, bearing in mind the premises of cognitive linguistics and the cognitive perception of meaning, we agree that specialization according to the field in question is a significant aspect of the use of language in a domain. Before we sketch a different account of specialized languages, let us mention that Cabré (1999: 65–66) uses the term *special languages* for subsystems of language marked by three variables: field, type of user and type of situation in which the communication takes place. Since these special languages are part of the language as a whole there are correlations between them and they exchange units and conventions (Cabré 1999: 65–66).

Assuming that the conceptual structure and the extralinguistic domain knowledge influence the language used in the domain, throughout this book special attention is devoted to general features of the field of law and in particular EU law. More concretely, attempt is made to accommodate the main features of EU law in a terminological approach to an EU legal dictionary. With this in mind and in line with cognitive linguistics, we do not support the view that LSPs are only varieties of general languages. Nor do we agree with a strict delineation of specialized and general language. Considering the aforementioned cognitive shift in linguistics, we perceive specialized languages to form an integral part of general language, or language as a whole. Consequently, specialized languages cannot be observed in totally separate compartments from general language. Instead, cognitive linguistics considers language in relation to other cognitive capacities of human beings, emphasizing that language, thought and experience are deeply intertwined. What is especially important from the perspective of this study is the cognitive linguistics'

focus on meaning and conceptualization as the process of understanding concepts as parts of wider conceptual structures. Recognizing the role of concepts in specialized language, the study of specialized languages should be placed in the cognitive context accounting for both the communicative and the functional aspect of language. But the same applies to general language as well. Therefore, rather than upholding the platitude about specialized and general language, the description of terminological units of a domain must take into account the domain's specific features and extralinguistic information, which in turn determine the meaning of these terminological units. Observed in this light, concepts warrant special attention in studies of law and language and legal lexicography alike.

In a parallel way we should approach the language of the law assuming there is a specialized language that exists solely within the realm of the law. Not convinced that this is the case nor that to embrace the specialized/general language dichotomy and common perceptions of specialized languages is the right approach to the study of language in law, the rest of this section gives an account of typical studies of legal language which, to a great extent, concentrate on formal features including vocabulary, syntax, style, neglecting thereby the conceptual dimension of legal language. Such studies seem to put style before substance and are unlikely to yield a clear and complete account of the use of language in a special field. To reiterate, we observe language in the field of law first and foremost through the prism of the function it fulfils. Language acts as a tool for communicating legal knowledge and knowledge transfer.

According to the mainstream view, legal discourses are formulated in a special language or sublanguage (Sager 1994: 29) generally known as the language of the law (Mellinkoff 1963: 3, *Ibid.*). This language of the law has been described as a specific legal genre whose peculiarities include force, sanctions and status (Wagner and G  mar 2013: 733). As such it is subject to special syntactic, semantic and pragmatic rules as the means of linguistic communication required for conveying special subject information among law specialists (Sager 1990: 99; after Cheng 2008). Similarly, the language of law has been accurately described as comprising a "characteristic conceptualism and technicity, an identifiable unfolding of intralingual and phenomenological pathways, an ascertainable terminology and style" (Glanert 2014: 258).

For the most part, studies into English legal language centre on technical features that can be deflated to what we have previously labelled as style, in contrast to substance. For example, Charrow (1981: 175–6) identifies the following features as pertinent to legal English: frequent use of "common words with uncommon meanings" (e.g. *action for lawsuit*) and of Old-English words (e.g. *aforesaid*, *whereas*); as well as of Latin words and phrases (*in propria persona*, *amicus curies*, *mens rea*); using French words that are not part of the general vocabulary (*lien*,

*ease*ment, tort); jargon or *terms of art* (*month-to-month tenancy*, *negotiable instrument*, *eminent domain*); professional jargon (*pierce the corporate veil*, *damages*, *due care*); frequent use of formal words (e.g. *Oyez*, *oyez*, *oyez* announced at the beginning of each session of the Supreme Court of the United States; or I do solemnly swear; and the truth, the whole truth, and nothing but the truth, so help you God declared by witnesses before U.S. courts); intentional use of words and expressions with flexible meanings (such as *extraordinary compensation*, *undue influence*, *reasonable time*, *reasonable notice*, *reasonable doubt*)<sup>8</sup> and striving for preciseness.

Focusing on such formal features of legal language without taking into account its substance, that is, the importance of conceptualization and conceptual structure in consonance with cognitive linguistics, we are not only making the mistake of identifying a language with its vocabulary (Sapir 1921: 219), but also disregarding the primary function of a specialized language as a language of concepts (Wüster 1953: 12). For these reasons, rather than describing the above mentioned formal features of legal language, greater attention should be paid to legal concepts and their extralinguistic context. After all, language used for legal purposes refers to the language of the law and language related to law and legal process (Cheng and Sin 2008). The law is expressed through legal institutions and legal concepts. This close relationship between language and the law makes the use of language in law so special, distinguishing it from the use of language in other domains. Likewise, it is important to remember that each legal system, each jurisdiction and area of the law has its own sublanguage, which in turn is the product of a specific history and culture (Cheng and Sin 2008: 35).

Summing up, to study legal language as a sublanguage means accepting the dichotomy specialized/general language. However, bearing in mind the above claim about the inseparability of specialized and general language, the silo-like notion of legal language should be abandoned altogether for it only muddies the study of the use of language in a domain. Greater weight should be put on the categories of concept and conceptual structure of the domain, as the latter reflect in the terms used to express the domain knowledge. To the end of gaining a better

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8. As regards the meaning of reasonable time, this is usually not defined by the law but by the discretion of the judges: *Quam longum debet esse rationabile tempus non definitur in lege, sed pendet ex discretione justifiaciorum*. Burton, W. C. 2007. *Burton's Legal Thesaurus*. We will cite the entry for *reasonable doubt* in Black's Law Dictionary (Garner 2007: 1293): „Reasonable doubt is a term often used, probably well understood, but not easily defined. It is not a mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginery doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.“ *Commonwealth v. Webster*, 59 Mass (5 Cush.) 295, 320 (1850) (per Lemuel Shaw, J.).



understanding of a domain and to enable smooth domain knowledge transfer, it is essential to untangle the domain in question from a terminological perspective. As argued in this book, focus should be put on the link between law and language and legal concepts and terms, while discarding the use of “legal language” as a specialized language limited to the described technical features. To speak of “legal language” implies that it constitutes a special category in opposition to the category of general language. However, terms of general language are also used within legal language, although to a different purpose as will be elaborated in section 2.6. It follows that the law uses the language to a special purpose, that is to communicate its knowledge and effectuate knowledge transfer. Accordingly, while it is true that different fields utilize and manipulate language to different ends, language is always the same, it just fulfils a different function. To relegate it to the status of legal or medical or scientific domain language runs counter to the goal of achieving a better understanding of the domain studied, as well as of language as a whole. Observed in this light, the present Chapter concentrates on the link between the language and the law with a view to grasping the role of legal concepts in law.

## 2.4 What language and the law have in common

In spite of different approaches to the study of legal language or the role of language in law, there seems to be general agreement on one point: Linguistic theories can provide a better understanding of the law. The reason for this is that law is considered to be a matter of language and words. Law includes reading, drafting and interpreting legislative texts. This transparent link between language and the law manifests itself in several aspects. For one thing, law is dependent on language because regulatory knowledge is communicated through language (Sacco 2005; Tiscornia 2007: 189–204). Language thus acts as the vehicle of the law (Pommer 2008: 358), enabling legal knowledge to be communicated. Furthermore, both language and the law are social practices (Endicott 2001: 24) and social and normative phenomena (Cornu 2000: 41). That is, both language and the law are characterized by the social practice of following rules and conventions. Also, they continue to develop and change. Just like social change triggers the emergence of new legal concepts, new words emerge to describe the developments taking place in our modern society.<sup>9</sup> To put it bluntly, language, just like law, must get the hang of every new situation.

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9. Thus, every year we witness new words being created, such as *twerking*, *selfie* (word of the year 2013), *vape* (word of the year 2014, available at: <http://www.americandialect.org/>) or one of my favorites, *Generation-Kopf-Unten*, a German word that got in the top ten words of the

As Szemińska (2011: 179) observes, language does not describe a particular legal reality, but rather creates it by naming and defining it, as well as by determining the rules that regulate it.<sup>10</sup> It was Wilhelm von Humboldt who first stated that language is inseparable from thought, or the society or culture (Humboldt 1963).<sup>11</sup> This claim was upheld to date. Legal norms are expressed through legal concepts (Sandrini 1996: 176) which have specific meanings determined and interpreted by judicial authorities. In this regard, it is not always clear what a legal norm says; be it an explicit or implicit legal norm. The former include legislation and judicial reasons for a decision, whilst the latter include custom/tradition and the general principles of law (Macdonald 1997: 147). In either case, interpretation is needed.

It is worthwhile mentioning that some scholars differentiate between the language of the law and the language of jurists (see Tiscornia 2007). While the language of the law is the language in which rules are written, the language of jurists serves as the meta-language. This meta-language includes language of judges in case law and the language of jurisprudence (legal scholarship and theory). Other scholars talk of the dichotomy between law in books and law in action referring to a distinction between paper rules and real rules. As Kjær (2008: 152) observes, such binary contrasts are misleading, at least from a linguistic point of view, since they rest upon the presumption that such a thing as the “bare text” or “mere words” exists. Since the cognitive turn in linguistics, the predominant view is that language is not a self-sufficient system which can be described independently of people’s use of language as a means of cognition (*Ibid.*). The flipside is true; language is a self-conscious system inseparable from cognition. The same holds true for law. Rather than being a self-sufficient system, law is dependent upon human interpretation, which cannot rely on the meaning of individual words. On that note, ordinary or general language should not be taken as an extra-legal resource on which law can draw (Hutton 2014: 196). Bearing in mind that law is a highly institutionalized communicative order regulating and giving special meaning to social actions (Bengoetxea 2011: 98), law sometimes has to push (ordinary) language beyond breaking point (Austin 1956, quoted in Hutton (2014: 198):

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year 2014 and which aptly describes the generation obsessed with smartphones and iPads (hence head-down generation). In 2015 the German word of the year was *Flüchtlinge* (refugees). Available at: <http://www.gfds.de>.

10. „Unlike other branches of knowledge, law is not one reality which can be expressed in (more or less) any language, but as many realities as there are legal systems“ (Szemińska 2011: 179).

11. Wilhelm von Humboldt’s claim about how different languages form different viewpoints (*Weltansichten*) provided the cornerstone of cognitive linguistics. Likewise, observing language as a mould of thought laid the groundwork for regarding language as function, which is emblematic of the 20th century Functionalism and Structural Linguistics.

In the law a constant stream of actual cases, more novel and more tortuous than the mere imagination could contrive, are brought up for decision – that is, formulae for docketing them must somehow be found. Hence it is necessary first to be careful with, but also to be brutal with to torture, to fake and to override, ordinary language: we cannot here evade or forget the whole affair.

Therefore, no category or object or behaviour can be observed as a stable abstract entity to which the relevant law will apply, for this would imply that language too is stable and independent of people's use and cognition as pointed out. Instead, it has to be interpreted in relation to its extralinguistic context which includes the relevant legal rule.

Because of this and in view of other commonalities between law and language referred to in this section, state-of-the-art linguistic theories can be of use for legal interpretation in particular, as another interface of language and the law. From the perspective of this study, the teleological or purposive method of interpretation is most significant and can be pinpointed as a prominent link between language and the law. In simple terms, this method of interpretation “goes beyond the text and words”, while taking into account the so-called extralinguistic knowledge which corresponds to the cognitive perception of meaning. In our opinion, this link between legal interpretation and the cognitive approach to meaning is worth exploring further and is thus dealt with in greater detail in the following Chapter.

The here presented analogies between law and language have served the purpose of clarifying what makes the use of language in law so special. Despite the fact that features pertaining to both law and language concern legal interpretation and legal concepts, these have not been on the research agenda of terminology scholars. This is surprising in view of the fact that the legal and the linguistic approach to meaning have a lot in common, which sheds a new light not only on legal interpretation, but on legal dictionaries as shall be seen.

Among the main characteristics of legal language are dynamic and often vague legal concepts and a dynamic legal context in which legal concepts are used, implemented and interpreted. This legal context serves as the conceptual structure in which legal concepts are conceptualized and understood. We therefore claim that it is not possible to describe, define or translate legal concepts without considering their wider conceptual structure. What more, this dynamic context enables the re-contextualization of legal terms in different fields of law, which is important for coping with polysemy of language in law and especially with polysemy in legal dictionaries and databases. In light of these considerations, we can observe the language of the law as consisting of a terminological and a conceptual structure. The former reflects the latter structure marked by vague legal concepts and a dynamic context which determines their meaning.

## 2.5 Legal concepts

This section defines legal concepts and legal terms drawing on the foundations of terminology. To remind ourselves, term as a linguistic denotation conveys a concept, which in turn is defined within a particular domain. A concept, by contrast, is a unit of thought or a mental construct (Wüster 1991: 2, *Denkeinheit*). In other words, a concept represents a unit of content consisting of a set of characteristics (Cabr   1999: 95).

Legal norms are expressed through legal concepts. A legal concept can be defined as the sum of all legal rules referring to a certain situation and ordering human behaviour (Pommer 2006: 36). By framing legal knowledge pertaining to a concrete legal problem, legal concepts thus serve the purpose of the application of law (Pommer 2006: 34). The term *fremd* in *fremde Sache* ('another's property') in the German criminal law provision on theft calls for appropriate statutory interpretation and knowledge on *Eigentum* ('property') in accordance with the German Civil Code (de. *Zivilgesetzbuch*) (Pommer 2006: 35). Legal concepts frame legal knowledge which is extrapolated and understood in its wider context, i.e. against the background of a particular domain. This feature of legal concepts must be accounted for in legal translation scholarship and in legal lexicography. To put it simply, legal terms are (only) linguistic representations of legal concepts which in turn frame legal knowledge. The problem in terms of legal translation is that, while some legal concepts are known to almost all legal systems, others are characteristic of a single legal system. It requires both legal knowledge and linguistic creativity to convey at least a partial understanding of such terms in the target language.

At any rate, understanding legal terms and concepts depends on extralinguistic knowledge which is derived from the respective legal system and field as the wider contexts in which a concept is used. In our opinion, such extralinguistic knowledge also encompasses the teleological criterion, i.e. the purpose that a concept fulfils within its domain. The here described view is in keeping with the cognitive understanding of meaning as a phenomenon that exceeds the limits of the word and depends on extralinguistic knowledge. The latter can be explained as conceptual knowledge or knowledge of the world. The meaning of a concept can only be understood if the concept is observed against its conceptual background. With this in mind, legal concepts should be studied as parts of their wider conceptual structure, because they do not exist independent of legal systems. We will now turn to different types of legal concepts. Likewise, addressing the question of vagueness of legal concepts offers opportunities to clarify the different types of concepts and provides a better insight into the nature of the law.

### 2.5.1 Types of legal concepts

The present section outlines different classifications of legal concepts suggested by legal scholarship, assuming the latter can be of use for a dictionary representation of legal concepts. Defining a legal concept in broad terms as any concept used in a valid legal provision, Englisch (1958: 62; Simonnaes 2007: 124–125), divides legal concepts into:

- 1a. concepts of legal provisions,
- 1b. concepts of legal content or “reflections of concepts of legal provisions”,
2. free concepts of jurisprudence, i.e. concepts worked out by the legal profession,
3. universal legal concepts, and
4. fundamental concepts of jurisprudence.

There seem to be notable similarities between the first two groups of concepts of legal provisions as concepts defined by statutes and concepts of legal content which bring the usefulness of such a distinction from the perspective of this study into question. In a similar vein, the last two groups of concepts can be thrown into the same basket and in opposition to the so-called free concepts of jurisprudence. In this sense the classification can be compared to Wank’s (1985) that includes:

1. legislative concepts created by the legislator,
2. concepts of legal science created by the legal science and
3. concepts of case law created by the courts (quoted in Sandrini 1996: 233).

Strict divisions of legal concepts should however, be observed in a critical vein, as there are legal concepts that can belong to more than one of the above categories. For example, courts sometimes attribute new or extended meanings to legislative concepts, which is the usual *modus operandi* of the Court of Justice of the European Union (hereinafter: CJEU)<sup>12</sup> or the European Court of Human Rights (hereinafter: ECtHR).

On the other hand, Cornu (2000: 90) only makes a distinction between determinate and indeterminate legal concepts. Among the former are *lettre de change*, *délit pénal*, *compétence territoriale*, whereas the latter, which he dubbs *notions-cadres* (‘frame-concepts’) include *ordre public*, *sécurité publique*, *bonne foi*, *équité*

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12. The CJEU is the collective term for the European Union’s judicial arm, but the single institution consists of three separate courts, each enjoying its own specific jurisdiction: the Court of Justice (CJ) which was formerly known as the European Court of Justice (ECJ); beneath the CJ is the General Court (GC) which was formerly known as the Court of First Instance (CFI); and the third tier consists of the Civil Service Tribunal (CST) as the EU’s single “specialised court”. Some legal scholars still use the term ECJ.

(Cornu 2000: 90). Due to their inherent vagueness and meaning fluidity, indeterminate legal concepts leave the courts more discretionary powers when applying them. Such vague concepts are not uncommon in international law, where we find *good faith* or *bona fides*. Likewise, indeterminate legal concepts are emblematic of EU law. Some fundamental concepts protected under the U.S. Constitution also allow for more than one interpretation as is elaborated in Chapter 3 (section 3.4.1.2.) and can be deemed indeterminate.

Koch (1979: 33) distinguishes between determinate and indeterminate legal concepts as well, whereas his distinction centres on the ability of subsumption. With determinate concepts it is possible to discern whether a set of circumstances can be subsumed under a certain concept. Unfortunately, with most legal concepts this is not the case and doubt arises concerning the subsumption. What Koch labels indeterminate concepts are in essence vague concepts for which the following claims are true:

1. some circumstances can be subsumed under the concept (the so-called “positive candidates”);
2. some circumstances cannot be assigned to the concept (the so-called “negative candidates”);
3. finally, there are circumstances for which it is impossible to say whether they belong to the concept or not (the so-called “neutral candidates”).

So, in case of vague concepts there is a sphere of certainty (*Begriffskern*) as well as a sphere of doubt (*Begriffshof*) (Koch 1979). While there will be circumstances that lend themselves to be assigned to a concept without doubts, other circumstances will cast doubts as to the application of a concept. In order to interpret and define vague legal concepts, it is thus necessary to set boundaries and delimit their meanings in terms of the underlying legal purpose and the extralinguistic context.

### 2.5.1.1 *Vagueness and indeterminacy of legal concepts*

It is evident that the notions of vagueness and indeterminacy are of special importance for legal concepts. Note that both vagueness and indeterminacy are present in language and the law, impacting both legal and linguistic understanding. Although they can be described as linguistic and legal phenomena, indeterminacy is usually treated as a feature of the law, whereas vagueness is more often attributed to both linguistic expressions and the law. A caveat concerns the so-called lexical indeterminacy that comes in two kinds: in class terms (superordinates) and in graded terms (see Bowers 1989: 138).<sup>13</sup> But what exactly is indeterminacy and

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13. For instance, class membership may be indeterminate: while the statement robin is a bird is clearly true, the statement chicken is a bird is less clearly true (see Bowers 1989).

what is vagueness in law? In short, law is said to be indeterminate when a legal question has no single answer. This can be labelled as *legal indeterminacy*, whereas *linguistic indeterminacy* refers to unclarity in the application of linguistic expressions that could lead to legal indeterminacy (Endicott 2001: 9).

As regards vagueness of the law, for quite some time has vagueness been a snare for legal theorists (Endicott 2001: 57). The latter have dealt with different types of vagueness, including semantic and pragmatic vagueness. This book, however, takes a closer look at vagueness in relation to legal concepts and addresses the implications of vagueness for understanding legal concepts. Leaving aside the philosophical view of vagueness as an obstacle to the operation of the law, we are interested in vagueness in a more narrow sense and especially in the way it affects the lexicographic representation of legal concepts. Note that in everyday language people tend to use *vague* to describe not expressions or concepts, but uses of language, wherefore, they use *vague* in the sense of uninformative or incomplete (Endicott 2001: 32). In the case of legal concepts this basic sense of *vague* takes on additional features, most notably imprecision, incommensurability and uncertainty, which are detrimental to law.

Observed from a linguistic perspective, vagueness is often regarded as a purely linguistic phenomenon in relation to ambiguity and polysemy, while Pinkal (1985: 61) used an umbrella term *präzisierungsfähige Unbestimmtheit* to denote both *Vagheit* and *Mehrdeutigkeit*.<sup>14</sup> Interestingly, similar views are supported by legal scholars. For instance, Poscher (2016: 128) sees both vagueness and ambiguity to be generically employed to indicate indeterminacy. Likewise, both are distinct to generality. According to Bowers (1989: 137), ambiguity and vagueness are sources of uncertainty, whereas ambiguity can be perceived as either homonymy or polysemy (this distinction is tackled in section 2.6.), and vagueness as non-specificity and indeterminacy. In the context of law, vagueness is a central topic. Bowers (1989: 147) notes that cases of vagueness vastly outnumber those of ambiguity. In fact, law is familiar with a “void for vagueness doctrine” according to which a statute is considered void if it is framed in terms so indeterminate that its meaning can only be guessed at (*Ibid.*). In this context it is fitting to mention that German law provides different doctrines for questions of vagueness and generalization and

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14. Pinkal (1985 :64): „Wo das Präzisierungsspektrum eines Ausdrucks als diskret empfunden wird, kann man von Mehrdeutigkeit sprechen, wo es als kontinuierlich empfunden wird, von Vagheit.“ Consider also: „Vage ist ein Ausdruck, der gradweise Abstufungen zulässt und durch unmerkliche Übergänge in sein Gegenteil überführt werden kann“. (Pinkal 1985: 62).

distinguishes a void-for-vagueness doctrine, as well as an essential-issue-doctrine (Bix 2016: 130).<sup>15</sup>

As to the difference between ambiguity and vagueness, both are types of indeterminacy. Ambiguous are those expressions which have multiple meanings, however, a term is vague if its meaning is underdefined and subject to more than one possible interpretations (Frade 2005: 137). Vague expressions are said to have borderline cases, namely cases “in which one just does not know whether to apply the expression or withhold it, and one’s knowing is not due to ignorance of the facts” (Grice 1989: 177, quoted in Poscher 2016: 129). The difference between ambiguity and vagueness is portrayed by Bowers (1989: 135) in the following way. While ambiguity presents clear choices, vagueness “challenges one to cut a trail or go no further”. Perhaps the most striking difference between vagueness and ambiguity is that the former cannot be resolved through (linguistic) context. For this reason, vagueness constitutes a key obstacle to precise legal communication.<sup>16</sup>

In more general terms, three different kinds of indeterminacy of legal concepts may be distinguished in accordance with the following origins of indeterminacy:

- a. general dependency of legal concepts on societal and ethical-moral conditions,
- b. intentional indeterminacy: certain concepts are intentionally left indeterminate in order to enable their broad interpretation (such as *good faith* or German *guten Glaubens*) and
- c. accidental indeterminacy resulting from a mistake in the legislative procedure (Arntz and Sandrini 2007: 137–138).

Elaborating each alternative further would go beyond the purpose of this study and would not contribute to a better understanding of the problem of legal concepts. That said, only the first two conditions posited by Arntz and Sandrini can be taken as true sources of indeterminacy of legal concepts.

As understood by Bix (2016: 146), the problems of legal determinacy and indeterminacy raise the issue of whether there are unique correct answers to

15. The essential-issue-doctrine prohibits the parliament from seeking refuge in highly generalized rules, forcing it to decide essential questions itself.

16. Scholarship differentiates several kinds of vagueness: vagueness of individuation or classification; qualitative or combinatoric, semantic and pragmatic. Pragmatic vagueness is central to legal interpretation. „Vagueness is so pervasive in law, because, as a linguistic practice with complex, sometimes conflicting and contested, pragmatic social purposes, it lends itself to all types of semantic and pragmatic vagueness and every imaginable combination thereof. Often the pragmatics of a rule override its semantics.“ (Bix 2016: 134).



legal questions.<sup>17</sup> If there are not, then law is indeterminate, if yes, then law is determinate. Legal scholars have supported both of these views with greater or lesser success. The controversial indeterminacy claim suggests that since the law is vague, the application of legal rules is also indeterminate. In line with claims of radical legal indeterminacy, one could conclude that law resolves little or nothing (Bix 2016: 154). Endicott (2001: 2) sees the indeterminacy claim as a threat to the so-called standard view of adjudication, according to which the judge's task is just to give effect to the legal rights and duties of the parties, but indeterminacy casts no doubt on the sense of the practice of law.

One can argue that legislators intentionally resort to vagueness, precisely because it allows for more than one interpretation (Frade 2005: 137). A legal concept may be applied to several different situations due to its vague meaning. This is the case with many EU concepts, such as *goods*, *worker*, or *undertaking*. The vagueness of *undertaking* arises from the fact that it is not defined under EU law, which gives the CJEU much leeway in deciding which entities fall under *undertaking* (see Chapter 4). Therefore, vagueness makes it possible to satisfy the need for the general nature of the law. The latter reflects in the necessity to cover as many different situations as possible. Nevertheless, vagueness remains a source of indeterminacy in law and cannot be reduced to language only.<sup>18</sup>

## 2.5.2 Determinate and indeterminate legal concepts

For the sake of simplicity within this book we will only differentiate between determinate and indeterminate legal concepts. This distinction is particularly important for the lexicographic description and defining of legal concepts. Under this heading we set out to clarify our understanding of the difference between determinate and indeterminate legal concepts and its implications for legal translation and legal lexicography, in keeping with the above made claims about vagueness and indeterminacy in law. Note that the term *indeterminacy* will be used as a feature of law and *vagueness* to refer to linguistic expressions denoting legal concepts.

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17. Note that the indeterminacy claim has been interpreted differently; Endicott (2001) for instance does not defend the notion that there is no right answer to a controversial question.

18. „We cannot say in general that even a *very* vague legal rule represents a deficit in the rule of law. But vagueness *is* a deficit when it enables authorities to exempt their actions from the reason of the law, or when it makes it impossible to conceive of the law as having any reason distinguishable from the will of the officials.“ (Endicott 2001: 5). A contrasting view is supported by positivists, who conceive indeterminacy in the language used by lawmakers as entailing indeterminacy in legal rules.

Generally speaking, determinate legal concepts are descriptive and often of formal nature. Determinate legal concepts are said to be part of procedural law and refer to persons, organs, documents and the like, whereas indeterminate concepts are part of substantive law and refer to an abstract situation of a legal norm (see Sandrini 1996: 46).<sup>19</sup> Indeterminate concepts are further divided into model and gradual concepts or general clauses (*Typus-* and *Ermessensbegriffe* or *Generalklauseln*). Model concepts cannot be defined and include cases that can be described as examples. General clauses such as *Treu und Glauben* or *wichtiger Grund* enable the application of general rules to a certain situation (Sandrini 1996: 80–82). This means that a given situation can be subsumed under a normative rule according to the more-or-less principle, implying there are more and less prototypical circumstances to which a norm can be applied. The more-or-less principle is a key notion of Prototyp Theory which is discussed in the following chapters.

A while ago a case was brought before a U.S. court which exemplifies how a norm is or is not applied to different circumstances. Before turning to the facts of the case, we should first explain the nature of U.S. judge-made law. In this regard, it is interesting to quote Justice Hughes' insightful words:

Common law is built on precedent. In the law, terms, phrases, even whole chunks of discourse, mean what courts have decided they mean. While the common meaning of a word phrase remains 'valuable as a potential basis for overruling' a court's decision, Chief Justice Hughes' statement that a 'federal statute finally means what the Court says it means (C. Hughes, The Supreme Court of the U.S. 230 (1928)) is probably more accurate. (Charrow et al. 1982: 184)

By means of precedents (decisions of higher courts which are binding for lower courts), judges thus attribute meaning to specific legal concepts. On the other hand, continental civil law systems adhere more to the letter of the law and try to determine the scope of legal norms by establishing the relationship between a real event and the legal norm in terms of their similarity (Pokrajac 2001: 171). In this respect, a civilian lawyer relies more on legislation than the common law lawyer,

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19. In an attempt to portray the basic distinction between procedural and substantive law it can be said that procedural law (in German *Verfahrensrecht* or *formelles Recht*) comprises legal norms that regulate the form of judicial proceedings, e.g. rules that govern court proceedings, criminal proceedings etc., as opposed to substantive law (in German *materielles Recht*) which consists of legal rules on substantive criminal law, civil law, administrative law etc. In other words, substantive law deals with the legal relationship between people or between the people and the state, and define the rights and duties of the people. Available at: <http://www.recht-slexikon.net/d/verfahrensrecht/verfahrensrecht.htm> (accessed: 1 November 2014).

while the civilian judges do not enjoy the law-making role accorded to the judges of common law jurisdictions.<sup>20</sup>

### 2.5.2.1 *Civil law vs. common law*

It is important to bear in mind that the categories of civil and common law are by no means watertight. For one thing, there are mixed jurisdictions, such as Québec. Not only has the authority of precedent become less rigorous over time, it also varies in different legal fields such as constitutional law, administrative or civil law (Mayrand 1994: 15). Mayrand (*Ibid.*) describes the law of Québec as a happy compromise between the English law and French law systems: “Le droit québécois constitue sur ce point un heureux compromis entre le système du droit anglais et celui du droit français” (Mayrand 1994: 15). Secondly, one should neither minimise the differences between the various civil-law jurisdictions, nor presume the existence of resemblances between common-law countries, as noted by Glanert (2014: 258). Notwithstanding that and at the risk of oversimplifying the difference between common law and continental civil law, the here presented general remarks juxtapose the two legal systems in order to provide a better understanding of their basic features which is important for understanding their legal concepts respectively.

The civil law tradition is based on Roman law. Emperor Justinian’s compilation of Roman law (529 C.E.) was rediscovered by Italian universities and gradually developed into the *jus commune* of Europe. The law of European countries included not only this shared law, but a mixture of Roman law, local customs, canon (church) law and the *lex mercatoria*. In the 16th and the 17th centuries, the methods of the Italian universities were replaced by the methods of the French legal humanists and the Dutch natural law school. Incorporating the Justinian heritage, individual nations rapidly codified their laws in the 17th and 18th centuries, while two codes: the French Civil Code of 1804 and the German Civil Code of 1896 have served as models for many other civil codes.<sup>21</sup> The Croatian and Serbian civil codes were however based on the Austrian Civil Code which had been translated into Croatian, Slovenian and Serbian in 1853. As a result of the codification processes, the legislated written civil law is more predictable, though less flexible than common law, which is codified to a far lesser extent.

20. In this respect Géný, the author of a leading French work in legal hermeneutics (in Kasirer 2001: 336) depicts judging as communicative action, in which the judge emerges as a communicator: „Quite naturally, this view of the role of the judiciary suggests that the interpretative function of judging has, as a necessary correlative, something more substantive than the role generally assigned to the judge as one who merely identifies the applicable law and then applies it.“

21. For an overview see Nedzel 2008.

The need for codification of common law appeared in the 16th century due to economic developments. Until then, there was very little statutory law. Accordingly, the courts did not have the role of interpreting and developing law before the 16th century. In general, English lawyers were impatient with theories, preferring practical experience instead (Nedzel 2008: 13). As Bentham formulated it a little offbeat, English judges created the common law in the same way as a man laying down the law for his dog – he waits until the dog acts wrongly and then beats him (cited in van Hecke 1962: 13). The lack of predictability or stability in common law is compensated by the doctrine of *stare decisis*, i.e. the court's policy to stand by precedents. According to the latter doctrine, similar cases must be decided similarly. The importance of case law in common law goes back to the 13th century, when court opinions began to be recorded and regarded as evidence of law and practice to be followed in the future, while the term *precedent* was first used in the 15th century (Nedzel 2008: 13). The common law began to develop after the Norman Conquest of England in 1066. Matters that used to be settled by the local courts were now brought before the King's court. Evolving over time into a bench of professional justices (royal officials, not lawyers who had training in canon and Roman law), the King's court appeared periodically in all the counties around England. The custom of the King's court became the common law of England or the law common to all England. In contrast with civil law, there was no written Norman Code and the King's court created law as it saw fit. People were however dissatisfied with common law and the system of writs (special requests that had to be made to the King's court) and began to appeal to the King to provide them with some form of remedy. Those petitions to the King were delegated to the Chancellor who established the Court of Chancery – later called courts of equity which based their decisions on natural justice and moral rules. By the 17th century, the above mentioned doctrine of *stare decisis* became the practice of both common law courts and courts of equity. In 1875 the common law courts and the courts of equity were fused into one court that applied both rule of law and rule of equity (for more see Beveridge 2002). It is interesting to note that this historic distinction between law and equity is still maintained in the United States (although it also no longer has separate courts for cases decided based on equity as opposed to law) as the Seventh Amendment of the United States Constitution guarantees a right to trial by jury in a civil case “in Suits at common law” (Nedzel 2008: 17).

Another distinction in regard to civil law is that the focus of common law is placed on resolving disputes, not on establishing truth (Beveridge 2002: 66), in line with the common law lawyers pragmatic approach to law. Furthermore, common law has no concept of a final and definitive formulation (see Nedzel 2008: 4). This is supported by the fact that it was developed bit by bit in an ad hoc manner by the practitioners, as Beveridge (2002: 16) points out. Consequently, common

law has been ascribed a virtue of elasticity and adaptability to changing circumstances (Bowers 1989). This fact reflects on the language of common law. Often convoluted and very difficult, the language of common law is hence in sharp contrast to the ideal of certainty and simplicity followed by the European lawmakers. This pragmatic perception of the law has a bearing on the role of language and the meaning of legal concepts in common law and even European law. Continental civil legal systems today apply teleological or purposeful interpretation and “give meaning to words”. What more, a trend of “transnational judicial dialogue” and increased judicial activism can be observed among high courts throughout Western Europe (Bengoetxea 2011: 107–108). Likewise, rather than being tucked in their isolated territories, national courts increasingly cite judgments from other jurisdictions as parts of their own reasoning (*Ibid.*).

### 2.5.2.2 *Conceptualization of indeterminate legal concepts: Is an airplane a vehicle?*

Having sketched the major differences between civil and common law, let us return to our case. The case *McBoyle v. United States* concerned an aircraft.<sup>22</sup> The accused was convicted of transporting from Ottawa, Illinois, to Guymon, Oklahoma, an airplane that he knew to have been stolen, and was sentenced to serve three years’ imprisonment and to pay a fine of \$2,000. The judgment was affirmed by the Circuit Court of Appeals for the Tenth Circuit. 43 F.(2d) 273. A writ of certiorari was granted by this Court on the question whether the National Motor Vehicle Theft Act applies to aircraft. Section 2 of the Act stipulates:

That when used in this Act: (a) The term ‘motor vehicle’ shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails.<sup>23</sup>

It should be noted that this provision exemplifies an extensional statutory definition. Unlike most dictionary definitions which are intensional and cite the essential features of the *definiendum*, extensional list the objects denoted and/or not denoted by the *definiendum* (Šarčević 2000: 154). Definitions are discussed in length in Chapter 7. The accused said an airplane is not listed in the Act, but the first-instance Court said it is because it starts from the ground, i.e. rolls on the runway. The Court subsumed *aircraft* under the broader meaning of *motor vehicle* (according to the more-or-less principle), so that the Act in question could be applied. The question to be answered is thus what is the meaning of *vehicle* in the phrase “any other self-propelled vehicle not designed for running on rails”. This example

22. *McBoyle v United States*, 283 U.S. 25 (1931).

23. Act of October 29, 1919, c. 89, 41 Stat. 324, U. S. Code, title 18, § 408 (18 USCA § 408).

illustrates the importance of the context of statutory language.<sup>24</sup> The U.S. Supreme Court has often pointed out that language cannot be interpreted apart from context and that words that appear ambiguous if viewed in isolation may become clear when analysed in light of the terms that surround it (Solan and Tiersma 2005: 23). What is meant by context here is the immediate context of terms, and not the extralinguistic context as a source of domain knowledge referred to elsewhere in this book. According to the second-instance court, it is possible to use *vehicle* to signify a conveyance working in land, water or air. A *vehicle* can accordingly refer to an aircraft. According to Hart, *vehicle* should be taken as the paradigm category, or a class of objects. To resolve the legal issue, the law must be able to recognize particular acts or objects as instances of general classifications.<sup>25</sup>

*Vehicle* refers to a class of physical objects to which an intuitive core meaning can apparently be ascribed, but which in their variability and multi-functionality are the product of a complex human social order and its myriad forms of interdependency. (Hutton 2014: 195)

However, this court claimed that in everyday speech *vehicle* calls up the picture of a thing moving on land:

For after including automobile truck, automobile wagon and motor cycle, the words ‘any other self-propelled vehicle not designed for running on rails’ still indicate that a vehicle in the popular sense, that is a vehicle running on land is the theme. It is a vehicle that runs, not something, not commonly called a vehicle, that flies.<sup>26</sup>

This kind of argumentation is consistent with the cognitive perception of meaning, as it considers not just the linguistic level, but also the extralinguistic knowledge linked to a concept (as illustrated in the *Kornspitz* example in Chapter 1). Conceptual knowledge as knowledge of the world concerns the common perception of a vehicle “in the popular sense”; that is, the way in which most people conceptualize a vehicle. For most people a vehicle calls up the picture of a thing moving on land, and therefore not an airplane. Argumentation used in other cases

24. This notion is known as *ejusdem generis*: “where general words follow an enumeration of specific items, the general words are read as applying to other items akin to those specifically enumerated.” A similar rule is *noscitur a sociis* – the notion that “a word may be known by the company it keeps” (Burnham 2006: 58–59).

25. Compare H.L.A. Hart (1907–1992). As the most prominent figure in the history of legal positivism Hart insisted that the law must predominantly refer to classes of persons, acts, things and circumstances. Respectively, individual acts or things or circumstances must be viewed as instances of the general classifications which the law makes (see Hart 1994).

26. *McBoyle v United States*, 283 U.S. 25 (1931).

follows the above rationale. In *Newberry v. Simmonds* it was ruled that a car whose engine was stolen was nonetheless a (mechanically propelled) vehicle requiring a licence, whereas in *Smart v. Allen* a car with a rusted engine, three flat tyres and one missing, no gear box and no electrical accessories, was ruled not to be a vehicle.<sup>27</sup> In *Macro Auto Leasing Inc. v Canada (Minister of Transport)* in answering the question whether imported vehicle parts seized by the Canadian Ministry of Transport amounted to a vehicle under s 2 of the Motor Vehicle Safety Act, the Court said the following:

By no stretch of imagination can it be said under the present definition of *vehicle* that the body/chassis in this case, without the wheels, the tires, the wheel hub adaptors, the differential, the brakes, the rotors, the bearings, the electrical fittings, the steering shaft and column, the battery, the engine, the transmission, the clutch, the driving shaft, the ignition, the carburator, the water pump, the motor mounts, the alternator and the distributor, to name just a few of the missing components of what is to become a Shely Cobra once assembled, is a *vehicle* within the meaning of this Act.<sup>28</sup>

Although it is not likely that a criminal will carefully consider the text of the law before he commits a crime, it is reasonable to expect that a fair warning should be given to the world in language that it will understand, of what the law intends to do if a certain line is passed. To make the warning fair, this line should be clear. Judging from the discussed cases, the court's logic seems to imply that even criminals should be given a fair and clear warning of what the law intends to do if a certain line is passed. Although there is little doubt as to whether the accused had committed theft in the *McBoyle* case, the meaning of a statute should not be interpreted expansively. It is therefore evident that unlike determinate legal concepts, indeterminate leave more room for interpretation. What more, their content can be changed through case law which bears ramifications for their lexicographic description as will be illustrated on the example of EU legal concepts.

### 2.5.3 Coping with indeterminate legal concepts in practice

In this light we claim that while determinate legal concepts can be defined according to traditional terminological principles (by naming the broader concept and listing the *definiendum's* main features), indeterminate can sometimes only be described as examples of a wider category in accordance with the more-or-less principle, e.g. an *aircraft* is more or less a *motor vehicle*. In this regard, we propose

27. *Newberry v Simmonds*, [1961] 2 Q.B. 345; *Smart v Allen*, [1963] 1 Q.B. 291.

28. This case is discussed in Hutton, C. 2014.

they be described as prototype categories. On the other hand, a *bill of exchange* can be defined as a written, unconditional order by one party (the drawer) to another (the drawee) to pay a certain sum and can be considered a determinate legal concept in line with both Sandrini's and Cornu's divisions. But a concept such as *comother* or *goods* cannot be defined in such a way. *Goods* should be defined in the context of the EU's internal market and the principle of the freedom of movement guaranteed under Articles 28–37 of the Treaty on the Functioning of the European Union (hereinafter: TFEU).<sup>29</sup> Although EU legislation contains no definition of *goods*, the CJEU defined this concept broadly in the case *Commission v. Ireland*<sup>30</sup> of 1968, stating that goods are all products whose value can be expressed in money. This definition served as the prototypical one for later case law in which it was extended or narrowed down. In this sense it is safe to say that indeterminate legal concepts are vague because they are contingent on the court's interpretation. It is equally important to stress the teleological criteria against which the meaning of these concepts is interpreted. In the case of *goods* we have to take into account the purpose of the relevant legal norm, which is the freedom of movement of goods. Should this freedom be restricted in any way, such restrictions must serve an interest under EU law; be appropriate and necessary for the realisation of a goal and applied non-discriminatory. By knowing this wider legal context that arises from the TFEU, it is possible to define the concept of *goods*. Sandrini (1996: 67) states hence rightly that interpretation and analogy are used not only to determine the meaning of concepts in law, but also to allow for flexible application of the law, as this example confirms. Likewise, the example of *goods* shows that for defining and translating indeterminate vague legal concepts, their conceptual structures and extralinguistic knowledge are essential, which in turn warrants the application of the principles of terminology studies to law.

Translating indeterminate legal concepts should be approached with extra caution. As is the case with the interpretation of such concepts, one must consider the wider context, i.e. the concept's conceptual structure and extralinguistic knowledge in the search for an appropriate equivalent. This is especially important when translating case law of the CJEU or the ECtHR. Due to their autonomous interpretation of concepts, what is a legal remedy in national law might not qualify as a remedy for the ECtHR, wherefore a different term should be used when referring to a concept of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The trend of autonomous interpretation of concepts is followed by the CJEU almost religiously, which calls for caution when

29. TFEU, Official Journal C 115/47 of 9 May 2008.

30. Case 249/81 *Commission v Ireland* [1982] ECR 4005.



translating its case law. If possible, translators should refrain from using national law equivalents for rendering such autonomous concepts. This is also problematic in view of the fact that EU case law is not always accessible in all 24 official languages.<sup>31</sup> Though it is unrealistic to expect national judges to consult case law in say French or English, they should, nonetheless, be familiar with the CJEU's judgments in order not to err in the application of EU law and avoid unnecessary and costly proceedings (especially preliminary reference procedures).

In the following section we will discuss the problem of polysemy of legal terms. Attempt is made to provide both theoretical and practical solutions for coping with polysemous legal terms. The difference in meaning between a national and European legal concept that may be couched in one and the same term is addressed too.

## 2.6 Polysemous legal terms

The use of language in law is marked by a need for precision and accuracy. This ambition for precision is challenged by indeterminate legal concepts that undermine legal certainty. This is known as the paradox of legal language. Individual justice (De: *Einzelfallgerechtigkeit*) clashes with legal certainty (Sandrini 1996: 74). While individual justice is achieved by adjusting normative definitions to an individual case, legal certainty requires the application of precise definitions. In a similar vein, van Hoecke (2002: 153) speaks of the conflict between general justice and equity. In this section attempt is made to resolve the problem of polysemy in language of the law.

Sapir (1921: 38) said that all languages have an inherent tendency to economy of expression. It is polysemy, i.e. the ability of a sememe to have more than one meaning that enables economy of expression. The ability of a word to have more than one meaning, therefore, yields communication more efficient and makes it possible for us to 'achieve maximum results by minimum effort'. As regards polysemy in terminology, it should be noted that Wüster introduced the distinction between *Einsinnigkeit* ('one sense') and *Eindeutigkeit* ('unambiguousness, having only one meaning'; 'monosemy'). He believed that in terminology we should strive

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31. For instance, Croatian translations of judgments issued prior to Croatia's EU accession (in 2013) are to a large extent unavailable. The CJEU's working language is French and consequently judgments are drawn up in French and then translated into the other official languages and published in the European Court Reports. However, as opposed to the primary and secondary law instruments, only judgments in the language of the case (and the French version) are authentic. Beyond that, the rules on translation differ depending on the court or the nature of the proceedings.

for one meaning, rather than one sense. *Eindeutigkeit* means that a word has only one meaning in a particular domain. Likewise, Wüster (1985: 79–83) insisted upon the differentiation between *Mehrsinnigkeit* ('more senses') and *Mehrdeutigkeit* ('more than one meanings', 'polysemy'). While *Mehrsinnigkeit* applies to the entire lexicon of a language, *Mehrdeutigkeit* refers only to a specialized field.

Furthermore, polysemy is treated differently in terminology and terminography than in lexicography. Strictly speaking, in terminology it is treated as homonymy (when one term denotes two different concepts), since in terminology the semantic value of a term is determined solely based on the relationship of the term and the given conceptual system (Cabr  1999: 108). For instance, in general language the terms *challenge* and *consideration* have different meanings than in law, in which they are not considered polysemous and have specific legal meanings in administrative procedural law (*challenge*) and contract law (*consideration*). A similar example is the English term *suspect*. In terms of the legal doctrine of innocence and guilt, the term denotes a person being suspected for having committed an offence (Fillmore 2006: 388). Despite this, journalists use *suspect* in other senses as well. On a similar note, the legal difference between the terms *innocent* and *guilty* is not equivalent to the general-language difference. In the first instance, the difference is whether a court found a person to be guilty of a crime; whereas in the general language, what matters is "did he do it". Fillmore has dubbed this occurrence the *disparity of schematization*, which often leads to wrong usage of these words. To give one more example, the term *bequeath* is often used in the sense of *give* or *devise* one's inheritance. However, most common-law courts stick to their definition according to which *bequeath* is used only in the context of personal property and does not include real property (Charrow et al. 1982: 185). Examples of words that have specific legal meanings in addition to their plain meanings include *truth*, *conscience*, *mistake* and many others. This issue was addressed by the German Federal Court that pointed out how the law utilizes concepts in a different sense than the general prosaic language:

Verwendet ein Gesetz einen Begriff, der auch au erhalb der Rechtsanwendung im Alltagsleben  blich ist, so stellt sich f r die Auslegung des Gesetztes die Frage, ob der in ihm verwandte Begriff in dem gleichen Sinne wie im allt glichen Sprachgebrauch gemeint sei. Das muss nicht so sein. Denn das Gesetz gebraucht gelegentlich Begriffe in einem engeren Sinne als die t gliche Umgangssprache.<sup>32</sup>

Cabr  (1999: 108) illustrates homonymy on the example of the term *key*. Whereas a lexicographic tool as a rule lists several meanings of such a term, in a terminographic resource it would be represented in the following way:

32. BGHSt 14, 116ff. 118. Quoted in Busse 2001: 56.

key, n. cartography. list of map's symbols and their meanings; legend.

key, n. telecommunications. individual dialling button on touch-tone phone; switch that opens or closes communications circuit, moving from one line to another.

key, n. technology. device that operator uses to send telegrams.

As can be observed, polysemy is resolved by attributing different fields or domains to the term in question. However, what makes things slightly more complicated is the fact that polysemy can exist within the same field or domain. In Austrian national law the term *Arbeitnehmer* ('worker') has different meanings in the context of employment contracts than in the context of workers' rights (Sandrini 1996: 82). In the first context it includes only those persons who have entered into an employment contract (in the sense of contractual obligations), whereas in the second context even interns and students, who have not entered into a contract, are deemed workers. Needless to say, we can use one term for translating both of these concepts, however, such subtle differences in meaning must be accounted for in a legal dictionary by referring to different subfields.

In this context we should also mention systematic polysemy which refers to terms denoting for instance both the institution and the function, or the physical object (Tiscornia 2007: 198). Examples thereof are: *The President of the Republic*, *contract*, *premises*, *office* etc. The President may refer both to a person and to the institution, while a contract is both a legal transaction as well as a document. Premises are both physical buildings and subject matter of the habendum of a lease. The latter cases are dubbed homonymic polysemy by Bowers (1989: 147).

Besides polysemy and homonymy, synonymy should be addressed as well. Whether or not true synonyms exist is debatable. In the field of trademark law, disputes have been fought on the issue of whether words are synonyms or not, that is, whether or not they have the same meaning. The case between *ConAGra* and *Hormel* referred to in the first Chapter provides an example of such a similarity of meaning between the words *choice* and *selection*.<sup>33</sup> Within the confines of legal discourse, synonyms are, or at least should be, a not too common occurrence. Sometimes though, synonyms are simply the result of inconsistency or even sloppiness of legal drafters. Such is the case with the Croatian terms *tražbina* (Obligations Act, Official Gazette No. 41/08) and *potraživanje* (Insolvency Act, Official Gazette No. 116/10), which are two different terms used by different acts to express the same concept ('claim', German *Forderung*). It is questionable though, whether terms that at face value appear to be synonyms are interchangeable in all

33. As to the semantic difference between these terms, Shuy (2016: 456) notes that choice conveys making a decision between two things, whereas a selection signals a decision among many different things.

contexts. Some legal English terms might appear to be synonyms, but after closer inspection, it becomes clear they are not interchangeable and cannot be used in the same context, as the terms *assign* and *delegate* or *holding* and *detention*. In the context of contracts assignment and third-party rights, the term *assign* should be reserved for the transfer of rights, and the term to *delegate* should be used in connection with the transfer of duties. This distinction is crucial, since as Krois-Lindner (2006: 93) points out, an obligee can rid himself of a right (by making an effective assignment), an obligor though cannot rid himself of a duty by the same means. Similarly, while *holding* is a common-law English concept, *detention* is primarily a continental-law English concept conceptually reflecting the Roman law institution of *dētentiō* (see Chromá 2014: 137).

Having in mind the purpose of this study, the focus is placed on polysemous legal terms that denote both concepts of national law and concepts of EU law. The lexicographic description of such polysemous terms interests us in particular. In addition to appropriate definitions of concepts denoted by such terms, a reliable dictionary representation should include the conceptual structure of a given field or subfield, which can be achieved by introducing the relevant extralinguistic information into the dictionary, as is detailed in Chapter 7. In this way a polysemous term can be linked to several subfields to which definitions can be attributed.

### 2.6.1 Implications of the cognitive shift for resolving polysemy

The cognitive shift in linguistics has contributed to a deeper understanding and consequently a more realistic lexicographic treatment of polysemy. As is well known, over the last twenty years cognitive linguistics has significantly influenced the development of lexical research. Some of its premises (in the realm of lexical semantics) offer a suitable theoretical framework for the making of dictionaries (Geeraerts 2007: 1160). Cognitive linguistics emphasizes the experientially embodied nature of language, maintaining that language is not an autonomous phenomenon, but is inextricably connected with the individual, cultural, social and historical experience of the language user (*Ibid.*). As cutting-edge research in psychology, neuroscience and cognitive linguistics shows, the principles and processes that structure human experience reflect on language structures as well (Žic-Fuchs 2009: 183).

What follows is an attempt to clarify the difference between linguistic and non-linguistic knowledge. Geeraerts (2007) believes that the structural approach does not provide the theoretical groundwork for distinguishing between dictionary and encyclopaedia (and in consequence linguistic and encyclopaedic knowledge). One of the basic postulates of cognitive linguistics is that the distinction between those two levels of description is not as strict as it was assumed in structuralism.

Pursuant to the structuralist view of language, the main distinction was made between linguistic meaning and designation.<sup>34</sup> Such a view is a corollary of taking meaning to be the result of the relationships of value (fr. *valuer*) which a lexeme realizes through relationships with other lexemes (Žic-Fuchs 2009: 182). This in turn results in the basic distinction between linguistic and encyclopaedic knowledge. Linguistic knowledge is a form of tacit knowledge that enables us to access and understand other types of knowledge, including legal knowledge. Encyclopaedic knowledge on the other hand, is said to account for conventional conceptual representations of the way we perceive and organize reality.<sup>35</sup> Thanks to cognitive linguistics, the described approach is replaced by a hermeneutic method which consists of an interpretive attempt of restoring the original experience behind an expression (Geeraerts 1991: 267).

Another aspect of cognitive linguistics that is important for the terminological description of concepts is the acceptance of indeterminacy and demarcation problems of semantic structures. Not only does it pose a threat to precise and clear legal communication, it also usurps the function of legal definitions. Therefore, one of the main challenges of this study and of legal lexicography in general is to find ways to account for the indeterminacy of the law and legal expression. Conversely, structuralist approaches focused only on the semantic level (meaning) as being important for the linguistic analysis, whereas the cognitive perception encompasses both semantic and referential level, i.e. the content and scope (Geeraerts 2007: 1161–1162). Accepting that there is no clear demarcation line between the semantic and the encyclopaedic level of description, a dictionary should point to prototypical members of a category (rather than list features). As is analysed in the following chapters, the notion of prototypes and findings of Prototype Theory enable a more realistic approach to the study of polysemy. Building on this assumption and by infiltrating the premises of cognitive linguistics into the terminological description of the field of law, we have a good platform for coping with the vague nature of indeterminate legal concepts.

### 2.6.2 Polysemy in the EU context

As previously mentioned, a single term may be used to denote a national law concept and a concept of EU law (e.g. the Croatian term *stečaj* is used to convey ‘insolvency’ both in national and EU law). Translators should be mindful of the fact that

34. Designation is the relationship that exists between a lexeme and the real entities surrounding a person, and which accounts for a separate level from the level of linguistic meaning (Žic-Fuchs 2009: 182).

35. In this respect Lakoff (1987: 9–28) speaks of idealized cognitive models.

such concepts are defined differently in EU, as opposed to national law, whereas different terms should be used to render them. In this regard a neutral term can be introduced for the European concept. The existence of polysemous terms that express both EU and national law concepts should be observed in the context of the complex relationship between these legal systems. EU law, as a supranational legal order *sui generis* includes concepts of national law of the Member States designated by their national law terms. Such concepts however, gradually take on a new meaning through case law and thus grow apart from the meaning attributed to them in national law. The relationship between EU and national law was neatly portrayed in a judgment of the Federal Constitutional Court of the Federal Republic of Germany of 30 June 2009.<sup>36</sup> In this judgment the President of the Court Bihof laid out a bridge theory, which assumes that the EU and the German national law are two separate legal systems open to each other with a bridge between them. On this bridge “sits” the Federal Constitutional Court as the supreme arbitrator who decides which norms should cross the bridge. Similarly, lawyer-linguist Colin Robertson describes the relationship between EU law and the law of the Member States in terms of mutual dependence. On the one hand, EU law is dependent on the Member States for its existence. On the other hand, the national law of the Member States has become dependent on the law of the EU at the supranational level (Robertson 2015: 37).

It should also be pointed out that the CJEU plays a vital role in the development and shaping of EU law. The teleological approach, for one thing, enables the CJEU to look for the purpose of a legal rule, which depends on its own understanding of it. In this respect, it is recommendable to refrain from the practice of using national terminology to denote EU law concepts as discussed in Chapter 6. Likewise, the CJEU’s autonomous interpretation is authoritative for Member States who must respect its judgments, which also underscores the role it plays in the creation of legal rules. In fact, some of the basic principles of EU law arose from the case law of the CJEU such as the principle of direct effect which was defined in the case *Van Gend en Loos*,<sup>37</sup> or indirect effect (cases *von Colson and Kammann*, *Marleasing*, *Wagner Miret*).<sup>38</sup> The principle of supremacy (today termed *primacy*)

36. BVerfG, 2 BvE 2/08.

37. Case 26/62 *Van Gend en Loos v Netherlands* [1963] ECR 1. In *Van Gend en Loos* it was determined that a citizen may realize its rights that arise from the Commission’s legislation against the State due to direct effect. In the case 2/74 *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* [1974] ECR 631 the Court established two kinds of direct effect: vertical and horizontal (depending on in relation to whom a certain right is realised).

38. Case 14/83 *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891; case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA*

of EU law was defined in *Costa Enel*,<sup>39</sup> where the Court determined that EU legal norms have primacy in application over the national norm. In other words, a national court must derogate a national norm that is contrary to EU law and apply EU law directly (case *Simmenthal*).<sup>40</sup> Likewise, the Court's autonomous and teleological interpretation accounts for a major difference in relation to the national laws of the Member States. Considering this feature of EU law and incorporating it into the terminological description of EU law contributes not only to a higher quality of legal translation and terminography in the EU context, but also to a better understanding of EU law.

## 2.7 Summary

This Chapter outlined the development of research into specialized languages, while focusing on legal concepts and their features. Discarding the dichotomy specialized/general language, attention was paid to clarifying the fundamental intricacies between language and the law and exploring the purpose of language in the field of law. Rather than regarding the latter as a specialized language in tension with general language, greater weight should be put on the categories of discourse, conceptualization and concepts. It was suggested that an interdisciplinary approach couched in terminology studies is best suited for a reliable description of legal concepts. With this in mind, legal concepts were defined as frames of legal knowledge that express legal norms. We proposed a distinction to be made between determinate and indeterminate legal concepts. Drawing a distinction between these two types of legal concepts is of importance for the making of legal dictionaries. Indeterminate concepts are often characterized by vagueness and are as a rule more difficult to define and translate.

For the purpose of compiling legal dictionaries, this Chapter has two important consequences. First, we have seen that vagueness is not just a feature of language, but of law too. For a plurality of reasons, the language in law is bound to be vague and open-ended. As such, vagueness leads to both linguistic and legal indeterminacy. The former manifests itself in polysemy, which in turn leads to

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[1990] ECR I-4135; case C-334/92 *Teodoro Wagner Miret v Fondo de Garantía Salarial* [1993] ECR I-6911. In light of the fact that horizontal direct effect prevents the application of directives to workers in the private sector, the Court recognized an indirect or interpretative effect of directives. Pursuant to the latter, national regulations must be interpreted in keeping with the objectives of a directive.

39. Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 1203.

40. Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* [1978] ECR 629.

legal indeterminacy. Secondly, bearing in mind the latter claim, it is important to differentiate between term and concept in a legal dictionary. That is instrumental in order to account for the inherent vagueness of terms and resolving polysemy, as well as to accommodate indeterminacy of the law in a legal dictionary.





# (How) Do courts do things with words?

### 3.1 Introduction

As mentioned in the previous chapter, legal interpretation accounts for an important correlation between language and the law. Indeed, methods of legal interpretation can prove to be quite useful, if not indispensable, for understanding and defining indeterminate legal concepts. To this end, this Chapter examines general aspects of statutory interpretation (section 3.3.) and the different methods of interpretation in law (section 3.4.). Special attention is devoted to the teleological or purposive method of interpretation. Finally, by analysing selected case law of last-instance courts the role of the (extra)linguistic context in interpretation is explained. I seek to put legal interpretation in a new light, by exploring how the terminological approach can provide an empirical ground for the construal of meaning in legal interpretation (sections 3.5. and 3.6.).

### 3.2 The linguistic importance of case-law reasoning

This Chapter articulates the interfaces between interpretive practices of courts and the linguistic approach to meaning. Examining to what extent the methods of legal interpretation and principles of cognitive linguistics and terminology studies are compatible may prove useful for legal lexicography as well. It should be noted that throughout this book we draw on case law settled before supranational courts (such as the CJEU<sup>1</sup> and ECtHR) and courts of appeal in order to illustrate how they grapple with the task of determining meaning. Case-law reasoning of these courts is especially interesting from the perspective of a linguistic study, considering that last-instance courts write down the rationales behind their holdings.

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1. Much research into the multilingual legal reasoning of the CJEU has been undertaken by legal scholars e.g. Derlén (2009), Baaij (2012), McAuliffe (2013). While lawyers appear to be curious about how multilingualism affects judicial interpretation of EU law, linguists shy away from the complicated way in which courts do things with words in general. This is regrettable, as besides the legal, the linguistic perspective could also further research into multilingual judicial interpretation.

These rationales provide valuable insights into the methods of interpretation used by a court. What more, supranational and international courts not only interpret rules dynamically, paying little attention to the wording of legislative texts, but often establish autonomous concepts (Kjær 2014:3).<sup>2</sup> Also, the last-instance courts referred to above have multiple judges deciding a case by a majority vote. A U.S. trial court normally has only one judge, whereas a reviewing court consists of at least three judges. The United States Supreme Court has nine judges. Unless the decision is unanimous, there may be dissenting and even concurring opinions (judges who agree with the decision, but do not support the reasoning).<sup>3</sup> Both dissenting and concurring opinions contribute to a deeper understanding of judicial reasoning. In case of the CJEU, additional clarification is gained from the Advocates General,<sup>4</sup> who deliver impartial opinions pertaining to a case in question. Though their opinions are not binding on the court, they are often referred to in the judgments. At this moment there are nine Advocates General assisting the judges of the CJEU.

The ways in which courts construe the meaning of concepts are of our main interest. However, before continuing, we need to clarify the usage of the term *legal interpretation*. Many law textbooks refer to *statutory*, rather than *legal* or *judicial interpretation*. While the term statutory interpretation is used predominately in the U.S., judicial interpretation and legal interpretation are more neutral terms whose usage is not restricted to a specific jurisdiction or doctrine. Note that court interpreting is sometimes also called legal interpreting or judicial interpreting. Furthermore, U.S. legal scholarship also makes a distinction between the categories of statutory and constitutional interpretation as we shall see in this Chapter.

### 3.3 Interpretation as a perennial source of legal difficulty

It is often claimed that language enables the functioning of law and acts as a vehicle of law. Legal knowledge is assumed to be expressed through legal norms, i.e. by means of language, however, at the same time, we need to concede that law is more

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2. As she asserts, the dynamic and autonomous interpretation style of international courts characterised by judicial activism makes it impossible to predict how a text will be interpreted (Kjær 2014: 4).

3. For more on judicial opinions of appellate courts see Burnham (2006: 64–77).

4. The role of Advocate General is created by Article 19(2) of the Treaty on European Union and Articles 253 and 254 of the Treaty on the Functioning of the European Union. Consolidated Version of the Treaty on the European Union OJ C 326, 26.10.2012, p. 13–390. Consolidated version of the Treaty on the Functioning of the European Union OJ C 326, 26.10.2012, p. 47–390.

than language and to answer a legal question we have to rely on interpretation. Herein lies a paradox at least from a linguist's perspective. Law is rooted in language and there is no law without language. At the same time, law is more than language, wherefore, to understand law we must resort to interpretation of some kind. But there is no interpretation without language, since to interpret means to rely on language either directly or indirectly. Interpretation is after all regarded as being concerned with textual and verbal meaning (Bowers 1989: 166). Interpretation is the process of coming up with an answer to the question "What do you make of this?" (Endicott 2001: 159). This is reminiscent of the legal hermeneutics' view of interpretation. Within legal hermeneutics, understanding is a mere act of cognition that occurs automatically, while interpretation occurs when a person is forced to reflect about the meaning as a result of ambiguity or textual unclarity (Larenz 1983: 195). As observed by Driedger (1974), comprehension of legislation hence involves more the application of the principles of language, logic and common sense, than rules of law. Moreover, many of the rules of interpretation are ordinary principles of language. Consider for instance, the principle *ejusdem generis* (where general words follow an enumeration of specific items, the general words are read as applying to other items akin to those specifically enumerated) or *noscitur a sociis* (a word may be known by the company it keeps), rules well known in the U.S. statutory interpretation, which are in essence linguistic rules based on the relationship of hyponymy and metonymy (cf. FN 24, Chapter 2). By the same token, Bowers (1989: 120) concludes that both *noscitur a sociis* and *ejusdem generis* constitute rules of interpretation which limit the meaning of a word within a particular class. The former rule does it implicitly, and the latter explicitly.

Based on everything we said in the last two chapters, one can think of law as a conceptual field with its own inherent logic. Therefore, to understand the meaning of a legal concept or a legal provision relying on linguistic knowledge alone is not enough, since, as Macdonald (1997: 166) puts it, legal knowledge is more than the rationalistic interpretation of texts. Likewise, interpretation (in whatever form) may differ from the *prima facie* meaning of a legal text (van Hoecke 2002), since the text only provides information about a legal rule. Other information as to the purpose of a rule, the need for its adoption and earlier practice of its application remain withheld. It should be borne in mind that the courts have a different task than draftsmen of legislative texts. A court attempts to match idiosyncratic facts with words of varying degrees of precision, while the draftsman is concerned with turning intentions into words (Bowers 1989: 130). Legal interpretation as the courts' interpretation thus deals with the relation between an abstract term and the real world. For this reason, the terms are not only abstract, but also open-ended and indeterminate in order to capture as many real life events and contingencies as possible. The problem in terms of legal interpretation has been nicely portrayed by Glanville Williams:

Each text was at one time drawn up by someone who presumably meant something by it; but once the document has left its author's hands it is the document that matters, not any unexpressed meaning that still remains in the author's mind. For the lawyer the words of a document are as authoritative as words, and there is generally no possibility of obtaining further information from the author, either because the author is dead, or because of rules of evidence precluding reference to him, or because a reference to the author would infringe a rule requiring the document to be in a certain form. It is the inability to refer to the author, coupled with the inherent vagueness of language, that makes interpretation such as perennial source of legal difficulty. (1945: 191–2, quoted in Bowers 1989: 153.)

That said, understanding legal concepts and legal knowledge conveyed by them requires some form of interpretation. But people may interpret a term, including the term *interpretation*, in different ways. Lawyers and poets probably have different views of interpretation, although, Dietrich Busse speaks of “*Juristen-Lyrik*”.<sup>5</sup> The latter see interpretation as a creative process of making choices or a way to clarify meaning. The former perceive legal interpretation as the way in which the courts establish the meaning of legal rules, assuming that law always requires interpretation before it is applied (Čapeta 2009: 1). Bowers (1989) draws a parallel between literary criticism and legal interpretation, concluding that the former is concerned with fictions and does not affect people in their daily lives as statutes.

Owing in particular to indeterminacy and vagueness addressed in the previous Chapter, it is often unclear whether a legal rule applies to a case in question. But both types of interpretation discussed here: semantic and legal interpretation seem to share two things in common. Interpretation is never final, nor is it true or false. Sometimes it is a matter of consensus, as is the case with panels of judges who decide a case by a majority vote. This does not render the interpretive results final or true, as a different panel in a different time and at a different place could opt for a different interpretation. Lest interpretation is a matter of making choices among open alternatives, the result is indeterminacy (Endicott 2001: 13).

Some scholars have even equated interpretation with understanding, claiming that everything that people do with other people's utterances is interpretation, and respectively, conventional understanding (e.g. Fish 1993), which seems plausible from a linguistic perspective. That is to say, if interpretation presupposes understanding, then it also includes the process of conceptualization to adduce meaning. This Chapter makes a direct effort to further clarify this point on hand of case

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5. „[Das Gesetz] ist nicht toter Buchstabe, sondern lebendig sich entwickelnder Geist, der mit den Lebensverhältnissen fortschreiten und ihnen sinnvoll angepaßt weitergelten will, solange dies nicht die Form sprengt, in die er gegossen ist.“ BGHSt 10, 157ff., 159f. (Quoted in Busse 2001: 49).

law analysis and in doing so, provide more stable empirical ground for meaning construal in the legal interpretive practice. This short introduction has made the claim that law, like language is not an exact science, wherefore, the process of interpretation is never final or true or false. What matters instead is how we understand an utterance in language and how we interpret a concept in law.

Given the fact that law just like language is by no means free from ambiguities and vagueness, courts are sometimes called upon to investigate not only whether a legal rule applies to a specific set of circumstances, but also to determine the meaning of concepts. As Solan and Tiersma (2005: 20) observe, many legal disputes concern the meanings of words. The courts often debate over whether a word in the statute should apply to the facts of a particular case. It is thus not surprising that legal doctrine has been called a science of meanings (Aulis 1979, quoted by van Hoecke 2002: 181). In fact, both semantics and law investigate meaning; however, as opposed to semantics, in law, meaning is established, or, in the case of CJEU it is made. What counts for the CJEU is not retrospective meaning-identification, but prospective meaning-making (Kjær 2015: 97).

This suggests that meaning of legal rules is not given, but depends on some extralinguistic factors. In a similar vein, Engberg (2004: 1149) speaks of the context and the interpreter. He perceives legal argumentation and legal decision-making to be a process of semiosis, that is, “a communicative struggle for assessing the exact interpretant to be applied in the communication about a certain case or in doctrinal discussions about a concept” (Engberg 2016: 176–177). The interpretant here is the meaning ascribed through an interpretive process relating the material entity (a word) and a meant entity (the concept) (*Ibid.*). There simply is no semantic autonomy or acontextual meaning which casts doubt upon the use of words as well as the use of legal rules. To reiterate, ambiguity and indeterminacy are not just features of language, but of the law as well. Such views are compatible with the cognitive understanding that meaning is neither fixed nor autonomous. Accordingly, legal norms do not carry a predetermined meaning detached from reality, but are dependent on the previously discussed conceptualization processes.

Therefore, more often than not, judges and linguists are dealing with the “penumbras” of doubts, rather than with a “core of certainty”.<sup>6</sup> This complicates the courts’ interpretation, needless to say. Judges cannot look up dictionary definitions and rely on them to resolve a dispute concerning the meaning of a term, nor can they take ordinary or general language to be a neutral or abstract category existing

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6. See Hart (1958). Hart’s metaphor of core and penumbra is often used by legal theorists. Greatly simplified, it pictures the circumstances of a core of certainty and marginal or penumbral cases marked by uncertainty. In the vocabulary of prototype semantics, core could be compared to central members of a prototype category, and the penumbra to peripheral ones.

fictively outside the law. Moreover, the flipside is true. Terms are sometimes borrowed from ordinary language and allocated a legal meaning which serves the purpose of settling a dispute at hand. That said, courts do sometimes examine the reasonable meaning of a term or what a reasonable person would understand by a term in question (for instance see *Lucy v Zehmer*).<sup>7</sup> But as acknowledged by Salmond (1947): “It is extremely difficult to state what lawyers mean when they speak of ‘reasonableness’. In part the expression refers to ordinary ideas of natural law or natural justice, in part to logical thought, working upon the basis of the rules of law.”

In this sense reasonable meaning is assumed to correspond to the person’s intention when using a particular word and represents the meaning a reasonable or prudent person would deduce from the word in question. A reasonable person on the other hand, has been described as a hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence, and as a person who exercises the degree of attention, knowledge, intelligence, and judgement that society requires of its members for the protection of their own and of others’ interests (Black’s Law Dictionary 2007: 1294).<sup>8</sup> What matters in this respect is the objective or the reasonable person standard, and not the subjective intent of a person using a particular word. In contract law in particular, it is important to

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7. *Lucy v Zehmer*, 196 Va. 493; 84 S.E.2d 516 (1954). In the holding of this case the court referred to the reasonable meaning of words which is important (and not the subjective undisclosed intent or an unreasonable meaning of words) in order to decide whether an offer made in jest can be taken to constitute a binding contract. Accordingly, the Court held that Zehmer’s words and acts could be reasonably interpreted as an offer to sell the farm. Although mutual assent is essential to a valid contract, “the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts.” Note that in tort law and especially in the law of negligence, the *reasonable person standard* is the standard of care that a *reasonably prudent person* would observe under a given set of circumstances. An individual who subscribes to such standards can avoid liability for negligence. Similarly a reasonable act is that which might fairly and properly be required of an individual.

8. “The reasonable man connotes a person whose notions and standards of behavior and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man – a term which implies an amalgamation of counter-balancing extremes.” Heuston, R.F.V. 1977. Salmond on the Law of Torts 56 (17th ed.). Cited in Black’s Law Dictionary (2007: 1294). In a similar vein, German judges have referred to a fictitious character of a prudent average reader (of the law): *verständiger Durchschnittsleser*, or impartial or objective reader *unbefangener Leser*, as well as to an objective meaning of a word *unbefangene Deutung des Wortes* (Busse 2001). Just like in the case of U.S. judges, German judges look for the objective, not the subjective intent or meaning.

interpret the terms of a contract by their external expression and not by the subjective intention of one party (Burnham 2006: 396). The court assumes that there is mutual assent between the contracting parties, and that the parties should have known the meaning attached by the other party to a term.

Notwithstanding that, as the *Kornspitz* example in Chapter 1 illustrated, one term may be conceptualized differently by different interpreters which underlines the prominent role of the extralinguistic context for determining the meaning of legal concepts. Therefore, despite the different objectives of the linguistic and the legal search for meaning, legal interpretation and state-of-the-art linguistic theories, such as terminology studies, share many things in common which are worth exploring further.

Our starting presumption is that framing legal interpretation in terminology studies can enable a better understanding of the way in which courts interpret not just legal rules, but also words. It is important to note that legal interpretation, just like language, is not an exact science.<sup>9</sup> As Weigand (2003, quoted by Kjær 2008: 152) notes, neither law nor jurisprudence are purely abstract logical systems which exist on paper, but are created by human beings by means of language. As such, they have to be applied and interpreted in each individual case. The problem is that the match between the human language faculty and the goal of law-making is not a perfect one (see Solan 2016: 99). We will try to demonstrate that the application of the principles of terminology studies influenced by cognitive linguistics can nonetheless provide more clarity with respect to the practice and challenges of legal interpretation, maintaining that terminology offers an appropriate tool to explain interpretive practices of courts. This is especially important in view of the problem of upholding legitimate expectations in multilingual judicial reasoning. The existence of different language versions of a legislative provision may result in differences in meaning which not only undermines legal certainty, but also requires the court's intervention to resolve any ambiguities and cases of interpretive doubts.

Before exploring the potential of terminology studies in the area of legal interpretation, it is important to gain a better grasp of the different interpretive methods used by courts. To this end the following section outlines general methods of legal interpretation used by EU and U.S. courts.

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9. For instance, Brown and Kennedy (2000: 323) claim interpretation of law is in no way an exact science, but rather a judicial art. They furthermore assert the judge proceeds instinctively.



### 3.4 General methods of legal interpretation

The question of methodology for legal interpretation has been a point of contention throughout legal history. In the context of interpretation of legislative texts as part of legal hermeneutics, there are two broad approaches: the literal and liberal methods (see Šarčević 2000: 61). As illustrated in the previous Chapter on hand of the aircraft case, the search for meaning of words based solely on literal or plain meaning pursuant to the textual method of interpretation may be flawed. For this reason, the purposive method of interpretation was developed (Crennan 2010). The historical source of purposive approach dates back to 1584 and the Heydon's case in which the so-called mischief rule was established.<sup>10</sup> In most simple terms, according to the purposive or the teleological approach, courts must look beyond the literal or plain meaning of words and examine the purpose (Greek *telos* means purpose or goal) of a given statute. Their job is to effectuate the legislator's will. By putting itself "in the shoes of draftsmen", a court should interpret the meaning of a word in accordance with the latter's will.<sup>11</sup> Although purposive or teleological interpretation is central to this study, other types of legal and statutory interpretation are briefly presented too.

Legal scholarship generally differentiates the textual or grammatical, historical, systemic or contextual and the teleological or purposive method of interpretation, whereas the purposive method has been developed last to supplement the above three main interpretive methods.<sup>12</sup>

1. *The textual or grammatical method* of interpretation assumes that the legislator's will has been expressed in a clear and reliable way. Therefore, both general and technical meanings of terms of a legal instrument that is subject to interpretation should easily be determined by means of a word and language analysis. Šarčević (2013: 14) summarizes to what the literal approach amounts to in the practice of the CJEU in the following way:

Greatly simplified, the literal approach consists mainly of two main categories: the majority argument in which the Court gives preference to the meaning attributed

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10. The purposive or teleological approach was developed in the Heydon's case (1584) 3 Co Rep 7a at 638 [76 ER 637 at 638]. In this case Lord Coke described the process through which the court must interpret legislation as involving four different aspects that need to be considered: (1) What was the common law before the making of the Act; (2) What was the mischief and defect for which the common law did not provide; (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth and (4) the true reason of the remedy.

11. Lord Simon in *Mownsell v Olins* (1975) AC 373.

12. See e.g. Savigny (1802) or Larenz (1983).

to the majority of language versions, and the clarity argument where preference is given to the language versions that the Court considers clearer or less ambiguous than the other versions.<sup>13</sup>

2. On the other hand, *the systemic method* determines the position of words, sentences or texts in the broader context of an act or legislation. What matters is therefore the context.
3. *The historic method* investigates the historic context. It analyses which legislative acts precipitated the adoption of the legislative text in question.
4. Finally, *the teleological or purposive method* of interpretation takes the purpose of a legal rule as the context for interpretation.

Since our focus is placed on the teleological method of interpretation, the cloudy notion of *legislative purpose* calls for further clarification. Legislative purpose is the purpose that lies behind the legislation in question. Some scholars further distinguish the subjective and the objective legislative purpose.<sup>14</sup> The subjective purpose, which reveals the real will of the legislator is further divided into subjective concrete and subjective abstract (Barak 2004: 190; quoted by Azuelos-Atias 2013: 37–39). While the subjective abstract is expressed in the goals, interests, policies, objectives and functions the legislature needs to implement, the subjective concrete is the will shared by the majority of the Members of the Parliament.

13. Both Dengler (2010) and Baaij (2012) conclude that only around 100 CJEU judgments (out of 246 with references to the comparison of language versions) tackled problematic linguistic discrepancies between 1950 and 2010, and only a minority of them involved serious rather than partial divergence (Dengler 2010: 85). These analyses seem rather complementary. Overall, as highlighted by Dengler (*Ibid.*), minor discrepancies due to conceptual nuances or terminological asymmetries appear to be the most frequent, and tend to be resolved through teleological and contextual criteria for effective reconciliation; Baaij (2012), meanwhile, suggests that a more literal approach (usually giving preference to the meaning of the majority of language versions) is taken by the Court when a translation error might be the cause of discrepancy, even if this is not normally acknowledged. As noted by Šarčević (2013: 14), in fact, the CJEU's case-law often merges literal and teleological interpretation by applying the former in the light of the latter.

14. This distinction was presented by Aharon Barak, legal scholar and former Supreme Court judge who is one of the most influential figures in contemporary Israeli jurisprudence (for an overview of Barak's understanding of purposive interpretation see Azuelos-Atias 2013: 30–54). The German legal scholarship also speaks of the objective purpose of the lawmaker: “der objektivierte Wille des Gesetzgebers, so wie er sich aus dem Wortlaut der Gesetzesbestimmung und dem Sinnzusammenhang ergibt” (BvferGE35, 263ff., 279, see Busse 2001: 57). The concept of *Sinnzusammenhang* has also been labelled as the true meaning of a legal norm and it is at least as important as the wording of a norm, if not even more important. It can be translated as a ‘means-end connection’ or the ‘meaning nexus’. Busse (2001: 80) rightly notes that a linguistic study should aim to investigate how and to what extent this *Sinnzusammenhang* can be described by linguistic tools.

According to Barak (2004: 191), the latter should not be taken into consideration in the process of purposive interpretation. On the other hand, the objective purpose is the will of the legislature in keeping with the fundamental principles of the law (Barak 2004: 192).<sup>15</sup> The German legal scholarship also speaks of the objective purpose of the lawmaker and of the objective and subjective interpretation theory. German courts have often emphasized the importance of the lawmaker's objective purpose which can be adduced from the wording and the *Sinnzusammenhang* (see Busse 2001: 57). The concept of *Sinnzusammenhang* has also been labelled as the true meaning of a legal norm and it is at least as important as the wording of a norm, if not even more important. It can be translated as a 'means-end connection'. Busse (2001: 80) rightly notes that a linguistic study should aim to investigate how and to what extent this *Sinnzusammenhang* can be described by linguistic tools.

Considering that this Chapter discusses selected case law of U.S. courts too, the following section presents an overview of the methods of interpretation employed by these courts. Interpretative methods of U.S. courts are important in view of the fact that case law is part of primary legal authority. The other types of primary authority in the United States are: constitutions, statutes and regulations (for more see Nedzel 2008).

#### 3.4.1 Statutory interpretation methods implemented by U.S. Courts

As a preliminary remark, it is important to concede that American judges and scholars are not in accord about how statutes should be interpreted (see Solan 2016: 87). U.S. courts also apply an interpretation method that corresponds to the teleological method, namely purposive interpretation, believing that they should interpret the language of the statute in such a way as to give effect to the purpose the legislature sought to accomplish (Burnham 2006: 54). Burnham (2006: 54–62) identifies seven different approaches encountered in judicial opinions of U.S. courts interpreting statutes. These can be summarized as follows:

1. *The plain meaning rule.* Under the plain meaning rule, a court should construe a statute so as to give its words their ordinary meaning. This approach may

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15. "The objective purpose of the law is the interests, goals, values, objectives, policies and functions that the law is supposed to realize. ... [This purpose is not] a guess or conjecture as to the will of the legislature. It applies even when it is obvious that the legislators could not have willed it. ... At the low levels of abstraction it reflects the will of the legislators if they thought about it, or the will of the reasonable legislature. At a higher level of abstraction it reflects the purpose that should be attributed to the type and nature of the statute. ... finally, at the highest level of abstraction the purpose of the statute is the fulfillment of the basic values of democracy. This last purpose is not unique in this or that statute. It applies to all statutes." (Barak 2004: 192).

be compared to the above textual or grammatical method of interpretation, which, needless to say contravenes the main postulates of cognitive linguistics. The latter deny that there is an ordinary or acontextual autonomous meaning in the first place.

2. *Plain meaning and legislative history.* In order to verify its reading of the language of a legal rule, a court may peak at the legislative history. What is meant by legislative history is the preparatory material used for the drafting of a bill: committee reports, conference committee reports or statements of individual legislators responsible for drafting. In this instance, legislative history is comparable to the above historical method of interpretation.
3. *The social purpose rule.* Under this rule, a statute is construed to effectuate the social purpose it was designed to accomplish.
4. *The context of statutory language.* This approach assumes that the meaning of a term is inferred from the immediate context of terms, i.e. that “a word may be known by the company it keeps” (*noscitur a sociis*), and is comparable to the above systemic method of interpretation.
5. *Presumptions about the use of language.* What lies at the heart of this approach are two rules: ‘the negative implication rule’, under which the expression of one thing implies the exclusion of others and ‘the specific language controls over the general’, which implies that specific statutes take precedence over general statutes.
6. *External influences on statutory interpretation.* Such influences are the rule of lenity for criminal statutes, deference to administrative interpretations, interpretation to avoid unconstitutionality and interpretation in light of fundamental values.
7. *Less traditional approaches to statutory interpretation.* These include legislatively-inspired common law and reasoning by analogy without the common law medium.

One of the reasons for introducing less traditional approaches to statutory interpretation is to meet the needs of regulatory gap-filling in light of changing social and economic circumstances. As Solan (2007: 9) observes: “Strange things happen in this world, and legislatures cannot possibly predict each one of them”. Similarly, Barak (2004: 210–211) sees the purpose of interpretation in giving the law that was enacted in the past the best political justification at present in order to regulate social life in the future.

#### 3.4.1.1 *Constitutional interpretation*

As noted above, in addition to statutory interpretation, U.S. legal scholarship further distinguishes constitutional interpretation. This is not surprising in view of

the fact that “almost all serious policy disputes – for example abortion, capital punishment, affirmative action (positive discrimination), same-sex marriage, regulation of political funding, and physician-assisted suicide – have appeared at one time or another before the American courts” (Bix 2016: 154). Therefore, looking for the proper approach to constitutional interpretation remains central to American legal discourse (*Ibid.*). One prominent approach to constitutional interpretation is called originalism, under which, guidance for resolving constitutional issues is to be sought in the original sources that accompanied the promulgation of the constitutional language in question.<sup>16</sup> A new wave of originalists has abandoned the notion of original intent as the key for interpreting the Constitution, urging instead that the quest is for original meaning (Bennet 2016: 121) – whatever that might be.

Generally speaking, constitutional interpretation enjoys greater flexibility compared to statutory interpretation, due to a strong tendency toward a more flexible and expansive approach to constitutional interpretation (Burnham 2006: 322). One of the reasons for this flexibility is that much of the Constitution’s text is expressed in very general terms (think of ‘liberty’, ‘due process’, ‘equal protection of the law’, ‘free speech’, ‘free association’, etc.) which lend themselves to broad interpretation. On one occasion for instance, the Supreme Court of the United States had to interpret the meaning of ‘nude dancing’ against the background of ‘free speech’ (*Erie v. Pap’s A.M.*), whereas in another case it had to interpret the meaning of ‘money’ in terms of the First Amendment’s right to free association (*McCutcheon v. Federal Election Commission*).<sup>17</sup> Quite surprisingly, in the latter case the Supreme Court lifted restrictions in the form of aggregate limits on political contributions, allowing donors to give as much money to as many political candidates, parties and committees as they like. It is worth mentioning that the aggregate limits on donations that were in place since 1974 were designed to fight corruption and prevent wealthy donors from having more influence on federal elections.

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16. For more see Bennet (2016: 114–128): “The [original unamended] Constitution means what a reasonable person in 1787 would have understood it to mean after considering all relevant evidence and arguments. Under this approach, original meaning represents hypothetical mental states of a legally constructed person.” (Lawson and Seidman 2006: 7, quoted in Bennet 2016: 122).

17. In *Erie v Pap’s A.M.* (529 U.S. 277, 2000) the Supreme Court issued a landmark decision regarding nude dancing as free speech, finding that an ordinance banning public nudity did not violate the operator of a nude entertainment establishment’s constitutional right to free speech. *McCutcheon v Federal Election Commission* 572 U.S. Supreme Court, 2014.

These cases are telling of the immense power that lies in the hands of the U.S. Supreme Court to give substance to the Constitution's general terms, insofar as it interprets the meaning of the latter as it deems necessary. The European Court of Human Rights has recently also dealt with somewhat similar cases. For example, in one case it had to decide whether YouTube can be considered as a platform to exercise freedom of expression. On December 1, 2015 it had decided that Turkey had violated Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by banning access to YouTube.<sup>18</sup> Since its citizens were not able to access YouTube, they could not exercise their right to freedom of expression. To put it another way, the meaning of YouTube – in terms of its function and purpose – can be subsumed under the category of the right to freedom of expression and people use it as a means to achieve the latter end.

Another reason for greater flexibility of constitutional interpretation is the date of the Constitution which calls for redefining constitutional concepts and adapting them to the current social reality. As Burnham (2006: 322) puts it: “issues deemed important by the Framers have become non-issues today”. This general nature of the Constitution's text and the fact that it is more than 200 years old well-nigh invite judicial activism. Needless to say, the task of updating the Constitution is left to the courts. This need for updating the Constitution clashes with the originalists' efforts who keep underlining the original meaning and historical values as the backdrop against which constitutional issues are to be interpreted. But just what amounts to original meaning remains exposed to debate. Taken at face value, the original meaning appears to be the meaning that an eighteenth-century reasonable person would understand, representing thus “hypothetical mental states of a legally constructed person” (Bennet 2016: 122). This notion of original meaning can be compared to the above mentioned true meaning or *Sinnzusammenhang* which is difficult to capture – legally and linguistically. Nevertheless, originalism gained a strong foothold in constitutional interpretation, and as a matter of fact, current Supreme Court judges identify themselves as originalists.<sup>19</sup> However, as Bennet (2016: 127) observes, contemporary values (not just history) are important too in constitutional interpretation, while a lively Constitution is unavoidable.

Although exemplifying each of the above methods of interpretation would go beyond the scope of this Chapter, a few more words concerning the role of the linguistic, as well as the extralinguistic context for legal interpretation are in place.

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18. Judgment of 1 December 2015, *Cengiz and Others v. Turkey* (applications nos. 48226/10 and 14027/11).

19. The late Justice Scalia and Justice Thomas (see Bennet 2016: 126).

### 3.4.2 The role of the context in legal interpretation or ‘anything goes’

Courts turning to the context to resolve ambiguities of a phrase or wording is by no means a novelty. In defamation law for instance, the context of an ambiguous phrase may be crucial for determining whether a statement is defamatory or not (*Rovira v. Boget*).<sup>20</sup> Similarly, the aircraft case discussed in Chapter 2 illustrates the importance of the context of statutory language. The U.S. Supreme Court has often pointed out that language cannot be interpreted apart from context and that words that appear ambiguous if viewed in isolation may become clear when analysed in light of the terms that surround them (Solan and Tiersma 2005: 23). What is meant by context here is the immediate context of terms. But we argue that courts refer to the extralinguistic context in their interpretive practice of meaning construal as well. To remind ourselves, in *McBoyle v. United States*, the court claimed that in everyday speech *vehicle* calls up the picture of a thing moving on land. This kind of argumentation is consistent with the cognitive perception of meaning, as it considers not just the linguistic level, but also the extralinguistic knowledge related to this concept. This conceptual knowledge as knowledge of the world concerns the common perception of a vehicle; namely the way in which most people conceptualize a vehicle.

This extralinguistic context is equally important for determining the meaning of a concept, as settled case law illustrates. On one occasion the U.S. Supreme Court had to determine whether tomato is fruit or vegetable. After having consulted both dictionaries and experts, the court decided tomatoes are vegetables, arguing that we eat tomatoes as vegetables, usually in a side dish, and not as a dessert, which is how we eat fruits.<sup>21</sup> This rationale is consistent with the cognitive perception of meaning, which rests on our individual, cultural and social experience. What is important is this conceptual meaning, or knowledge of the world that influences the way in which we understand concepts. This was made clear in a more recent case *Toy Biz, Inc. v. US*, in which Toy Biz Inc. imported playthings, i.e. action figures from various Marvel Comics series from China. Under the then valid Harmonized Tariff Schedule of the United States (hereinafter: HTSUS) of

20. In *Rovira v Boget* (1925, 240 N.Y) the court wrestled with the phrase: “worse than a cocotte”. The latter was used by the defendant to refer to the plaintiff after a heated debate. *Cocotte* may mean a prostitute, as well as a poached egg. When such multiple interpretations are possible, U.S. courts leave it to the jury to determine what could be reasonably understood by the listener, while taking into consideration the context and the circumstances in which the phrase in question was uttered. It is interesting to note that the word entered the Black’s Law Dictionary with a reference to the *Rovira v. Boget* case: *Cocotte*: a woman who leads a fast life, one who gives herself up for money. Also a poached egg. Cite: *Rovira v Boget*, 240 N.Y. 214, 148 N.E. 534, 535.

21. *Nix v Hedden*, 149 U.S. 304 (1893).

1989, U.S. Customs Service classified the so imported items as “dolls representing only human beings and parts and accessories thereof” dutiable at 12% *ad valorem*. Conversely, had the playthings been classified as “toys representing animals or other non-human creatures (e.g. robots and monsters) and parts and accessories thereof” they would have been taxed at 6,8%. The case was brought before the U.S. Court of International Trade which had to ascertain which meaning the words “representing” and “only” were intended to carry in the phrase “dolls representing only human beings” (heading 9502 of the HTSUS).

As stated in *Pillowtex Corp. v. United States*,<sup>22</sup> a court may use various aids in construing the statute and disclosing legislative intent, provided that the statutory language of a tariff classification is ambiguous. Such various aids include lexicographic and scientific authorities, dictionaries, and other reliable information.<sup>23</sup> Especially in trademark cases, dictionaries are frequently used to determine the meaning and pronunciation of words used in marks or slogans (Shuy 2016: 452). Likewise, a court may rely upon its own understanding of a term in question (Burnham 2006: 54). Rather than just referring to dictionary definitions or expert opinions, the Court also resorts to extralinguistic knowledge. Having in mind the purpose of our study, it is interesting to examine how the Court frames its meaning-construal arguments in this regard.

While the Court agreed with Toy Biz, that *only* means *exclusively* in keeping with the Oxford English Dictionary (“OED”), it struggled with the meaning of *represent*. Does *represent* mean *resemble* or *embody*? According to the OED, *to resemble* is only one of the possible meanings of *to represent*, whereas the Court said one cannot read the “dolls” provision as meaning exclusively “dolls resembling human beings”. For if “to represent” in “dolls representing only human beings” meant exclusively “to resemble”, a toy that merely resembled a human being would be *prima facie* classified under both the “dolls” and “other toys” provision. This would create ambiguity and lead to even greater legal uncertainty. It follows that *represent* means more than just *resemble*. Bearing in mind the wider HTSUS scheme and intent, the Court argued that to be classified as a “doll”, a toy needs to be an “embodiment” of a human being. So are “X-Men” and the other action figures members of the prototype human being category? Departing from the above HTSUS regulation and the OED definition, the Court found these action figures do not represent human beings, but should be classified as toys representing animals or

22. *Pillowtex Corp. v. United States*, 171 F.3d 1370, 1373 (Fed.Cir. 1999).

23. *JVC Co. of Am., Div. Of US JVC Corp. v. United States*, 234 F.3d 1352 (Fed. Cir. 2000). European courts must also sometimes gain access to the meaning of foreign languages due to the multilingual nature of EU law. In such cases they resort to dictionaries, expert opinion or translation (Derlén 2009: 293–298).



non-human creatures (for example, robots and monsters) and parts and accessories thereof (HTSUS subheading 9503.49.00).

The Court based its decision on three succinct arguments. First of all, most of the figures in question exhibit at least one non-human characteristic, such as claws or robotic eyes, wherefore they do not match the OED definition, according to which dolls represent only human beings. Secondly, the Court points to the fact that these Marvel characters are known in popular culture as “mutants” who use their extraordinary and unnatural physical and psychic powers on the side of either good or evil. Hence, they do not represent humans only. By the same token, the Court’s third argument puts forth that the “X-Men” figures are marketed and packaged as “mutants” or “people born with ‘x-tra’ power”. The Court seems to be making the point, that among their fans these figures are known as mutants. In other words, the “X-Men” figures are conceptualized as mutants, and not as human beings.

In my opinion, the last two arguments underline the importance of the wider conceptual structure and extralinguistic context for the understanding of a concept. In this instance, the Court’s interpretative logic is consistent with the previously mentioned cognitive notion of meaning. By recognizing the importance of popular culture as a factor for identifying certain figures as non-humans, the Court in effect addresses the question of conceptualization. In other words, the Court utilizes the context in the extralinguistic sense as an aid to understanding meaning, and seems to proceed intuitively. Note that Busse (2001: 47) claims that the clarifications provided by German judges in their judgements are usually backed by intuition.<sup>24</sup>

Here the court is articulating the importance of conceptualization for meaning. Similarly, opponents of a plain meaning rule in law argue that plain meaning rests on the erroneous assumption that words have a fixed meaning, whereas it is the real usage of words that gives them meaning. It is thus safe to assume that courts extrapolate the extralinguistic context as a rational aid to understanding meaning. In *Singh v the Commonwealth*, Chief Justice Gleeson stated that meaning is always influenced by the context, which might include time, place and any other circumstance.<sup>25</sup> Hence, even an understanding of the *zeitgeist* may rationally assist in understanding the meaning of a statute, as Justice Crennan (2010: 14) points out.

24. “Bedeutungsexplikationen von Richtern sind (außerhalb der juristischen Fachfragen) stets intuitive und rekurren kontrafaktisch auf eine vermeintliche Homogenität der deutschen Sprache.“

25. *Singh v the Commonwealth* (2004) 222 CLR 322 at 332. The central question of the case was whether an Indian child born in Australia and resident since birth was an alien.

### 3.4.2.1 *The CJEU's utilization of the context*

This section provides a brief account of the CJEU's interpretive practice, while the following Chapter analyses in detail CJEU's case law to examine whether the CJEU also refers to this extralinguistic context when determining the meaning of EU concepts and in cases of interpretive doubt. According to Derlén (2009: 119), interpretive doubt refers to some doubt as to the correct interpretation of EU law which may be created by ambiguity, vagueness or unreasonableness in the national language version of the relevant legal instrument.

The CJEU often considers the context and teleological purpose of a relevant provision and determines the meaning of a concept in relation thereto:

The Court has consistently held that the need for uniform application of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community; that *interpretation must take into account the context of the provision and the purpose of the legislation in question*. (Emphasis added)<sup>26</sup>

In fact, it has been claimed that the purposive or teleological approach is the CJEU's dominant method of establishing meaning (Fennelly 1997: 656). For even when the Court applies the textual method of interpretation, it examines the purpose behind the disputed rule, as we shall see in the following Chapter. What more, in case of incompatibility the Court gives priority to a teleological interpretation that may be contradictory to the literal meaning (Šarčević 2013: 14). As she recognizes, this fact may lead to legal uncertainty, since it is impossible for individuals to predict which interpretive methods will be used by the Court in a particular case.

In addition to the purpose of a provision, the Court considers the wider context, as settled case law demonstrates. Taken together, the purpose and the context, account for the overriding factor in determining meaning of vague concepts of EU law. Considering the purpose and the context is necessary in light of the fact that legal translation is not perfect and there may be differences between the 24 equally authentic language versions. To reiterate, neither translation or language, nor legal interpretation constitute an exact science. Nevertheless, it should be possible to provide more clarity to the way in which courts interpret meaning, just like cognitive advances in linguistics have enabled a better understanding of meaning.

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<sup>26</sup> Trstenjak, Verica, Opinion of Advocate General Trstenjak, delivered on 18 February 2009, case C-489/07, *Pia Messner v Firma Stefan Krueger*. Case 283/81, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health* [1982] ECR 3415. Paragraph 19. „Legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.“

Judging from the CJEU's case law, the underlying question which the Court attempts to answer in its interpretative approach is the following: How is the specific meaning of a concept to be delimited under EU law? The meaning of a concept must be weighted in accordance with the purpose of the relevant provision, the context and legal consequences. This cannot be done without taking into consideration the wider extralinguistic context. It seems that the question of what the teleological interpretation really amounts to lies in delimiting the specific meaning of a concept under EU law.

### 3.5 Summary

This Chapter illustrated how courts grapple with the meaning of words, assuming that both linguists and lexicographers can learn valuable lessons from the courts' interpretive practices. With this in mind we have juxtaposed the court's approach to determining the meaning of concepts with contemporary linguistic approaches to meaning. Judging from the analysed cases, it seems safe to generalize that the two approaches have a lot in common. This is especially true of the teleological or purposive method of interpretation and the cognitive perception of meaning. Both case law settled by U.S. courts and the CJEU confirms this conclusion. Their interpretive practice sends a strong signal that in cases of interpretive doubt priority is given to the teleological or purposive method of interpretation, rather than textual. The Courts' approach can be compared to the cognitive perception of meaning, as the meaning of a concept is determined by taking into consideration the purpose and the wider context, i.e. by going beyond the linguistic level. To put it differently, judges delimit and interpret the meaning of a concept under the law and while taking into account the extralinguistic context. Within terminology studies such an approach is known as *onomasiological*, as mentioned in Chapter 1. Maintaining that terminology studies contribute to a better understanding of legal interpretation, closer scrutiny of the CJEU's judgments that will be conducted in the following Chapter will demonstrate that the application of a cognitive terminological framework to legal interpretation makes the courts' interpretative methods appear more legitimate and transparent.

## Understanding EU legal concepts

### 4.1 Introduction

The following two chapters examine EU legal concepts through the lenses of conceptual autonomy and multilingualism as the central characteristics of the EU legal order. In this Chapter focus is put on conceptual autonomy of EU legal concepts. We will first take a closer look at general aspects of conceptual autonomy. After that, it is studied how indeterminate concepts (*compensation for use*, *arrival time* and *undertaking*) are conceptualized at the EU level on hand of selected case law. Analysing settled case law is instrumental for gaining a better understanding of EU legal concepts, as well as for investigating to what extent the Court's approach to establishing meaning of EU legal concepts is compatible with cognitive linguistics' approach to meaning.

### 4.2 Conceptual autonomy

Within terminology studies, a concept is commonly defined as a unit of knowledge. In a parallel way, we claim that legal concepts frame legal knowledge. Terms, on the other hand, make it possible to communicate about concepts and reflect the way in which specific knowledge is structured in the expert's mind. However, one should not be misled into thinking that terms are semantically isolated units (Cabr  1999: 42), as they are always linked to the concepts as their semantic representations. As Faber (2012: 11) puts it, terms are linguistic units which convey conceptual meaning within specialized texts. They open a window into the conceptual structure and extralinguistic knowledge behind a concept. Structured cognitively, knowledge can be seen as interrelated concepts which are the basis of meaning. In order to discover what a concept looks like it is necessary to investigate

“what knowledge elements (that is, conceptualizations) constitute the conceptual representation activated by relevant individual language users when understanding or using the words conventionally connected to the concept”.

(Engberg 2015: 175)

From the perspective of cognitive linguistics, a concept can be regarded as autonomous if it activates its own knowledge elements at the supranational EU level, as opposed to the national levels of the Member States.

From the perspective of EU law, conceptual autonomy is a prerequisite for uniform application of EU law. By interpreting concepts at the EU supranational level the concepts are accorded an autonomous or EU meaning. This semantic independence guarantees that EU concepts will not be interpreted and applied in the sense of national law meanings which shields the EU supranational legal order from clashing with national legislations. At the same time, concepts are applied in a uniform manner throughout the Union irrespective of the national law differences at the level of the Member States. Accordingly, autonomous interpretation that is independent of the laws of the Member States results thus in independent concepts of EU law (Kjær 2010: 312).

### 4.3 Conceptualization of EU legal concepts

In order to describe a concept it is necessary to investigate what knowledge elements or conceptual structures are activated by using a term which is connected to the concept in question. In the previous Chapter we have seen that the courts often explore similar conceptual avenues in their interpretative methods. Rather than relying on the wording or the language level, they actually grapple with the issue of conceptualization and study how a concept is understood in a given conceptual structure. In this context it is interesting to analyse how the CJEU deals with the interpretation of vague concepts of EU law, assuming that its approach can offer valuable assistance in defining and understanding such concepts. The multilingual character of EU law makes case law even more relevant in “setting interpretation boundaries”, as Prieto Ramos (2014: 325–326) puts it. The CJEU’s autonomous teleological interpretation can be taken as an indication of this setting of boundaries or delimitation of meaning under EU law.

#### 4.3.1 Difference in conceptualization

A legal concept cannot be detached from the conceptual structure to which it belongs and in which a concept realizes its full meaning. The fact that different legal conceptual structures have different boundaries makes a comparison of legal concepts and by extension legal translation and lexicography complex. Although we can translate the German term *Verbraucher* by using the English term *consumer*, these terms denote different concepts. An *ordinary consumer* or *reasonable consumer* is conceptualized differently in California than in Germany for instance. To

support this claim I refer to a case discussed by the United States District Court, S.D. California in 2011. The consolidated consumer class action lawsuit concerned the question of whether Nutella (Ferrero's spread) can be advertised as a healthy, nutritious and balanced breakfast food. The action was brought on behalf of people who have purchased Ferrero's Nutella spread after relying on such allegedly deceptive and misleading labeling and advertisements.<sup>1</sup> This issue hinges on the meaning of a *reasonable consumer*, and how they would understand the above advertisement. It seems possible to generalize that the meaning of a *reasonable consumer* in Europe is different since the same advertisement is used in EU countries, but (so far) no misrepresentation claims have been made against Ferrero. So, the same advertisement was understood or conceptualized differently.

The described difference in conceptualization takes a new form in the EU context due to the fragmented nature of EU law and its special relationship with national Member State laws. The fragmented nature of EU law results from the existence of competing instruments that regulate a certain field. Such is the case with European contract law in which some fundamental concepts are regulated differently in different legislative instruments. This will be demonstrated by analysing examples of indeterminate EU legal concepts. Considering that the autonomy of EU legal concepts has been developed in the interpretive practice of the CJEU, it is necessary to take a closer look at the CJEU's settled case law.

### 4.3.2 The CJEU's case-to-case approach

#### 4.3.2.1 *Example 1: Compensation for use*

The concept *compensation for use* is regulated differently in a number of different instruments: Draft Common Frame of Reference (hereinafter: DCFR), Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and the Common European Sales Law (hereinafter: CESL), not to mention national law instruments of Member States.<sup>2</sup> In consequence, different conceptualizations complicate the

1. In *re Ferrero Litigation*, 794 F.Supp.2d 1107 (2011). Specifically, Plaintiffs alleged that Ferrero misleadingly promotes its Nutella spread as healthy and beneficial to children when in fact it contains dangerous levels of fat and sugar. In the end, Ferrero USA Inc. agreed to pay consumers \$550,000 and make changes to the labeling and advertising of its chocolate hazelnut spread Nutella to settle a class action claiming that it misleadingly promoted the product.

2. See Bajčić (2014: 125–147). DCFR and Directive 97/7 are based on a different concept of *compensation for use*. Compensation for inspection and testing is expressly ruled out under Article II.5:195(3) of the DCFR, but under Article II.-5: 105(4) of the DCFR the consumer is expressly required to pay compensation in the case of normal use. Under CESL, the consumer

demarcation of the concept's meaning under EU law. At the same time, the different conceptualizations underline the need for an autonomous interpretation of concepts by the CJEU. The meaning of the above concept compensation for use was discussed in the case *Messner*,<sup>3</sup> in which the Court had to determine whether, in the event of rescission of a distance contract, the consumer is granted compensation for use, that is, whether in the event of withdrawal from a distance contract, the consumer is granted compensation for temporary use of the goods. According to the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, exercising the right of withdrawal must be limited to the direct costs for returning the goods (within at least seven working days) without penalty and without giving any reason. In order to resolve the legal issue at hand, it is necessary not only to delimit the meanings of the concepts of use and compensation for use in accordance with the purpose of the relevant provision, but also to consider the wider context and related concepts. As Advocate General Trstenjak (2009, para 57)<sup>4</sup> states, irrespective of the question how the specific meaning of compensation for use is to be delimited under Community law, the matter of damages must be considered in any analysis. Furthermore, it must be determined whether compensation for the use of the consumer goods falls under the concepts of penalty or charge within the meaning of Article 6 of the Directive and is incompatible with Directive 97/7, as it does not represent the direct cost of returning the goods. Neither concept refers to the law of the Member States as regards its content and scope. The Court concluded that a broader interpretation of costs and charge (e.g. one leading to unjust enrichment as recognized by the national law) cannot be inferred from the wording and does not follow an interpretation based on scheme, spirit and purpose. The Court's approach questions whether the provision on compensation for use is a member of the wider category of charges. Compensation for use must be based on the actual value of the goods purchased and the expected life of the

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shall only be liable for any diminished value of the goods resulting from the handling, other than what is necessary to ascertain the nature and functioning of the goods.

3. Case 489/07, *Pia Messner v Firma Stefan Krüger* [2007] I-7315. Ms Messner bought a laptop computer on the Internet for EUR 278. After the seller refused to repair the defect which appeared 8 months after the purchase free of charge, Ms Messner revoked the contract of sale and claimed a refund in exchange for return of the goods. Since the seller refused to reimburse her, she initiated legal proceedings, demanding the sum of 278 EUR, while the seller claims she is obliged to pay compensation since she used the laptop for eight months.

4. Opinion of Advocate General Trstenjak delivered on 18 February 2009 in Case C-4589/07, *Pia Messner v Firma Stefan Krüger*.

goods (Trstenjak 2009, para 34). This must be determined on a case-to-case basis which stresses the role of the extralinguistic context and the conceptual structure.

This problem of different conceptualizations is hence circumvented by conceptual autonomy. Conceptual autonomy in turn allows the CJEU to cope with the sometimes irreconcilable differences not just of legal terms in different languages, but more importantly of the underlying legal conceptual structures.

#### 4.3.2.2 *Example 2: undertaking*

Since there is no definition of *undertaking* at the level of EU law, it is up to the CJEU to determine whether, for instance, a public hospital acts as undertaking in a given case. Therefore, *undertaking* represents an autonomous and vague concept of EU law. Autonomous means that it is conceptualized (and interpreted by the CJEU) irrespective of the national law meanings attributed to this concept. To put it differently, how this concept is interpreted within German or Italian law is irrelevant for the EU meaning it carries in the eyes of the CJEU. Furthermore, in view of the fact that what is considered to be an *undertaking* changes with new case law, its meaning can be described as fluid and vague. Sometimes though, the EU legislator has not failed to supply a definition of a concept, but its definition may be inaccurate, unclear or ambiguous. In such cases it is also left to the CJEU to establish an autonomous concept at the EU level (Šarčević 2014: 60). What is striking about the concept of *undertaking*, as abundant settled case law shows, is the lack of legal certainty in terms of what exactly constitutes an *undertaking*. This is detrimental for uniform application of EU law and legal certainty, needless to say.

In this regard Šarčević warns of incompatibility of legal translation and legal certainty. The fact that translations of EU legislation are inherently imperfect leads to legal uncertainty (Šarčević 2014: 47).<sup>5</sup> In our opinion, the CJEU's autonomous teleological approach enhances the compatibility of legal translation and legal certainty. This claim may seem somewhat contradictory, considering opposing opinions which hold that Union promotion proceeds at the expense of EU's other fundamental values as legal certainty (Rasmussen 1999, quoted by Kjær 2014: 303). In other words, if EU citizens cannot rely on legislative texts in their respective

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5. Šarčević (2014: 47): "Thanks to translation, EU law is accessible to Union citizens in all EU official languages, thus fulfilling the formal requirement of legal certainty. However, due to the inherent imperfections of legal translations of the various language versions of EU legislation are inevitable, thus creating legal uncertainty that hinders the proper functioning of the internal market." Similarly, McAuliffe (2013: 881) warns that the approximation and imprecision inherent in language and translation do have implications for the case law produced by the CJEU. In fact, she claims hybridity and approximation define EU law as a distinct and supranational legal order, but at the same time that approximation leads to discrepancies between language versions of case law and jeopardise the uniform application of EU law (McAuliffe 2013: 861).



languages, but instead have to turn to the CJEU to be certain of the meaning of a legal provision, that by all means undermines legal certainty. Yet, the CJEU's approach highlights the importance of the conceptual autonomy by concentrating on the concept, and not on the linguistic denotation (in line with an onomasio-logical approach), teaching us that it is the concept which is interpreted uniformly and autonomously. Observed from this perspective, the CJEU's approach reduces the incompatibility of legal certainty and translation. In fact, placing the focus on the concept in the multilingual legal setting of the EU may bring legal translation a step closer to the aim of achieving legal certainty.

How exactly does the CJEU determine the autonomous meaning of a concept under EU law? It determines it on a case-to-case basis, i.e. by taking into consideration the specific facts of the case at issue and by creating autonomous standards at the EU level. In the case of *undertaking* it considers a related concept instrumental for the character of an *undertaking*, namely *economic activity*. The latter can be considered an essential feature of undertaking, for if an entity carries out an economic activity, it is said to act as undertaking. However, there is no clear definition of an economic activity, nor is there a clear line of demarcation between public and economic activities, which further muddies the meaning of undertaking. Do hospital services, for example, count as non-economic or economic activities? According to the CJEU, the answer would be both affirmative and negative. The same answer is true of providers of social insurance; in certain cases the CJEU found they can be subsumed under the vague category of an undertaking (see *Watts, Smits and Peerbooms*), in others it found they are merely providing services of general interest and are not engaged in an economic activity.<sup>6</sup>

In *Henning Veedfald v. Århus Amtskommune* the Court decided a publicly funded hospital that produces perfusion fluid for its own use can be considered to act as an undertaking, even though the said product, perfusion fluid, is not put into circulation as most products.<sup>7</sup> On the other hand, the CJEU concluded differently elsewhere. Interesting cases in this respect are *Poucet v. Assurances Generales de France and Pistre* in which the Court found social insurance providers are not undertakings, and the case *FENIN v. Commission*, in which management bodies of the Spanish national health system were not considered undertakings as they fulfilled not an economic, but a social purpose.<sup>8</sup> There is an evident lack of legal

6. Case C-372/04, *Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health*, [2006] I-04325. Case C-157/99, *Geraets-Smith and Peerbooms* [2001] ECR I-5473.

7. *Henning Veedfald v. Århus Amtskommune* C-203/99, [2001] ECR I-03569.

8. Joint cases C-159/91 and C-160/91 *Poucet v. Assurances Generales de France and Pistre* ECR I-00637 in which the Court found social insurance provider are not undertakings. *FENIN v.*

certainty in this respect and such inconsistent interpretation of the concept of undertaking results in contradicting decisions of national competition authorities and national courts.

The conducted analysis of the CJEU's approach to the meaning of *undertaking* leads to two conclusion. First, compliant with the Court's teleological approach and autonomous interpretation, it is important to proceed from the EU concept, and not from its linguistic denotation in a given language in order to determine the concept's meaning. Second, this process presupposes delimiting a concept's meaning under EU law, which cannot be done without taking into consideration its extralinguistic context. Another legal case discussed in the following section will support the points made here.

#### 4.3.2.3 Example 3: Arrival time

The CJEU has recently delivered an interesting ruling in the case *Germanwings GmbH v Ronny Henning* on the meaning of the concept of 'arrival time' which, by the way, might be of interest for every frequent flyer.<sup>9</sup> The facts of the case are as follows. Mr Henning's flight from Salzburg to Cologne/Bonn was delayed. His ticket, purchased with Germanwings, specified a take-off from Salzburg airport at 13:30 and an arrival at Cologne/Bonn airport at 14:40 on the same day. The flight distance between those two airports is less than 1,500 km. The aircraft was delayed in taking off from the Salzburg airport so that it arrived at Cologne/Bonn airport, i.e. touched down on the tarmac of the runway at 17:38 and reached its parking position at 17:43. The doors of the aircraft opened shortly thereafter. Mr Henning was of the opinion that the final destination was reached with a delay of more than three hours in relation to the scheduled arrival time, so he initiated proceedings in Austria to seek the amount of €250 on the basis of Articles 5–7 of Regulation 261/2004.<sup>10</sup> Germanwings took the view that the actual arrival time was the time at which the plane touched down on the tarmac at Cologne/Bonn airport, wherefore, the delay in relation to the scheduled arrival time is only two hours and 58 minutes and no compensation is payable under the Regulation 261/2004. Germanwings appealed the first-instance court's decision ordering it to pay compensation of €250 to Mr Henning. It was the second-instance Salzburg Regional

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Commission c-205/03 (1s1/07/2006) ECR I-6295.

9. Case C-452/13 *Germanwings GmbH v Ronny Henning*: Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 12 August 2013.

10. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91. Official Journal No. L 46 2004, p. 0001–0008.

Court that stayed proceedings and referred the issue to the Court of Justice asking for a preliminary ruling.

Preliminary rulings account for an important and often practiced procedure in EU law. A reference for a preliminary ruling is a procedure exercised before the Court of Justice of the EU enabling national courts to question the Court of Justice on the interpretation or validity of European law. Under Art. 267 TFEU, the decision of the Court of Justice of the EU is binding on the referring national court. The importance of preliminary rulings lies in achieving uniformity of EU law. It is instructive to note that as a rule only last-instance courts, i.e. national courts against whose decisions there is no judicial remedy under national law may request a preliminary ruling.<sup>11</sup> The Salzburg Regional Court requested a preliminary ruling on the following question:

“What time is relevant for the term ‘time of arrival’ used in Articles 2, 5 and 7 of Regulation 261/2004?”

1. The time that the aircraft lands on the runway (“touchdown”).
2. The time that the aircraft reaches its parking position and the parking brakes are engaged or the chocks have been applied (“in-block time”).
3. The time that the aircraft door is opened.
4. A time defined by the parties in the context of ‘party autonomy’ (contractual agreement).

The Regulation itself does not define the concept of arrival time, wherefore the second-instance Court found it necessary to turn to the CJEU for assistance in the interpretation of this concept’s meaning. The reference for a preliminary ruling concerns the issue of conceptualization of arrival time. In other words, the Court needs to ascertain how this concept is to be understood in regard to the present case, i.e. its factual background and against the context of the Regulation 261/2004.

The CJEU ruled that Articles 2, 5 and 7 of Regulation 261/2004 must be interpreted as meaning that the concept of arrival time refers to the time at which at least one of the doors of the aircraft is opened. The Court found that Regulation 261/2004 does not define the actual arrival time, determining that the concept

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11. Sometimes, a reason for requesting a preliminary ruling may lie in the multilingual nature of EU law. As Derlén (2009: 95–96) observes, the parties can make reference to foreign language versions of provisions of EU law as part of their argument, or the content of foreign language versions can be brought to the attention of the court by other means. Unable to conduct multilingual interpretation on its own, a court may seek help from the Court of Justice (concrete language control). A court may also choose to refer a matter to the Court of Justice to make sure that the various language versions do not diverge in meaning (abstract language control). Multilingual interpretation can thus be activated by the parties also by interpretive doubt as will be demonstrated in the following Chapter.

of actual arrival time must be interpreted in such a way as to apply uniformly throughout the EU (paragraph 11). The CJEU therefore rejected the possibility envisaged by the referring Court that the concept could be defined by the parties concerned on a contractual basis. Likewise, contrary to a number of European Regulations and also certain International Air Transport Association documents which refer to the concept of actual arrival time as the time at which an aircraft reaches its parking position, it concluded that the concept of arrival time, which is used to determine the length of the delay to which passengers on a flight have been subject, refers to the time at which at least one of the doors of the aircraft is opened. This conclusion was supported by the assumption that arrival time has to be the time at which the passengers are permitted to leave the aircraft and are able to resume their normal activities. As long as the aircraft's doors are closed, they are unable to do so.

This simple substantiation of the concept's meaning comes close to the cognitive perception of meaning which rests on our experiential background, and not just on the linguistic level. In other words, rather than complying with existing (whether legal or linguistic) definitions of the concept, the Court defined it in relation to the purpose of the Regulation, while taking into account the wider context and the passenger's perspective in order to protect their consumer rights.

There are many other examples of the CJEU's teleological method of interpretation and the resulting autonomous conceptualization. A few of them will be briefly discussed within this section. One of the first cases in which the CJEU discussed the purpose of the rule at hand (in addition to examining all existing language versions) was *Koschniske*.<sup>12</sup> At issue was the interpretation of the expression *wife* in Regulation 574/72, which was meant to implement Regulation 1408/71 regarding social security for workers and their families.<sup>13</sup> Whilst the Dutch language version used the phrase *wife*, all other language versions used the phrase *spouse*, which can apply to both husband and wife. The case was resolved by the CJEU asserting that *wife* in Dutch also means husband. This implies that the Dutch term cannot be understood in isolation from other EU language versions and that EU law must be interpreted and applied uniformly throughout the Union.

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12. Case C-9/79 Marianne Wörsdorfer, née Koschniske v Raad van Arbeid [1979] ECR 2717.

13. Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community. OJ L 74, 27.3.1972, p. 1–83

In a more recent case *Institute of the Motor Industry*, the CJEU had to determine the meaning of the term *trade union*.<sup>14</sup> The French term *syndicat* is wider in meaning and includes more professional federations, while the English term includes classical trade unions for workers. This matter was first addressed by the plaintiff to the case. Interestingly, the CJEU found that the Institute of the Motor Industry was not an organization of trade-union nature, after having consulted the purpose of the rule at hand. It further stated that one version could not be allowed to take precedence over the other language versions and that in cases of divergence between the language versions which are discussed in length in the following Chapter, the rule in question must be interpreted by using its purpose and context.

In the previously mentioned case *Henning Veedfald v. Århus Amtskommune* the CJEU had to determine whether *perfusion fluid* used for the preparation of organs for transplantation falls under the meaning of *product* and whether a *hospital* can be considered an *undertaking*. On both occasions the CJEU opted for a teleological approach to construing the meaning of the above concepts. By doing so, the CJEU underlined the autonomous meaning of EU legal concepts, while taking into account the specific circumstances of the case in question. This case-to-case approach is especially important in the absence of statutory definitions of legal concepts (such as *undertaking* which is not defined under EU law) as it proceeds from the concept, i.e. the meaning of a concept under EU law. What is most important is that the CJEU takes into account factors that can be described as extralinguistic, namely the legislative purpose and the wider context in demarcating the meaning of a concept under EU law. Again, legal concepts are perceived as parts of wider conceptual structures in which they realize their full meaning. While the described CJEU's case-to-case approach may lead to inconsistent case law that is detrimental for legal certainty, at the same time it underscores the importance of the extralinguistic context for the interpretation of a concept's meaning in keeping with the cognitive terminological view. Applying the principles of cognitive terminology to legal interpretation contributes to a better understanding of the courts' interpretive methods in general, and especially in respect of meaning construal and interpretation in the multilingual context of EU law in which achieving uniform application of law is not always easy.

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14. Case C-149/97 *The Institute of the Motor Industry v Commissioners of Customs and Excise* [1997] ECR I-07053.

## 4.4 Summary

The introduction of autonomous concepts by the European courts has been called an egg of Columbus for the reason that it circumvents the burden of comparing and translating between legal languages and cultures. In this sense Kjær (2016: 96) raises a legitimate question: “Could it not be said that the invention of autonomous concepts is a shortcut to the creation of a common European law and language?” Indeed, conceptual autonomy might lead to the creation of a common European discourse, distinct from the national discourses, and in consequence flag the cultural and linguistic diversity which lies at the root of the European Union. Irrespective of the fact whether or not the latter claim will remain fiction or become a fact, for the purpose of the present study conceptual autonomy accounts for a central characteristic of EU law and its concepts. As such, conceptual autonomy must be accounted for in a study of EU legal dictionaries.

In view of the fact that the idea of autonomy of both EU law and concepts emerged from the CJEU’s case law, this Chapter analysed concrete cases to demonstrate how the Court operationalizes EU autonomous concepts. The autonomy of concepts mirrors the nature of EU law as a supranational *sui generis* legal order and should be interpreted as both semantic and *de jure* independence. As elaborated, the teleological method of interpretation applied by the CJEU leads to autonomous conceptualization. The Court’s method of interpretation can be compared to the cognitive perception of meaning inasmuch that the meaning of a concept is determined by “going beyond the words” and taking into consideration the conceptual structure and knowledge activated by a given concept.



## Multilingualism and EU legal concepts

### 5.1 Introduction

“United in diversity”, the European Union is committed to protecting national identities and heritage of its Member States. In particular, efforts are directed at safeguarding the equal standing of all official languages used in the Member States. Not only can EU citizens access EU legislation and relevant information pertaining to the EU in their own language, they can also contact EU institutions in their own language. The right to use one’s own mother tongue is after all an important tool to exercise democracy.<sup>1</sup> Maintaining that multilingualism affects EU’s law-making, the present Chapter examines EU legal concepts through the lens of multilingualism. By analysing how the CJEU copes with the differences between the 24 official languages in practice, it is assessed to what extent the guidelines established by the Court in such cases can be of interest for multilingual legal lexicography. Before that, the concept of equal authenticity will be clarified. Finally, the Chapter elucidates the ensuing consequences of multilingualism on legal lexicography.

### 5.2 The multilingual character of EU law

While it is true that multilingualism is an indispensable component of the effective operation of the rule of law in the EU legal order, we can still ask ourselves whether the EU is doomed or blessed for its multilingualism (Bengoetxea 2011: 100–101). In either case, what makes EU multilingualism unique is the unprecedented number of official languages (Šarčević 2013: 1).<sup>2</sup> Equal authenticity of all language versions was established by the Treaty of Rome and the legal basis of multilingualism is guaranteed under Regulation No. 1/1958 determining the languages to be used by the European Economic Community (also known as the

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1. According to Will Kymlicka (2001) the language of democracy is the vernacular.

2. As of July 1, 2013 there are 24 official languages of the EU: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.



Charter of Languages of the EU).<sup>3</sup> It is instructive to note that the rule regarding equal authenticity of treaty languages is not an EU-related novelty, but is based on principles developed in post-war international law (the 1969 Vienna Convention on the Law of Treaties).<sup>4</sup>

### 5.2.1 The Vienna Convention on the Law of Treaties

When discussing multilingual interpretation, due attention must be paid to the Vienna Convention on the Law of Treaties (hereinafter: VCLT), and especially its Article 33. The latter article refers to important terms: authentic/authoritative and text/version, which will be briefly explained here. If a text is *authentic*, it means that it is final and definitive, i.e. not subject to further change. If a text is *authoritative*, it means that it can be used in the interpretation of the Treaty. Under Article 33 (1) of VCLT, all authentic texts are also authoritative, unless the parties agree otherwise (Derlén 2009: 18). A further distinction is made between texts and versions. While *texts* are language versions of a treaty which were authenticated (according to Article 10 of the VCLT), *version* refers to any other language version which has not been authenticated (Derlén 2009: 18). It is interesting to compare the terminology used by the VCLT and the EU. Considering the equal standing of the authentic languages in the EU, we can say that they are also authoritative in the sense of the VCLT. On the other hand, the described distinction between text and version is not made explicit in the EU context and these two terms seem to be used interchangeably, whereas the CJEU favours the terms *version* and *language version*.

Furthermore, Article 33 (3) of the VCLT states that the terms of a multilingual treaty are presumed to have the same meaning in each authentic text. Similarly, the case law of the CJEU has confirmed that each of the equally authentic language versions of EU instruments of secondary law is presumed to have the same meaning (Šarčević 2013: 7). However, one should be aware that the presumption of equal meaning does not stand if the wording of an authentic text is ambiguous and not sufficiently clear, thus leading to doubt (Derlén 2011: 145). We will come back to this point when discussing cases of divergences between the language versions. It should also be pointed out that the VCLT mentions the importance of both purpose and context for interpretation (Article 31 (1) and (2)) and allows for

3. EEC Council Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, 385–386.

4. For more see Šarčević (2000: 20; 196–200).

supplementary means of interpretation (Article 32).<sup>5</sup> The latter include recourse to preparatory work of the treaty and the circumstances of its conclusion, in the sense of legislative history (see Chapter 3).

### 5.2.2 Official and working language

The Charter of Languages of the EU introduced the notions of “official and working language” which call for further clarification. While all 24 language versions are deemed official and are equally authentic, only English, French and German are the working or core languages of the EU. Downsizing the number of working languages is necessary in order to reduce costs to the European taxpayer. To this objective, the European Commission increasingly endeavours to operate in the three core languages of the European Union, while developing responsive language policies to serve the remaining 21 official language groups. With a permanent staff of 1,750 linguists and 600 support staff, the Commission has one of the largest translation services in the world, bolstered by a further 600 full-time and 3,000 freelance interpreters.<sup>6</sup>

Another important legal instrument for multilingualism is the TFEU, whereas its Art. 342 guarantees European citizens the right to write to the European institutions in the official language of their choice and to receive an answer in this same language. The rationale behind this Article and the logic of the EU institutions seem to be that all EU citizens, organizations and courts must be able to understand European laws that are directly applicable to all of them.

Furthermore, equal authenticity of all language versions has been confirmed by abundant case law (e.g. *Kik v. OHIM, CILFIT*).<sup>7</sup> At the same time, the CJEU has established and maintained that reliance on one language version cannot

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5. Article 31 reads as follows:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
  - a. Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
  - b. Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

6. Available at: [http://ec.europa.eu/languages/policy/language-policy/official\\_languages\\_en.htm](http://ec.europa.eu/languages/policy/language-policy/official_languages_en.htm).

7. Case C-361/01 P, *Christina Kik v Office for Harmonisation in the Internal Market* [2003] ECR I-8283; Case C-283–81 Srl *CILFIT* and *Lanificio di Gavardo SpA v Ministry of Health* [1982] ECR 3415.

be compatible with the principle of equal authenticity and the requirement for uniform application of EU law (e.g. *Cricket St Thomas* or *Institute of the Motor Industry*).<sup>8</sup> So, what the principle of equal authenticity implies is that, in cases of doubt, there is no authentic text of the law to resort to (see Bengoetxea 2011: 104).

### 5.2.3 Problems posed by multilingualism in practice

But what do multilingualism and the principle of equal authenticity amount to in practice? It is just impossible to expect that all languages say the same thing.<sup>9</sup> Assuming that divergences in meaning between the authentic texts of EU legislation are an inevitable fact of EU multilingual law-making reduces the presumption of equal meaning to an illusion, which in turn defies the postulate of equivalence (Šarčević 2014: 50). In this regard, the multilingual character of EU law (which enables us to refer to EU legislation in our respective languages) and the teleological method of interpretation go hand in hand, as the latter is indispensable for resolving issues of language divergences. Observed in that light, the Court has a “corrective role,” as Šarčević puts it (2013: 11). But it should also be pointed out that teleological interpretation may undermine legal certainty, inasmuch as EU citizens cannot always rely on their respective language versions.

In the case *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v. Gedeputeerde Staten van Zuid-Holland* the Dutch Government used the argument of legal certainty to uphold the claim that only the Dutch version of Directive was authentic in the Netherlands. The CJEU seems to have noticed this problem in the case *North Kerry Milk Products v. Minister for Agriculture*:

The elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty, inasmuch as one or more texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words.

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8. Case C-372/88 *Milk Marketing Board of England and Wales v Cricket St Thomas Estate* [1990] ECR I 1345; Case C-149/97 *The Institute of the Motor Industry v Commissioners of Customs and Excise* [1998] ECR I 7053. The Court’s standard formulation goes as follows: “The wording used in one language version of a provision of European Union law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement for uniform application of European Union law.” (Quoted by Kjær 2010: 302).

9. On this McAuliffe (2013: 881) claims: “The method of teleological interpretation developed by the CJEU and the evolution of the notion of a new EU legal language do ensure the effectiveness of EU law to a large extent. However, the fact remains that different languages offer different accounts of reality. The approximation and imprecision inherent in language and translation do have implications for the case law produced by the CJEU.”

Nevertheless, the CJEU failed to discuss this issue any further.<sup>10</sup> Being a natural consequence of the principle of the rule of law, legal certainty involves the element of predictability.<sup>11</sup> In other words, citizens have to know in advance what the legal consequences of their actions will be in order for their legitimate expectations to be protected. This is hardly the case if EU citizens cannot rely on their language versions, and are instead dependent on the Court's interpretation, which erodes the element of predictability and legitimate expectations.

#### 5.2.4 The CJEU's approaches to reconciling divergent language versions

Due to the described problems posed by multilingualism, the CJEU puts forth that reliance on one language version should be avoided. We have already dealt with different interpretive methods in Chapter 3. Nevertheless, in light of the problems posed by multilingualism in practice it is necessary to offer a more detailed overview of approaches used by the CJEU in reconciling divergent language versions of EU law in order to draw conclusions that can be useful for both legal lexicography and legal translation in the EU context. Fully aware that an in-depth analysis of the CJEU's approaches would require a separate book, the aim of this section is to illustrate the heterogeneity of Court's approaches to reconciling divergent language versions. To this end, the following section discusses the nature of the CJEU's comparison of different language versions in more detail.

We will first summarize the three different approaches to reconciling divergent language versions singled out by Derlén (2009: 43–48). The method dubbed classical reconciliation involves a genuine comparison of the language versions, after which they are reconciled based on some principle (e.g. preference for clear meaning). The second method, reconciliation and examination of the purpose starts with classical reconciliation and then examines the result against the purpose and/or context of the rule. Finally, the radical teleological method concentrates on the purpose and/or the context of the rule in question, thus leaving out the linguistic level at the face of discrepancy between the language versions. On the other hand, many scholars argue that the CJEU utilizes only one approach to multilingual interpretation, namely the teleological method. This claim appears to be in place if we consider seminal cases such as *Regina v. Bouchereau*, *Röser*, *Koschniske* or *North Kerry Milk* referred to elsewhere in this book. In any event, it appears impossible to create a watertight theory as to when the CJEU uses which approach.

10. Cases C-72/95 *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403; C-80/76 *North Kerry Milk Products v Minister for Agriculture* [1977] ECR 425.

11. For a discussion on the problem of legal certainty in EU law see Derlén (2009: 51–58).

Schübel-Pfister (2004: 245–246) makes an interesting point that the court seems to employ various arguments depending on what best fits the dispute at hand. She argues that the CJEU uses contextual, teleological and historical methods in addition to the literal interpretation (*Ibid.*, 235–243). At the same time it is safe to generalize that, observed from a strict linguistic perspective, the CJEU relies more on the purpose and the context (as supplementary interpretative methods), than on the wording of a particular language version. We do not agree that the CJEU always tries to reach a solution by a ‘thorough semantic analysis’, as posited by van Calster (1997: 377). He claims that the CJEU only examines the purpose if the textual approach does not render any results. However, the CJEU’s comparison of different language versions will seldom render reliable results and will most often require the utilization of further interpretive methods. Likewise, it is questionable to what extent the CJEU’s comparison of language versions can be deemed a thorough semantic analysis. As shall be seen in the second part of this Chapter, its language comparison appears rather superficial.

Based on the case law analysed within this study we agree that the CJEU most often relies on the teleological or as Derlén calls it “the radical teleological method of interpretation” in cases of interpretive doubt. The reason for this seems obvious; by examining the purpose and the context (including also the extralinguistic context) it is possible to reconcile divergent language versions. As regards language and linguistic understanding of meaning, it is impossible to expect that 24 languages always say one and the same thing, or to put it differently, 24 language terms and one EU concept form the opposite ends of a scale. Although the law regards the 24 language versions as being *de jure* equally authentic and authoritative, the reality of case law shows that there are differences in meaning and that the CJEU needs to intervene to resolve these differences by relying not on the linguistic level, but on the conceptual one in line with the cognitive terminological approach to meaning. In other words, if different language versions say different things about a particular provision, then the Court determines the true meaning of the provision. This approach provides firmer ground to the previously made claim that meaning is really not a matter of term equivalence, but is construed at the concept level.

#### 5.2.4.1 *Comparing different language versions*

Under this heading attempt is made to demystify the myth of comparing different language versions. In the well-known CILFIT case the CJEU clearly stated that not only are all language versions of EU legislation equally authentic, but in order to interpret a legal provision one needs to compare different language versions. The teleological method of interpretation that as we have seen is often applied to reconcile divergences between language versions should hence begin with a

comparison of the different language versions. According to Ćapeta (2009: 12), language comparison can end in two outcomes: either all languages mean the same, or they do not. Since legal translation is inherently imperfect and it is impossible that all 24 languages say exactly the same due to the described difference in conceptualization, the latter outcome of language comparison is more likely. For this reason the CJEU needs to employ the teleological method of interpretation. Rather than relying on the wording, the teleological interpretation involves framing every provision of EU law in its respective context. The CJEU continues to reiterate its interpretive approach to the present day:

It must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions. ... every provision of [EU] law must be placed in its context and interpreted in the light of the provision of [EU] law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.<sup>12</sup>

In this context it should be mentioned that, according to certain studies, in cases of linguistic discrepancies, the Court's prevailing approach is in fact the literal method of interpretation (Baaij 2012: 219). Nonetheless, in such cases the Court also examines the purpose of the disputed rule and reserves the right to give priority to the purposive interpretation – even if it contradicts the clear literal meaning (Šarčević 2013: 14). One could refer to the literal method of interpretation as *overt*, and to the teleological as *covert interpretation*. That said, entertaining the idea of clear and literal meaning underlying overt interpretation clashes with the cognitive approach to conceptual meaning and cannot be maintained from a linguistic point of view.

For the purpose of this Chapter, two directions of the CJEU's approach call for closer scrutiny: comparing different languages and the role of the context. The latter will be tackled in the following section, whereas the present deals with the duty to compare different languages. How should the above comparison of different language versions be read? The fact remains that the CJEU always reaches the final decision on matters of meaning and interpretation. Does in this respect comparing language versions remain only a declarative notion in practice and thus represents CJEU's wishful thinking that, by the way, is "Union correct" insofar that

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12. C-283/81, Cilfit, para. 16–20.

relying on one language version is not allowed?<sup>13</sup> Or does it have practical bearing to the result of interpretation and, more importantly, is it of linguistic significance?

In the former scenario, the CJEU creates a self-fulfilling prophecy – according to which its interpretation is needed to reconcile different language versions and that in the end it is the CJEU that has the final say. In consequence, the comparison of different language versions is in essence not that important, as long as there is no relying on one language version, which runs counter to legal certainty. In this regard, the CJEU seems to claim that there is no predetermined meaning expressed either in one or in all languages for that matter. Though some scholars postulate that the CJEU’s goal is capturing the underlying essence of EU legislation or the text’s essentialist meaning (Solan 2007: 16),<sup>14</sup> what actually matters is the meaning the CJEU attributes to a legal norm and its purpose. In other words, the Court determines the true meaning of a provision and there is no predetermined meaning which can be established by relying on one language version. Conversely, if the Court would rely on conceptualization linked to one language, it would be assuming that a concept is understood universally in all 24 languages. But the conceptualization of a concept differs as it is made against different legal backgrounds. Though this understanding may be disappointing for linguists, who might expect a lot from the CJEU’s interpretive approach taken at face value, we believe it reflects the reality of multilingual adjudication in the EU context. To confirm this basic assumption, selected case law dealing with language divergences is analysed, while departing from the CJEU’s guidelines developed in the *CILFIT* judgment.

#### 5.2.4.2 *The CILFIT guidelines*

The guidelines spelled out in the famous *CILFIT* judgment should be taken as propositions of what a truly multilingual judicial reasoning should look like, at least within the confines of the world of academia:

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13. As put forward in *EMU Tabac*, all language versions must be recognised as having the same weight (C-296/95 *The Queen v. Commissioners of Customs and Excise, ex parte EMU Tabac SARL. The Man in Black Ltd.* John Cunningham [1998] ECR I-1605).

14. Comparing the Augustine’s approach to translating the Scriptures and the CJEU’s teleological approach Solan (2007) concludes that both are essentialists: „It is only if there exists in the first place some deeper, underlying understanding that one can justify an enterprise whose task is to uncover such an essence. In both cases, language provides strong evidence of that essence, but the essence cannot be reduced to any single version of the text.“ In his opinion, the ability to compare different versions brings out nuances and helps gain additional insight – hence he predicts, the proliferation of languages in the EU actually aids in the task of statutory interpretation.

1. Community legislation is drafted in several languages and the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.
2. Community law uses terminology which is peculiar to it.
3. Legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.
4. Every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.<sup>15</sup>

The *CILFIT* case caused extensive discussion among legal scholars.<sup>16</sup> Despite these guidelines, many scholars argue that it is impossible to predict when will the Court resort to comparing language versions. As Bobek (2011: 140) phrased it, despite having read hundreds of decisions, one is still not able to discern any visible patterns as to when comparing various language versions will be employed. He goes on to argue that, since there is no way of predicting when the method of comparing language version will be employed, the question arises if this method might not just be used in cases where detachment from the text and its reformulation (with the help of the purpose) fits the interpreter. In fact, Bengoetxea (2011: 97) claims that the Court does not systematically compare the official language versions of the law it applies. It thus contradicts its own guidelines postulated in the *CILFIT* case.

In previous chapters we have clarified the problem of different meaning of polysemous terms denoting both EU and national law concepts which hinges on conceptual autonomy and is circumscribed above under point 3. Likewise, we will not discuss in detail the peculiar terminology of Community law (point 2). Instead, we will focus on the first and the fourth guideline. As regards peculiar terms used in EU law – most famously dubbed Eurospeak – Kjær (2010: 308) finds it to be the planned result of a deliberate linguistic Europeanisation, i.e. “the inevitable outcome of the process of European legal integration”. The purpose of using neutral terminology should be to blot out differences between legal languages. However, whether or not this purpose is served is highly doubtful. In any case, the Court should be praised when it succeeds in attributing meaning to the peculiar

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15. See Paragraphs 18–20 of the Judgment of the Court of 6 October 1982 in Case 283/81-Srl CILFIT and Lanifici di Gavardo SpA v Ministry of Health. The background of the CILFIT case was a request for a preliminary ruling from an Italian court. Note that before 2009 and the enforcement of the Treaty of Lisbon, the term Community was used instead of Union.

16. For an overview see Derlén (2009: 72–73).



terminology of Community law, or as Kjær (2010: 298) puts it, for “making sense out of the nonsensical language of EU legislation”.

Bobek (2007–2008) has also neatly summarized the Court’s propositions from *CILFIT* as instructions to be followed by courts (including national courts) in multilingual interpretation. The instructions read as follows:

- a. Do not regard one version in isolation; all language versions are equally authentic and correct legal interpretation of any one piece of EU legislation involves the parallel reading of all versions;
- b. Do not majoritize from a number of confluent language versions; and
- c. Take into account other methods (system and *telos*).<sup>17</sup>

The above prohibition of majoritization refers to not allowing the majority of language versions to prevail over the minority (Bobek 2011: 133). Making conclusions about the meaning of a provision based on wordings of similar or related languages would override other language versions and should be avoided. It is interesting to note how the CJEU has held that national courts have the same duty! This view was heavily criticised by legal scholars. Bobek (2011: 141) affirms that this obligation implies national courts must also read other language versions in order to detect and filter potential mistakes. Although it is questionable whether national courts actually do so, Derlén (2009: 160) points out that they must ask if the wording of the national language version represents the true meaning of a given provision. Alternatively, they can just turn to the CJEU by means of preliminary references. This second option would be in line with the above formulated self-fulfilling prophecy of the CJEU’s interpretive approach, which says “when in doubt, turn to the Court for answers”. It is worthwhile mentioning that Bengoetxea (2011: 115) identifies a further criterion to be added under the above point b) implying that the meaning chosen must be compatible with all language versions. To that extent he underlines the importance of a minimum common denominator. However, meaning is as a rule established against the background of EU law, rather than chosen, inasmuch as there is no predetermined or as Bengoetxea (2011: 117) puts it, “pre-interpretive” meaning.

Instructions aside, what does really happen when different languages say different things? The Court must find ways to reconcile such differences.

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17. *Telos* here refers to the phrase reiterated by the court in settled case law: “the real intention of its author and the aim he seeks to achieve”.

### 5.2.4.3 Example 1

In a well-known and widely discussed case *Commission v. UK*,<sup>18</sup> which concerned the origin of goods, that is fish, the Court had to interpret the meaning of the phrase “taken from the sea” which forms part of the Regulation 802/68.<sup>19</sup> At the time of the case there were five official languages. The Regulation’s rather vague wording in Dutch, English, French and Italian was contrasted by the more precise German term *gefangen*, which would require that the fish was lifted from the water. After having compared different languages, the Court decided to employ the teleological instead of literal interpretation in keeping with the purpose of the Regulation 802/68 and in the context of the internal market. The English text of the Regulation read as follows:

Goods wholly obtained or produced in one country shall be considered as originating in that country ... The expression ‘goods wholly obtained or produced in one country’ means products of sea-fishing and other products *taken from the sea* by vessels registered or recorded in that country and flying its flag.

(Emphasis added)

What happened in this case was that Polish trawlers trawled the nets without at any time taking them on board. When the trawl was completed, the British trawlers drew alongside the Polish vessels and lifted the nets. The contents of the nets were taken on board the British trawlers, which then took the fish to the UK. The legal issue to be answered was is the fish of Community origin or not. If it is, then no taxes are levied due to the freedom of movement of goods within the common market; if it is of Polish origin, however, taxes have to be paid. Having compared the wording in other languages (*FR extraits de la mer*; *DE gefangen*; *IT estratti dal mare*; *NL uit de zee gewonnen*), the court decided the phrase “taken from the sea” means “not only the act of taking out of the sea, but the act of separating a substance from the whole of which it is a part.” In the case of fishing this cannot mean anything other than the act of catching fish in the net and so separating them from the sea where they lived before being caught. It agreed with the Commission that this is the most significant operation in fishing that was carried out wholly by Polish vessels.

To the best of our knowledge it seems that this conclusion was reached in consideration of the wider legal context and the purpose of the regulation in question, pursuant to the teleological method of interpretation. The undertaken comparison of different language versions does not seem to have played a part in the

18. Case C 100/84 *Commission v UK* [1985] ECR 1169.

19. Regulation 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods, OJ L 148, 1–5.

CJEU's decision-making. For one thing, it did not engage in linguistic analysis of the meanings of different wordings, nor did it consult dictionaries or language specialists (as U.S. courts sometimes do).<sup>20</sup>

#### 5.2.4.4 Example 2

Another real life legal case can serve to demystify the act of comparing different language versions. The *Robert Bosch* case<sup>21</sup> also concerned a difference in meaning between language versions. Without going into details, the point that interests us here is how to interpret the word *affect* in the following wording: “agreements ... which may *affect* the trade between Member States” (emphasis added). For the sake of comparison, it should be stated that the French term was *affecter*, Italian *pregiudicare* and German *beeinträchtigen*. The latter two are negative in meaning (‘to influence negatively’). On the other hand, the English and French term can be both negative and positive. As regards the importance of the meaning of this term, it was taken as the criterion for jurisdiction over competition law issues and the application of Articles 101–102 of TFEU (former Art. 85 of the TEEEC). In other words, this term is the jurisdictional criterion for the allocation of competence between the EU and the Member States. If there is no negative (restrictive) effect on the trade between Member States, agreements between undertakings are not prohibited and national competition laws shall apply. However, if there is a cross-border effect, the EU has jurisdiction and such agreements are prohibited. Having in mind the importance of competition law for the EU, the Court adopted a broader reading of the provision in question interpreting *affect* to mean: “influencing in whatever way”. Without conducting a linguistic study, the Court followed the opinion of the Advocate General Lagrande who suggested adopting a broader reading of the provision.<sup>22</sup> Accordingly, the CJEU has given broader competence

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20. Only rarely have Advocates General performed a comparison of the dictionary meanings of a word. For instance, AG Cosmas compared the dictionary meaning of the English term trade union and the French *syndicat* in case C-149/97 *Institute of the Motor Industry* ECR [1997] I-07053. As was discussed in Chapter 3 (section 3.3.2.2.), the French term *syndicat* is wider in meaning and includes more professional federations, while the English term includes classical trade unions for workers.

21. Case 13/61, *Kledingverkoopbedrijf de Geus en Uitdenboger v Robert Bosch GmbH and Maatschappij tot voorzetting van de zaken der Firma Willem van Rijn* [1962] ECR English special edition 45.

22. Opinion of the Advocate General Lagrande of 27 February 1962.

to the EU based on the aims and purpose of the Treaty.<sup>23</sup> This case clearly illustrates that the text of the Treaty is reinterpreted in “a more Euro-friendly way” based on the aims and purposes of the Treaty or secondary legislation (Bobek 2011: 140). In this sense, comparing language versions allows for untying of the interpreter from the text (*Ibid.*).

A similar case relating to competition law will also be briefly mentioned here, the case *Ferriere*.<sup>24</sup> It concerned the question whether the relevant agreement should have as its object and effect (cumulatively) to restrict competition within the Community, or if it was sufficient that either object or effect was at hand (Derlén 2009: 34). While the Italian version suggested both criteria had to be fulfilled, other languages stated that it was sufficient if only one criterion was satisfied. Due to the importance of competition law for EU law, the Court has also taken the second stance, positing that it suffices if one of the conditions is fulfilled (in order to prohibit such agreements between undertakings). This case is also important for the Court clearly stated that there is no right to rely on only one language version and that all language versions have the same weight.

Similarly, the case *EMU Tabac*<sup>25</sup> concerned vague language versions of Directive 92/12. As the Court admitted, all language versions of the Directive in question were vague, except for the Danish and the Greek versions. The plaintiffs to the case argued that these versions should not be allowed to decide the case as only 5 per cent of EU citizens spoke these languages. Nevertheless, following the line of argumentation used in previously settled case law, the CJEU rejected the argument that different language versions should carry different weight depending on how many citizens speak a language. Once again the Court demonstrated there is no right to rely on a single language version.

What can be concluded from these cases? Rather than conducting a linguistic analysis of the meanings of the respective terms in different languages, the Court

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23. Article 3 of the Regulation 1/2003 determines the relationship between Articles 101 and 102 and national law, providing that while applying national competition laws to an agreement or practice that affects trade between Member States, National Competition Authorities or national courts must also apply Art. 101 or 102. The application of national competition law may not lead to the prohibition of agreements which affect trade between Member States, but which do not restrict competition within the meaning of Art. 101 para. 1 TFEU, or which fulfil the conditions of Art. 101 para. 3 TFEU or which are covered by an EU block exemption, as well as the national authority or court cannot authorize agreements prohibited by EU Law.

24. Case C-219/95 P. *Ferriere Nord SpA v The Commission of the European Communities* [1997] ECR I-4411.

25. Case C-296/95 *The Queen v Commissioners of Customs and Excise, ex parte: EMU Tabac SARL and others* [1998] ECR I-1605.

followed its familiar teleological path and went for conceptual autonomy. The latter presupposes identifying the meaning independent from a concrete language version. As stated earlier, the role of language becomes less important in light of the fact that meaning is established by referring to the purpose of a legal norm. This also means that there is no legal certainty until a case is resolved by the Court which “has the power to give authoritative constructions of its meaning” (Ćapeta 2009: 15). In other words, courts are final interpreters of the meaning of legal norms. The above analysed cases illustrate interpretive doubt which may be a reason for requesting a preliminary ruling (see Chapter 3, section 3.3.2.2.). Needless to say, there are many other cases of multilingual interpretation activated by interpretive doubt, however, further analysis of such cases would exceed the purpose of this study.<sup>26</sup>

### 5.3 A summary of findings

Different language versions of an EU text must be given uniform interpretation and in the case of divergences between the versions, the provision in question must be interpreted with reference to the purpose and general scheme of the rules of which it forms a part. The so-called “context and purpose mantra” (Derlén 2011: 158) has been criticized for being dependent on the text, but in our opinion, it does have extratextual roots, considering that it depends on extralinguistic knowledge and context. In fact, here lies an analogy with the cognitive terminological understanding that concepts are always part of a wider conceptual structure and that their meaning is modified by the extralinguistic context. And indeed, if the only way of overcoming language divergences is by relying on the teleological method of interpretation – as a covert operation which goes beyond the text and takes into consideration extralinguistic information in order to delimit the meaning of a concept under EU law – the same approach should be followed in lexicographic description and translation of such concepts. Both the teleological and the cognitive terminological approach underline the importance of the concept and not the term. This is significant in view of the multilingual nature of EU law.

McAuliffe (2013: 881) finds that the CJEU’s teleological interpretation which is needed to reconcile divergences between language versions, assumes a platonic notion of EU law being expressed in “one language that exists in many linguistic versions”. In her opinion, the idea of a single EU legal language that allows EU law

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26. For a comprehensive study of multilingual interpretation of European Union law see Derlén (2009). From a linguistic perspective cases involving language discrepancies activated by interpretive doubt are most interesting (Chapter 6, p. 119–171).

to be uniformly applied throughout the Union is a legal fiction, though a workable one. Kjær (2010: 32) has argued that the existence of autonomous concepts is a normative vision of an emerging common legal language. Similarly, Legrand (2008) thinks that a common European neutral and denationalized language is not achievable. On the other hand, the CJEU emphasizes the existence of single concepts that it interprets autonomously and teleologically. This conceptual autonomy should not be confused with the existence of one legal language. Conceptual autonomy is not linked to one legal language, but underscores the importance of conceptualization for the understanding of legal concepts. For a better understanding of the multilingual functioning of EU law it is instrumental to discern the term from the concept. It is certainly true that uniformity is sought at the conceptual level, and not at the term level as settled case law illustrates.

### 5.3.1 What will the future bring?

In recent times, there has been heightened concern as to the future of multilingualism. The question was raised whether the EU can continue to function with 24 official languages. Problems with 24 equally authentic versions of EU law reflect in the CJEU's case law and lead to legal uncertainty. Likewise, divergences between language versions undermine legitimate expectations of EU citizens who cannot rely on their respective language version. In view of this evident tension between legal certainty and multilingualism and the mounting costs of multilingual legislation, some scholars have suggested reforming the existing multilingualism policy. For example, Derlén (2009) proposes using English and French as mandatory consultation languages, that is, in addition to the national language, instead of maintaining equal authenticity of 24 language versions. A more radical proposal is voiced by Schilling (2010: 17) who argues for keeping only one authentic language, namely English, making all other languages official translations. Finally, Lutterman (2009: 332–335) advocates a quasi-bilingual system involving two reference languages at the EU level. By virtue of the democratic majority principle, these should be English and German since these are the first two most commonly used languages in the EU. Despite this, Šarčević raises a valid point that French was the main drafting language for almost 50 years. Moreover, it is still one of the drafting languages, although English is the base text in most new legislation (Šarčević 2013: 21).<sup>27</sup> Needless to say, Member States would fiercely object the introduction of language policies resulting in supremacy of some languages over others.

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27. According to the Office for Official Publication, more than 70 per cent of EU legislation produced in 2008 was drafted in English, about 15 per cent in French and the rest (15 per

To date, politicians have flatly rejected all proposals to discontinue the policy of EU multilingualism (Šarčević 2013: 2). Therefore, for the time being we must find ways to cope with the practical problems posed by multilingualism. These concern primarily inevitable divergences between the various language versions of EU legislation and the imperfections of legal translation. As has been observed, it is up to the CJEU to compensate for the imperfections of translation. In light of these reasons, we take multilingualism and conceptual autonomy to be the most salient features of EU law which have to be taken into consideration when determining the most appropriate approach to legal lexicography in the EU context.

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cent) in other languages, of which German is the strongest “small” drafting language (quoted in Bobek, 2011: 132).

## EU legal translation and challenges for the dictionary

### Incorporating legal translation into dictionary making

#### 6.1 Introduction

The relationship between EU law and legal translation is based on reciprocity. While it is true that legal translation is part and parcel of EU law, since it enables the functioning of multilingual EU legislation making it applicable and accessible in all 24 official languages, the features of EU law impact both the process and result of legal translation. To support the latter claim, this Chapter examines how two most salient features of EU law, namely multilingualism and conceptual autonomy, influence the translation of EU law. By gaining a better idea of the specific theoretical challenges of legal translation in the EU context, we can respond more aptly to its challenges in practice. Considering that a legal dictionary is often consulted during the process of legal translation, it should be able to cope with the challenges of legal translation. Therefore, understanding legal translation is basic to understanding legal lexicography. Issues such as equivalence and non-equivalence that are discussed here, reappear in the process of compiling a legal dictionary and must be accounted for. This Chapter assumes that such issues have to be first theoretically accommodated within the sphere of legal translation in order to be successfully resolved in a legal dictionary. With a view to suggesting what can be termed practical guidelines or best practices for both legal translation and legal lexicography, the Chapter analyses selected legal dictionaries and term banks. Zooming in on individual examples of dictionary entries, it makes critical assessments and suggestions for future legal dictionaries. As a recurrent topic of this book, conceptualization is also addressed from the viewpoint of legal translation scholarship, in particular from the perspective of comparative law as a legal field most related to legal translation.



## 6.2 Legal translation

No other field of specialized translation has been touted for interdisciplinarity as much as the field of legal translation. In consequence, a plurality of multidisciplinary perspectives of the field has been unveiled over the last two decades (see Engberg 2016; Baaij 2012; Olsen et al. 2009; Cao 2007; de Groot 2006; Gémár 2001; Šarčević 2000). Surprisingly though, this multitude of different perspectives has not reaped the expected benefits and there are shockingly little substantially different theoretical approaches to legal translation. It seems that the interdisciplinary potential of legal translation has been used modestly. The mainstream view of legal translation centres on the interdependency of legal language and the legal system. Such interdependency reflects in the need to conduct comparative legal analysis in the translation process. That well-worn legal translation rhetoric needs to be reassessed in the context of EU law and in general within a “rapidly changing legal landscape” (Kjær 2014: 5). That is not to say that the postulates of legal translation scholars, especially Susan Šarčević’s “New Approach to Legal Translation”, do not offer valuable insight into the challenges of legal translation. Nevertheless, in the context of EU law, it is necessary to reassess the traditional concepts of legal translation theory in light of an increasing internationalisation of law or “an irreversible trend towards law beyond boundaries” (Glanert 2014: 261) and the autonomous interpretation style of the CJEU illuminated in the preceding two Chapters. Before we venture to unpack new proposals in this respect, let us first look at some general features of translation and in turn legal translation. Bearing in mind the present purpose, the account of specialized translation will be brief, allowing for the basic understanding of the most pervasive translation problems in the field of law. We will start by scrutinizing the notion of *skopos* as purpose of translation.

The *skopos* theory puts the spotlight on the communicative purpose of a text. Accordingly, the main task of the translator is to produce a new text that satisfies the cultural expectations of the target receivers of a text with a particular function. By the same token, translation is regarded as a cross-cultural event, wherein translators must take into account the communicative function of the target text and the sociocultural situation in which the text was produced.<sup>1</sup> The same holds true in terms of legal translation. Legal translators must transmit the interpreted information into the target language, trying to recreate the text in the other legal and linguistic environment, while keeping in mind the purpose of translation and the expectations and needs of the ultimate recipient (Chromá 2014: 125).

By swinging the pendulum to the cultural aspects of translation, as Cao (2014: 121) notes, translation theories have shifted in focus enhancing purely linguistic

1. For an excellent overview of functionalism in translation studies see Nord (2012: 26–43).

means and methods by sociolinguistic views, pragmatic application, and semiotic approaches. Advocates of a sociosemiotic approach to legal translation find the creation of legal equivalence to be a socio-semiotic operation; that is, a sociosemiotic and cultural mediation instead of merely a linguistic or semiotic transfer (Cheng et al. 2014: 122). Reiterating that a sign's meaning is given by the sign user and can only be understood with reference to a particular sign system, choice of equivalence is not merely a linguistic decision. Albeit useful, the semiotic approach still does not fully account for the cognitive processes underlying every translation "as a form of conveying knowledge" (Engberg 2013: 21). Regarded as a cross-cultural transfer or "as a *sui generis* case of intercultural communication" (Glanert 2014: 258), translation represents a process of mediation between languages and cultures and involves various types of cognitive processes (Faber and Ureña Gómez-Moreno 2012: 89). Translation is thus in need of a theory that focuses on meaning and context: "Putting semantics and pragmatics at the forefront, the linguistic theory most applicable to translation would be one that emphasizes the cognitive aspect of language since translation is itself a cognitive process." (*Ibid.*)

It seems safe to claim that legal translation too would benefit from a theory that focuses on meaning and context. What makes legal translation as a type of specialized translation so special is the nature and logic of the law. The legal process is not only complex, but also different in each jurisdiction, whereas legal translation produces legal impact and consequence (Cao 2014: 107–108). Underlying the specific cognitive processes of legal translation is the close relationship between legal interpretation and legal translation. Both law scholars (Kasirer 2001) and legal translation scholars (e.g. Cao 2014: 106, Simonnæs 2014) have drawn a parallel between legal interpretation and legal translation, reinforcing the idea that "interpretation and translation in law are two features of a common creative endeavour" (Kasirer 2001: 351). As brilliantly described by Kasirer (2001: 339), legal translation is "most naturally aligned with the fundamental problem of identifying the appropriate ways and means for understanding meaning in law". Despite this self-evident connection between understanding and translation, jurists often reject the idea of interpretation of legal texts by non-jurists (Prieto Ramos 2014: 325). Such scepticism towards legal translators pursuing interpretation common among traditional legal scholars, might be justified in light of the fact that interpretation in law is not necessarily the same as interpretation in translation studies (see Simonnæs 2014: 149–151). While the former centres on the identification of the purpose of a statute and employs a particular legal methodology and hermeneutics, the latter perceives interpretation as a means of understanding. Herbot (1987: 831, cited in Šarčević 2000: 91) thus makes a valid argument that non-lawyers are bound to arrive at a different interpretation than lawyers, which, in consequence, might distort the original intent. But if legal translators must grasp all the shades

of meaning in order to reformulate a text in the most reliable way possible, then they must scrutinize the text not only as linguists, but also analyse the content from a legal angle (Prieto Ramos 2014: 325). Prieto Ramos here echoes previous voices of legal translation scholars such as Stolze (1992, 2016) or Šarčević (2000) in accentuating the importance of legal hermeneutics as a branch of jurisprudence that involves interpretation of texts for the legal translator. In a parallel way, legal hermeneutics brings to the fore the issues of meaning, context and conceptualization, which lie at the heart of terminology studies.

As mentioned above, discussions on legal translation have revolved around many different but at the same time similar issues such as the function of a translation, the text type, translator's creativity or fidelity to the source text as "the polar star of legal translation" (Kasirer 2001: 331). The issue of the visibility of translator has also come up in discussions on legal translation. Schleiermacher (2004) posited the dichotomy, according to which the translator either brings the writer to the reader or the reader to the writer. In a similar vein, Venutti (1995) uses the terms *domestication* for the former situation and *foreignization* for the latter. Applying this distinction analogously to the context of EU translation, Baaij (2015:111) uses the terms *familiarization* and *exteriorization* (2015: 111). He claims that familiarizing EU translation entails adapting each language version to the legal culture of a Member State by using legal language familiar to that State. Exteriorization, on the other hand, requires the use of legal language and terminology exterior to the national legal cultures of the Member States. Concluding, Baaij (2015:119) claims that EU translation in reality combines both approaches, albeit exteriorizing is more likely to succeed in expressing EU law consistently. Baaij's discussion about familiarization and exteriorization puts much weight on the issue of readability and transparency of the translation, neglecting to pay due attention to the need to achieve legal equivalence and equal authenticity as the primary goal of legal translation in the EU context.

### 6.2.1 Legal texts

Likewise, taking into consideration the function of a text is deemed vital for choosing the appropriate translation strategy in order to create a text in the target language that produces the same legal effect as the text in the source language. Most legal translation scholars (e.g. Šarčević 2000; Sandrini 2006; Cao 2007) emphasized the importance of the text function for legal translation, in keeping with the functionalist approach to translation in general. With the view of simplifying the choice of translation strategy for legal translators, it is useful to differentiate between basic legal text types. According to their communicative function we can divide legal texts into prescriptive, descriptive and prescriptive, and descriptive (Šarčević 2012: 189–190). Prescriptive texts as normative instruments are legally

binding. To this category belong legislative texts (different acts and statutes), international treaties and conventions. The second category is made up of hybrid texts that are primarily descriptive, but may contain prescriptive parts. Judgments, court files, appeals, testimonies, expert witness testimonies and testaments are examples of such hybrid texts. The third category comprises only descriptive texts such as law textbooks, scientific papers, law commentaries. Another important distinction concerns the legal status of a text, according to which legal texts are either binding or non-binding. Translating binding legal instruments calls for extra caution and care on behalf of the translator to produce the desired legal effect.

Considering that such topics are not central to this study, the following sections discuss those issues of legal translation that resurface in legal lexicography: equivalence, conceptual analysis and functional equivalents.

### 6.2.2 Equivalence: A mission impossible

Being emblematic of all translation, the notion of equivalence merits special attention. According to the common belief, the goal of all translation is to achieve equivalence by producing the closest possible equivalent text (Wills 1977: 72; Šarčević 2000: 47). But just what equivalence means is far from clear. In fact, some translation scholars have renounced all attempts to define translation equivalence, whilst others developed alternative and more dynamic concepts such as adequacy (Reiß and Vermeer 1984: 140) or comparison in the field of law (Sandrini 2014: 148). According to the principle of adequacy, presuming that the target text is adequate to serve the same communicative function as the source text, two texts may be regarded equivalent. This means that the adequacy of translation depends on its function. As is well known, modern translation started to defy the principle of fidelity to the source text, thus making the translator a text producer with the responsibility of selecting a translation strategy based on the communicative situation of reception (Šarčević 2000: 79). Emphasizing the prominent role of the receiver for equivalence, this receiver-oriented translation aimed to create functional or dynamic equivalence (Nida and Taber 1974), i.e. to produce the same response in the target text receivers as the source text in the source text receivers. This type of equivalence was also known as pragmatic equivalence (Koller 1979) and communicative translation (Newmark 1982). One should also note that the equivalence between individual lexical items of the source and target texts is dubbed terminological equivalence (Šarčević 2000: 48), whereas terminology theory defines equivalence as the coincidence of conceptual characteristics (Sandrini 2014: 147).

In a similar vein, the meaning of legal equivalence is not unproblematic. In general, lawyers speak of legal equivalence between the translation and other parallel texts of a legal instrument in the context of the principle of equal authenticity.

The latter principle implies there is no original and respectively no translations, since all language versions form a single legal instrument presumed to have the same meaning in all languages (Biel 2007: 146). Insofar as parallel texts of a single instrument that are deemed to be equally authentic produce the same legal effect, legal equivalence exists, which means that legal effect is instrumental for achieving legal equivalence. Departing from this short discussion on equivalence two points can be made. First, general equivalence is surprisingly difficult to define. Depending on different fields of translation, it can fulfil different purposes or be scaled down to correspondence, similarity or mediation as perceived by sociosemiotic approaches. Second, equivalence is difficult to achieve and legal equivalence well-nigh impossible to achieve. The question is then how can lexicographers compensate for the lack of equivalence in a dictionary? In this respect legal lexicography turns to its stepsister legal translation to borrow solutions and tools.

In this context attention must be drawn to the comparative law take on issues of legal translation. Bearing in mind the interdisciplinary nature of legal translation, it is important to observe it from the perspective of comparative law: a legal field sharing some of the objectives and utilizing some of the methods of legal translation. One of the goals shared by both legal translation and comparative law is looking for the best solution, or as Zweigert and Kötz (1998: 8) put it, “to discover which solution of a problem is the best”.

### 6.2.3 Conceptual analysis as the comparative-law approach to legal translation

The words “comparative law” “suggest an intellectual activity with law as its object and comparison as its process” (Zweigert and Kötz 1998: 2). Comparative lawyers compare the legal systems of different nations either on a large scale (macrocomparison) or on a smaller scale (microcomparison) (*Ibid.*, 4–5). While the former compares the spirit and style of different legal systems and can be considered as the theoretical-descriptive part of comparative law, the latter has to do with specific legal institutions or problems as applied comparative law. The comparative-law method of microcomparison in particular has been said to assist the translation of legal institutions and concepts peculiar to another legal system (see Jopek-Bosiacka 2013 and Simonæs 2013). However, one must often conduct both microcomparison and macrocomparison in legal translation to come up with if not the best, then at least reliable solutions. On account of everything said about the meaning of concepts in the foregoing chapters, it can be concluded that to translate a legal concept the translator must be able to understand what the concept means in the legal system in which it is applied and interpreted, and in which it produces a certain legal effect. Starting from that assumption, translators must compare to what extent a concept of the legal system of the source language is compatible with the concept

of the legal system in the target language into which it is being translated. In this respect, the close relationship between comparative law and legal translation manifests itself in the process of comparing legal concepts, which (sometimes) includes both microcomparison and macrocomparison. As emphasized by Chromá (2004: 63), a translation dictionary in law should also be preceded by an extensive comparative study of legal systems and their reflection in the languages.

Comparative law does not consist of a system of legal rules as other branches of the law, but of methods for comparing concepts of different legal systems (Šarčević 2000: 235). The basic methodological principle of comparative law is the principle of *functionality*, for: “Incomparables cannot usefully be compared, and in law the only things which are comparable are those which fulfil the same function.” (Zweigert and Kötz 1998: 34). Consequently, the notion of *conceptual analysis* plays an important role in both comparative law and the functional approach to legal translation. A conceptual analysis examines the content, legal effect and scope of application of the concepts being compared. Such an analysis represents an intellectual activity based not only on logic, but also on teleological, interpretive and comparative legal elements (Sandrini 1996: 149). The extent of compatibility between legal concepts of source and target legal system is measured by means of equivalence. In the case that the legal concept denoted by a source language legal term fulfils a similar function as the concept denoted by the target language legal term, the terms can be regarded as equivalents, that is, as *functional equivalents*. The notion of functional equivalent is used not only in legal translation, but also in comparative law. Both conceptual analysis and functional equivalents underline the importance of the function that a legal concept fulfils. Let us consider the following. Legal concept A is ingrained in a special legal environment in which it was developed and in which it is applied and interpreted. The function it fulfils is unique to this particular environment. Put another way, A’s function is determined by the environment, the history and practice of its earlier application and interpretation. Another legal concept B is rooted in a different environment and developed as a result of different circumstances. What more, B is applied to different circumstances and interpreted in different ways than A. In short, A and B fulfil different, albeit comparable or similar functions. Observed in this light, equivalence in legal translation can never be absolute.

### 6.2.3.1 *The illusion of comparing legal concepts*

To rephrase, the most commonly used method of comparison of legal concepts is the so-called functional approach. In line with the latter, comparison starts from the function or task that a concept fulfils. Although most legal systems provide solutions for the same problems, comparativists generally believe that legal concepts of different legal systems can be compared only if they fulfil the same function.

A judge who has to determine whether a concept in the foreign legal system fulfils the same function as the concept of his legal system, departs from the legal problem investigating how this problem is solved in the foreign legal system. As Šarčević (2000: 235) asserts, legal translators should proceed in the same way.

This does not mean that the choice of translation equivalents is simple and that one only has to determine whether the concepts denoted by the equivalent terms fulfil the same function. Far from it, translators face the challenging task of overcoming considerable hurdles in their search for an appropriate equivalent. Not only do they have to compare the functions of the concept by means of a conceptual analysis, but also understand the concept in the source legal system. As Faber and López Rodríguez (2012: 10) suggest, translators of specialized texts must be closet terminologists capable of carrying out terminological management as a means of knowledge acquisition, which in my opinion, includes both micro-comparison and macrocomparison.

Another point to be made here concerns the difficulty of comparing different legal concepts. Zweigert and Kötz (1998: 44) claim that the solutions one finds in the different jurisdiction must be cut loose from their conceptual context and stripped of their national doctrinal overtones. Only then can the solutions be seen purely in the light of their function. Hence, “one must never allow one’s vision to be clouded by the concepts of one’s own national system” (Zweigert and Kötz 1998: 35). The difficulty of comparing concepts purely in light of their function can be observed from the perspective of Frame Semantics. A word’s meaning cannot be understood by someone who is unaware of those human concerns and problems which provide the reason for that category’s existence (Fillmore 2006: 381). Believing that words are part of dynamic systems called frames and scenes, the meaning of a word is always part of a culture-bound scene or situation. In this sense, the meaning should be described by using the elements of the scene in which a word is used. Put another way, in order to truly understand the meanings of words in language, one must first have knowledge of the semantic frames or conceptual structures that underlie their usage (Faber and López Rodríguez 2012: 22). This raises the anthropological issue of ethnocentrism as the trap of describing or interpreting concepts of one culture by means of another, which would lead to a superiority of one group over the other. Needless to say, ethnocentrism poses a threat to comparative law too. In order to avoid ethnocentrism, we need a neutral *tertium comparationis* not to compare and judge concepts from our own viewpoint and experience. Since lawyers conceptualize legal concepts against the background of their education, legal culture and legal system, any comparison of legal concepts always starts from a different point of reference and lawyers are bound to judge concepts of different legal systems based on their own legal cultures and “local knowledge” (Glanert 2014: 263). There is no common mould to

force legal concepts in. As Araúz et al. (2012: 117) insightfully note, our knowledge of a concept provides the context in which it becomes meaningful to us. Every legal concept frames a specific chunk of legal knowledge. Within cognitive linguistics the latter is known as extralinguistic knowledge. This extralinguistic or legal knowledge is a link to the legal culture in which the concept is used, applied and interpreted. Therefore, in order to truly circumvent legicentric comparisons one would need a neutral legal culture and a neutral metalanguage to express it, not to impose the use of national legal terms. Accordingly, when practising comparative law comparatists must eradicate the preconceptions of their native legal systems (Zweigert and Kötz 1998: 35) and in turn disentangle themselves from their native concepts in order to discover neutral concepts. In this context it is fitting to mention that some legal scholars have claimed that translating law is simply not possible, lest it is impossible to have a neutral common background against which legal concepts can be interpreted (Legrande 2008).

The need for a neutral meta-language or a language-independent point of reference in order to avoid ethnocentrism has been highlighted within linguistics too. The linguist Anna Wierzbicka (1996) has proposed the introduction of semantic primitives and Ray Jackendoff (2011) conceptual primitives as neutral meta-categories. Though such endeavours may prove viable with more universal categories, with legal concepts their utilization would soon hit a wall due to the nature of the law and unique categories of each legal system. Nevertheless, it makes sense to address the issue of ethnocentrism and legicentrism in the context of EU law, which is practiced by lawyers coming from different Member States and of different national law education and experience. The latter will inevitably influence their perception of EU law, whereas they might have different interpretations as to the meaning of some EU legal concepts. In order to overcome legicentrism, they would have to learn to think in neutral EU meta-categories, purging themselves of national law categories. To a degree, this can be achieved by conceptual autonomy of EU law which resonates in the legal discourse of European lawyers. Terminology could play a major role in this respect, and lawyers (just like legal translators) would definitely benefit from a heightened awareness of terminology. Terminology and discourse can influence our conceptualization and change how people think. To paraphrase Kjær (2015: 105), if European concepts are constructed as autonomous, people will increasingly treat them as such.

### 6.3 Some challenges posed by legal translation to the legal dictionary

Though flawed, comparison of legal concepts is possible. The results of comparisons and the above described conceptual analysis must be incorporated into the



legal dictionary which is of our main concern. As elaborated, legal equivalence is difficult, if not impossible to achieve because, due to the nature of comparison, the process of legal translation is imperfect and has to come to terms with ethnocentrism. Likewise, the result of legal translation is inherently imperfect. This section examines how a legal dictionary can overcome these obstacles and cope with the challenges of legal translation. To illustrate this, I will analyse the common law concept of *damages* and attempt to provide its equivalents in other languages. Based on the results of what purports to be both a linguistic and a legal analysis, I will propose a dictionary display of the concept in different languages. This short analysis goes to show that the issue of conceptualization accounts for the main obstacle to legal translation and the legal dictionary.

The first step is to scrutinize the concept within its source law in terms of classification and scope of application. *Damages* is linked both to tort and contract law. Within contract law, *damages* can be defined as compensation that is awarded for a breach of contract or a compensation for a tort. Most often this type of compensation is called *liquidated damages* as they are stipulated in the contract. Within civil legal systems this concept is also known (*Vertragsstrafe* in German law, *pénalité contractuelle* in French law, *penalità* in Italian law or *ugovorna kazna* in Croatian law). However, the common law has other types of *damages* unfamiliar to the civil legal systems such as *special*, *punitive*, *expectation*, *general damages*, to name just a few. As a matter of fact, the Black's Law Dictionary contains 69 different types of *damages* (Garner 2007: 416–419).

Before we turn our attention to some subtypes of damages, it is interesting to note that the English concept is denoted by a *pluralia tantum* as opposed to the German term *Schadensersatz* which seems to accentuate a state that Wierzbicka calls *heightened countability* of damages in English and the fact that there are so many subtypes of damages. Conversely, within the German civil law system, a *singularia tantum* is used, underlining the fact that there are not many subtypes of damages. Respectively, the German lawyers conceptualize the German concept different than lawyers practising in the United States or Great Britain. Although this kind of linking of grammatical number with semantic countability is interesting, the grammatical number can at best be taken as a clue as to conceptualization (see Wierzbicka 1996: 394).<sup>2</sup> Digging deeper into this would extend the boundaries of this study, nevertheless, this example illuminates that grammatical number

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2. Wierzbicka analyses different instances of lowered and heightened countability on hand of German terms: *die Hose* and *die Hosen*, or *Haar* and *Haaren*. According to Wierzbicka, the singular form is used when the speakers do not wish to emphasize the duality of the object, that is, in instances of lowered countability (Wierzbicka 1996: 387).

is not necessarily arbitrary and that meaning is not a universal category; instead it is conceptualized differently even at the grammatical level.

We will now give a short account of some subtypes of common law *damages*. *Special damages* are awarded as a compensation for losses that are a result of special facts and circumstances relating to a particular transaction and which were foreseeable by the breaching party at the time of contract, while *punitive damages* are as a rule imposed by the court to deter malicious conduct in the future. *Expectation damages* seek to put the non-breaching party in the position he would have been had the contract been performed, and *general damages* are *actual damages* for a loss that is the result of the natural and logical result of the breach of contract (Krois-Lidner 2006: 79). Another common type of damages in common law is *restitution*. The latter concept is applied not only in tort and contract law, but also in criminal law and admiralty law. As a remedy for a breach of contract, restitution damages can be defined as damages awarded to a plaintiff when the defendant has been unjustly enriched at the plaintiff's expense or as 'compensation determined by the amount of benefit unjustly received by the breaching party' (Garner 2007: 419). In German law however, the term *Naturalrestitution* or *Naturalherstellung*, that at face value might appear equivalent to the English term, carries a different meaning: *Wer zum Schadensersatz verpflichtet ist, hat regelmäßig den früheren Zustand – in wirtschaftlich gleichwertiger Weise – wiederherzustellen (Grundsatz der Naturalherstellung, Naturalrestitution, § 249 S. 1 BGB).*<sup>3</sup>

The corresponding concept of Croatian law (*restitucija*) has a similar meaning to the German concept as defined by the German Civil Code. Table 1 below illustrates the problem of displaying the term *damages* in a multilingual dictionary. For the purpose of this study we will only provide equivalents in three languages: English, German and Croatian. The German term *Naturalrestitution* and the Croatian *restitucija* are only partial equivalents, which is demonstrated by the use of italics. There are no equivalents, i.e. terms denoting corresponding concepts for the other types of damages (special, punitive, reliance, general, expectation).

This brings us to another question: What can a lexicographer do in case there is no equivalence or only partial equivalence? If there is no equivalence, this should be indicated to the user by leaving the original term and providing a definition or an explanation as to why there is no equivalent in the other legal system. Likewise, paraphrases or neologisms can be used, provided the dictionary authors possess substantial legal knowledge. Forcing equivalence or creating virtual equivalence undermines a dictionary's reliability and lexicographers should shy away from such practice.

3. Creifelds Rechtswörterbuch. 2000. Sechzehnte 16. Auflage. München: C. H. Beck. P. 1138.

**Table 1.** Comparison of *damages*, *Schadenersatz* and *naknada štete*

damages	Schadenersatz*		naknada štete
liquidated	vereinbarte	Vertragsstrafe	ugovorna kazna
	pauschalierter		
unliquidated	Schadenersatz		
special			
punitive			
restitution	<i>Naturalrestitution</i>		<i>Restitucija</i>
reliance			
general			
expectation			

**Note.** \*Also spelled Shadenersatz in Austria.

As we have seen in the first part of this book, capturing the dynamic nature of legal concepts is a formidable task as is, while a bilingual or multilingual dictionary faces the additional difficulty of finding corresponding legal concepts in two or more different legal systems. Law is a culture and system bound phenomenon, whereas many legal concepts are untranslatable. Consider *equity*, *trust* or *common law*. If we study legal dictionaries with a critical eye, it is remarkably easy to conclude that most of them are lacking in precision and take equivalence for granted, even if there is no conceptual correspondence between the concepts. Still, despite the fact that most dictionaries fail the user in one aspect or the other and do not give a reliable portray of the legal systems in question, they are often used, either by legal translators, lawyers, law students or (legally literate) laypeople. Though users have high expectations and resort to dictionaries for quick solutions, they have to settle for compromises that come in many forms from neologisms to paraphrases, for there is either no equivalent for a given concept; or there are several equivalents. The latter is in tension with the principle of univocity which requires that one term refers to only one concept. Within specialized communication, univocity is deemed essential for ensuring precision und clarity and all synonymy and polysemy should be avoided. In legal expressions that is of paramount importance, because using consistent legal terms is a prerequisite for legal certainty. Departing from this assumption, one concept should only have one dictionary entry. Unfortunately, this is seldom the case. As Sandrini (2014: 145) concludes, the principle of univocity is unfamiliar to multilingual dictionaries in general and the dictionary users are usually given no information to help them discriminate between the offered equivalents. Instead, “a useful work of reference should explain the concept as a knowledge unit within the legal system” (*Ibid.*). Unfortunately,

most legal dictionaries do not pursue this goal and take equivalence for granted, as the following examples substantiate.<sup>4</sup>

### 6.3.1 Analysis of lexicographic treatment of legal terms

In von Beseler and Jacobs-Wüstefeld's German-English dictionary of law, the German concept *Besitz*<sup>5</sup> (1991: 293) is translated as

- (1) possession; [Land-]tenure; [Haus]occupancy; [Besitztum] possession(s); property, estate; [Aktien, etc.] holding(s).  
(von Beseler and Jacobs-Wüstefeld 1991: 424)<sup>6</sup>

Likewise, there are many equivalents for *Eigentum*:

- (2) property; ownership, proprietorship; (legal) title; tenacy; dominion; [wirtschaftliche -] beneficial ownership;
- (3) personalty; chattels, movables; effects; belongings, having(s);
- (4) [Land] (legal, real) estate; fee, fee simple.  
(von Beseler and Jacobs-Wüstefeld 1991: 424)

Bergenholtz and Tarp (1995: 64) note that a bilingual law dictionary should provide a minimum of encyclopedic information to enable the user to compare the legal systems of the countries in question. However, the examples cited here support the point made by Chromá (2004: 62) that any bilingual dictionary for specific purposes only serves as a first aid, and translators should also work “with monolingual specialized dictionaries, lexicons and encyclopaedias in all languages they work with”. In order to discriminate between the above mentioned equivalents, a

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4. For a comprehensive analysis of legal dictionaries covering the EU languages see de Groot and van Laer (2011: 149–209) and van Laer and van Laer (2007: 85–92). According to the 2007 research provided by van Laer and van Laer there were 159 bilingual legal dictionaries for languages used in the EU. What their study shows is that the existing dictionaries account for only 15% of the actual demand for legal dictionaries. Likewise, it shows that as compared to the older Member States, there is a general shortage of dictionaries for the languages of the new Member States.

5. One would expect a note clarifying the difference in meaning of the term *Besitz* in German, as opposed to Austrian law. Whilst in German the concept denoted by this term refers to factual possession, within the Austrian legal system it includes *animus domini*: *Innehabung* (see Peruginelli 2010).

6. Von Beseler, D. and B. Jacobs-Wüstefeld. 1991. Law Dictionary. Fachwörterbuch der anglo-amerikanischen Rechtssprache einschließlich wirtschaftlicher und politischer Begriffe. Deutsch-Englisch. 4., neubearbeitete und erweiterte Auflage. Berlin – New York: Walter de Gruyter.

user would have to consult a monolingual dictionary of law or have a legal background to know that *chattels* and *fee* are concepts of the U.S. legal system, and that *dominion* is not the same as *property*. In fact, *dominium* is a concept of Roman civil law: „This term gradually came also to mean merely ownership of property as distinguished from the right of possession“ (Garner 2007: 525). As a rule of thumb, in case there is no equivalence between concepts, legal lexicographers as well as legal translators should attempt to make sense out of the source language concept and transfer its meaning as correctly as possible in the target language. From the legal point of view, this means creating the same legal effect in the target text. The safest way to achieve this is by integrating additional extralinguistic information into the dictionary. Moreover, the original source language term should always be used in the target language text together with the paraphrase, thus providing additional reassurance to the target language receiver who, in case of doubt, may always look up the original definition of the concept in question.

The *Dictionary of Legal and Commercial Terms* seems to follow a lexicographic practice similar to the above dictionary as the following entry shows:

- (5) **Anfechtbar** voidable, annulable, defeasible, challengeable, contestable, controversial; debatable, subject to appeal, not final; nicht ~ noncontestable, final. (Romain et al. 2002: 43)<sup>7</sup>

In our opinion, *voidable* is the best equivalent for *anfechtbar* (at least in the context of contracts), while other equivalents have different meanings to a greater or lesser extent. Moreover, some equivalents are not legal terms such as *controversial* or *debatable* and should not be included in a legal dictionary. Unfortunately, including terms of general language in specialized dictionaries is not an isolated case that can be discounted.

Compare the entries from *Dictionary of Legal, Commercial and Political Terms with Commentaries in German and English*:

- (6) Ungültigkeit invalidity; nullity; ~erklärung invalidation, declaration of invalidity; cancellation, rescission; ~ geltend machen to set up invalidity. (Dietl and Lorenz 2005: 732)

7. Romain, A., B. S. Byrd and C. Thielecke. 2002. *Dictionary of Legal and Commercial Terms*. Verlag C.H. Beck OHG, Munich Helbing...Lichtenhahn, Basel, Wien: Manz'sche Verlags- und Universitaetsbuchhandlung.

- (7) *anfechtbar* voidable, contestable, disputable (*Zeugenaussage*) challengeable, impeachable, *~es Rechtsgeschäft* (a)voidable transaction; *e-e Entscheidung ist* ~ a decision can be appealed against (or is subject to appeal); a decision can be challenged in the courts; *die (Willens-)Erklärung ist* ~ the declaration *ist* (a)voidable (or can be (a)voided or rescinded).

(Dietl and Lorenz 2005: 76)<sup>8</sup>

In this context it is worth mentioning that in U.S. judge-made law, certain general language terms have found their way into monolingual legal dictionaries after having been discussed in case law. *Cocotte* is one such example. Following a legal dispute, *cocotte* which is ambiguous in meaning – and conveys both a poached egg and a prostitute – earned an entry in the Black's Law Dictionary (see Chapter 3, FN 20). Nevertheless, there seems to be no justification in the lexicographic practice of including terms *Lage*, *Möglichkeit*, *Moment*, *neu*, *wirtschaftlich*, *Wirt*, *Wirtin*, *Zukunft*, *zukünftig*, *Zuschauer*, *Zwist*, *Zyklus* (Jacobs-Wustefeld), or *ADAC*, *Kalt*, *Kanal*, *Kanaldämpfer*, *Kanalisation*, *Privatschule*, *Problem*, *Separatist* (Romain et al.), *boat*, *book*, *brother*, *bring*, *crown*, *culture*, *boat*, *brin*, *savage*, *scorn*, *write* (Köbler). Another dictionary of law includes the following: *able*, *automaker*, *poo (!)*, *pop*, *prize*, *pro*, *spreading*, *spray*, *T...D (training and development)*, *tabula rasa* (Gačić).<sup>9</sup>

Misleading equivalents are present in Köbler's dictionary too:

- (8) **consideration** (N.) *Betracht* (M.), *Betrachtung* (F.), *Entgelt* (N.), *Erwägung* (F.), *Gegenleistung* (F.), *Gegenversprechen* (N.) (*Gegenversprechen im angloamerikanischen Recht*), *Rücksicht* (F.) (Köbler 2001: 233)<sup>10</sup>

Strictly speaking, only the term *Gegenleistung* can be considered as a legal term for it denotes a concept of contract law. The same dictionary also offers many English equivalents for German terms. For instance:

- (9) **Entscheidung** (F.) *decision* (N.), *ruling* (N.), *determination* (N.), *adjudication* (N.). (Köbler 2001: 49)

The above mentioned von Beseler and Jacobs-Wustefeld's dictionary also lists a handful of English equivalents for the German term *Entscheidung* that will be listed here for the sake of comparison:

8. Dietl, C.-E. and E. Lorenz. 2005. Dictionary of Legal; Commercial and Political Terms with Commentaries in German and English. 5. Auflage. München: C. H. Beck OHG.

9. Gačić, M. 2010. Englesko-hrvatski rječnik prava međunarodnih odnosa, kriminalistike i forenzičnih znanosti, kriminologije i sigurnosti. Zagreb: Školska knjiga.

10. Köbler, G. 2001. Rechtsenglisch: deutsch-englisches und englisch-deutsches Rechtswörterbuch für jedermann. Unter Mitarbeit von Gregor Schusterschitz. 5. edition. München: Vahlen.

- (10) Decision; determination; resolution; disposition; [endgültige-] settlement; [gerichtliche-] (judicial) decision, ruling; (court) finding; judg(e)ment; adjudication; sentence; decree; [Geschworene] verdict; [Schiedsgericht] arbitration, arbitrament; award. (von Beseler and Jacobs-Wüstefeld 1991: 482)

The majority of English equivalents in these two examples are only partial equivalents for the German term *Entscheidung*. While an *Entscheidung* ('decision') can be issued by a variety of different authorities and in a range of different procedures, *arbitral award* is the binding decision adopted in a specific arbitration procedure by an arbitrator. The underlying legal effect produced by these two concepts is different.

In the following example there are as much as 16 different Croatian equivalents for the common law concept tort:

- (11) Tort građanski delikt, civilni delikt; namjerno nanošenje štete (anglosaksonsko građansko pravo); šteta, nezakonit čin; štetna radnja, uništavanje tuđe imovine, nedozvoljena radnja, neispunjenje obveze; odgovornost za štetu, izvanugovorna odgovornost, naknada (građanske) štete, krivnja, nepravda, prijestup, uvreda. (Gačić 2010: 1684)

Only the first term can be taken as an equivalent for a tort. The remainder of terms can under no circumstances be used for a tort. On that note, the Croatian terms for tort law are all wrong:

- (12) Tort law deliktno pravo, pravo naknade štete, pravo građanske odgovornosti za štetu (Gačić 2010: 1684).

Note that tort law is commonly referred to as *Deliktsrecht* in Germany or *Haftpflichtsrecht* in Switzerland. Taken together, the common law of contracts and the law of torts correspond to the civil law field of law of obligations (in Croatian *obvezno pravo*; in Germany *Schuldrecht*, *Obligationenrecht* in Austria and Switzerland. That said, law of torts does not have an exact counterpart in civil law systems, but can be circumscribed as *izvanugovorno pravo* and *außervertragliches Haftungsrecht*. While it is true that it includes the law of damages, the latter only forms one of its aspects. To translate it using the Croatian term for the law of damages as is the case in the above dictionary (*pravo naknade štete*) is hence misleading.

One last example will be given here from a trilingual dictionary of law:

- (13) prestup petty offence, heinous crime, infraction, offence, trespass, violation, infringement, lesser criminal offence, minor offence contravention (f), forfait (m), infraction (f), violation (f), délit (m), délit correctionnel (m).<sup>11</sup>

The civil law Serbian term is rendered by a number of different English and French terms. As can be adduced on hand of the English terms, even terms denoting criminal law concepts have been offered as potential equivalents.

The main purpose of analysing entries from the above legal dictionaries was to gain insight into some of the existing lexicographic practice of bilingual (and multilingual) legal dictionaries.

### 6.3.1.2 A glance at multilingual databases of EU law

Considering that the object of this study is EU law, we now turn to EU multilingual databases, specifically EuroVoc, IATE and LTS. A terminology or term database can be defined as a structured set of terms and concepts of a field created for a specific user group which is often utilized as a translation tool (Cabré 1999: 176). Strictly speaking, Eurovoc is a multilingual thesaurus, and not a term bank. Also, it is multidisciplinary, meaning that it covers multiple fields and not just EU law. This is not surprising in view of the fact that its main users are the European Parliament, national parliaments and the Publications Office. In fact, EuroVoc is managed by the Publications Office which moved forward to ontology-based thesaurus management and semantic web. It contains terms in 23 EU languages (Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish), plus Serbian. Unfortunately, EuroVoc contains many outdated terms, failing, at the same time to include more recent concepts of EU law, which is its major setback.

The term *subsidiary* is for example attached to three different domains: public finance and budget policy, business organisation and the United Nations. Its equivalents in German and Croatian are: *Tochtergesellschaft* and *društvo-kći* (it is not spelled like that in Croatian). Similarly, *merger* is associated to: European Union law, business organisation and competition. The German equivalent is *Fusionskontrolle*, and the Croatian *kontrola spajanja poduzeća*. The latter term is not used within Croatian law, as *poduzeće* denotes an *enterprise*, not *undertaking*, and is, on top of that, not a legal term. The term *spajanje* for *merger* is even more misleading as it denotes a different legal operation than *merger*, that is a *consolidation* of companies. A merger is the joining of two companies resulting in the

11. Jovanović, J. and S. Todorović. 2003. Rečnik pravnih termina: srpsko-englesko-francuski. 3. edition. Beograd: Savremena administracija.



dissolution of one company and the survival of the other (Krois-Lindner 2006: 49). Another important EU concept *public health* is found under health, without a reference to the legal use of the term. Respectively, its equivalents in other languages are *Volksgesundheit* and *javno zdravlje*. Both of these terms (subsidiary and public health) are illustrated in our dictionary model in Chapter 8.

Terminology database IATE (Interactive Terminology for Europe)<sup>12</sup> incorporates all of the existing terminology databases of the EU's translation services into one interinstitutional database containing approximately 1.4 million multilingual entries. Since it was created in 1999, all EU institutions have been using it, and as of 2006 it became accessible to the public. Its advantages are that it refers to the source of a term, i.e. documents in which a term appears, and that it links terms to specific fields. However, whether a term is really linked to the most appropriate field is questionable. For instance, *public morality*, a crucial concept for the internal market and the freedom of movement, just like *public health*, is linked to several different fields, but not to internal market. Likewise, the user might be confused by the large number of equivalent terms offered. Just like EuroVoc, this term bank fails to include more recent concepts of EU law (e.g. *wholly artificial arrangement*). Croatian equivalent for the above mentioned term *merger* is *spajanje*, which is misleading for the reasons presented. Looking for more general legal terms, such a *contract* or *consideration*, in Croatian, is unsuccessful as there are no Croatian terms offered.

Nevertheless, both IATE and EuroVoc have a user-friendly interface enabling an easy overview, unlike some ontological databases.

The ontological database LOIS (Lexical Ontologies for Legal Information Society) applied a tool for creating multilingual conceptual dictionaries of EU law based on an ontology called LTS (Legal Taxonomy Syllabus) (see Ajani et al. 2010: 137). LTS connects European terms with national legislation implementing European law with a view to enabling specialists access to EU documents via relevant terminology. It differentiates the term from the concept level. LTS links European terms with the national legislation that implemented EU legal instruments to the end of enabling easier access to the latter by means of relevant terminology. It covers the terminology of consumer protection law in English, French, German, Italian and Spanish. It consists of 332 European terms and 214 national terms; 290 European concepts and 171 national concepts.<sup>13</sup> Since LOIS was created to meet the needs of specialists, non-lawyers in particular might find it difficult to use as the following figure illustrates:

12. Available at: <http://www.iate.eu>.

13. For more see: <http://www.loisproject.org>.

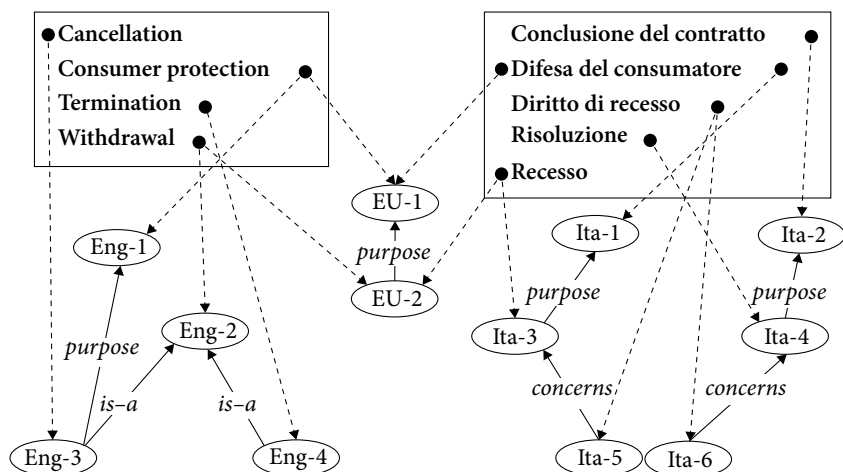


Figure 2. Example of LOIS.

Source: Ajani et al. (2010: 144).

As can be seen, the database distinguishes three kinds of relationships: *is-a* (which links a category to its superordinate category); a *purpose* (links a concept to the underlying legal principle) and *concerns* (which refers to general relatedness) (Ajani et al. 2010: 144–147). In order to point to normative changes, the relationship *replaced\_by* refers to the new meaning, i.e. to a new directive in the event the old directive is no longer effective. Bearing in mind that different acts and statutes may entail different interpretations of a single concept, the database also includes the relationship *interpreted\_as* by means of which it refers to other interpretations of a single concept. The latter relationship is adequate for describing vague legal concepts. Despite the fact that the database differentiates the term from the concept level which is useful for resolving polysemy, and furthermore, includes ontological relationships that are useful for the description of EU law, one should bear in mind that it was created to meet the needs of specialists. As opposed to IATE or Eurovoc, LOIS is not as easy to use for non-specialists. That said, even lawyers might struggle to navigate this advanced tool. Because of this, we will not provide more examples of terms from LOIS.

### 6.3.2 Coping with different types of equivalence in a legal dictionary

In addition to the described shortcomings of including too many equivalents and even non-legal terms, neither the existing legal dictionaries, nor term banks make an effort to differentiate the degree of equivalence which is important considering that legal concepts of different legal systems may vary in the extent to which they fulfil the criteria of legal effect and scope of application or classification. The

reason for this is the lack of congruence between legal concepts and legal rules of different legal system. Sometimes, a particular social problem which is regulated by a legal rule in one country may be controlled by mechanisms which operate outside the legal system altogether (Zweigert and Kötz 1998: 38). Such conceptual incongruence must be accommodated in the translation practice. In this sense legal translation scholarship distinguishes different degrees of equivalence between the source and the target language equivalent denoting such concepts: near equivalence, partial equivalence and non-equivalence (Šarčević 2000: 238–239). Needless to say, absolute or full equivalence is not common, or as Engberg (2014: 149) puts it, no 1:1 relation exists. Hence, different solutions have to be made in different translation situations for in the majority of cases functional equivalents are only partially equivalent and the concept of the source language has a broader or a narrower meaning than the concept of the target language and vice versa.

An example may be used in order to illustrate partial equivalence. The German-law concept of *Ehevertrag* (as well as the Croatian or Slovenian concepts *bračni ugovor*) and the common-law concept of *premarital* or *prenuptial agreement* fulfil a similar function and can be considered equivalents. However, while the prenuptial agreement as the term suggests is made before marriage, *Ehevertrag* can also be made during marriage (Art. 1410 BGB).<sup>14</sup> Needless to say, there are other differences between these concepts in terms of contract validity and solemnization etc. The described conceptual incongruence makes the concepts in question only partially equivalent.

Both near and partial equivalence involve relations of intersection and inclusion. Near equivalence occurs when concepts A and B share all of their essential and most accidental characteristics, whereas partial equivalence occurs when concepts A and B share most of their essential and some of their accidental characteristics. It has been proposed that the characteristics of legal concepts be divided into two groups: *essentialia* and *accidentalia* (see Šarčević 2000: 237). Unlike accidental, essential characteristics are thought to be vital for the meaning of a concept, and must be considered when determining functional equivalents. Instead of listing features, it is important to determine the purpose that the concept in question fulfills. Nevertheless, the notions of intersection and inclusion can prove helpful when conducting conceptual analysis, insofar as they point to conceptual differences between potential functional equivalents. This was illustrated by *Ehevertrag* which includes the meaning of a *prenuptial agreement*, but has an important additional characteristic.

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14. Bürgerliches Gesetzbuch (German Civil Code in the version of 2 January 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), modified through Article 6 of the Act of 19 February 2016 (BGBl. I S. 254).

Legal translators should bear in mind that the source language concept sometimes has a broader meaning than the target language concept. This is called *interlingual hyponymy* or *hyponimic translation equivalent* (Heid 1997: 193). German *Straftat* for instance, can be translated as *crime*, however, the former includes categories (such as the previously mentioned *defamation*) which do not fall under *crime*. In this sense, *Straftat* evokes more information than *crime*. Furthermore, in some contexts it could be possible to translate *Straftat* as *misdemeanor* or *felony*. Though a crime, the former category constitutes a less serious offence punishable either by a fine or up to one year incarceration, whereas the latter is a more serious offence punishable by longer imprisonments. To generalize, for misdemeanors you go to a jail (Black's 2004: 851), and for felonies to a prison. Prison (also termed penitentiary or a penal institution) is a state or federal facility of confinement for convicted criminals, especially felons (Garner 2007: 1233). Moreover, prisons are run by the state at the federal level, and jails on the other hand are run by the local government. The described conceptual difference between jail and prison does not exist in other legal systems. In Germany, the most common term for penal institution today is *Justizvollzugsanstalt* (in Switzerland *Strafanstalt* and in Austria *Justizanstalt*) which has replaced the older term *Gefängnis*.

Conversely, if the target language concept has a broader meaning than the source language concept, we speak of a *hyperonimic translation equivalent* (see Heid, *Ibid.*). In such cases information may be lost in the translation process, as the following instantiation shows. By translating *arbitral award* with the German *Entscheidung* (as the above analysed legal dictionary) instead of *Schiedsspruch*, specific information pertaining to *arbitral award* is not rendered by the German concept, which has a broader meaning. Accordingly, the German concept fails to create the same legal effect. While an *Entscheidung* ('decision') can be issued by a variety of different authorities and in a range of different procedures, *arbitral award* is the binding decision adopted in a specific arbitration procedure by an arbitrator.<sup>15</sup>

Even though the above terms can be used as functional equivalents, they nonetheless carry different conceptual information and evoke different meanings in their respective extralinguistic contexts. The said differences can range from insignificant, which means that the terms in question can be used as equivalents without posing a risk to legal communication, to vital, which would mean that using the terms as equivalents might lead to legal misunderstandings. In our opinion, the extralinguistic context is instrumental for determining the appropriate equivalent, because, if translators are aware of the conceptual idiosyncrasies

15. The term *arbitral award* is used inter alia in the UNICTRAL's Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

between two terms, they are less likely to make a mistake in respect of legal effect. After all, the purpose of legal translation as an act of communication is to render the legal effect produced in the source language in the target language. Therefore, creating the same legal effect in the target language should always be the guiding principle for legal translators in the translation process.

### 6.3.2.1 *What to do in case of non-equivalence*

Considering that law is a social and cultural phenomenon with its concepts rooted in 'a time and place', it comes as no surprise that in most instances legal translators have to make concessions and settle for partial equivalents. However, some legal concepts are so strongly ingrained into their unique legal cultures in which they evoke a specific meaning that they cannot be transferred into another legal system. For this reason most languages do not have terms for the concepts *common law* or *equity*. We can say that these concepts are untranslatable and do not have equivalents in other languages. Yet, we can understand their meaning and understanding constitutes the first step in transposing the concepts into other languages and cultures. In an attempt to define non-equivalence, we can say that non-equivalence means there is no correspondence either in one segment (as is the case with intersection), or no inclusion (when one meaning is contained in the other). The question is, what can a legal translator and a legal lexicographer do to compensate for non-equivalence?

As a note of caution, translators should be careful if they decide to use literal equivalents, borrowings or to create neologisms. It should always be borne in mind that legal terms act as signals for judges and lawyers who interpret a particular legal text. In case of borrowings or neologisms there is a significant risk that the target receivers might not understand the meaning of a neologism, wherefore it might be misinterpreted. Pursuing the goal of legal translation, which lies in creating the same legal effect in the target language, we believe that a paraphrase or an explanation should be used in case of non-equivalence to transfer the specific legal information from the source into the target language. Rather than resorting to neologisms, translators are taking less risk if they attempt to describe the meaning of the concept for which there is no functional equivalent in the source language. However, paraphrasing should not be taken too lightly as it requires legal knowledge. Although it is true that only skilled translators with legal training should attempt to use descriptive paraphrases (Šarčević 2000: 254), it is safe to assume that the target language receivers will be able to grasp the meaning of the source concept that has been described or defined by means of a paraphrase. It is equally important to integrate the original term in the target language text in addition to a paraphrase. Another option in case of non-equivalence is to use lexical expansions (see Šarčević 2000: 250–251), which in our opinion, are similar to a paraphrase.

For instance, the lexical expansion *mortgage without conveyance* can be used for *hypothèque*. The concepts *mortgage* and *hypothèque* differ in respect of their legal effect,<sup>16</sup> so a paraphrase or a lexical expansion is needed in order to compensate for the evident incongruence.

As a rule of thumb, in the case of non-equivalence attempt must be made to make sense out of the source language concept and transfer its meaning as correctly as possible in the target language. From the legal point of view, this means creating the same legal effect in the target text. The safest way to achieve this is by means of a paraphrase as demonstrated above. Likewise, the original source language term should always be used in the target language text together with the paraphrase. This provides additional reassurance to the target language receiver who, in case of doubt, may always look up the original definition of the concept in question.

The foregoing sections showed that the problems of legal translation can be circumscribed by the common denominator of conceptualization. Coming to terms with the search for equivalence and the imperfections of conceptual analysis cannot be done without addressing the issue of conceptualization. In fact, the difference in conceptualization accounts for the underlying problem of legal translation. Bearing in mind that the challenges of legal translation are very much present in the process of compiling a legal dictionary, in what follows I propose ways to improve legal translation and in turn the lexicographic practice in the EU context.

## 6.4 Choosing the right approach to legal translation in the EU context

In light of the special interplay of law, language and translation in the making of EU law, it is questionable whether comparative law and translation theories are the most relevant theories to apply (Kjær 2015: 92). Considering the importance of meaning for legal translation in the EU context, terminological approaches can shed the needed light on EU translation, since they place meaning at the forefront and address the issue of conceptualization. The importance of meaning and context for EU translation must be weighed against the fact that meaning is constructed conceptually and not by exact term equivalence. With this in mind, we believe that terminology studies influenced by cognitive linguistics provides an appropriate platform both in terms of theory and methodology for legal translation in the EU context.

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16. For an excellent discussion on the conceptual incongruence between the concepts *mortgage* and *hypothèque* see Šarčević (2000: 245; 247; 251).

Taking into account most pertinent features of the domain of EU law, legal translation in the EU context can be defined as an interdisciplinary field standing at the crossroads of EU law, CJEU's interpretation, comparative law, translation and terminology studies. The desiderata of a comprehensive theory of legal translation in this context must account for the dynamic development of multilingual EU law as a transnational category independent of national laws and for the autonomous interpretation of the CJEU.

As elaborated in the previous two chapters, the multilingual nature of EU law and the CJEU's autonomous and teleological interpretation account for the most salient features of EU law and should be taken as the points of departure for choosing the most adequate translation strategy. What more, these features warrant the application of an onomasiological, in lieu of a logocentric approach. Unlike the semasiological approach which proceeds from the term, the onomasiological approach first identifies the concept and then determines which term is used to denote it. Acknowledging that while there are 24 different language terms, which as we have seen, differ in meaning, this approach maintains there can only be one European concept whose meaning must be delimited against the background of EU law. The CJEU seems to reason that while different linguistic versions may differ from each other at a purely linguistic level, at the legal level they express the same concept (McAuliffe 2013: 881). This brings into question the usefulness of comparing different language versions. According to van Calster (1997: 375), the characterisation of all language versions as being "equally authentic", places them in a relationship of interdependence, making a comparison of the language versions of paramount importance (as spelled out in *CILFIT*) (see Kjær 2010: 304).

Nevertheless, in light of the above considerations and previously analysed case law we disagree with such reading of the notion of equal authenticity. As the CJEU concluded, no legal consequence can be based on the terminology used in case of language differences (*Régina v. Pierre Bouchereau*).<sup>17</sup> Reducing the role of language, the Court establishes meaning by referring to the purpose of a legal norm. For the same reasons we do not find the described interdependence of languages to be of use for legal translation in the EU context. Understanding one single unit of meaning never presupposes knowledge of the sum of all other units of meaning produced and in circulation (Kjær 2010: 314). That said, understanding of a single unit does presuppose knowledge of its wider conceptual structure in which it becomes meaningful to us. Therefore, in order to understand and translate this European concept, we must consider its background as the legal context, and not rely on the linguistic level alone. Although it is true that the latter task poses an array of challenges due to the complexity of EU law, applying the

17. Case C-30/77 *Régina v Pierre Bouchereau* [1977] ECR 1999 para 13.

cognitive terminological approach offers a realistic platform for coping with these challenges. Likewise, it enhances our understanding of the inherent problems of translating EU law.

#### 6.4.1 Using functional equivalents when translating EU legal concepts

This section questions whether functional equivalents which convey legal concepts that fulfil a similar function as the concepts of the legal system of the source language, can be used in the translation of concepts of EU law. To recapitulate, in order to determine functional equivalents translators must conduct conceptual analysis and compare the scope, classification and legal effect of concepts. At this point it is important to note that legal translation in the EU context is poorly served by the traditional category of source language in view of equal authenticity of all language versions. There is simply no source text, just like there is no source authentic legal text which can be relied upon in cases of doubt.<sup>18</sup> Likewise, perceptions of legal concepts as categories with clear and stable boundaries, that may be measured objectively in terms of the degree of their equivalence across languages (Kjær 2014: 4), need to be revisited in the multilingual setting of EU law. For Kjær (2014: 4) the major challenge of legal translation today is that law is increasingly produced by transnational communities of lawyers operating in a shared *lingua franca*. What is needed, hence, is a framework that will respond to this shift and not rely on classic notions of legal translation scholarship, but utilize new tools that will contribute to the advancement of research in this area and account for international institutional settings.

In determining functional equivalents, the main emphasis is placed on legal effect (Šarčević 2000: 72). Reasserting that the main goal of legal translation is “to produce a text that will preserve the unity of the single instrument by guaranteeing uniform interpretation and application” (Šarčević 2000: 72), the role of the legal context should be emphasized as well. In accordance with a cognitive terminological view, legal concepts are not fixed categories and their meaning is determined by their context. With this in mind, functional equivalents need to be reassessed

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18. Against this background, Kjær (2014: 4) mentions new concepts such as „translation without a source text“, “text reproduction“ and McAullife’s hybrid texts. Translation studies should concentrate on those concepts in order to answer the needs of the dynamic progress of law in its today’s rapidly changing environment. Kjær (2014: 7): “My suggestion is that Pym’s notion of the ‘moving text’ (2004) may perhaps be a source of inspiration for scholars of legal translation; this concept seems to catch the dynamics of translation in a world of internationalisation and transnationalisation of law. Instead of difference, direction, distance and distinctness, the traditional concepts of translation theory, we should perhaps rather think of translation in terms of similarity of languages, texts on the move, closeness of actors and dynamics of communication.”



taking into account the nature of EU law and its special relationship with the national laws of Member States. Considering that EU legislation is not only independent of national laws, but also has primacy of application, using functional equivalents, i.e., national terminology to denote EU concepts may be misleading as suggested in my earlier research (see Bajčić 2010). This claim is also supported by the CJEU's approach as it is cautious not to apply the terminology in use in the Member States for emerging EU concepts (Kjær 2014: 310). In general, there is a strong tendency at the EU level to prefer neutral translation to terms denoting national law concepts (Prieto Ramos 2014; Bajčić 2010; 2014) and hence functional equivalents. Not only do such translation strategies recognize the prominent position of the context in the cognitive-terminological sense; they also serve the goal of legal translation in the EU context, namely achieving uniform application and interpretation of EU law. However, this is not to say that functional equivalents should be avoided at all cost. Jopek-Bosiacka's (2013: 127) contrastive analysis of translations of ECJ judgements into Polish showed a predominant usage of functional equivalents supported by additional explanations and/or transcriptions, i.e. borrowing in case there are no functional equivalents. Although resorting to functional equivalents in EU translation can sometimes be necessary in order to ensure a proper understanding of EU legislation, it must be borne in mind that functional equivalents denote concepts of particular legal traditions that have different scopes of application in national laws than in EU law. As Prieto Ramos (2014: 6) warns, such concepts should not be taken at face value. Rather than relying on national law terms, i.e. functional equivalents when translating EU concepts, it is instrumental to delimit the meaning of a concept under EU law.

## 6.5 Practical guidelines for legal translators working in the EU

We believe that the CJEU's approach described in the previous chapters offers a point of departure for translating EU law, under the caveat that comparing different language versions should be restricted to the term level alone, for one is not comparing the meanings of these terms. In this respect it is not important that there is no source language or no neutral standard by which to compare. It is the meaning of an EU concept that should be taken as the yardstick for comparing concepts and the starting point in the process of translation. In this sense, the first step in the translation process is to delimit the meaning of a concept under EU law in line with the CJEU's autonomous teleological approach, whereas the comparison of language versions can be taken as the second step or a model for gaining assurance that the selected language equivalent is correct or the best solution. We have previously compared the CJEU's approach to the cognitive terminological

approach to meaning. Departing from that and in keeping with the CJEU's pattern of argumentation set out in *CILFIT* we advocate a concept-based approach to translation of EU law which takes into account its specific legal context.

That said, comparing other languages should be part of the practical search for the appropriate equivalent, highlighting the multilingual character of EU law. As Derlén (2009: 355) recognizes, the point of consulting other versions is to gain perspective on the national wording.<sup>19</sup> This is true not just of legal interpretation, but also of translation. An added value of comparing other versions is that it helps prevent mistakes often resulting from relying on one language version. There are probably many examples attesting to the fact that translators relied only on one language (usually English as the language of the base text). At least with Croatian translations of EU legislation this has not seldom been the case as elaborated hereafter.

*Enforcement order* has for instance been translated into Croatian as *ovršni analog*,<sup>20</sup> whereas it should be *ovršni naslov* which denotes a broader concept covered by the English term. Had the translators consulted German, French or other languages, they would soon realise that all of them use a term denoting *naslov*, i.e. a broader concept (e.g. DE: *Vollstreckungstitel*, FR: *titre exécutoire*, IT: *titolo esecutivo*, ES: *título ejecutivo*, NL: *executoriale titel*, SV: *exekutionstitel* etc.). What is interesting is that besides Croatian, only Slovene uses the more narrow term *naslov za izvršidbo*. It must be conceded that this is, at least partly, due to an evident lack of time for translators are working under constant time pressure. Be as it may, once published in the Official Journal, translations become authentic versions and are binding wherefore wrong usage of terms may cause problems in the legal practice, despite the fact that mistakes can be corrected by means of corrigenda. Meaning-changing corrigenda that result from translation mistakes are numerous. In fact, corrigenda are being published in the Official Journal "on a rolling basis" (Bobek 2011: 127). Besides the meaning-changing corrigenda that alter the content of the legal norm, there are also purely formal corrigenda. According to Bobek (2011: 128), the latter are genuine corrigenda that rectify typographic mistakes and

19. From the perspective of legal scholars, multilingualism does not lead to problems in national courts, but the uncertain and practically impossible guidelines from the ECJ (Derlén 2009). Assuming that "some comparison is surely better than none", Derlén advocates using English and French side by side with the national language version – which may reduce and root out translation mistakes. Other scholars claim that the purpose of a truly multilingual reasoning should be to reach a better interpretation of the norm of EU law (Bengoetxea 2011: 109).

20. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004, p. 15–39. The Croatian version of the Regulation is available at: <http://eurlex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32004R0805...from=EN>.

omissions.<sup>21</sup> Despite the possibility of corrigenda, one must consider the fact that it might take a lot of time to notice a mistake, whereas, national law practitioners might misinterpret the meaning and scope of application of a mistranslated concept. In all likelihood, they will not consult other languages just to make sure they ‘got it right’. Therefore, translators are warned not to translate from English (or from another language for that matter) only and more importantly, without taking into account the meaning of a concept under EU law. On a practical note, it is equally important that translators do not majoritize based on confluent languages (e.g. consult Italian and Spanish only, or Croatian and Slovene), for such practice can lead to poor terminological choices.

As Bengoetxea (2011: 116) correctly observes, legal translation does not consist of ascertaining equivalence between legal terms used in different languages. The most important point to be made here is that there is no semantic correspondence of concepts denoted by those terms (since the concepts are regulated differently in the different legal systems) (*Ibid.*). The CJEU also seems to acknowledge the latter fact since it relies on developing “autonomous concepts and independent meaning to ensure effective and uniform application of EC law based more on the teleology of the treaties” (Bengoetxea 2011: 108), rather than on linguistic studies and comparing different language versions. By analysing settled case law it is evident that the CJEU draws little value from comparison. To remind ourselves, in case of doubt, a particular provision should be interpreted and applied in light of the other official languages; however, in the case of divergence between the language versions, a provision or a concept must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part. In linguistic terms, it is necessary to consider the extralinguistic context of a provision in question. We believe that following the above described propositions may enhance the quality of legal translation in the EU context.

## 6.6 Summary

By zooming in on the existing lexicographic treatment of legal terms, this Chapter identified some shortcomings of bilingual or multilingual legal dictionaries and

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21. As regards the legal status of corrigenda, strictly speaking, the corrigendum is not a self-standing text (see, for example, Bobek 2011: 130–133). A corrigendum enters into effect at the same time as its parent text and is promulgated in the form of a notice in the Official Journal. However, as Bobek points out, the post-corrigendum regulation is a different legislative text, whereas a meaning-changing corrigendum should be regarded as an amendment in a material sense which can be applied only prospectively, and with due respect for acquired rights and the legitimate expectations of the individuals concerned (*Ibid.*).

term banks. It made proposals to improve the existing lexicographic practice by analysing most pervasive issues of legal translation and exposing the set course of legal translation scholarship to debate. Making a shift from this general background to the special demands of EU law, it underlined the need to move away from the traditional notions of translation studies, such as source text and target text taking into account the features of EU law. Instead, we suggested greater weight be paid to the categories of concept, context, meaning and conceptualization, all of which are central to terminology studies and need to be addressed in legal lexicography too. In numerous cases the CJEU has likewise put forth that reliance on one language version should be avoided, favouring instead an onomasiological, that is, a concept-based approach. In determining the concept's meaning the CJEU relies on extratextual factors, such as the purpose and the context of a legal provision. When searching for an equivalent translators of EU legislation should also cast their net wide enough to conduct both microcomparison and macrocomparison of concepts. Since the legal context or background legal knowledge acts as a catalyst for the meaning of a legal concept, it is essential to consider it when translating legal concepts. These findings must be born in mind when compiling a legal dictionary of EU law, for legal lexicographers share the challenges of legal translators. In light of these observations, we have unveiled the proposal to utilize the tools of terminology studies in order to cope with the challenges of EU legal translation as 'a translation type *sui generis*' (Kjær 2015: 92). It is hoped that insights from terminology studies and in particular the cognitive terminological approach may offer a course of inspiration for scholars of legal translation.



## Multilingual legal dictionaries

### Towards a terminological dictionary of EU law

#### 7.1 Introduction

To claim that the study of law starts with a dictionary, implies that people need a dictionary to understand the law. Although the same argument could be made for other domains by extension, there is at least one notable distinction to be made in relation to the legal field. In one way or the other, people's lives are affected by the law, considering the law is capable of enforcement through institutions. Despite the fact that legal rules govern our lives from the cradle to the grave, they are not always understandable. Having an inherent logic of their own and being embedded in complex legal contexts, to fully grasp the meaning of a particular legal rule, one cannot rely on words alone. Needless to say, within a multilingual legal environment such as the EU, the described problems of understanding the law are multiplied.

Nevertheless, users still turn to dictionaries (either monolingual or bi- and multilingual) imperfect as they may be, hoping to find quick solutions preferably by a mouse click. Departing from this background the present Chapter examines what can be done to improve the quality and reliability of legal dictionaries. With this in mind general matters pertaining to legal lexicography and the role of theory in dictionary making are addressed. While the lack of a theoretical approach is still a cause of concern for lexicography in general, the integration of theory into the practice of dictionary making is instrumental for enhancing the quality of dictionaries. The Chapter tackles a number of other issues such as the distinction between lexicography and terminography, the importance of domain and dictionary definition and the need to reinvent the role of the dictionary adapting it to the age of google translator and other technological juggernauts.

#### 7.2 Reinventing the dictionary

The task of revising traditional dictionaries for the digital age calls up two important questions: What should a modern-day dictionary look like? And do we

really need one? Dr. Johnson (1755) defined a dictionary as “a book containing the words of any language in alphabetical order, with explanations of their meaning, a lexicon, a vocabulary, a word-book.” It goes without saying that a dictionary isn’t primarily a book anymore. Given the shift from finite to infinite space and the fact that there are no physical constraints, the conception of a dictionary has changed significantly. As Sven Tarp (2009: 43) put it, lexicography is on the move. Today, dictionaries are perceived as digital databases that we carry in our pockets. The fact that the digital revolution is transforming the traditional dictionary is not a bad thing, but an opportunity to rejuvenate the venerable dictionary (L’Homme and Cormier 2014). The inevitable digitalisation of dictionaries will bring about major changes to the form, as well as the display of data in a dictionary, which makes the dictionary an interesting object of study.

Regarding the second question, yes, we do need dictionaries. As Steven Pinker (1994: 7) said, “I have never met a person who is not interested in language”. Not only do people tend to have many questions, but they also have strong opinions about language. This meta-awareness of language is especially common among lawyers, which, considering that language has been labelled as the lawyer’s most important tool, is understandable. Versatile as the purposes of consulting a legal dictionary may be, we believe that the main purpose of a legal dictionary is to enable users to learn about legal concepts in order to understand the law.<sup>1</sup> That meta-purpose looms large over all other more specific objectives of dictionary usage such as finding a translation equivalent or comparing different legal systems. In this regard, the modern dictionary of law should first and foremost aim to provide an easily graspable display of legal information.

Irrespective of the orthodox importance of dictionary for the study of law, it is less known that the study of law has contributed to lexicography as well, most notably to early English lexicography. In fact, the notion of a monolingual English dictionary began with a lawyer, John Rastell, in the early 1520s. This is not surprising considering that of the 43 known members of the Elizabethan Society of Antiquaries, 38 were lawyers; 15 of whom engaged in lexicographic undertakings.<sup>2</sup> Likewise, one of the first dictionaries of English titled *A Compendius Dictionary of the English Language* compiled in 1806 was the work of a lawyer. Though a lawyer by vocation, the language enthusiast Noah Webster became far more famous as a

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1. L’Homme and Cormier (2014: 8) make the following argument: “The essence of a language or encyclopedic dictionary will remain because they meet a fundamental human need: learn a language to understand the universe.”

2. For an overview of the development of the early legal lexicography in English see Lancashire and Damianopoulou (2014: 45–59).

lexicographer.<sup>3</sup> He is mostly associated with the *American Dictionary of the English Language*, a massive follow-up to the first edition. Published in 1828, the *American Dictionary* contained 70,000 entries (and by 1864 114,000 entries) and was the most complete dictionary of its age. With the *American Dictionary* Webster made his mark on the American lexicographical landscape and became a household name. After his death in 1843, two businessmen from Springfield, Massachusetts, Charles and George Merriam, bought the rights to his dictionaries and the famous Merriam-Webster dictionary appeared in 1847. The described lawyerly practice of engaging in lexicographic undertakings has continued to date. In fact, the majority of the dictionaries analysed in Chapter 6 have been authored by lawyers.

Today, we live in a golden age for the study and appreciation of words, in which dictionaries are more accessible than ever. Online dictionaries accessible per handheld devices and mobile phones give whole new meaning to the phrase ‘look it up in a dictionary’. Though not every dictionary is reliable, we are witnessing a popularity of dictionaries thanks to their digitalisation. Online tools like Wiktionary or Urban Dictionary<sup>4</sup> demonstrate that people are curious about language and words. These tools are crowd-sourced, which means that people can actually add entries and contribute word usages. This has revolutionized the user’s role turning the user from a passive observer into an active participant. Consequently, such “dictionaries” no longer offer just a snapshot of a word’s usage, but include whole lists of different usages documented by real users. Unlike older traditional dictionaries compiled by professional lexicographers, such tools are neither authoritative nor prescriptive. The inevitable shift of the dictionary paradigm is a consequence of the digital age and the internet; lexicographers simply cannot outrace the evolu-

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3. Noah Webster (1758–1843) cherished a passionate patriotism about language and believed American English is at least as good as British English. Among other things, he fought for simplified spelling of American English and even lobbied the Congress to make it a legal requirement. He is believed to be responsible for the American aluminum in preference to the British aluminium, for the American pronunciation of schedule (rather than the English ‘shedjulle’) and for the standard pronunciation of lieutenant (which used to be pronounced ‘lefftenant’). Before compiling his dictionary, he published his first work between 1783 and 1785 *A Grammatical Institute of the English Language* consisting of three books: a grammar, a reader and a speller, and then in 1788 *The American Spelling Book*. For a more detailed depiction of Webster’s work see Bryson (1990: 145–150).

4. Available in 158 languages, Wiktionary (whose name is a blend of the words wiki and dictionary) conceived as Wikipedia’s sister project is a multilingual, web-based project to create a free content dictionary. Available at: <https://www.wiktionary.org/>. Urban Dictionary ([www.urbandictionary.com](http://www.urbandictionary.com)) is a crowdsourced online dictionary of slang words and phrases. Anyone can make submissions to these dictionaries. Professional translators likewise use online tools and discussion forums (e.g. Proz.com which has a system of asking terminological questions, see Biel 2008.)



tion of language. By the time they finish with Z, they have to move on to A again, because language is evolving all the time. While this does not mean that dictionaries are “on their way out”, the dictionary conception needs to be adapted to the digital age. The same holds true for the legal dictionary.

### 7.2.1 The future of legal dictionaries: Going digital and cognitive

The key tasks in lexicography used to be data collection, data analysis and synthesis. After 1980s annotated corpora began to be used, thus replacing hand-gathered and labour intensive citations. Finally, in the 2000s Web corpora saw the light of the day and changed the key tasks of lexicographic data collection. Despite the new technologies and the ever-growing volume of data, core lexicographic tasks still depend on human effort. This holds true for lexicographic projects in the field of law in particular.

In order to create reliable databases and dictionaries we need more reliable representation systems that will accommodate both the fuzzy boundaries of domains and the dynamic nature of the domain categories. The question is how a dictionary can parallel the way concepts are conceptualized by the legal discourse community? This cannot be done without a shift from finite to infinite digital space, wherefore the future dictionary must be a digital resource. The advantages of digital dictionaries as compared to print dictionaries are discussed in more detail later in this Chapter.

Law, in general, reflects human values, practices and aspirations of changes as its boundaries are flexible and in constant evolution (Wagner and Gémár 2013: 738). A dictionary should be able to capture this nature of the law. As was mentioned in Chapter 2, it is not the language of the law, but the law itself that is complex. Language reflects both the conceptual structure and the specific characteristics of the law. Therefore, rather than being described in isolation, legal concepts should always be observed against their conceptual backgrounds. After all, the concepts of a domain are determined by the nature of that domain (Araúz et al. 2012: 162). It is hence not possible to describe or define concepts without taking into account the characteristics of their domain. In regard to EU law, its most salient features are multilingualism and the autonomous teleological interpretation of the CJEU, as discussed in the previous chapters. Both of these characteristics will influence the terminological description of EU legal concepts, underlining the cognitive terminological perception of context as being all-important in knowledge representation. As such, the extralinguistic context must be included in the dictionary representation. This is instrumental in view of the belief that knowledge resources in which concepts are related to one another and to the wider dynamic conceptual structure facilitate knowledge acquisition. In fact, it

has been claimed that dictionaries and databanks would be more efficient if their structure would resemble the way in which concepts are represented in the mind (see Meyer, Bowker and Eck 1992: 159–172), and we may add, if they were more intuitive to use. Needless to say, this cannot be achieved by the traditional linear representation typical of print dictionaries. Instead, richer conceptual structures need to be included in the dictionary.

The proposition endorsed throughout this book, sustaining that legal concepts are flexible categories conceptualized as parts of wider conceptual structures is consistent with basic findings of cognitive linguistics. Note that cognitive linguistics is one of the few linguistic theoretical frameworks that make an effort to account for knowledge acquisition (Faber and Ureña Gómez-Moreno 2012: 89). Considering that terminology studies have always focused on the representation of entire specialized knowledge domains, the interrelatedness between terminology studies and cognitive linguistics appears self-evident. Approaches such as sociocognitive terminology and frame-based terminology (and more recent approaches such as termontography and ontoterminology) have in particular tackled the issue of creating terminographic resources. However, different approaches deal with different domains. In consequence, the principles and methodologies developed within a domain may be ill-adapted to other domains. Frame-based terminology for instance, focused on the environment domain, while Temmerman's sociocognitive terminology provides terminographic solutions for the domain of natural sciences. The former approach was developed by Faber et al. (2005, 2006; Faber 2007, 2009, 2011) and represents a newer cognitive variety of Fillmore's frames. By means of corpus analysis, conceptual networks based on a domain and on a closed inventory of hierarchical and non-hierarchical semantical relations are created. EcoLexicon, a conceptual network of this type, contains the so-called *Environmental Event* as the generic unit for framing and organizing all concepts in the database. A major advantage of this tool is that it facilitates knowledge acquisition by representing concepts as parts of wider knowledge structures (see Faber 2011: 25–26).

Both frame-based terminology and sociocognitive terminology draw on cognitive semantics and its proposals for meaning representation (such as frames and idealized cognitive models). Attaching greater weight not just to meaning, but also to the link between meaning and cognition, has led to the creation of resources that facilitate knowledge acquisition, since concepts are presented as part of larger knowledge structures. In this respect, both of these theoretical proposals deserve due attention as well-grounded proposals based on solid theoretical foundations and methodologies, even though they might not be apt for a terminological description of every domain. The fact that they implement theoretical principles into the methodology of dictionary making is important in light of the notable lack of theory in lexicographic projects.

### 7.3 The role of theory in the making of dictionaries

For a long time linguistics has looked down on lexicography. Although the development of semantics brought certain changes in this respect, most linguists still persevere that there is no theoretical lexicography (Béjoint 2010: 262).<sup>5</sup> Atkins and Rundell (2008: 4) note that while there may be lexicographic principles governing the making of dictionary, there is no theory of lexicography. However, with the evolution of cognitive linguistics, lexicography (and terminography) has finally turned a corner and the theoretical premises of cognitive linguistics commenced to be applied to lexicographic undertakings (e.g. FrameNet).<sup>6</sup> Consequently, cognitive linguistics has provided a theoretical platform for the methodology of dictionary making. This conclusion holds up for conceptual dictionaries in particular, due to the importance of the conceptual structure for the cognitive perception of meaning. We will now turn to terminography as the starting platform for the making of terminological conceptual dictionaries.

#### 7.3.1 Terminography

As the applied sister discipline of terminology, *terminography* deals with the practice of making terminological resources like databases and dictionaries. Generally speaking, it aims to provide a systematic description of terms of a specialized field (Temmerman 2000: 231). We have previously referred to legal lexicography, rather than legal terminography, without discriminating between the two. It is important to note that the differences between specialized lexicography, whose object of study is the making of specialized dictionaries, and terminography are not that significant (Bergenholtz and Tarp 1995). Likewise, many terminology scholars find that specialized lexicography and terminography cannot be clearly delimited (Wright and Budin 1997; Cabré 1999, Bowker and Pearson 2002). Similarly, Martin and van der Vliet (2003) hence make no distinction between a terminological dictionary and a specialized dictionary as both focus on a language used among specialists in the field, i.e. a specialized language.

The main difference between lexicography and terminography may be described as a difference of approach. While the traditional lexicographer utilizes the conventional semasiological approach, the terminographer proceeds from the

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5. In his book *Lexicography of English* Béjoint (2010: 381) starts his strikingly short chapter on the theory of lexicography on a grim note: "The chapter on the theory of lexicography will be as short as a chapter on snakes in Ireland. I simply do not believe that there exists a theory of lexicography, and I very much doubt there can be one."

6. For more on FrameNet see Fillmore and Atkins (1994: 349–393).

concept, and not the term, in accordance with the onomasiological approach. In reality though, both lexicographers and terminographers combine semasiological and onomasiological approaches (Bowker and Pearson 2002: 155). In my opinion however, the onomasiological approach is more in keeping with the cognitive orientation in terminology and should be integrated into the theoretical framework for the making of legal dictionaries. Based on a conceptual structure, legal dictionaries do not describe words or terms; instead, they represent concepts in their wider knowledge structures and in interrelation to other concepts of the same structure. The definition is central to such concept representation, in that it provides additional legal information to the dictionary user. In line with principle propositions of cognitive terminology, such a dictionary is not a mere list of terms, but aims to represent the structure of a particular domain, thus enabling the user to gain information on the structure of that field of knowledge (Szemińska 2011: 179).

Taking a critical view of the category of specialized lexicography, in this section I will refer to the conclusions made on legal language (Chapter 2) and reassess them against the background of specialized lexicography. To embrace the common perceptions of specialized languages as sublanguages in sharp contrast to general language is unlikely to yield a clear account of the use of language in a special field. Instead, focus should be put on the link between language and the domain in which it is used and in which it fulfils a special function, and on the categories of concept and conceptualization. Both domain concepts and the process of conceptualization mirror the characteristics and the conceptual structure of the domain of study. The same line of argumentation holds true for legal lexicography or legal terminography. Failure to recognize the implications of the function of a dictionary and the domain it portrays results in at best partial solutions of lexicographic problems. To conclude, instead of persevering on worn-out dichotomies specialized/general, lexicography should be approached first and foremost in relation to the domain that represents the object of its interest. To this end the following section discusses the importance of domain for dictionary making.

### 7.3.2 Domains

Domain and domain structure are central to any theory of terminology and specialized communication, as well as knowledge representation (Araúz, Faber and Montero Martínez 2012: 161). Since not all domains are structured in the same way, different domains call for different terminological approaches. In this respect, it is the nature of the domain that determines not only the theoretical principles, but also the methodology to be applied to a particular domain. The above mentioned frame-based model can do little for the terminographic representation of law, considering that law, unlike natural sciences or environment, is a culture-bound domain.

In the context of this discussion it is instructive to note that domain represents an ambiguous concept in linguistics. In the cognitive linguistics sense, a domain represents a part of knowledge of the world which consists of categories and their relations. Within terminology, there are two different perceptions of domain. A domain is viewed either as a conceptual category (such as GEOGRAPHIC OBJECT, STORM-EVENT, to cite examples from EcoLexicon), or as a specialized field of knowledge (e.g. GEOLOGY, ENGINEERING) (Faber 2011: 20). Within this study the term *domain* is used in the latter sense to denote legal fields as specialized knowledge domains. However, it is difficult, if not impossible, to draw clear lines between individual legal fields, as law is gradually outgrowing its national categories, while new categories emerge such as transnational and supranational. EU law as the domain of our interest is linked not only to national laws of EU Member States, but also to international law. Rather than complying with the more traditional classifications of legal fields,<sup>7</sup> in case of EU law it is recommendable to make a further distinction between subfields which act as specialized extralinguistic contexts and should be included into a dictionary of EU law. At the same time, subfields of EU law should not be observed in strictly separate compartments, but rather as interrelated parts of EU law.

Summing up, it can be said that domains as specialized fields of knowledge provide the context in which a concept's meaning is fully realized. Respectively, the domains act as the background against which concepts are re-contextualized. *Re-contextualization* here refers to the modification of a concept's meaning by the context. Even the meaning of fairly common legal concepts like *legal remedy* or *court* can be modified by the context. In the context of the European Convention for the Protection of Human Rights and Fundamental Freedoms for instance, these concepts have a different meaning than in the context of national laws of the signatory states<sup>8</sup> to the Convention. The ECtHR stated in the case *Sramek v Austria*

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7. In continental civil legal systems (e.g. German, Austrian, Croatian etc.) law is as a rule divided into the following branches: financial law; civil law and civil procedural law; criminal law and criminal procedural law; criminology and victimology; international law; private international law; family law; maritime and transportation law; history of law and state; labour and social law; Roman law; general theory of law and state; commercial law and company law; administrative law and the administration; constitutional law; European public law; European private law (Ordinance on the Areas, Fields and Branches of Science and Art of the Republic of Croatia, Official Gazette, No. 118/09). These branches of law also account for the subjects commonly taught at law schools in continental civil legal systems.

8. A signatory state is a state that has signed and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and joined the Council of Europe. In this context it should be pointed out that the term Member State spelled with first letters as capital letters indicates we are talking about EU Member States, whereas the term member state (in lower-case letters) refers inter alia to the members of NATO (North Atlantic Treaty Organization).

(application no. 8790/79) that the Austrian Regional Real Property Transactions Authority (in German *Landesgrundverkehrsbehörde*) can be considered a tribunal under Art. 6 (1) of ECHR. Likewise, the CJEU is known for its broad interpretation of the concept of *court* or *tribunal*, failing or refusing to provide an unambiguous definition thereof. On one occasion (see *Nordsee*<sup>9</sup>) it determined that an arbitration tribunal does not fall under the category of court or tribunal in the sense of EU law. These instantiations of different interpretations in varying legal contexts attest to the importance of the extralinguistic context and knowledge for the dictionary representation of such concepts of EU law.

Having in mind the underlined importance of the domain for the choice of methodology and the theoretical approach to the making of a dictionary, due attention must be paid to EU law.

#### 7.4 The role of definitions in a legal dictionary

As a rule, definitions are not included in either bilingual or multilingual legal dictionaries. As to why the definition does not seem to merit a dictionary entry, we can only speculate given the lack of legal lexicography scholarship and a profound theoretical void in the making of legal dictionaries. The latter is supported by a relatively small number of publications researching legal lexicography.<sup>10</sup> Conceding that drafting legal definitions is a formidable task; drafting legal definitions for the purpose of a legal dictionary is flat out intimidating. In spite of that, it is argued here that definitions should be included in a legal dictionary. To make a case for the legal definition in bilingual or multilingual dictionary of law, we must first examine the purpose of definitions in general and in turn in the field of law.

Since the time of Socrates defining the meaning of words has posed a philosophical question of a recurrent concern. At the root of this question lies the mysterious relationship between the word and its meaning. There are two alternative conventional views of the described relationship: the physist and the nomist. According to the physist view, a word is the natural expression of a particular real thing. As such, the meaning of a word is not separable from the thing itself, but an inherent feature of the thing. In contrast to the physist view is the well-known nomist view. The latter assumes a dualism of word and meaning, which later became

9. Case C-102/81 *Nordsee v Reederei Mond* [1982] ECR 1095.

10. Marta Chroma's *Legal Translation and the Dictionary* (2004) focusing on bilingual special-purposes lexicography and a recently published volume titled *Legal Lexicography. A Comparative Perspective* (2014) edited by Máirtín Mac Aodha are exceptions, but much remains to be researched in this underexplored territory.

the cornerstone of cognitive streams in linguistics and mentalism, postulating that there is no correctness in names “other than convention and agreement; any name which you give, in my opinion, is the right one, and if you change that and give another, the new name is as correct as the old” (Plato’s *Cratylus*).<sup>11</sup>

With respect to the purpose of definitions, they provide us with the necessary clarity and disambiguity as to the meaning of a word. For this reason people look up words in monolingual dictionaries. But what is the main purpose of a definition in a dictionary? If it is to clarify meaning, then a definition is concerned with sense and relies on actual usage of a word, and not application, (although at first glance at least the latter seems more important in the field of law). It was Wittgenstein who said that a word’s meaning is determined by its use in language. But as Humpty Dumpty explains to Alice: ‘When *I* use a word, it means just what I choose it to mean – neither more nor less.’<sup>12</sup> In a similar vein, legal terms are assigned special meanings by virtue of legal concepts and legal provisions. A dictionary definition should hence describe the concept, and not the term and contribute to the overall goal of achieving a realistic dictionary representation of a domain and paralleling the way knowledge and concepts are connected in the mind. Before making suggestions as to how this can be achieved, we will take a look at general features of definitions in the field of law and point out their shortcomings when used as dictionary aids.

Definition is often regarded in relation to explication, whereas only the former is nominal, and explication real. In other words, the definition focuses on the word in its existing expression of a concept, and the explication focuses on the concept which it attempts to refine for a word in the interests of expression (Bowers 1989: 160). Not seldom is an explication mistaken for a definition. Explanation, on the other hand, is a kind of signposting or particularizing a sense or application. In this sense Bund (1983: 21) claims that not everything that looks like a definition, deserves the label: „Nicht alles, was wie eine Definition aussieht oder als solche ausgegeben wird, verdient diese Bezeichnung.“ On that note it should be pointed out that Dr. Johnson (1755) used the word *explanation* not *definition*.

A further distinction is to be made between lexical definitions, which reflect meaning as recorded in actual usage and stipulative definitions, which create new meanings or new states of affair by fiat and have a declarative illocutionary force:

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11. In the dialogue, Socrates is asked by two men, Cratylus and Hermogenes, to tell them whether names are “conventional” or “natural”, that is, whether language is a system of arbitrary signs or whether words have an intrinsic relation to the things they signify. (Quoted in Bowers 1989: 156).

12. Lewis Carroll’s *Through the Looking-Glass* (1872), Lee and Shepard, where Humpty Dumpty (anthropomorphic egg) discusses semantics and pragmatics with Alice.

“Stipulative definitions are those which drastically alter the ordinary meaning of words by narrowing or enlarging their sense or by creating a wholly new meaning for them.” (Bowers 1989: 173). The questions to be considered are, however, who is the definition for, a specialist or a layperson, and what function does it fulfil. Our primary task is to create ways for a reliable presentation of concepts in a dictionary, preferably one that would parallel the way in which lawyers conceptualize the law.

Terminologists claim that a concept can be represented in a dictionary either by a definition or by an illustration (Cabr  1999: 104). Rather than attempting to use iconic units to reproduce concepts in a legal dictionary, this study relies on linguistic formulae to describe legal concepts. In compliance with the ISO standard 1087 (1990),<sup>13</sup> a definition is a statement which describes a concept and permits its differentiation from other concepts within a conceptual system. Within the theory of terminology, three types of definitions are distinguished: linguistic, ontological and terminological (Cabr  1999: 104). Unlike *linguistic definitions*, which resemble traditional dictionary definitions referred to in Chapter 2, *ontological definitions* include encyclopaedia-like features, such as the particular intrinsic, extrinsic, essential, and complementary aspects of a concept. *Terminological definitions*, on the other hand, are more descriptive and define concepts in exclusive reference to a special subject field. Unfortunately, defining indeterminate legal concepts calls for a shift from these traditional definition conceptions. Therefore, this section proposes new ways of defining indeterminate legal concepts, while departing from the findings about the semantics of legal concepts.

Definitions have a decisive role in law in view of the fact that they serve as aids for interpretation and promote clarity by reducing indeterminacy and achieving consistency ( ar evi  2000: 153). Some authors distinguish between *statutory* and *explanatory definitions*. While the former alter the ordinary meaning of words by narrowing or enlarging their sense or by creating a new meaning for them, the latter only provide a necessary degree of definiteness (Bowers 1989: 173). As mentioned in Chapter 1, definitions in law can be either intensional or extensional. *Intensional* cite the essential features of the concept being defined like dictionary definitions, whereas *extensional definitions* list the objects denoted by that concept. In other words, extensional definitions are formulated by enumerating the sub-classes of a class. According to Mattila (2006: 67), this is possible if the sub-classes are well known and their number limited. It should also be mentioned that it is common in law to define an offense by enumerating its constituent elements and situational components in an extended fact-situation. This seems to be the

13. ISO 1087 (1990): Terminology-Vocabulary = Terminologie-Vocabulaire, Geneva, International Organization for Standardization.



usual practice in criminal provisions of common law legislation (Šarčević 2000: 156–157). As noted in Chapter 2, both types of definitions can be intensional and extensional. Intensional definitions are popular in law, since the legal system is based on classifications (see Mattila 2006: 67). The previously mentioned definition of *vehicle* is an example of an extensional definition. To illustrate an intensional definition we will refer to an extract from the Pentagon's Department of Food Procurement specifications for a sandwich cookie:

The cookie shall consist of two round cakes with a layer of filling between them. The weight of the cookie shall be not less than 21.5 grams and filling weight not less than 6.4 grams. The base cakes shall be uniformly baked with a color ranging from not lighter than chip 27885 or darker than chip 13711. The color comparison shall be made under north sky daylight with the objects held in such a way as to avoid specular refractance. [...].

According to Bryson (1990: 184), this perversion of language continues to run on for fifteen densely typed pages. Pains-taking effort is made to over-explain the meaning of cookie as if to an idiot. Amusing as this definition may be, the modern dictionary calls for a rethinking of such intensional definitions, bearing in mind that concepts are in constant flux and their meaning may differ in different extra-linguistic contexts.

#### 7.4.1 Redefining the role of legal definitions

Therefore, in the field of law definitions serve a different purpose than in language in general. Commonly regarded as aids for interpretation, definitions provide certainty in regard to the application of law. If a judge is uncertain whether a legal provision applies to the facts of a case, they can find reassurance in statutory definitions. Observed in this light, the purpose of definitions is not just to clarify meaning and exemplify actual usage of words, but to clarify the application of concepts in the sphere of law. Interestingly, the early modern draftsmen warned against over-explanation and over-use of definition. Definitions were deemed legitimate only in case of vague borderline cases:

The fewer definitions the better. ... A word should never be defined to mean something which it does not properly include, e.g. 'piracy' ought not be defined to include 'mutiny' and so fort. ... The proper use of definitions is to include or exclude something with respect to the inclusion of which there is a doubt. ... and no attempt should be made to make a pretense of scientific precision by defining words of which the ordinary meaning is sufficiently clear. ...

(Thring 1902: 95–6, quoted in Bowers 1989: 170)

Similar warnings have been sounded by legal scholars as well, assuming that the courts pay little attention to definitions. That attitude implies that statutory definitions are drafted for the courts only. Likewise, it explains why statutory definitions were used so scarcely in common law. We will now concentrate on the purpose of statutory definitions from the legal perspective.

In general, definitions in statutes aim to fulfil three main purposes: (1) to promote clarity by reducing indeterminacy, (2) to achieve consistency and (3) to avoid lengthiness by abbreviation (see Bowers 1989: 171). While the third purpose boils down to indexing, and consistency can be ensured by adhering to the term/concept distinction as elaborated in previous chapters, we are left with clarity as the main purpose of definitions in statutes and legal drafting. However, the term clarity needs further clarifying. We interpret this term to mean resolving ambiguity and settling doubt. Legal definitions should aim to promote uniform interpretation and application by enabling courts to know whether a particular set of facts amounts to a particular category for the purposes of legal consequences (Šarčević 2000: 153). Unfortunately, legal definitions are not always straightforward in meaning and call for further intervention, usually on behalf of the judge. The example with the meaning of *vehicle* clearly shows that it is not always possible to determine whether a particular set of facts amounts to a category (i.e. aircraft to a vehicle) relying on a statutory definition alone. The problems of statutory definitions are connected to the general problems of legal interpretation and the loose relation between abstract terms and real-life events. In light of the fact that even statutory definitions can be obscure, imprecise and inconclusive, one may question the usefulness of definitions in a legal dictionary.

What more, EU law which is our object of study, is characterized by a lack of nominal definitions, wherefore many concepts are defined by the court in a concrete case. The definitions created in this fashion can be considered as explanatory at best. This brings into question their exploitation in a dictionary of law. Furthermore, definitions are likely to be altered or extended with future case law. For example, the restrictions on the freedom to provide services in the EU are prohibited by the primary legislation of the EU. However, over time the CJEU has developed the so-called justified limitations as measures that can restrict the freedom to provide services (see *Saeger v Denneweyer*; *Gebhard*).<sup>14</sup> Despite the described shortcomings of statutory definitions, we argue that there is a place for definitions in a dictionary of law, provided they are redefined and not drafted as statutory definitions in order to be more user-friendly. What has been called the penumbra cases as less central members of a category can be described by onto-

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14. Case C-76/90 *Saeger v Denneweyer* [1991] ECR I-4221; Case C-55/94, *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, [1996] ECR I-4165.

logical relations and explanations if necessary, as will be demonstrated later on. In this sense the definition contributes to the goal of integrating legal extralinguistic knowledge into the dictionary, thus enabling the user a better understanding of a legal concept, and in turn of the law.

#### 7.4.2 The problems of defining and categorizing EU legal concepts

If language of the law is a language of concepts which express legal norms and carry legal knowledge, then understanding legal norms presupposes the processes of conceptualization and categorization, which are vital for understanding the meaning of legal concepts. Conceptualization represents the process of understanding concepts as parts of wider conceptual structures. One concept may be conceptualized differently against different contexts which activate different knowledge elements and modify the meaning of a vague concept. On the other hand, categorization is the mental process that enables us to understand the world and classify entities by perceiving similarities and differences between them (Faber and López Rodríguez 2012: 25). Needless to say, categorization is important not only for understanding legal concepts, but also for juxtaposing legal concepts of different legal systems. It follows that both conceptualization and categorization are instrumental for understanding the meaning of a concept.

Just like definitions, classification of concepts has been a topic since time immemorial. The Ancient Greek philosophy differentiated two methods of classification: *diáresis* and *merismós*, that is, *divisio* and *partitio*. *Diaíresis* is the division of a whole into its parts. To give an example, the civil law concept of *Rechtsgeschäft* can be divided into *Verträge*, *Gesamtakte* and *Beschlüsse* (see Bund 1983: 19). The terms *genus* and *species* were developed later in the Aristotelian logic. On the other hand, *merismós* represents distribution, that is an enameuration or elaboration of the parts used for the whole. Assuming that classification of legal concepts can benefit from other non-legal approaches to categorization, two alternative views of categorization are explained in turn.

The two main theoretical proposals to category organization are the Prototype Theory and the Classical Theory.<sup>15</sup> Greatly simplified, while the former theory is based on judgments of graded similarity or family resemblance, the latter holds that conceptual and linguistic categories have definitional structure and are based on componential features (in the sense of either-or Aristotelian categories). In line with the latter, a category is either a crime or not, assuming it has the componential features of a crime, whereas according to the prototype theory, a category

15. For more see Faber and López Rodríguez 2012. The theoretical foundations of the Prototype Theory have been laid by Elenor Rosch in the 1970s.

can be more or less a crime. In other words, different members are deemed to belong to the category based on different degrees of similarity. For instance, the category of worker within EU law includes more prototypical and less prototypical members (ranging from posted workers to students working part-time, sportsmen and even job seekers who are considered to belong to this category). The more-or-less principle has a lot in common with the features of vague concepts that have been labelled core and penumbra (*Kern/Hof*) and include unclear cases casting interpretive doubt. For this reason, and having in mind the nature of EU law, the prototype theory is more likely to enable a realistic classification of EU concepts – assuming one is possible in the first place.

When it comes to categorizing EU law into different subfields such as criminal law, contract law, company law etc., rigid delimitations are not always possible. There are simply no clear dividing lines either between different subfields, or between EU law on the one hand, and national laws of the Member States, on the other. To the contrary, EU law and national law are interrelated in a special way due to the processes of harmonisation and approximation of national law to EU law.

### 7.4.3 Subject-field classification: Demarcation of EU law

Within the field of specialized lexicography, the process of delimiting a field in relation to adjacent fields is known as external subject classification (Bergenholtz and Tarp 1995). The latter stands in contrast to internal subject classification – also known as encyclopaedic classification (Svensén 2009: 148) – and to terminological classification. While the latter deals with concepts and terms belonging to the language of the subject field in question, encyclopaedic classification is concerned with the facts about the subject field. Known for its heterogeneous nature and a remarkably dynamic development, EU law does not lend itself to a purely terminological classification. For one thing, terminology used to express EU law has often been borrowed from other legal orders, especially legal systems of the EU Member States. The problem is that these terms are in the majority of cases given new meanings. Therefore, rather than relying on terms alone, regard must be had to the concepts of EU law. To this end, dictionary authors must tackle the issue of conceptualization and find ways to cope with the difference in conceptualization between legal orders, wherefore their task transcends the usual *modus operandi* of compiling a corpus by means of electronic tools for extracting relevant data from electronic corpora. If the latter even exist they may be lacking in the sense that they do not contain (all) relevant terms (since EU law is developing all the time) or they are inconsistent and inadequate; or the terms are not available in every language. This is true in terms of case law of the CJEU. Not all judgements are available in all languages since only the French version and the version in the language

of the case constitute official versions. Therefore, even if translations into other languages exist, they are unreliable. For this reason, the use of electronic corpora, frequency lists and automated extraction tools might result in omission of some important concepts of EU law. Until a more systematic approach to translating case law of the CJEU is taken, in order to compile a representative corpus for EU law, one must not only possess knowledge of the field, but also understand the special relationship between the CJEU and the national courts, as well as basic facts about EU law. For this reason the field of EU law makes an interesting object of a terminological study. Another important aspect of EU law to consider is a general lack of definitions, as opposed to civil law and common law, in which there is an abundance of nominal, prescriptive definitions. Because of this, judgements are indispensable for the compilation of a corpus for a dictionary of EU law, as many concepts are defined by the court in a concrete case.

Aware that a detailed historiographic analysis of EU law would exceed the purpose of this Chapter, it is nevertheless necessary to give an outline of its most salient features and analyse the way in which these impact its terminographic description. This is a must considering that to understand legal concepts, we must consider their wider social and legal backgrounds. To put it bluntly, terminographers must always consider the bigger picture. We cannot understand the meaning of the U.S. concept of *gerrymandering*<sup>16</sup> for example, if we do not consider its context: how it is applied, how and why it was introduced etc. Also, one can presume that U.S. citizens and lawyers in particular, are familiar with this term. In contrast, European Union citizens are not always familiar with EU concepts due to its relatively short history and new legislative tradition. The concept of *flexicurity*, (De: *Flexicurity*, Fr: *flexisécurité*) as a relative newcomer in EU law and society, can be mentioned to support the above claim. The latter concept refers to a model of a welfare state, namely a mixture of flexibility and social security combining the safety of work place, active labour market and social policy. It purports to be part of a knowledge-based economy, enabling simplified hiring and discharge of workers as well as considerable benefits for the unemployed. But in order to truly grasp the meaning of *flexicurity*, it is vital to consider the fact that it was first implemented in Denmark during the 1990s, where its implementation resulted in a 4% unemployment rate. It is also important to note that an unemployed person in Denmark is obliged to continuously seek employment or pursue further education in order to realize all unemployed benefits (Samardžija and Butković 2010: 290). Against this wider social background, the concept of flexicurity realizes its full meaning. Though this concept may be introduced into other Member States, it may (and

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16. In most simple terms, gerrymandering can be described as the process of dividing a region in which people vote in a way that gives an unfair advantage to a political group.

most certainly will) not achieve the same results as in Denmark due to notable differences in the national legal systems and economic realities of those states.

Before embarking on a terminographic description of EU law, attempt must be made to delimit this field – in the sense of external subject-field classification – which is not an easy task. For one thing, EU law has a special relationship with legal systems of its Member States, and with international law. However, what distinguishes EU law from international law is the fact that EU law is applicable to individual citizens in individual Member States and therefore must be accessible (and effective) in all of the official languages (McAuliffe 2013: 881). As regards the relationship between EU law and national Member State law, it is determined by the primacy of EU law over national law. This means that EU law is to be applied before national law in terms of legal hierarchy, and all Member States are bound by EU law and must apply it; be it by means of regulations as secondary law instruments that have direct effect, or by implementing directives which have indirect effect.

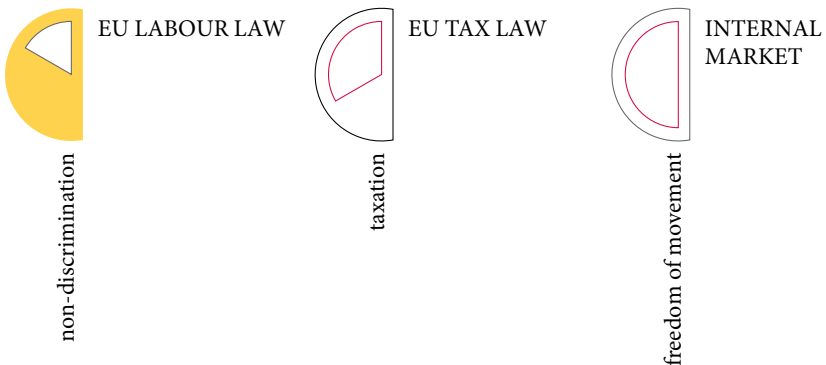
Furthermore, EU law represents an independent legal order with an autonomous conceptual system and EU legal terms hence derive their meaning from a common conceptual system at the EU level (Šarčević 2010:27). This is especially the case with newer legal fields, such as environmental law (which is at the interface of law, science, biology and economics). In this field, 90% of national environmental law comes from EU legal texts. That said, many EU concepts have been borrowed from one or from several national legal systems, or from international law (e.g. *effet utile*), and gradually take on an autonomous European meaning through case law. This is a consequence of the Court's autonomous interpretation that does not rely on national law meanings, which is especially striking today, whereas older EU directives have left more discretion to the Member States to interpret individual concepts (Šarčević 2012: 98).

Another aspect of EU law which has evident implications for its terminographic representation is the fact that it is developing at a tremendous pace. Every day new legislative instruments ranging from secondary legislation to soft law are issued to meet the changing social and political circumstances of our day. New regulations are passed that flesh out new concepts in order to make concessions or impose sanctions to the Member States. As a rule, concessions are made to the older Member States, whereas sanctions are imposed to the new ones. In this context it is fitting to mention that there is a strong economic dimension to EU law. According to Madsen (2008: 68), EU law should be perceived as part of intertwined processes of institution-building and market-making. In fact, EU law might be better understood if it is seen as the result of the interplay of institutions and markets which are the driver of European legal integration. Similarly, factors such as the economic crisis, accession of new Member States, terrorist attacks,

refugees, all change the perspective in EU law and impact the way it is conceptualized. In short, the circumstances surrounding EU law have matured from an economic community of 4 countries to a Union that today counts 28 Member States with an internal market guaranteeing free movement to its Member States and citizens. Despite the changes to which EU law has been subjected, for the purpose of this study, two features of EU law were singled out as its most striking characteristics, namely conceptual autonomy and multilingualism. Both of these reflect in the conceptualization of EU legal concepts and must be accounted for in a dictionary of EU law.

A corpus of EU tax law has been compiled to the end of proposing a dictionary model of EU legal concepts. On the example of EU tax law it will be demonstrated that this subfield is also linked to other subfields and that in order to describe it, it is necessary to include other relevant subfields into the dictionary representation. Because of this, a single EU concept can be part of different subfields. Although the focus here is placed on tax law, the same demarcation problems are typical of other EU law subfields.

The above mentioned concept of *worker* for example, can be classified under EU labour law, EU tax law or internal market and fundamental freedoms of the EU. Depending on the different subfield its definition will differ in regard to the specific purpose it fulfils in a particular subfield (teleological definitions):



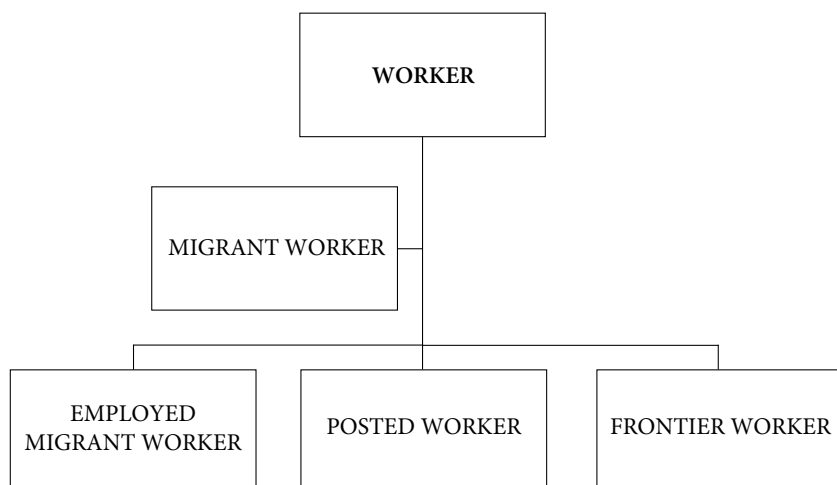
**Figure 3.** Different purposes of *worker* in EU law

Such a perception of concepts that can be subclassified in more than one domain is known as *multidimensionality* within terminology (Faber and López-Rodríguez 2012: 26). Based on the analysed case law, we have elucidated the following prototypical definition of worker within the subfield of EU labour law: “a person who provides services during a given time for and under the direction of another

in return for remuneration“ (case *Lawrie-Blum*).<sup>17</sup> In EU labour law, worker is defined having in mind the purpose of non-discrimination of workers, whereas other features, such as whether payment is in cash or in kind, are not deemed important. However, even retired workers, job seekers, those between jobs or undergoing training have been considered to belong to the category of worker by the CJEU. This starting prototypical definition of worker is then modified in other subfields having in mind the different purposes it fulfils in them, namely taxation of workers within EU tax law, and the freedom of movement of workers within internal market. A broad definition of worker needless to say contributes to the freedom of movement.

What can be deduced from this is that indeterminate EU concepts of vague meaning are poorly served by traditional silo-like divisions into legal fields and by classic categorization theories. Instead, it is argued that the cognitive perception of subfields as conceptual domains that modify the meaning of a concept is better suited for a terminographic description of EU law and its vague legal concepts.

Furthermore, the prototype category of worker as an indeterminate legal concept entails other subordinate concepts: migrant worker, employed migrant worker, posted worker and frontier worker, all of which are members of the same prototype category of worker. These relationships of subordination can be represented as follows:



**Figure 4.** Subordinate concepts of the category of *worker*

17. Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121. The case concerned the scope of protection of employment rights. The CJEU took the view that even a trainee teacher can be deemed a worker if he or she provides services under the direction of another. In other words, an employment contract requires someone to work under the direction of another.



In addition, the category worker includes the above mentioned job seekers, retired workers, those between jobs or undergoing training etc. Together with the different subfields in which this concept is realized, its subordinate concepts and other related concepts deemed important (e.g. pay, severance, etc.) make up its conceptual structure and have to be included in the dictionary representation. Definitions may also be added to subordinate concepts – in addition to the starting prototypical definition. It is important to note that if a concept is used in more than one subfield, its description in different subfields must relate to the different function it fulfils in each of them as illustrated on the example of worker.

An illuminating case in this respect is *Schumacker*<sup>18</sup> which at the same time concerned EU labour law and tax law. The legal issue of the case was whether different treatment of workers who are residents and those who are non-residents in a Member State with the view of direct taxation is justified. In order to answer the latter question, the CJEU had to apply the teleological criteria of both labour law and tax law, which served as the extralinguistic knowledge that influenced the meaning of this concept.

In light of these considerations, legal dictionary compilers are cautioned against using too rigid categorizations of law in general, and EU law in particular, bearing in mind that different subfields act as dynamic extralinguistic contexts which modify the meaning of a concept. For this reason, we do not advocate traditional classification methods used in some lexicographic tools such as UDC,<sup>19</sup> as they fall short in terms of providing a realistic account of a domain and its concepts. Likewise, dictionary authors should refrain from relying on traditional classifications of legal fields, as these are inadequate for the EU's autonomous and supranational legal system. Instead, it is argued that a cognitive terminological view of subfields based on the principle of multidimensionality offers a more adequate representation of legal concepts as parts of their wider extralinguistic legal context. It devises a way to link concepts to their related concepts without restricting their description to one subfield, contributing thus to a reliable and authentic dictionary portrayal of law. The terminographic methodology to be employed for this purpose must correspond to the features of the domain being described with a view to providing effective solutions for practical problems. In our opinion, this is achieved by the introduction of special ontological relationships into the dictionary, as is elaborated in the following Chapter.

The preceding sections have clarified the role (and the notable lack) of theory in the making of dictionaries and addressed the distinction between lexicography

18. Case C-279/93 Finanzamt Köln-Altstadt v Schumacker [1995] ECR I-225.

19. On the utilization of the classification scheme UDC (Universal Decimal Classification) in dictionaries see Bergenholtz and Tarp (1995).

and terminography. Due to the importance of concepts for legal studies, it was emphasized that the theoretical principles for the making of legal dictionaries should be sought within legal terminology studies with emphasis on the semantics of legal concepts. Just like legal translation in the EU context requires a specialized translation theory, legal terminography is also in need of a theoretical approach that would contribute to a reliable representation of EU legal concepts. With this in mind, the following section sets out the principal proposals of a cognitive terminological framework that can be applied to the making of legal dictionaries.

## 7.5 Filling a gap in legal lexicography

Cognitive semantics offers the most appropriate platform for the study of meaning in contemporary linguistics, due to the fact that it takes into account the contextual and pragmatic flexibility of meaning. Observed as a cognitive phenomenon, meaning is thought to exceed the word boundaries and involve conceptualization. The latter presupposes the construal of the concept's meaning. In the cognitive linguistics' sense meaning is therefore realized in the linguistic and the extralinguistic context (Tuđman Vuković 2009: 138). Furthermore, cognitive semantics sheds a new light on the principles according to which the conceptual structure and the lexicon are organized. Any viable theory of lexicography must venture to accommodate the above findings. With this in mind, this section proposes *cognitive terminography* as an adequate platform for the making of legal dictionaries. It builds on the main premises of cognitive linguistics seen through the lens of legal terminology studies. As regards category organization and conceptual organization, valuable insight came into linguistics from psychology, such as the catch-all notion of *prototype* (Rosch 1975, 1978). Findings on the prototype structure of categories and concepts without clear-cut lines offer a fresh perspective for defining indeterminate legal concepts, as demonstrated above on the example of worker within EU law. The following section further clarifies the notion of prototype and illuminates the link between prototype theory and terminography.

### 7.5.1 Prototype giveth, terminography taketh

The Prototype Theory was first developed in the 1970s in the context of psycholinguistic research into the internal category structure by Eleanor Rosch. Its further development continued within the fields of psychology and linguistics, whereas its application to linguistic research became also known as Prototype Semantics (Fillmore 1978). The experiments conducted by Rosch (1975) showed that natural categories in the mental lexicon are not represented as a set of characteristic

features, but as prototypes (meaning the best or clearest examples) of a category.<sup>20</sup> This leads to the conclusion, that whether a member belongs to a category is not an all-or-nothing phenomenon (see Rosch and Mervis 1975: 573–574), but rather a question of family resemblance of category members to its prototype, as the most central member of the category.<sup>21</sup> The latter understanding has bearing on how a concept should be defined. Moreover, it can be linked to the cognitive linguistics' thinking that encyclopaedic meaning represents structured knowledge, rather than strings of data or features. Rosch first used colour categories to prove her thesis, and subsequently succeeded in applying it to other natural categories such as birds, furniture, fruits and sports. By the same token, Fillmore (1975: 123–131) has pointed to the distinction between checklist meaning and prototype meaning. Unlike the former which is the meaning of a word according to the range of collocations it may fit, the latter is conceptual and general.

A crucial principle of the Prototype Theory is the more-or-less principle under which a member belongs “more or less” to a category by different degrees of its resemblance to the prototype. We find this principle to be equally important for legal definitions and legal interpretation. As noted in the part on indeterminate legal concepts (Chapter 2, section 2.5.2.), the inherent vagueness of concepts helps legislators cope with the overarching nature of the law. A legal norm, which is expressed by legal concepts, purports to be all-encompassing in order to cover as many category members as possible. Hence, the U.S. National Motor Vehicle Theft Act also refers to aircrafts (assuming that an instance of this category is more-or-less a motor vehicle).<sup>22</sup> Though they are not specifically listed in the Act, it is implied that the Act also applies to aircrafts, at least this seems to be the logic of the court as previously discussed. The main point to be made in this regard is that sometimes indeterminate legal concepts cannot be described by enumerating the main features of a concept or by relying on its statutory definition, but in pursuance with the described more-or-less principle.

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20. A category accounts for the number of objects that are considered as equivalents (Rosch 1978: 30).

21. It goes without saying that Wittgenstein's notion of family resemblance has played a vital role in the development of the prototype theory.

22. Act of October 29, 1919, c. 89, 41 Stat. 324, U. S. Code, title 18, § 408 (18 USCA § 408). That Act provides: ‘Sec. 2. That when used in this Act: (a) The term ‘motor vehicle’ shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails. \* \* \* Sec. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both.’

In Chapter 2 (section 2.6.1.), the advantages of the cognitive conception of meaning for the dictionary representation of polysemous terms were pointed out. The findings of prototype theory in particular proved fruitful for the treatment of polysemy. Temmerman (2000: 138) claims that prototypical categories have a polysemous character, whereas the number of semantic variants grouped around the prototypical nucleus grows. She illustrates this point with the English term *cloning*, demonstrating that a new variant can be built into the category because of its resemblance to the prototype. In this context we will briefly outline the main premises of Temmerman's sociocognitive terminology (Temmerman 2000) that builds on cognitive semantics and draws on the notion of prototype. Its key assumptions are here succinctly summarized:

- a. Language cannot be regarded as divorced from concepts. However, she advocates a semasiological approach (that departs from the term).
- b. Many categories have fuzzy boundaries and cannot be clearly defined. Temmerman hence distinguishes between categories that can only be described as prototype structures and concepts. Instead of concepts she uses the term *units of understanding*.
- c. Categories and concepts should be studied diachronically. To remind ourselves, Wüster's GTT as the precursor to all terminology theories was synchronic only.
- d. Finally, Temmerman assumes that polysemy and synonymy occur in specialized languages as well.

In law however, one should be mindful of the fact that polysemy undermines legal certainty which should be resolved at the concept level. At any rate, translating and defining polysemous legal terms calls for extra caution. Although Temmerman gives preference to the semasiological over the onomasiological approach, we believe that legal concepts should be the starting point for a terminographic analysis of EU law. The main reasons for this are the multilingual nature of EU law and conceptual autonomy, both of which emphasize the prominence of concepts. In addition, the application of a semasiological approach would defy the fact that terms and concepts are interconnected, much the same way as linguistic and extralinguistic knowledge permeate the perception of meaning. A legal term calls up the picture of a legal concept, whose meaning is fully realised in its wider conceptual structure. What more, distinguishing term from concept enables a more realistic dictionary treatment of polysemy, allowing for disambiguation of the concept's meaning in different subfields. Nevertheless, we agree with Temmerman that certain concepts – that she dubs units of understanding – cannot be clearly defined.

### 7.5.2 Teleological definitions

The example of worker (section 7.4.2.) illustrated the benefits of applying the prototype category in defining vague concepts. Let us consider the concept of *mother*. A popular website on general language usage contains as many as 35 definitions of mother.<sup>23</sup> In law though, concepts ought to have precise, unambiguous definitions. An array of different definitions of this concept within general language runs counter to the need for its precise definition in law. Nonetheless, it is not always possible to rely on precise legal definitions of concepts. This and other chapters name many examples of not only unprecise and vague definitions of legal concepts, but also of absence of definitions. As Wagner and G  mar (2013: 739) observe, one of the challenges in law is combining generalisation and precision. While the law strives for precision, it also needs to be general in order to be applicable to as many different situations as may be possible. By the same token, how the law defines *mother* depends on the wider social reality and the changes occurring within it.<sup>24</sup> Today, there are many different members of the category mother such as biological mother, foster mother, co-mother, surrogate mother or stepmother, as Figure 5. illustrates.

The commercialization of surrogate motherhood has recently caused much uproar in the United States and brought the legality of Californian surrogacy laws under a question mark. A 2012 California law codifies procedures for surrogacy agreements. Note that the United States have legalized commercial surrogacy as opposed to Canada and the majority of European countries. A woman serving as a surrogate mother has recently been put under pressure to abort one of the foetuses she was carrying.<sup>25</sup> Having refused, she and the would-be father started a legal battle which concerns the question of whether a *surrogate* can be considered a mother.

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23. <http://www.urbandictionary.com/define.php?term=Mother> (accessed 17 December 2014). Here are just a few definitions: 1. a woman who cooks, cleans, and washes her children's and children's friends' dishes without complaints; 2. a person who loves unconditionally and never plays favorites; 3. someone who gives their children money and car rides and candy without asking any questions.

24. It is interesting to study how general dictionary definitions also change over time. Homosexuality used to be "atypical sexuality" (Merriam-Webster Unabridged Project of 1961) and today the same lexicographer defines it as "sexual attraction or the tendency to direct sexual desire toward another of the same sex". Similarly, the entry for marriage has a new subsense for same-sex marriage. Available at: <http://www.merriam-webster.com/dictionary/marriage> (accessed 1 February 2016).

25. Available at: <https://www.washingtonpost.com/news/morning-mix/wp/2016/01/07/i-am-not-having-an-abortion-a-surrogate-mothers-stand-against-reducing-her-triplets/> (accessed 28 February 2016).

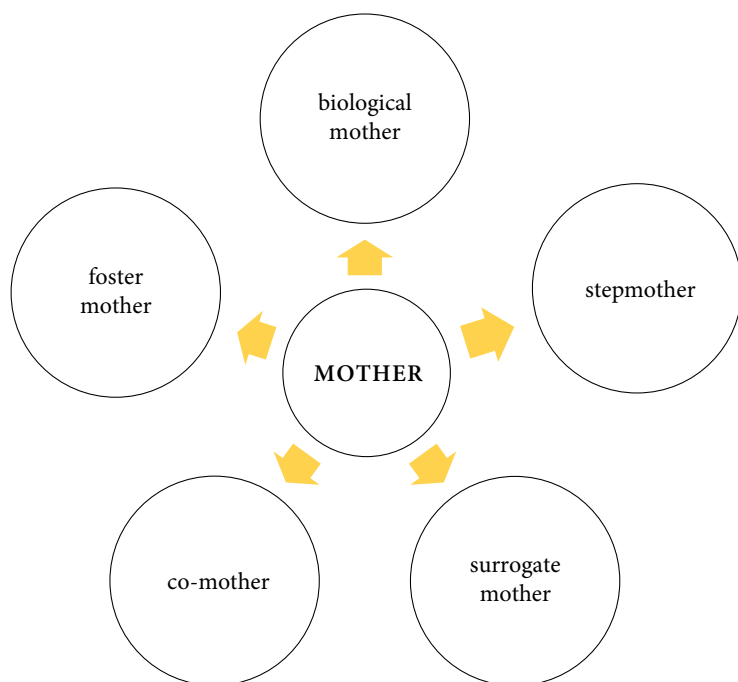


Figure 5. Different members of the category *mother*

On the other hand some European countries, e.g. Norway and France, have introduced the concept of *co-mother*. In Norwegian legislation the term *medmor* ('co-mother') was introduced by the Children Act (Simonnæs 2013: 154) and denotes a woman in a same-sex relationship (marriage or non-marital cohabitation) who has not given birth, whereas the child has to be conceived either after assisted reproductive technology treatment; with sperm from an identifiable and registered donor and with prior written consent to the above treatment. However, French law makes a reference to *co-mother* in another bioethical context of assisted reproduction. Considering that at the EU level there is (yet) no definition of this concept, the CJEU would have to determine its meaning in a case brought before it, of course without relying on the meaning attached to the concept by different Member States. Judging from its settled-case law, it would do so by considering the purpose of the legal norm in question and the circumstances of the case; in other words, by delimiting its meaning under EU law as seen on the example of worker. Whether or not a person can be considered a worker in the EU, depends on a set of teleological criteria which are fulfilled (more-or-less) and which differ across EU subfields. It follows that different circumstances can be subsumed under a category according to the more-or-less principle. For the sake of terminographic representation, it makes sense to define such vague concepts as dynamic and relative prototype categories

that do not have strict category boundaries and checklist meanings. This suggestion is compatible with the previously discussed CJEU's case-to-case approach which allows for more flexibility in the interpretation of a concept's meaning.

Therefore, optimal definition structure and type depend on the concept being defined. Bearing in mind the indeterminacy and open-ended nature of some EU legal concepts, we propose they be defined as prototype categories not in terms of their essential features, but in terms of the teleological criteria they fulfil. Accordingly, such definitions can be called *teleological definitions*. The underlying idea is to enable the dictionary representation to mirror the way concepts are conceptualized in law and that is as parts of conceptual structures whose meaning is not fixed but subject to interpretation. Maintaining that definitions should provide the user with (most) relevant legal knowledge, I perceive them to be first and foremost a means of disambiguation whose purpose is to specify the core sense of a legal concept. Again, the core sense of the concept of worker in the subfield of labour law would be "a person who provides services during a given time for and under the direction of another in return for remuneration". The latter prototypical definition can be modified within different subfields and for different subordinate concepts of the category of worker (e.g. migrant worker, posted worker etc.). Including conceptual characteristics into the definition makes it possible to define the facts, circumstances or conduct that constitute a concept of law according to the more-or-less principle. Abandoning the practice of inserting definitions into a dictionary in a cut-and-paste fashion from other resources, teleological definitions are based not only on corpus data, but on conceptual characteristics – namely the legislative purpose of a concept and its extralinguistic context. By grounding teleological definitions in extralinguistic knowledge they resemble mini-knowledge repositories, rather than traditional dictionary or stipulative definitions. In this sense, teleological definitions contribute to the goal of integrating extralinguistic information into the dictionary offering users a more reliable representation of concepts.

## 7.6 Integrating extralinguistic information into the dictionary

As noted earlier, language structures reflect conceptual structures that represent knowledge of the world. Put another way, terms open a window into the conceptual structure which provides a dictionary user with the extralinguistic knowledge of a concept. A reliable dictionary representation of EU legal concepts must depart from this assumption. With this in mind, the following part discusses the most important findings concerning the cognitive conception of semantic structures and the indeterminate nature of concepts and categories that have bearing on the dictionary description of EU law.

First of all, the description of units of meaning goes beyond the lexical level and considers clusters of units, rather than individual ones in isolation. Secondly, meaning does not account for an autonomous level, but arises from the experiential background, i.e., from the mental processing of everything that surrounds us (Žic-Fuchs 1991; 2009: 58). Therefore, a reliable terminographic description of multilingual EU law must accommodate the fact that some EU legal terms designate indeterminate legal concepts which are parts of wider conceptual structures. It is in this conceptual context that a concept is fully realized and that is how it is conceptualized and understood. In order to ‘translate’ this into a dictionary, the dictionary must include dynamic contexts that act as background frames and modify the conceptualization of a legal concept. For instance, if one term designates two concepts; one used at the EU level, and the other at the national one such as the Croatian term for *preliminary ruling procedure*, we must describe the concept in relation to the two different contexts:

#### **preliminary ruling procedure**

EN	preliminary ruling procedure
DE	Vorabentscheidungsverfahren
HR	prethodni postupak

#### SF European law

definition: procedure in which the Court of Justice of the European Union reaches a preliminary reference on the interpretation of validity of EU law

source: TFEU

#### SF1 Croatian civil law

*includes*

pre-trial hearing source: CCPA

#### SF2 Croatian criminal law

*includes*

criminal persecution  
investigation  
taking of evidence  
raising of charges source: CCPA1\*

\* CCPA: Croatian Civil Procedure Act (Official Gazette of the Republic of Croatia No. 25/2013); CCPA1: Croatian Criminal Procedure Act (Official Gazette of the Republic of Croatia No. 80/2011).

By means of an onomasiological approach we proceed from the concept as the starting point, noting the terms designating the concept *preliminary ruling procedure* in



English, German and Croatian (EN, DE, HR).<sup>26</sup> Below the Croatian term reference is made to the subfield (SF): European law, the definition of the concept in that subfield and to the source of the definition. We use abbreviations for the source of definitions, whereas a list of abbreviations is included in Appendices 1 and 2. Since the Croatian term has multiple references and designates concepts belonging to other subfields as well, additional subfield categories (SF1 and SF2) are added. Had this been the case for the German and English term, additional categories would have been added to those terms respectively. Instead of a definition, additional subfields entail the ontological relationship *includes* which refers to different parts of the concept. *Includes* thus refers to the part-whole relationship and can be extremely helpful when it comes to defining indeterminate legal concepts. It is noteworthy that the verb *includes* is frequently used in English legal definitions to denote inclusion and equivalence. However, it is also used to “settle doubt” as to whether a word means a particular thing (Driedger 1976: 46). The definition for other subfields can be included if this is deemed necessary bearing in mind the scope and purpose of a dictionary. In case of an EU legal dictionary, it suffices to provide the EU definition and a note saying that related concepts in other subfields include different parts, i.e., other subordinate concepts. From these extralinguistic information (definition, source, note), the user can easily retrieve additional information about a concept. At the same time, dictionary authors must take care not to include too much information into the dictionary as this may overburden the user especially today when dictionaries are mostly compiled in a digital form leaving no space restrictions. Including too many data has the disadvantage of confusing the user and making the spotting of the needed data slower and more difficult (see Tarp 2009: 47). Deciding just how much information is too much is a balancing act which requires profound knowledge of the respective field of study and user needs instead of relying on lexicographer’s intuition. By the same token, the knowledge of the field is paramount for choosing the ontological categories to be included into the dictionary.

The above dictionary representation hence has the advantage of allowing for the concept to be described within the dynamic matrix of its conceptual basis. Such a matrix covers all subfields as knowledge frames in which a concept is conceptualized. As mentioned earlier in this Chapter, this dynamicity of subfields is known as the principle of multidimensionality within terminology. It is fitting

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26. The proposed dictionary model includes three languages: English, German and Croatian, assuming this suffices to demonstrate the advantages of multilingual conceptual dictionaries of law which describe the concept and not its linguistic denotation. Other languages may of course be added. Digital dictionaries can circumvent the space problem and it is easier to add more languages.

to note that Langacker (1987: 147) proposed the notion of *domain matrix* as the range of possible domains against which a concept can be profiled.

One could argue that the proposed ontological categories are in essence thesaurus categories. Though it is true that the ontological structure by its very nature resembles a thesaurus category, it enables a stronger integration of the premises of cognitive linguistics into the dictionary. A more traditional thesaurus description based on a thematic organization of terms and controlled synonymy, homonymy and polysemy, does not enable such a reliable description of legal concepts, nor does it include the same amount of extralinguistic knowledge.<sup>27</sup> Furthermore, the relations of synonymy and homonymy blur the distinction between term and concept, failing to recognize the importance of concepts for the field of law. It is our basic assumption that legal concepts must be described within their contexts in which they are used and interpreted, as this is how they are understood.

In view of these considerations, I propose applying cognitive terminography to the making of multilingual dictionaries of EU law. Drawing on the gained insights into the semantics of legal concepts, the approach is based on the interrelatedness of term and concept and linguistic and extralinguistic information which is framed by an ontological structure. The concept is taken as the starting point in line with an onomasiological approach and having in mind the main characteristics of EU law and general features of legal reasoning discussed in Chapter 3. Since the concepts of EU law should have identical meaning in all official languages, in theory at least, there is no traditional source language in the sense of translation studies. The categories of source and target language need to be adapted to the special context of EU law. All language versions are equally authentic, meaning that 24 different terms must refer to the same European concept. In reality, most legislation today is being translated from English into other EU languages, whereas in the past the drafting language number one used to be French. Also, legislation is first drafted in English, French and German, to be translated then from those into other languages (see Šarčević 2013). This, however, may not be the best strategy, as it undermines the importance of the European concept, as elaborated in the previous Chapter. Since it is the concept that should be expressed in all 24 languages, preference should not be given to one language over other, but to the conceptual level. In this sense, the multilingual nature of EU law warrants the application of the described cognitive terminographic approach to the making of a dictionary of EU law.

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27. Thesaurus can be defined as a conceptually organized lexicographic tool characterized by hierarchical term relationships. Unlike traditional (alphabetically structured) dictionaries, thesaurus is organized thematically following the conceptual taxonomy of knowledge structure and organization.

Likewise, the autonomous teleological method of interpretation speaks in favour of the onomasiological approach to legal terminography – especially in terms of definitions of indeterminate legal concepts. As already noted, the teleological or purposeful interpretation is applied by the CJEU precisely because of the multilingual nature of EU law. It is fairly impossible that 24 languages always say one and the same thing. Therefore, it is up to the Court to intervene in cases of language divergences and resolve any uncertainties in order to ensure a unified application of EU law. Since teleological interpretation goes beyond the wording and considers the purpose of a legal provision, as well as the context, it also focuses on the concept and the conceptual structure, rather than on the terminological level (semasiological approach). This portrays a neat symmetry between the teleological interpretation and the cognitive perception of meaning.

The main premises of the here proposed approach that I call *cognitive terminography* are summarized as follows:

- a. Some concepts are inherently indeterminate and do not lend themselves to clear-cut categorizations as they have no clear boundaries due to the invisibility of linguistic and encyclopaedic meaning. The linguistic structures expand into conceptual ones, which in turn provide access to extralinguistic knowledge. Such indeterminate concepts should be described and defined as prototype categories.
- b. Concepts are conceptualised within their conceptual structure. This means that they are based on systems of structured knowledge and experience, as a consequence of which, they cannot be understood without taking into account the wider extralinguistic context. Rather than denying the existence of sharp boundaries, we should therefore abandon the notion of boundaries altogether and focus on the process of conceptualization instead.
- c. The extralinguistic context serves as a dynamic matrix or framework of knowledge which modifies the meaning of a concept. Extralinguistic channels of knowledge must be included in a dictionary in the form of the ontological categories of subfield, definition, explanation and the relation *includes*.

### 7.6.1 Parts of the ontological structure

These principles are integrated into the multilingual description of EU law by means of the proposed ontological relationships, which allow for indeterminate concepts to be described within their contexts and defined as prototype structures taking into account their flexible and vague nature. In this light, we propose the term *termontological dictionary* for a conceptual dictionary based on the theoretical underpinnings of cognitive terminography.

The following section briefly explains the notion of ontological structure that is instrumental for our dictionary model.

Chapter 1 already addressed the issue of ontologies and ontological relationships in particular (section 1.3.2.). To remind ourselves, as a means of conceptualizing and structuring domain knowledge, an ontology deals with describing terms, concepts and the conceptual relations that exist in a field. The ontological structure can be defined as a simple taxonomy consisting of ontological relationships (*subfield*, *related concept*, *part\_whole*, *implemented\_as*) which enable us to describe a concept in its context. The choice of ontological relationships to be included in a dictionary is made bearing in mind the domain, type, users and function of a dictionary. This is important as until recently, conceptual relations in term banks were mainly restricted to generic-specific and part-whole relations (see Araújo et al. 2012: 129), whereas ontological relationships were mostly absent. Because of this, term banks were lacking in dynamicity and reliability. Our termontological dictionary aims to provide its users with a conceptual-linguistic network which allows for access to the relevant legal knowledge. The described cognitive-terminographic approach provides a suitable theoretical platform for the making of such dictionaries of EU law. The main findings about the semantics of legal concepts grounded in the principles of cognitive and prototype semantics are not just of declaratory nature, but impact the understanding of concepts, dictionary structure, treatment of polysemy and writing of definitions.

## 7.7 Summary

Highlighting the need to reinvent the dictionary in light of new technologies and new cognitive advances, this Chapter discussed general matters pertaining to legal terminography and the role of theory in dictionary making. Maintaining that the integration of theory into the practice of dictionary making is instrumental for enhancing the quality of dictionaries, it unveiled a theoretical proposal to the making of multilingual legal dictionaries. Distinguishing lexicography and terminography – as a sister discipline of terminology – the Chapter put the spotlight on terminography as a discipline capable of vindicating traditional lexicography. Special attention was also devoted to the problem of dictionary definitions and the role of definitions in law, maintaining that the definition deserves a place in the legal dictionary, provided it is adapted to the dictionary's function and form.



# Methodology for the making of a termontological dictionary

## 8.1 Introduction

The advantages of the approach of cognitive terminography to the making of multilingual legal dictionaries are demonstrated on a dictionary model of EU law. For this purpose a multilingual corpus based on EU tax law has been compiled. This Chapter explains the methodology used for the making of the proposed model, showcasing concrete terminographic solutions to yield a clear account of indeterminate legal concepts in a dictionary. Examples of selected EU law concepts will be cited in order to illustrate the edge of the proposed model on the more traditional lexicographic tools. As regards indeterminate legal concepts, it is proposed that they be defined as prototype categories by means of teleological definitions. Allowing for more flexibility than traditional dictionary definitions, the latter can cope with the vague nature of indeterminate concepts.

## 8.2 Termontographic methodology

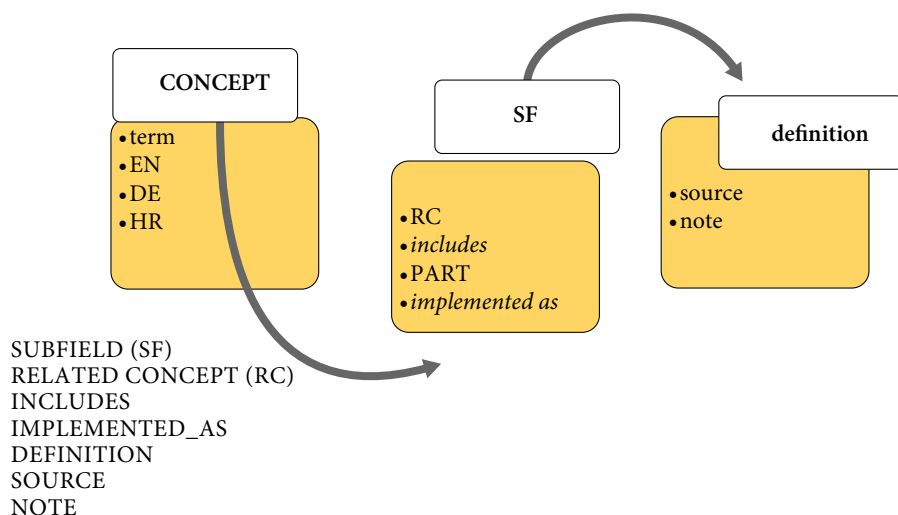
The methodology used in the creation of our dictionary model draws on *Termontography* (De Baer, Kerremans and Temmerman 2006; Temmerman and Kerremans 2003, 2005), a terminological approach in which multilingual terminological knowledge is structured according to a culture-independent and task-oriented framework of domain-specific knowledge. At the same time, we find that the above determined terminological framework dubbed *cognitive terminography* devises a way for a stronger integration of important cognitive terminological principles into dictionary making. In this part it is explained how our dictionary model differs from termontography. Before that, due attention is paid to the termontographic methodology.

The main advantage of termontography is that the content and structure of the termontological resource are the result of a careful analysis of its purpose, the requirements of its users and the scope of the domain of interest. All of this is determined in the analysis phase. The latter results in the categorisation framework,

which is used as the starting-point for the extraction of terminology (search phase). Categorisation frameworks represent conceptualised models of a particular domain. As Kerremans (2004) observes, one needs to have substantial insight in the categories and inter-categorical relationships that exist independent of any culture or language in the domain of interest in order to create such categorisation frameworks. This first version of a termontological resource may be further specified by additional information (refinement phase). After that, a consistency check is conducted (verification). Finally, it should be examined whether the content of the database meets the requirements specified in the analysis phase (validation phase). In line with the termontography method, we introduce simple ontological structures in the multilingual terminographic description of EU law. For our purposes, a simple ontological structure, to reiterate, represents a taxonomy of EU law based on selected ontological relationships. Its main advantage is that it allows selecting the most adequate ontological relationships, i.e. those that are deemed indispensable for the description of EU legal concepts. In other words, the choice of ontological relationships depends on the domain of terminographic description. Unlike the termontography method and the unit-of-understanding approach, our model favours an onomasiological approach making an effort to separate the term and the concept level in the dictionary representation. As shall be seen, to discern term from concept leads to a more realistic treatment of polysemous legal terms.

As regards term extraction, the method differs from termontography insofar as it does not rely on terms alone, but on the underlying concept by means of an integrated top-down and bottom-up approach. While the bottom-up approach includes extracting information from a multilingual corpus related to the domain, the top-down approach enables gathering of information from additional materials.

It goes without saying that users' needs must be taken into account when determining the most appropriate methodology and the theoretical framework for dictionary making. With this in mind, cognitive terminography aims to describe concepts as realistically as possible, so that the users can benefit from an authentic concept representation – one that resembles the cognitive conceptual structure in the brain. Departing from this assumption and taking into account the main characteristics of EU law, as well as the cognitive terminological principles, the proposed dictionary model includes the following ontological relationships: part-whole (*includes*), relatedness, implemented\_as. For the sake of simplicity, these relationships are represented in the dictionary by means of the following ontological categories:



**Figure 6.** Ontological categories in a dictionary of EU law

The category of subfield refers to the domain or context in which a concept is used and conceptualized. Including this category into the dictionary enables us to portray the sometimes nuanced differences between polysemous terms, and especially terms denoting both EU and national law concepts. Related concept refers to other concepts which are related to the starting concept. This category enables the description of a concept in its wider conceptual structure (by including its subordinate or superordinate concepts into the description). The category *includes* refers to the part-whole relation and is – if deemed necessary – added either to the definition or to the starting concept. In regard to indeterminate legal concepts, the latter category allows for examples of cases to be subsumed under the prototype, or the prototypical definition. As we shall see, such concepts are common in EU law. The category *implemented\_as* refers to the national legal term through which a European concept has been implemented and was taken over from the multilingual legal database LOIS analysed in Chapter 6. This category pertains to directives as instruments of secondary law that are implemented into national law. Unlike regulations that are directly applicable in all Member States and have direct effect, directives are transposed into national legislation. National legislator has the choice of form and method of their transposition, as long as the same aim is achieved (TFEU). For this reason the translation of directives is extremely important. In some Member States, national law practitioners have grown frustrated by how directives were being translated into their respective languages. It is fairly common that parts of directives are added to existing acts pursuant to the purpose of achieving the same goal as indicated in the directive, but irrespective of the form and method. It happened that the added provision contained



different terminology than the original act, or used the same terms for different (new) concepts. Translators, terminologists and lawyer linguists must take painstaking efforts not to get lost in such terminological jungles. In case of doubts or uncertainties, national law practitioners should consult the texts of directives in several official languages to gain certainty. Admittedly, such undertakings are time-consuming, but improper implementation or failure to implement a directive can lead to far greater costs for the Member States that may be held liable for damage caused to an individual for their failure to implement a directive.

Along with definition, source and note (which can be added if necessary, e.g. in order to provide more extralinguistic information for the user), the above categories belong to the conceptual level, whereas English, German and Croatian (EN, DE, HR) terms account for the terminological level. Thanks to its structure and different categories, ontologies introduce order into the conceptual and terminological mess, as León Araúz et al. (2012: 99) point out. Furthermore, distinguishing the conceptual and the terminological level allows for an efficient treatment of polysemous legal terms.

The following sections describe the methodological steps of creating a multilingual termontological dictionary of EU law. Bearing in mind the specific purpose of such a dictionary, we departed from the above proposal of cognitive terminography and the termontography methodology that was adapted to the needs of a multilingual dictionary representation of EU law. The methodological process of creating a termontological dictionary consists of the following steps: *analysis phase*, *search phase*, *information-gathering phase*, *refinement phase* and *verification phase*. The first phase includes a thorough analysis of the domain of interest, which was conducted under section 7.4.2. Subject-field classification: Demarcation of EU law, and an analysis of the purpose a dictionary should fulfil. The latter must address the issue of users as well as examine the needs of potential users of the dictionary.<sup>1</sup>

### 8.2.1 Search phase

After the initial analysis phase, at this point the multilingual corpus in English, German and Croatian is compiled. In order to make sure that the corpus actually

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1. Such an analysis of users' needs was conducted within my doctoral thesis titled *Teorijski model izradbe višejezičnih terminoloških rječnika* (A Theoretical Approach to the Making of Multilingual Terminological Dictionaries), University of Zagreb 2014. Supervisors: Susan Šarčević and Maja Bratanić. For that purpose a questionnaire was compiled aiming to ascertain not just the needs, but also preferences of users of legal dictionaries. The questionnaire included questions pertaining to existing legal dictionaries. Furthermore, the interviewed legal translators and lawyers were also handed a sample of a conceptual dictionary model (in English, German and Croatian) and were asked to comment on the latter.

contains relevant texts, experts should be consulted. The selected corpus comprises (mostly) EU tax legislation and relevant textbooks and scholarly work.<sup>2</sup> Due to the fragmented nature of EU tax law, and the lack of rigid boundaries between subfields, it is sometimes necessary to use sources which, strictly speaking, do not belong to tax law. Each legislative act, textbook and other source type is accompanied by an abbreviation that is used to indicate the source of definitions in the dictionary representation. For a list of the selected sources see Appendix 1. Noting the sources used for the writing of definitions in the dictionary by means of abbreviations facilitates eventual later revisions and also assures the user of the definition's reliability.

### 8.2.2 Information-gathering phase

At this stage the relevant information is retrieved from the corpus (bottom-up approach). Information retrieval is conducted manually in accordance with the relevance criterion. Under the latter, only terms denoting concepts that belong to EU tax law are retrieved. Aware of the fact that such retrieval requires legal knowledge and can prove to be a finicky task, it would not be possible to retrieve this kind of information by applying the frequency criterion, that is by choosing those terms that appear most frequently in the text or by automated extraction tools. In case the terminographer is not sure whether a term belongs to the domain, an expert must be consulted. This method of term extraction is similar to the one applied by de Baer et al. (2006) in their termontography methodology. Rather than using categorisation frames as de Baer et al. (2006), we grouped the corpus of about hundred concepts denoted by English terms ontologically. The list of concepts comprises the starting concepts in English, their subordinate concepts (ontological relationship *part-whole*), related concepts (RC) and parts. The ontological relationship *includes* may be added to the definition, which refers to examples/cases of the prototypical definition of indeterminate concepts (such as *public health*). For example, *merger* is related to the starting concept of *company* as its related concept and includes subordinate concepts: *down-stream merger* and *up-stream merger*, as well as related German and Croatian concepts: *Verschmelzung*

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2. The Member States' tax legislation is not harmonized like other areas of law, but coordinated. In consequence, a variety of legislative acts is being adopted within tax law; mostly directives, but also non-binding acts as guidelines, whereas case law plays an important role in its development. Due to this, EU tax law is characterized by a somewhat fragmented regulation which complicates the compilation of a corpus of EU tax legislation. Likewise, demarcation of EU tax law from other EU subfields is quite difficult. Sometimes concepts belonging to other subfields such as competition law, state aid or company law were thus included in our corpus because, in one way or the other, they are affected by tax legislation.

and *Zusammenschluss*; *pripajanje* and *koncentracija*. In keeping with the basic terminology principles, terms were extracted in the singular form. For the purpose of this study the proposed dictionary model with ontological relationships will be applied to a handful of selected examples in order to showcase a termontological dictionary based on the premises of cognitive terminography.

The list of ontologically grouped starting concepts in English:<sup>3</sup>

**taxation (SC):**

European Union company income tax (part)  
 home state taxation (part)  
 common consolidated corporate tax base (part)  
 single, compulsory harmonized tax base (part)  
 parent-subsidiary taxation (part)  
 savings taxation (part)  
 mutual assistance in the assessment of taxes in the field of direct taxation (SP)  
 source state (SP)  
 paying agent (RC)  
 beneficial owner (RC)  
 Arbitration Convention (RC)  
 Code of Conduct on transfer pricing documentation for associated enterprises in the EU (RC)  
 Advance Pricing Agreement (RC)  
 treaty shopping (RC)  
 guidelines for Advance Pricing Agreements (RC)  
 wholly artificial arrangement (RC)  
 transfer pricing (part)  
 EU Joint Transfer Pricing Forum (RC)  
 transfer of shares (RC)

**company of a Member State (SC):**

subsidiary company (part)  
 parent company (part)  
 receiving company (part)  
 acquiring company (part)  
 acquired company (part)  
 associated company (part)  
 transferring company (part)  
 enterprise (RC)  
 medium-sized enterprise (part)  
 small enterprise (part)

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3. SC stands for starting concept; RC for related concept; part denotes the ontological relationship part\_whole.

micro enterprise (part)  
     **merger** (RC)                      down-stream merger (part)  
    up-stream merger (part)  
     **division** (RC)  
         partial division (part)  
     **transfer** (RC)  
         transfer of assets (part)  
         transfer of shares (part)  
 transfer of the registered office (part)  
 hybrid entity (part)  
 registered office (part)  
 branch of activity (part)  
 establishment (part)  
     permanent establishment (part)  
**state aid** (RC):  
 de-minimis aid (part)  
 state aid to shipbuilding (part)  
 state aid for research and development and innovation (part)  
 aid for newly created small enterprises (part)  
 restructuring aid (part)  
 rescue aid (part)  
 employment aid (part)  
 closure aid (part)  
 existing aid (part)  
 indirect aid to a second undertaking (part)  
 prohibited state aid (part)  
 unlawful aid (part)  
 horizontal aid (part)  
 sectoral aid (part)  
 new aid (part)  
 transparent aid (part)  
 beneficiary (RC)  
 undertaking in difficulty (RC)  
     formal investigation procedure (RC)  
 aid ceilings (RC)  
 aid intensity (RC)  
 compensatory measure (part)  
 soft loan (part)  
 compatibility criterion (RC)  
 Lorenz period (RC)  
 cumulation of aid (RC)  
 measure having equivalent effect to state aid (RC)  
 one time last time principle (RC)  
 control of state aid (RC)  
 non-economic activity (RC)

viability (RC)  
 start-up company (RC)  
 preliminary examination procedure (RC)  
 assisted area (RC)  
 recovery of state aid (RC)  
 ex ante notification (RC)  
 aid scheme (RC)  
 complaint from a third party (RC)  
 selectivity test (RC)  
 block exemption (RC)  
 subsidy (RC)  
 balancing test (RC)  
 service of general economic interest (RC)  
 own contribution (RC)  
 Altmark criteria (RC)  
 sheltered employment (RC)

**worker** (SC): disabled worker (part)  
                   migrant worker (part)  
                   employed migrant worker (part)  
                   posted worker (part)  
                   frontier worker (part)

After having compiled the starting corpus in English, German and Croatian equivalents are added to the English terms denoting the starting concepts.<sup>4</sup> Though Croatian is an official EU language as of 1 July 2013, the procedure for determining Croatian equivalents is not always the same as the one for English and German and sometimes requires conducting a conceptual analysis described in Chapter 6. While the English and German equivalents are mostly retrieved and determined from the EU's online legislation data base EurLex, since Croatian is a new language, not all EU legislation is available in Croatian. Likewise, it is possible that the Croatian language versions contain false or inappropriate terminology, making it necessary to consult other sources and experts in the field in order to determine the most appropriate term. This brings to surface the relatedness of legal translation and the making of legal dictionaries. The latter sometimes requires practising legal translation. For this reason, the conclusions made in regard to legal translation can be very useful for the making of legal dictionaries. What more, the possibility of mistakes and false terminology usage seems greater for smaller

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4. Part of this corpus was compiled for the purposes of the Croatian national term bank Struna ([www.struna.ihjj.hr](http://www.struna.ihjj.hr)). For more on the development of the Croatian special field terminology see Bratanić and Ostroški Anić (2013).

and newer EU languages. Because of this, in addition to the above listed corpus another micro corpus for Croatian has been used including not only translations of EU legislation, but Croatian legislative acts, legal textbooks and scholarly work. The latter corpus is listed in Appendix 2.

The results of aligning English, German and Croatian terms are represented at the term level in our termontological dictionary.

**Table 2.** Aligned English, German and Croatian terms

EN	DE	HR
acquired company	aufgenommene Gesellschaft	preuzeto društvo
acquiring company	aufnehmende Gesellschaft	društvo stjecatelj
Advance Pricing Agreement	Vorheriges Abkommen über Verrechnungspreise	prethodni sporazum o transfernim cijenama
aid ceilings	Höchstgrenze für Beihilfen	gornja granica intenziteta potpora
aid for newly created small enterprises	Beihilfe für neu gegründete kleine Unternehmen	državna potpora za novoosnovane male poduzetnike
aid intensity	Intensität der Beihilfe	intenzitet potpore
aid scheme	Beihilfenregelung	program potpore
Altmark criteria	Altmark-Kriterien	Altmark-kriteriji
Arbitration Convention	Schiedsübereinkommen	Arbitražna konvencija
assisted area	Fördergebiet	potpomognuto područje
associated company	verbundenes Unternehmen	povezano društvo
balancing test	Abwägungsprüfung	test prevage
beneficial owner	Nießbraucher	stvarni korisnik
beneficiary	das begünstigte Unternehmen	korisnik državnih potpora
block exemption	Gruppenfreistellung	skupno izuzeće
branch of activity	Teilbetrieb	gospodarska cjelina
closure aid	Stilllegungsbeihilfe	državna potpora za zatvaranje
Code of Conduct on transfer pricing documentation for associated enterprises in the EU	Verhaltenskodex zur Verrechnungspreis-dokumentation für verbundene Unternehmen in der EU	Kodeks ponašanja o dokumentaciji za transferne cijene za povezana društva u EU
common consolidated corporate tax base	Gemeinsame konsolidierte Steuerbasis	zajednička uskladena osnova poreza na dobit
company of a Member State	Unternehmen eines Mitgliedstaats	društvo države članice

**Table 2.** *(continued)*

EN	DE	HR
compatibility criterion	Vereinbarkeitskriterium	kriterij kompatibilnosti
compensatory measure	Ausgleichsmaßnahme	kompenzacijska mjera
complaint from a third party	Beschwerde von Dritten	pritužba treće osobe
control of state aid	Kontrolle der statlichen Beihilfen	nadzor provedbe državne potpore
cumulation of aid	Kumulierung der Beihilfen	zbiranje državnih potpora
de-minimis aid	De-minimis Beihilfe	državna potpora male vrijednosti
disabled worker	behinderter Arbeitnehmer	radnik s invaliditetom
division	Spaltung	podjela
down-stream merger	Verschmelzung der Mutter-auf die Tochtergesellschaft	nizvodno spajanje
employed migrant worker	zu- und abwandernder Arbeitnehmer	zaposleni radnik migrant
employment aid	Beschäftigungsbeihilfe	državna potpora za zapošljavanje
EU Joint Transfer Pricing Forum	Gemeinsames EU-Verrechnungspreisforum	Zajednički forum EU-a za transferne cijene
European Union company income tax	EU-Unternehmens-einkommensteuer	porez na dobit EU-a
ex ante notification	vorherige Anmerkung	prethodno odobrenje
existing aid	bestehende Beihilfe	postojeća potpora
formal investigation procedure	förmliches Prüfverfahren	formalni istražni postupak
frontier worker	Grenzgänger	radnik u pograničnome području
guidelines for Advance Pricing Agreements	Leitlinien für Verrechnungspreiszusagen in der EU	Smjernice o prethodnim sporazumima o transfernim cijenama unutar EU-a
home state taxation	Besteuerung seitens des Heimatsstaates	oporezivanje prema zakonodavstvu domaće države
horizontal aid	horizontale Beihilfe	horizontalna državna potpora
hybrid entity	hybrides Unternehmen	hibridno društvo
indirect aid to a second under-taking	indirekte Beihilfe zu zweitem Unternehmen	neizravna potpora drugom poduzetniku
Lorenz period	Frist nach dem Urteil Lorenz	Lorenz-rok

**Table 2.** *(continued)*

EN	DE	HR
measure having equivalent effect to state aid	Maßnahme mit gleicher Wirkung wie eine staatliche Beihilfe	mjera s jednakim učinkom državnim potporama
medium-sized enterprise	mittelständisches Unternehmen	srednje veliki poduzetnik
merger	Fusion	spajanje
micro enterprise	Kleinstunternehmen	mikro poduzetnik
migrant worker	Wanderarbeitnehmer	radnik migrant
mutual assistance in the assessment of taxes in the field of direct taxation	gegenseitige Amtshilfe im Bereich der indirekten Steuern	uzajamna suradnja pri utvrđivanju neposrednih poreza
new aid	neue Beihilfe	nova državna potpora
non-economic activity	Tätigkeit ohne wirtschaftlichen Charakter	negospodarska djelatnost
one time last time principle	Grundsatz der einmaligen Beihilfe	načelo jednokratne dodjele
own contribution	eigener Beitrag	vlastiti doprinos
parent company	Muttergesellschaft	društvo majka
parent-subsidiary taxation	Steuersystem der Mutter- und Tochtergesellschaften verschiedener Mitgliedstaaten	oporezivanje društva majki i društva kćeri
partial division	Abspaltung	djelomična podjela
paying agent	Zahlstelle	isplativatelj
permanent establishment	Betriebsstätte	stalna poslovna jedinica
posted worker	entsandter Arbeitnehmer	izaslani radnik
preliminary examination procedure	Vorprüfungsphase	postupak prethodnoga ispitivanja
prohibited state aid	verbotene staatliche Beihilfe	nedopuštena državna potpora
receiving company	übernehmende Gesellschaft	društvo primatelj
recovery of state aid	Rückforderung einer staatlichen Beihilfe	povrat državne potpore
registered office	Sitz	sjedište
rescue aid	Rettungsbeihilfe	potpora za sanaciju
restructuring aid	Umstrukturierungsbeihilfe	državna potpora za restrukturiranje
savings taxation	Zinsbesteuerung	oporezivanje štednje



**Table 2.** *(continued)*

EN	DE	HR
sectoral aid	sektorale Beihilfe	sektorska državna potpora
selectivity test	Merkmal der Selektivität	test selektivnosti
service of general economic interest	Dienstleistung von allgemeinem wirtschaftlichem Interesse	usluga od općeg gospodarskog interesa
sheltered employment	geschütztes Beschäftigungsverhältnis	zaštićeno radno mjesto
single, compulsory harmonized tax base	obligatorische konsolidierte Bemessungsgrundlage im Unternehmenssteuerbereich	jedinstvena obvezna usklađena porezna osnova
small enterprise	Kleinunternehmen	mali poduzetnik
soft loan	zinsgünstiges Darlehen	kredit pod povoljnijim uvjetima
source state	Quellenstaat	država izvora
start-up company	Jungunternehmen/Start-up Unternehmen	mladi poduzetnik koji se bavi inovacijama
state aid	staatliche Beihilfe	državna potpora
state aid for research and development and innovation	staatliche Beihilfe für Forschung, Entwicklung und Innovation	državna potpora za istraživanje i razvoj i inovaciju
state aid to shipbuilding	staatliche Beihilfe an den Schiffbau	državna potpora za brodogradnju
subsidiary company	Tochtergesellschaft	društvo kći
subsidy	Zuschuss	subvencija
transfer of assets	Einbringung von Unternehmenseiten	prijenos imovine
transfer of shares	Austausch von Anteilen	zamjena dionica ili udjela
transfer of the registered office	Verlegung des Sitzes	prijenos sjedišta
transfer pricing	Verrechnungspreise	transferna cijena
transferring company	einbringende Gesellschaft	preneseno društvo
transparent aid	transparente Beihilfe	transparentna državna potpora
treaty shopping	Treaty Shopping	neovlašteno stjecanje ugovornih povlastica
undertaking in difficulty	Unternehmen in Schwierigkeiten	poduzetnik u teškoćama

Table 2. (continued)

EN	DE	HR
unlawful aid	rechtswidrige staatliche Beihilfe	nezakonita državna potpora
upstream merger	Verschmelzung bei der die Tochtergesellschaft in der Muttergesellschaft aufgeht	uzvodno spajanje
viability	Rentabilität	održivost
wholly artificial arrangement	rein künstliche Gestaltung	potpuno umjetne konstrukcije
worker	Arbeitnehmer	radnik

### 8.2.3 Refinement phase

After having grouped the English terms ontologically, and then added German and Croatian terms, further refinement is needed for the microstructure display of EU legal concepts. To this end, additional ontological categories are introduced into the dictionary representation. Departing from the main characteristics of EU law, the following categories were included: subfield, related concept, includes, implemented\_as. The definition and note are also written at this stage. Drafting definitions and notes for indeterminate concepts of EU law can prove to be quite demanding and time-consuming. Nevertheless, definitions are instrumental for a reliable dictionary representation of legal concepts as they provide the user with additional extralinguistic knowledge. In turn they enable a deeper understanding of concepts of EU law. On hand of examples it will be illustrated how the above categories and the definition contribute to a more realistic description of EU law.

As stated in Chapter 2, for the purpose of legal translation and legal terminology concepts of EU law can be divided into determinate and indeterminate legal concepts. Determinate legal concepts can be defined in keeping with the traditional terminological principles. In other words, the definition of a determinate concept starts from its superordinate concept, is not written as a full sentence, but in small capitals and without a full stop. Examples of determinate concepts are concepts of procedural nature such as *formal investigative procedure*:

- (1) procedure initiated by the Commission after the preliminary investigation in case of doubt whether the state aid is compatible with the internal market  
(source: Bacon)

or *preliminary examination procedure*:

- (2) procedure initiated by the Commission after having received notification of new state aid, which aims to determine within a two-month period whether the aid is compatible with the internal market (source: TFEU)

Concepts referring to specific bodies, agreements or guidelines can also be considered determinate legal concepts: *Guidelines for Advanced Pricing Agreements*:

- (3) guidelines adopted at the EU level with a view of avoiding disputes of transfer pricing and double taxation (source: Terra and Wattel)

On the other hand, some concepts do not lend themselves to one type of classification and can at the same time be considered determinate and indeterminate such as *permanent establishment*:

- (4) establishment in a Member State through which a company of another Member State conducts its business to the extent to which the profit of that establishment is subject to taxation in the Member State where it is situated by virtue of bilateral or national legislation (source: Terra and Wattel)

This definition is derived from EU legislation. Although the concept can be considered determinate in view of its terminological definition, its meaning is not fixed and may be modified by means of case law. In the latter case, the given definition would have to be expanded or narrowed, and the concept defined as a prototypical structure including different category members. The criterion for distinguishing determinate and indeterminate legal concepts is the existence of unambiguous definitions, i.e. the impossibility of different interpretations. If this criterion is satisfied, we are dealing with determinate concepts denoting concepts of procedural law. Greater attention here is devoted to indeterminate concepts of EU law that are subject to broad interpretation and meaning modifications, which makes their terminographic description more challenging.

In order to illustrate the advantages of the proposed terminological dictionary model of EU law, it is applied to the following concepts: *establishment*, *parent company*, *subsidiary company*, *company of a Member State*, *wholly artificial arrangement* and *merger*. The application of teleological prototypical definitions will be examined and explicated on the concepts of *worker*, *public health*, *establishment* and *wholly artificial arrangement*.

#### 8.2.4 Teleological definitions of indeterminate legal concepts

Not every word and concept can be defined in keeping with the traditional lexico-graphic principles: substitutability and *genus/differentiae*. Insisting on those criteria results in artificial and even unreliable definitions that are not useful to the

user. By the same token, the traditional intensional or extensional definitions are of little help when it comes to defining indeterminate concepts of EU law, which have no statutory definitions. In contrast to determinate concepts, indeterminate cannot always be defined by naming their superordinate concept and listing features (intensional definitions). Likewise, the traditional principles of defining, namely substitutability and genus (the superordinate category) and differentia (what distinguishes this member of the category from all others) are not suitable for legal concepts, since many do not work like that. Rather than defining legal concepts in keeping with the traditional terminological principles, we have previously proposed they be defined as prototype categories according to the teleological purpose they fulfil (section 7.5.1.). In other words, key features of prototype structure are also a characteristic of indeterminate concepts of EU law because:

- a. their meaning is not fixed (but subject to modifications through legal interpretation), due to which;
- b. they cannot be defined in terms of essential features, but according to teleological criteria;
- c. the meaning of prototype structures is connected, though in case of polysemy concepts modified by the context and
- d. indeterminate concepts refer more or less to specific circumstances or facts which is determined by the court.

Observed in this light, the here proposed teleological definitions manage to define the conduct, circumstances and other factors that constitute a particular concept of the law. To illustrate a teleological definition, we will cite the microstructure representation of *public health*.

#### 8.2.4.1 *Public health*

Public health is a vague EU concept whose meaning is not fixed. Far from it, the CJEU has interpreted the meaning of this concept in the sense of “justification for restrictions of the freedom of movement” departing from the relevant provisions of the TFEU and basic principles of EU law. Having in mind its purpose, the concept has been interpreted quite narrowly by the CJEU. In our opinion, the best way to show the microstructure representation of public health thus involves a simple teleological definition. The latter starts from its basic purpose arising from the TFEU and includes examples of cases that can be subsumed under this prototype structure (epidemiological diseases, contagious diseases, diseases caused by parasites etc.):

**public health**

EN	public health		
DE	öffentliche Gesundheit		
HR	javno zdravlje		
	SF internal market	definition: justification of limiting the freedom of movement between Member States	source: TFEU
		<i>includes</i>	epidemiological diseases contagious diseases diseases caused by parasites

**8.2.4.2 Worker**

In a parallel way, we can approach the teleological definition of worker. The prototypical or starting definition of *worker* has been modified in the subfields of EU tax law and internal market in which *worker* is conceptualized differently, i.e. in regard to the teleological purposes it fulfils in those subfields. By doing so, the importance of the context that modifies the meaning of a concept is reflected in the dictionary as the following microstructure representation illustrates:

**Worker**

EN	worker		
DE	Arbeitnehmer		
HR	radnik		
	SF EU labour law	definition: a person who provides services during a given time for and under the direction of another in return for remuneration	source: <i>Lawrie-Blum</i>
	<i>includes</i>	<b>migrant worker</b> <b>employed migrant worker</b> <b>posted worker</b> <b>frontier worker</b>	
	SF1 EU tax law	definition: a person who provides services during a given time for and under the direction of another in return for remuneration that is subject to taxation	source: <i>Schumacker</i>
	SF2 internal market	definition: a person who provides services during a given time for and under the direction of another in return for remuneration and whose movement cannot be restricted	source: TFEU

The characteristics of prototype structures yield it possible to indicate in the dictionary that the meaning of indeterminate legal concepts is not fixed, but modified by the context and further developed through case law. Note that *public health* constitutes a justified reason for restricting the free movement of workers.

#### 8.4.2.3 *Establishment*

The concept of *establishment* is also an indeterminate legal concept, in view of the fact that it has no unambiguous definition at the level of EU law. Instead, its meaning was established in CJEU's case law. More concretely, in the case *Rockfon* the Court had to determine whether Directive 75/129 is applicable to a Danish company called Rockfon.<sup>5</sup> To this end, the Court had to first answer the question whether Rockfon can be considered an establishment. If yes, then the Directive is to be applied and Rockfon acted in violation of the Directive's provisions, since it failed to conduct mandatory counselling with workers before dismissing them. In the sense of Danish legislation, an establishment is a unit that produces, buys or sells goods or services (e.g. workshop, factory, shipyard, shop, office), and can conduct collective redundancies by virtue of Art. 23A (1) of the Danish Act. However, the Court did not accept the Danish definition, and instead considered the teleological criterion, i.e. the purpose of Directive 75/129, which is to provide greater protection to workers in case of collective redundancies. Departing from that purpose, *establishment* is defined as "the unit to which the workers made redundant are assigned to carry out their duties". Furthermore, since an *establishment* may include subsidiaries, factories and other bodies capable of making their own decisions, the ontological relation *includes* is added to the prototypical definition.

In this respect, the above concept has the characteristics of a prototype structure, since its meaning is not fixed, whereas it makes sense to define it in terms of the teleological criterion. The teleological criterion is the purpose behind the legislative instrument in question; here the Directive 75/129. The meanings of different members of this category (subsidiary, factory etc.) are linked, while the concept *establishment* applies to them under the more-or-less principle. The decision about its application to different facts is brought by the Court on a case-to-case basis. It is important to note that when the Court interprets such concepts, it first has to delimit their meaning under EU law, regardless of the possible national law meanings of the respective concepts, as the Danish case shows.

The term *establishment* also designates a concept of EU tax law, which is accounted for in its dictionary representation by adding a prototypical definition for

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5. Case C-449/93 *Rockfon A/S v. Specialarbejderforbundet i Danmark* [1995] ECR I-4291. Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 048 1975 P. 0029–0030.

the concept in the subfield of EU tax law. The latter reads as follows: “entire assets and liabilities of a part of company which functions as an autonomous unit with its own resources”.

Microstructural representation of establishment:

establishment		
EN	establishment	
DE	Betrieb	
HR	gospodarska cjelina	
SF EU labour law	definition: unit to which redundant workers are assigned to fulfil their duties	source: <i>Rockfon</i>
	<i>includes</i>	branch factory shop
SF1 EU tax law	definition: entire assets and liabilities of a part of company which functions as an autonomous unit with its own resources	source: Dahlberg

8.3 Dictionary display of indeterminate EU law concepts

8.3.1 Parent company

As opposed to the indeterminate concept of *establishment*, the definition of *parent company* did not require additional ontological relationships to be included in its terminographic description. In view of the fact that the latter concept is attributed a specific meaning which is derived from a legal norm, namely the Directive 90/435, it can be considered to be a determinate legal concept. However, both the English and the German term denoting this concept are polysemous, because *parent company* and *Muttergesellschaft* are at the same time part of tax law and company law. While the English and the German term are used for EU concepts, and the German furthermore designates a national concept of German company law, the Croatian term *društvo majka* has not been transposed into the Croatian tax legislation, though it has entered the Croatian terminology denoting EU company law. In order to point to the polysemous nature of the terms denoting the starting concept *parent company*, related concepts (together with their respective subfields) are added to the Croatian term.

The EU concept has been implemented as *matično društvo* in the Croatian legislation, which is a term denoting a concept of Croatian tax law as well. A

related concept to *matično društvo* is *vladajuće društvo*, used in Croatian company law. Bearing in mind that EU secondary law is still not completely available in Croatian, one can expect and hope that the given inconsistencies in the usage of Croatian terms for EU concepts will be removed. Unfortunately, it is not uncommon that different terms are used for one and the same concept which undermines legal certainty and creates ambiguity. This is especially detrimental to the application of EU law which strives for uniformity across the EU. But to return to *parent company*. Considering the different national terms that are used to denote a similar concept in different legal subfields, it might be advisable to use a more neutral Croatian term *društvo majka* to denote concepts of EU company law and EU tax law, while keeping the recognizable national terms *vladajuće društvo* and *matično društvo* in use within national law only in order to avoid possible confusion when applying and interpreting these concepts.

The microstructure representation of parent company:

#### parent company

EN parent company

DE Muttergesellschaft

HR društvo majka      *implemented\_as*  
matično društvo

SF EU tax law	definition: a company whose share in the capital of another company amounts to at least 10 per cent	Source: Directive 90/435
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RC1 društvo majka	SF1 EU company law
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RC2 vladajuće društvo	SF2 Croatian company law
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definition: a company that owns majority of stocks or shares providing voting rights in another company (ovisnom društvu)	source: AA
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Note: The concept **matično društvo** belongs both to Croatian tax law and law of accounting.

Since the concept *parent company* includes *subsidiary company*, the microstructure representation of *subsidiary company* is also analysed hereafter.



8.3.2 Subsidiary company

	subsidiary company	part_of parent company		
EN	subsidiary company			
DE	Tochtergesellschaft			
HR	društvo kći	implemented_as ovisno društvo		
	SF EU tax law	definition: a company whose capital includes a share of the parent company	source: Directive 90/435	
		RC1 društvo kći	SF1 EU company law	
		RC2 ovisno društvo	SF2 Croatian company law	
		RC3 ovisno društvo	SF3 Croatian tax law	

In this context related Croatian concepts were added to the dictionary representations. Needless to say, the same can be done for German and English concepts in the event they too have related concepts. It is important to bear in mind the user for whom the dictionary is compiled. In case of multilingual dictionaries, it is safe to assume that its users will be of different language backgrounds, whereas including relevant information in all dictionary languages seems to be the terminographer’s best bet.

8.3.3 Company of a Member State

The concept *company of a Member State* is the superordinate concept of the above described concepts, wherefore it must also be included into the dictionary. It is by linking superordinate and subordinate concepts that a dynamic ontological structure of the domain of EU tax law is created. Furthermore, including other categories as related concepts and pertaining subfields into the dictionary description helps to refine the ontological structure and offer dictionary users a reliable linguistic and extralinguistic knowledge repository of the domain in question. The aim is to create a conceptual-linguistic network which provides users with access to relevant multilingual information on EU tax law.

The microstructure representation of company of a Member State:

**company of a  
Member State**

EN company of a  
Member State

DE Gesellschaft eines  
Mitgliedstaats

HR društvo države  
članice

SF EU tax law      definition: any company formed according to the tax laws of a Member State and considered to be resident in that Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Union      source: Directive 2011/96/EU

*includes*

**parent company**

**subsidiary company**

**acquiring company**

definition: company which acquires a holding by means of an exchange of securities      source: Directive 2009/133

**acquired company**

definition: company in which a holding is acquired by another company by means of an exchange of securities      source: Directive 2009/133

**transferring company**

definition: company transferring its assets and liabilities or transferring all or one or more branches of its activity      source: Directive 2009/133

**receiving company**

definition: company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company      source: Directive 2009/133

Since both *parent company* and *subsidiary company* have already been defined in the above representations, their definitions were not included. In the following part we will show how different parts of the starting concept *company of a Member State* can also be included in other languages.

### 8.3.4 Company of a Member State: Different parts

company of a Member State			
EN	company of a Member State		
	<i>includes</i>	parent company	SF European tax law
		subsidiary company	
		receiving company	
		transferring company	
		acquiring company	
		acquired company	
DE	Gesellschaft eines Mitgliedstaats		
	<i>includes</i>	Muttergesellschaft	SF Europäisches Steuerrecht
		Tochtergesellschaft	
		übernehmende Gesellschaft	
		einbringende Gessellschaft	
		erwerbende Gesellschaft	
		erworbene Gesellschaft	
HR	društvo države članice		
	<i>includes</i>	društvo majka	SF europsko porezno pravo
		društvo kći	
		društvo preuzimatelj	
		preneseno društvo	
		društvo stjecatelj	
		preuzeto društvo	

Again, it is possible to add definitions to each part in all languages. Having in mind the purpose of our study and the limitation of space, we will refrain from doing so.

### 8.3.5 Wholly artificial arrangement

The following example accounts for a new concept of EU law: *wholly artificial arrangement*. Being a relatively new concept of EU law, it had no Croatian equivalent. After having consulted other language terms (German, French, Italian, Slovene), we proposed the term *potpuno umjetna konstrukcija* to be used as its

Croatian equivalent. As this concept has been defined in case law and has not been implemented into the national legislation, we will not include the relation *implemented\_as* in its representation. Likewise, since there is no legislative definition of this concept at the EU level, it is up to the CJEU to determine whether a certain case falls under the category of *wholly artificial arrangement* as interpreted in the landmark tax law case *Cadbury Schweppes*.<sup>6</sup> Though the CJEU used this phrase in settled case law, this was the first case in which it defined what is meant by it. Pursuant to the Court's interpretation and the teleological criterion derived from Directive 90/435, the prototypical definition of this concept is phrased in the following way: "an arrangement which does not reflect economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out on national territory". Departing from this prototypical meaning, the concept can include *arranging transfer pricing* and *change of a company seat* among other things. These in turn account for examples of less central members of the category *wholly artificial arrangement*.

In this sense, the concept *wholly artificial arrangement* also serves as an example of prototype structure due to the following characteristics:

- a. its meaning is not fixed;
- b. it cannot be defined in terms of essential features but pursuant to the teleological criteria;
- c. the meaning of individual members of the prototype category is linked (by the teleological criteria that have to be fulfilled in order for a member to belong to the category) and
- d. this concept applies to different cases in accordance with the more-or-less principle which is decided by the CJEU.

As the case law continues to develop and grow, the ontological category *includes* can be added to the definition of *wholly artificial arrangement*. In terms of its definition, it is more likely that it will be interpreted broadly in order to avoid possible violations of Directive 90/435.

Microstructure representation of *wholly artificial arrangement*:

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6. Case C-196/04 Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue [2006] ECR I-07995.

7. TFEU prohibits any limitations to the freedom of establishment for citizens from one EU Member State on another Member State's territory. This prohibition applies respectively to any limitations of company formation for citizens of one Member State who realized their right to freedom of establishment on the territory of another Member State.

	<b>wholly artificial arrangement</b>	
EN	wholly artificial arrangement	
DE	rein künstliche Gestaltung	
HR	potpuno umjetna konstrukcija	
SF EU	tax law	<p>definition: an arrangement which does not reflect economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out on national territory</p> <p>Note: When determining the existence of such artificial arrangements, the Court of Justice of the EU finds that it is necessary to apply objective criteria, while taking into account the freedom of establishment.<sup>7</sup></p> <p>source: Denkvit</p> <p>source: <i>Schweppes</i></p>

### 8.3.6 Merger

The last example to be analysed here is the polysemous term *merger*, which designates concepts belonging to more than one legal subfield. It was thus necessary to add several subfields (national company law, EU company law, competition law) and related concepts. Within national company law *merger* refers to a change in the company's status, through which the entire assets of one company (acquired company) are taken over by the other (acquiring company) and the former ceases to exist. The functional equivalent for this concept in Croatian law is *pripajanje*. Under the Croatian Companies Act (Official Gazette, No. 118/03) only capital companies can conduct *pripajanje*. A related Croatian concept of EU tax law (denoted by one and the same English term *merger*) *spajanje* is however defined in accordance with the teleological criterion as:

...a business activity by means of which one or more companies stop to conduct business without being liquidated and furthermore transfer their entire assets and liabilities into another existing company in exchange for shares in capital or stocks for their shareholders.

*Fusion*, a related concept of German company law – denoted by the same term used for the concept of EU tax law – is added to the dictionary representation of *merger*. What, though, further complicates the description of *merger* is the fact that it is also used in EU competition law. Because of that we added the subfield competition law, as well as the respective German and Croatian terms denoting

this concept within this subfield: *Zusammenschluss* and *koncentracija*. As regards the domain of competition law, it is not necessary to differentiate between the levels of EU and national law. The reason for this is that competition law is regulated at the EU level to a large extent. In fact, the Commission has the authority to impose fines on undertakings of Member States and to supervise state aid directly.

The definition of *merger* includes subordinate concepts (*upstream* and *downstream merger*) which is illustrated by the ontological relationship *includes*. By including all this extralinguistic information into the dictionary representation of EU legal concepts, account is taken of the cognitive terminological findings on the dynamic nature of concepts and the importance of context for their meaning.

The microstructure representation of *merger*:

### Merger

EN Merger

DE Fusion

RC1 SF1 German company law

Verschmelzung

RC2 SF2 competition law

Zusammenschluss

HR spajanje SF EU tax law definition: a business activity by means of which one or more companies stop to conduct business without being liquidated and furthermore transfer their entire assets and liabilities into another existing company in exchange for shares in capital or stocks for their shareholders source: Dahlberg

RC1 pripajanje SF1 Croatian company law

definition: a business activity enabling one or more joint stock companies to join another one without liquidation by transfer of assets in exchange for shares source: CA

*includes* uzvodno spajanje<sup>8</sup> source: Dahlberg

EN upstream merger

DE Verschmelzung bei der die

8. Since it is the Croatian concept *spajanje* that has related concepts, we first refer to those concepts by the Croatian term, and then by adding the English and German. Needless to say, it is difficult to express all these ontological relationships in a paper dictionary, whereas the electronic form is better apt for such conceptual representations.

	<p>Tochtergesellschaft in der Muttergesellschaft aufgeht</p> <p>definition: merger by means of which a subsidiary company becomes part of its parent company</p> <p>nizvodno spajanje</p>	<p>source: Dahlberg</p>
	<p>EN down-stream merger</p> <p>DE Verschmelzung der Mutter- auf die Tochtergesellschaft</p> <p>definition: merger by means of which the parent company becomes part of the subsidiary company</p> <p>Note: There is a significant difference between the Croatian terms <i>spajanje</i> and <i>pripajanje</i>: through <i>spajanje</i> a new company is established (consolidation), while in the event of <i>pripajanje</i> (merger) one company takes over the other without establishing a new company.</p>	
SP2 koncentracija	<p>SF2 competition law</p> <p>definition: a business activity brought about by a permanent change in acquiring control over an undertaking by means of a merger or consolidation or by gaining decisive influence</p>	<p>source: CCA</p>
<i>includes</i>	<p>horizontalna koncentracija</p> <p>EN horizontal merger</p> <p>DE horizontale Fusion</p> <p>vertikalna koncentracija</p> <p>EN vertical merger</p> <p>DE vertikale Fusion</p>	

## 8.4 Verification phase

This last phase includes checking the dictionary for consistency and accuracy. Among other things, it is examined whether the definitions are written in a consistent manner and whether the sources are correct. It can also be verified whether all terms had been entered in the singular form and the German terms without

articles (in line with basic terminology principles). Finally, field specialists can be consulted once again in case of any doubts or questions.

## 8.5 Form of the termontological dictionary: Go digital or perish

I would like to start this section with an extract from the Foreword to the *Webster's New World Dictionary of the American Language*:

This Pocket-Size Edition of *Webster's New World Dictionary* has been prepared with a twofold purpose in mind. It will serve as an adequate reference work for those who need a useful, reliable dictionary at the lowest possible price. It will also serve in an important way those who already own another, larger dictionary but who, because of the nature of their work or study, require a small volume that they can carry with them in pocket, purse, or briefcase. (Guralnik 1968: iii)

Nearly half a century ago, the pocket-size dictionaries were touted for their resourcefulness and perceived as a revolutionary tool enabling users to carry a true language reference work in their pocket. Observed from the today's perspective, online dictionary tools fulfil a similar function for they too enable the users to carry dictionaries in their pockets, albeit not in a paper format. The new dictionary does not face the problem of space which was a major issue for print dictionaries. Philip Gove, editor of the Webster's Third Dictionary, apparently caused much outrage by taking extra efforts to save dictionary space.<sup>9</sup> Every editorial decision he made was dictated by space in order to cram new words into the finite boundaries of the printed book. Among other things, he refrained from using commas and redefined Merriam's defining style by banning the use of complete sentences. As a result, his definitions were frequently mocked. This anecdote is telling of the problem of space for print dictionaries. One can hardly imagine the traditional linear dictionary representation to entail all the above information on EU legal concepts in a systematic and user-friendly way. For this reason, preference must be given to digital dictionaries. One of the most evident advantages of digital over print dictionaries is that there is no imperative to abridge. Furthermore, they can be updated continuously, which is especially important for expanding prototypical definitions of indeterminate legal concepts as it allows for new category members to be easily included into the dictionary. This is vital in order to keep up with the development of the law. Another important advantage of digital dictionaries is that they provide easier overview, considering that users can zoom in on the

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9. Available at: [www.slate.com/articles/life/culturebox/2015/01/merriam\\_webster\\_dictionary\\_what\\_should\\_an\\_online\\_dictionary\\_look\\_like.html](http://www.slate.com/articles/life/culturebox/2015/01/merriam_webster_dictionary_what_should_an_online_dictionary_look_like.html)? (accessed 17 January 2015).



specific information of their interest and in the language of their choice. Since there are no physical space restrictions, all the relevant extralinguistic information can be included in the dictionary (e.g. definition, note, source). Concepts can thus be linked to as many related concepts as necessary, and different subfields inter-related. Accommodating the principle of multidimensionality is crucial for the terminographic description of EU law, in view of the fact that some concepts have several subordinate and related concepts, as the above described *merger*, whereas others carry different meanings in different subfields.

A final advantage of digital dictionaries to be mentioned here concerns time. Digital dictionaries enable users to retrieve information by one click and save time, which is of paramount importance for the today's on-demand society. The latter is characterized by an incessant need for information and knowledge transfer. What more, information should be retrievable as quickly as possible. Let us not forget that, without trying to overstate the importance of technology, we do live in an era in which the traditional shopping cart is delivered to our homes via drones! In light of these considerations, digital dictionaries are without a doubt our best bet for the future.

## Concluding remarks and directions for future research

This book has departed from two main assumptions. First, it was assumed that the transfer of legal knowledge proceeds via legal concepts. From the perspective of non-lawyers, legal communication is hence perceived as intransparent, and legal knowledge as incomprehensible and unfathomable. Understanding legal knowledge is made especially difficult by the difference in the knowledge background and conceptualization. Secondly, it was assumed that using linguistics, and especially the tools of terminology studies, can yield legal communication more transparent and in turn legal knowledge more comprehensible. Making a plea for a *“linguistisch aufgeklärte Rechtslehre”*, it was explained why terminology matters for law, arguing that its application to the legal field can provide a better understanding of legal concepts. Terminology studies have the attraction of maintaining a strong relationship not only with other linguistic disciplines, such as semantics and lexicography, but also with logic and the law. Topics that are to a certain degree common to all of the named disciplines include conceptualization, meaning, classification, defining and transfer of specialized knowledge, and each must be tackled in the process of dictionary making, specifically in the case of a legal dictionary. With this in mind we have claimed that all of the above issues must be addressed at a theoretical level first insofar that they can be successfully resolved in the lexicographic practice. Surveying different views and implications of conceptualization and meaning for the transfer of specialized knowledge allowed for making our own theoretical proposals and conclusions, which, due to the cross-disciplinary nature of dictionary making, have a universal appeal and may be of interest for legal translation scholarship, terminology studies and legal studies as well.

Another and perhaps more universal objective pursued in this book was to further understanding of the role of concepts in law and promote understanding of the law in general, and of statutory interpretation and EU law in particular. With this in mind numerous examples were discussed to give substance to the conclusions made and to facilitate ease of reading. Making sense out of the “interpretive jiggery-pokery” or “legalistic argle-bargle”, as late Justice Scalia referred to the interpretive twilight zone, is instrumental to grasp the role of concepts in

law and come to terms with legal argumentation.<sup>1</sup> If it is true that writers think in terms of words; chemists in terms of molecules and physicists in terms of atoms, than lawyers think in terms of concepts. Observed in this light, understanding legal concepts and legal institutions is basic to understanding the law. Accordingly, a dictionary of law ought to be a dictionary of concepts which requires gaining deeper insights into the semantics of legal concepts.

### 9.1 Digitalisation and customized lexicography

Thanks to the shift from finite to infinite space and the fact that there are no physical constraints, the conception of a dictionary has changed significantly over the last decades. As a matter of fact, digitalisation brings an opportune moment to rethink the form and the function of a dictionary. Versatile as the reasons why people use dictionaries may be, the fact is that people still engage in dictionary research. Present users though have extremely high expectations in terms of speed and are looking for effective solutions preferably by a mouse click. That said, the main function of a dictionary has changed too. While at Webster's day dictionaries were regarded as flagships of a nation underlining the connection between language and national identity, today we perceive a dictionary to serve as a pool of information. Assuming that legal dictionaries should also serve as pools of legal information, the future legal dictionary should resemble a mind map and reflect the way legal knowledge is conceptualized. The conceptual organization provides for a more realistic description of concepts and complies with the basic cognitive assumption that we understand concepts as parts of their background conceptual structures. The conceptual structure of a dictionary comes close to the aim of providing the users with an intuitive mode of utilizing the dictionary inasmuch as it allows for concepts to be described in the way they are conceptualized. In order to translate this into a dictionary one must resort to contextual extralinguistic knowledge. Therefore, finding a way for integrating extralinguistic information into a dictionary is crucial for ensuring a reliable and precise dictionary display of concepts. As this book suggested, this can be achieved by introducing ontological relationships into a dictionary. Compared to traditional lexicographic tools, the proposed termontological dictionary manages to account for the difference in the conceptualization and classification of legal concepts, as the underlying problems of legal communication and obstacles to the transfer of legal knowledge. By

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1. The latter two expressions were used by the most famous Supreme Court Justice the late Antonin Scalia (1936–1916) in *King v. Burwell* 576 U.S. \_ (2015) and *United States v. Windsor* 570 U.S. \_ (2013).

referring to other subfields and linking concepts to related or subordinate concepts we can come to grips with the difference in conceptualization and classification between various legal systems. Likewise, distinguishing the term and the concept level provides for a more realistic treatment of polysemy in accordance with the cognitive linguistics' view.

Summarizing, the examples of the proposed termontological dictionary presented in the last Chapter have hopefully offered an insight into the benefits of applying the cognitive terminographic approach to the making of multilingual dictionaries of EU law. Further research should rely on the cooperation between dictionary authors and knowledge engineers, while combining insights from computer technology and the advances made in cognitive science in order to jumpstart the application of ontologies to terminographic resources. This is extremely important in the face of critical voices that cognitive linguistic representations do not work well in computer applications (Faber and López Rodríguez 2012: 21.) We hope that the ideas proposed here can contribute to this goal.

A final point to be made here concerns the question of customization. The verb *to customize* was first used in the sense “to make or alter to individual or personal specifications”.<sup>2</sup> Today it is most often used in relation to smartphones, apps and services. Customization presupposes that each customer or client is different and has different needs to which one must adapt (its product or services). Note that *personalization* is used in a similar sense – especially in Europe – and we speak of personalized medicine or personalized banking. In the context of dictionary making, I interpret the word ‘customization’ to mean “to make a dictionary to a domain’s specification”, recognizing that, users aside, the domain with its special conceptual structure and features streamlines the process of dictionary making and sets the course of all lexicographic projects. With this in mind, the book has unveiled an approach “made to the domain’s specifications” showcased on the example of EU law. To engage in a lexicographic study of EU law, it is essential to consider the intricacies of multilingualism, conceptual autonomy and language. With this in mind attempt was made to illuminate some paradoxes posed by the special relationship between law in general, and EU law in particular, and language.

In light of the made considerations, it is futile to search for a theory of lexicography. There simply cannot be one ultimate theory that fits all lexicographic nooks and crannies out there. Our intellectual resources should instead be directed at providing plausible explanations of specific lexicographic questions. Such explanations can serve not only lexicography on the whole, but also the domain studied and other disciplines related to the domain in question, enabling us to exploit the

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2. The word was first used in 1934 in American English. Available at: <http://www.thefreedictionary.com/customize> (accessed 28 February 2016).

interdisciplinary potential of both lexicography and the domain. Although customization represents a buzzword emblematic of the 20th century, lexicography has yet to capitalize on it. Therefore, scholars dealing with the study of dictionaries are in no danger of being idle:

Probably the dictionary as we know it is on its way out, and we will see the emergence of new kinds of tools, reference tools encompassing more than the dictionary, containing other kinds of information and providing a better treatment of the more traditional information. [...] We are entering a period where knowledge cannot be further than a click away. [...] The early twenty-first (century) is a beginning, in which neither the lexicographer nor the metalexicographer are in any danger of being idle. (Béjoint 2010: 386)

# Bibliography

## Terminology studies, legal terminology, lexicography, legal dictionaries

- Atkins, B.T. Sue and Micheal Rundell. 2008. *The Oxford Guide to Practical Lexicography*. Oxford: Oxford University Press.
- Bajčić, Martina. 2010. "Challenges of Translating EU Terminology." In *Legal Discourse across Languages and Cultures*, ed. by Maurizio Gotti and Christopher Williams, 75–95. Bern: Peter Lang.
- Bajčić, Martina. 2011. "Conceptualization of Legal Terms in Different Fields of Law: The Need for a Transparent Terminological Approach." In *Research in Language*, 9: 1, ed. by Stanislaw Goźdz-Roszkowski and Iwona Witczak-Plisiecka, 81–93. Warsaw: Versita.
- Bajčić, Martina. 2014. *Teorijski model izradbe višejezičnih terminoloških rječnika*. Zagreb: Sveučilište u Zagrebu.
- Béjoint, Henri. 2010. *The Lexicography of English*. New York: Oxford University Press.
- Bergenholtz, Henning and Burkhard Schaefer. 1994. "Vorwort." In *Fachlexikographie. Fachwissen und seine Repräsentation in Wörterbüchern*, ed. by Henning Bergenholtz and Burkhard Schaefer, 1–11. Tübingen: Gunter Narr Verlag.
- Bergenholtz, Henning and Tarp, Sven. 1995. *Manual of Specialized Lexicography*. Amsterdam/Philadelphia: John Benjamins Publishing Company. doi: 10.1075/btl.12
- Biel, Łucja. 2008. Legal terminology in translation practice: dictionaries, googling or discussion forums. *SKASE Journal of Translation and Interpretation*, 3/1.
- Bowker, Lynne and Jennifer Pearson. 2002. *Working with Specialized Language. A Practical Guide to Using Corpora*. London/New York: Routledge. doi: 10.4324/9780203469255
- Bratanić, Maja and Ana Ostroški Anić. 2013. "The Croatian national termbank STRUNA: A new platform for terminological work." In *Collegium antropologicum* 37(3): 677–83.
- Budin, Gerhard. 2001. A critical evaluation of the state-of-the-art of terminology theory. *ITTF Journal* 12 (1–2). 7–23.
- Cabré, Maria Teresa. 2003. "Theories of terminology. Their description, prescription and explanation." In *Terminology* 9 (2), Amsterdam: John Benjamins, 163–200.
- Cabré, Maria Teresa. 1999. *Terminology. Theory, Methods and Applications*. Amsterdam/Philadelphia: John Benjamins Publishing Company. doi: 10.1075/tlrp.1
- Chromá, Marta. 2004. *Legal Translation and the Dictionary*. Tübingen: Max Niemeyer Verlag.
- De Baer, Peter, Koen Kerremans and Rita Temmerman. 2006. Bridging Communication Gaps between Legal Experts in Multilingual Europe: Discussion of a Tool for Exploring Terminological and Legal Knowledge Resources. In *Proceedings of the XII Euralex International Congress*, ed. by Corino, E., Marelllo, C. and C. Onesti. 6–9 September, Turin, Italy. 813–818.

- De Groot, Gerard-René and Conrad J. P. van Laer. 2011. Bilingual and Multilingual Legal Dictionaries in the European Union: An Updated Bibliography, *Legal Reference Services Quarterly*, 30: 3. 149–209. doi: 10.1080/0270319X.2011.601715
- Faber Benítez, Pamela. 2009. The cognitive shift in terminology and specialized translation. *MonTI. Monografías de Traducción e Interpretación*. 2009, 1. 107–134. doi: 10.6035/MonTI.2009.1.5
- Faber, Pamela. (ed.) 2012. *A Cognitive Linguistic View of Terminology and Specialized Language*. Berlin: De Gruyter Mouton. doi: 10.1515/9783110277203
- Faber, Pamela, and Clara Inés López Rodríguez. 2012. Terminology and specialized language. In *A Cognitive Linguistics View of Terminology and Specialized Language*, ed. by Pamela Faber, 9–33. Berlin: De Gruyter Mouton. doi: 10.1515/9783110277203
- Faber, Pamela. 2011. The dynamics of specialized knowledge representation: Simulational reconstruction or the perception-action interface, *Terminology*, 17: 1. 9–29 doi: 10.1075/term.17.1.02fab
- Fillmore, Charles J. and Sue B. T. Atkins. 1994. “Starting where dictionaries stop: the challenge of corpus lexicography.” In *Computational Approaches to the Lexicon*, ed. by Sue B.T. Atkins and Antonio Zampolli, 349–393. Oxford: Oxford University Press.
- Gaudin, François. 2003. *Socioterminologie: une Approche Sociolinguistique de la Terminologie*. Brussels: Duculot.
- Geeraerts, Dirk. 2007. Lexicography. In *The Oxford Handbook of Cognitive Linguistics* ed. by Dirk Geeraerts and Hubert Cuyckens, 1160–1174. Oxford/New York: Oxford University Press.
- Heid, Ulrich. 1997. *Zur Strukturierung von einsprachigen und kontrastiven elektronischen Wörterbüchern*. Tübingen: May Niemeyer Verlag. doi: 10.1515/9783110936582
- Kerremans, Koen. 2004. Categorisation frameworks in termontology. *Journal Linguistica Antverpiensia, New Series-Themes in Translation Studies*.
- Kerremans, Koen and Rita Temmerman. 2004. Towards Multilingual, Termonological Support in Ontology Engineering in: *Proceeding of Termino 2004*. Université de Lyon, Lyon. Available at: [http://www.academia.edu/851011/Towards\\_multilingual\\_termonological\\_support\\_in\\_ontology\\_engineering](http://www.academia.edu/851011/Towards_multilingual_termonological_support_in_ontology_engineering) (accessed 1 December 2014).
- Lancashire, Ian and Janet Damianopoulou. 2014. “The Early Modern English Law Lexicon.” In *Legal Lexicography: A Comparative Perspective*, ed. by Martin Mac Aodha, 45–59. Surrey: Ashgate.
- León Araúz, Pilar, Pamela Faber and Silvia Montero Martínez. 2012. Specialized Language Semantics. In *A Cognitive Linguistics View of Terminology and Specialized Language*, ed. by Pamela Faber, 95–117. Berlin: De Gruyter Mouton.
- L’Homme, Marie-Claude and Monique C. Cormier. 2014. Dictionaries and the Digital revolution: A Focus on Users and Lexical Databases. *International Journal of Lexicography* 2014/ doi: 10.1093/ijl/ecu023.
- Martin, Willy and Hennie van der Vliet. 2003. “Design and production of terminological dictionaries.” In *A Practical Guide to Lexicography*, ed. by Piet van Sterkenburg, 333–350. Amsterdam/Philadelphia: John Benjamins Publishing Company. doi: 10.1075/tlrp.6.37mar
- Meyer, Ingrid, Lynne Bowker and Karen Eck. 1992. COGNITERM: An experiment in building a knowledge-based term bank. In *Proceedings of the Fifth EURALEX International Congress*. Tampere, Finland. 159–172.
- Najera Villar, Blanca and Diana Brändle. 2012. There Is No Knowledge without Terminology: Key Factors for Organisational Learning. *Systems, Software and Services Process Improvement*

- Communications in Computer and Information Science* Volume 301, 2012. 300–309.  
doi: 10.1007/978-3-642-31199-4\_26
- Peruzzo, Katia. 2014. Capturing dynamism in legal terminology: the case of victims of crime. In *Dynamics and Terminology. An interdisciplinary perspective on monolingual and multilingual culture-bound communication*, ed. by Rita Temmerman and Marc van Campenhoudt. Amsterdam/Philadelphia: John Benjamins, 43–59.
- Picht, Heribert and Klaus-Dirk Schmitz. 2001. *Terminologie und Wissensordnung. Ausgewählte Schriften aus dem Gesamtwerk von Eugen Wüster*. Wien: TermNet.
- Sager, Juan C. 1994. *Language Engineering and Translation: Consequences of Automation*. Amsterdam: John Benjamins. doi: 10.1075/btl.1
- Sandrini, Peter. 1996. *Terminologiarbeit im Recht*. Vienna: International Network for Terminology.
- Sandrini, Peter. 2014. “Multinational Legal Terminology in a Paper Dictionary?” in *Legal Lexicography. A Comparative Perspective* ed. by Máirtín Mac Adoha. Surrey: Ashgate. p. 141–153.
- Smith, Lionel. 2014. Foreword to *Legal Lexicography. A Comparative Perspective* ed. by Máirtín Mac Adoha. Surrey: Ashgate. p. IX.
- Szemińska, Weronika. 2011. “Translating Law into a Dictionary. A Terminographic Model.” In *Research in Language*, 9: 1, ed. by Stanisław Goźdz-Roszkowski and Iwona Witczak-Plisiecka, 177–186. Warsaw: Versita.
- Tarp, Sven. 2009. Reflections on data access in lexicographic works. In *Lexicography in the 21st Century*, ed. by Sandro Nielsen and Sven Tarp, 43–63. Amsterdam/Philadelphia: John Benjamins Publishing Company. doi: 10.1075/tlrp.12.05tar
- Temmerman, Rita. 2000. *Towards New Ways of Terminology Description: The Sociocognitive Approach*. Amsterdam/Philadelphia: John Benjamins Publishing Company.  
doi: 10.1075/tlrp.3
- Temmerman, Rita and Koen Kerremans. 2003. Termontography: Ontology Building and the Sociocognitive Approach to Terminology Description. *Prague CIL17 Conference*. Available at: [http://www.hf.uib.no/forskingskole/temmerman\\_art\\_prague03.pdf](http://www.hf.uib.no/forskingskole/temmerman_art_prague03.pdf) (accessed 9 August 2011).
- Temmerman, Rita and Koen Kerremans. 2005. What will be considered a term? From static terminology description to dynamic terminology processing. *Proceedings of the LSP conference*, Bergamo. 265–277.
- Tiscornia, Daniela. 2007. “The LOIS Project: Lexical Ontologies for Legal Information Sharing.” In *Proceedings of the V Legislative XML Workshop*, ed. by Carlo Biagioli, Enrico Francesconi, and Giovanni Sartor, 189–204. Florence: European Press Academic Publishing.
- Van Laer, Conrad J. P. and Tom van Laer. 2007. The Shortage of Legal Dictionaries Translating European Languages. *Terminology* 13: 1, 85–92. doi: 10.1075/term.13.1.06lae
- Wright, Sue Ellen and Budin, Gerhard. 1997. *Handbook of Terminology Management*. Amsterdam/Philadelphia: John Benjamins. doi: 10.1075/z.htm1
- Wüster, Eugen. 1968. *The Machine Tool, an Interlingual Dictionary of Basic Concepts*. London: Technical Press.
- Wüster, Eugen. 1974. “Die allgemeine Terminologielehre – Ein Grenzgebiet zwischen Sprachwissenschaft, Logik, Ontologie, Informatik und den Sachwissenschaften.” *Linguistics* 119: 61–106.
- Wüster, Eugen. 1985. *Einführung in die allgemeine Terminologielehre und terminologische Lexikographie*. Kopenhagen: Infoterm.



## Linguistics, specialized language, legal language

- Ajani, Gianmaria, Guido Boella, Leonardo Lesno, Marco Martin, Alessandro Mazzei, Daniele P. Radicioni and Piercarlo Rossi 2010. Multilevel Legal Ontologies. In *Semantic Processing of Legal Texts: Where the Language of Law Meets the Law of Language*. ed. by Enrico Francesconi, Simonetta Montemagni, Wim Peters and Daniela Tiscornia. LNCS 6036. Berlin: Springer. 136–156. doi: 10.1007/978-3-642-12837-0\_8
- Araúz, León Pillar, Pamela Faber and Silvia Montero Martínez. 2012. “Specialized Language Semantics.” In *A Cognitive Linguistics View of Terminology and Specialized Language*, ed. by Pamela Faber, 95–177. Berlin: De Gruyter Mouton.
- Arntz, Reiner and Peter Sandrini. 2007. Präzision versus Vagheit: Das Dilemma der Rechtssprache im Lichte von Rechtsvergleich und Sprachvergleich. In *Indeterminacy in Terminology and LSP* ed. by Bassey Edem Antia. Amsterdam/Philadelphia: John Benjamins Publishing Company. 135–157. doi: 10.1075/tlrp.8.14arn
- Austin, J. L. 1956. A Plea for Excuses. *Proceedings of the Aristotelian Society* 1, 8.
- Beveridge, Barbara J. 2002. “Legal English – How It Developed and Why It Is Not Appropriate for International Commercial Contracts.” In *The Development of Legal Language*, ed. by Heikki E. S. Mattila, 55–81. Helsinki: Kauppakaari.
- Bowers, Frederick. 1989. *Linguistic Aspects of Legislative Expression*. Vancouver: University of British Columbia Press.
- Bukovčan, Dragica. 2010. *Od teorije do prakse u jeziku struke*. Zagreb: Školska knjiga.
- Busse, Dietrich. 2001. Semantik der Praktiker. In *Neue Studien zur Rechtlinguistik* ed. by Friedrich Müller and Rainer Wimmer. Berlin: Duncker & Humboldt. P. 49, 45–81.
- Charrow, Veda, Crandall, Jo Ann and Robert Charrow. 1982. Characteristics and Functions of Legal Language. In Kittredge, Richard and John Lehrberger (eds.) *Sublanguage. Studies of Language in Restricted Semantic Domains*. 175–191.
- Croft, William and D. Alan Cruse 2004. *Cognitive Linguistics*. Cambridge: Cambridge University Press. doi: 10.1017/CBO9780511803864
- Endicott, Timothy A.O. 2001. *Vagueness in Law*. UK: Oxford University Press.
- Cornu, Gérard. 2000. *Linguistique juridique*. Paris: Éditions Montchrestien.
- Engberg, Jan. 2004. Statutory Texts as Instances of Language(s): Consequences and Limitations on Interpretation. 29 *Brook. J. Int’l L.* 1135 2003–2004. Available at: <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/bjil29&div=33&id=&page=> (accessed 1.06.2011).
- Engberg, Jan. 2015. “Autonomous EU Concepts: Fact or Fiction?” In *Language and Culture in EU Law: Multidisciplinary Perspectives*, ed. by Susan Šarčević, 169–183. Surrey: Ashgate.
- Engberg, Jan. 2016. “Word Meaning and a Globalized Legal Order.” In *The Oxford Handbook of Language and the Law*, ed. by Lawrence M. Solan and Peter M. Tiersma, 175–187. UK: Oxford University Press.
- Faber, Pamela and José Manuel Ureña Gómez-Moreno. 2012. “Specialized Language Translation.” In *A cognitive linguistics view of terminology and specialized language*, ed. by Pamela Faber. 20: 73–92. Berlin, Boston: De Gruyter Mouton. doi: 10.1515/9783110277203
- Fillmore, Charles J. 1975. An Alternative to the Checklist Theories of Meaning. *Proceedings of the First Annual Meeting of the Berkeley Linguistics Society* (1975). p. 123–131.

- Fillmore, Charles J. 2006. Frame Semantics. In *Cognitive Linguistics: Basic Readings*. ed. by Dirk Geeraerts. Berlin: Walter de Gruyter GmbH & Co. KG. 373–401.  
doi: 10.1515/9783110199901.373
- Frade, Celine. 2005. “Legal Multinominals: Recovering Possible Meanings from Vague Texts.” In *Vagueness in Normative Texts* ed. by Vijah K. Bhatia et al., 133–157. Bern: Peter Lang.
- Geeraerts, Dirk. 2010. *Theories of Lexical Semantics*. New York: Oxford University Press.
- Goddard, Cliff. 2008. “Contrastive semantics and cultural psychology: English heart vs. Malay hati.” In *Culture, Body and Language. Conceptualizations of internal Body Organs across Cultures and Languages*. ed. by F. Sharifian, R. Dirven, N. Yu and S. Niemeier, 75–103. Berlin/New York: Mouton de Gruyter.
- Hotta, Syûgo and Masahiro Fujita. 2016. “The Psycholinguistic Basis of Distinctiveness in Trademark Law.” In *The Oxford Handbook of Language and the Law* ed. by Lawrence M. Solan and Peter M. Tiersma, 478–489. UK: Oxford University Press.
- Humboldt, Wilhelm von. 1963. *Schriften zur Sprachphilosophie*. Darmstadt: Wissenschaftliche Buchgesellschaft.
- Jackendoff, Ray. 2011. Conceptual Semantics. In *Semantics. An International Handbook of Natural Language Meaning*. ed. by Claudia Maienborn, Klaus von Heusinger and Paul Portner. Berlin/Boston: de Gruyter Mouton. Vol. 1. 688–709. Available at: <http://ase.tufts.edu/cogstud/incbios/RayJackendoff/ConceptualSemantics.doc>. (accessed 1 June 2011).
- Kjær, Anne-Liese. 2008. “Introduction: Language as Barrier and Carrier of European Legal Integration.” In *Paradoxes of European Legal Integration*, ed. by Hanne Petersen, Anne Lise Kjær, Helle Krunke and Mikael Rask Madsen, 149–157. Great Britain: Ashgate.
- Koch, Hans-Joachim. 1979. *Unbestimmte Rechtsbegriffe und Ermessensermächtigungen im Verwaltungsrecht. Eine logische und semantische Studie zur Gesetzesbindung der Verwaltung*. Frankfurt am Main: Alfred Metzner Verlag.
- Kocourek, Rostislav. 1982. *La langue française de la technique et de la science*. Wiesbaden: Brandstetter.
- Krois-Lidner, Amy. 2009. *International Legal English*. Cambridge: University Press.
- Lakoff, George. 1987. *Women, Fire and Dangerous Things: What Categories Reveal about the Mind*. Chicago: University of Chicago Press. doi: 10.7208/chicago/9780226471013.001.0001
- Langacker, Ronald W. 1987. *Foundations of Cognitive Grammar*. Volume I. Stanford CA: Stanford University Press.
- Macdonald, Roderick A. 1997. Legal Bilingualism. 1997 *McGill Law Journal* 42, 119–167.
- Marder, Nancy S. 2016. “Instructing the Jury.” In *The Oxford Handbook of Language and the Law* ed. by Lawrence M. Solan and Peter M. Tiersma, 435–445. UK: Oxford University Press.
- Mattila, Heikki E.S. 2006. *Comparative Legal Linguistics*. Great Britain: Ashgate.
- Mellinkoff, David. 1963. *The Language of the Law*. Boston: Little Brown.
- Müller, Friedrich. 2001. “Textarbeit, Rechtsarbeit. Zur Frage der Linguistik in der Strukturierenden Rechtslehre.” In *Neue Studien zur Rechtlinguistik*, ed. by Friedrich Müller and Rainer Wimmer, 11–25. Berlin: Duncker & Humboldt.
- Petersen, Hanne, Anne-Lise Kjær, Helle Krunke and Mikael Rask Madsen (eds.). 2008. *Paradoxes of European Legal Integration*. Great Britain: Ashgate. 149–157.
- Pinkal, Manfred. 1985. *Logik und Lexikon – Die Semantik des Unbestimmten*. Berlin, New York: Walter de Gruyter.
- Pinker, Steven. 1994. *The Language Instinct. The New Science of Language and Mind*. London: The Penguin Press.

- Poscher, Ralph. 2016. Ambiguity and Vagueness in Legal Interpretation. *The Oxford Handbook of Language and the Law*, ed. by Lawrence M. Solan and Peter M. Tiersma, 128–145. UK: Oxford University Press.
- Rosch, Eleanor 1975. Cognitive representations of semantic categories. *Journal of Experimental Psychology: General* 104. 192–233.
- Rosch, Eleanor. 1978. Principles of categorization: a historical view. In *Cognition and Categorization*, ed. by Eleanor Rosch and Barbara L. Lloyd. Hillsdale, NJ: Lawrence Erlbaum. 27–48.
- Rosch, Eleanor and Carolyn B. Mervis. 1975. Studies in the Internal Structure of Categories. *Cognitive Psychology* 7. 573–605. doi: 10.1016/0010-0285(75)90024-9
- Sacco, Rodolfo. 2005. “Language and Law.” In *Ordinary Language and Legal Language* ed. by Barbara Pozzo, 1–21. Milan: Giuffrè.
- Sapir, Edward. 1921. *Language. An introduction to the study of speech*. New York: Harcourt, Brace and Company.
- Šarčević, Susan. 2009. “Book Review of Heikki E.S. Mattila. Comparative Legal Linguistics.” *Target* 21: 1 (2009), 150–156. doi: 10.1075/target.21.1.09sar
- Šarčević, Susan. 2010. “Creating a Pan-European Legal Language.” In *Legal Discourse across Languages and Cultures*, ed. by Maurizio Gotti, and Christopher Williams, 23–51. Bern: Peter Lang.
- Shuy, Roger W. 2016. “Using Linguistics in Trademark Cases.” In *The Oxford Handbook of Language and the Law* ed. by Lawrence M. Solan and Peter M. Tiersma, 449–463. UK: Oxford University Press.
- Simonnæs, Ingrid. 2007. “Vague legal concepts. A contradictio in adjecto?” In *Indeterminacy in Terminology and LSP*, ed. by Bassey-Edem Antia, 119–134. Amsterdam: Benjamins. doi: 10.1075/tlrp.8.13sim
- Solan, Lawrence M. 2016. “Linguistic Issues in Statutory Interpretation.” In *The Oxford Handbook of Language and the Law*, ed. by Lawrence M. Solan and Peter M. Tiersma, 87–100. UK: Oxford University Press.
- Solan, Lawrence M. and Peter M. Tiersma. 2005. *Speaking of Crime. The Language of Criminal Justice*. University of Chicago Press.
- Stygall, Gail. 2016. “Discourse in the US Courtroom.” In *The Oxford Handbook of Language and the Law* ed. by Lawrence M. Solan and Peter M. Tiersma, 369–381. UK: Oxford University Press.
- Trench, Richard Chenevix. 1852. *On the Study of Words*. Available at: <http://www.etymonline.com/index.php?term=schadenfreude> (accessed 9 November 2011).
- Tudman Vuković, Nina. 2009. Značenje u kognitivnoj lingvistici. *Suvremena Lingvistika* 67. 125–150.
- Van Hoecke, Mark. 2002. *Law as Communication*. Oxford: Hart Publishing.
- Wagner, Anne and Jean-Claude Gémard (2013). Materializing Notions, Concepts and Language into Another Linguistic Framework. *Int J Semiot Law* (2013) 26: 731–745. doi: 10.1007/s11196-013-9339-4
- Wierzbicka, Anna. 1996. *Semantics. Primes and Universals*. Oxford/New York: Oxford University Press.
- Žic-Fuchs, Milena 2009. *Kognitivna lingvistika i present perfect*. Zagreb: Nakladni zavod Globus.
- Žic-Fuchs, Milena. 1991. *Znanje o jeziku i znanje o svijetu*. Zagreb: SOL.

## Translation studies, legal translation

- Baaij, Jaap C.J.W. (ed.). 2012. *The role of legal translation in legal harmonization*. Alphen aan den Rijn: Kluwer Law International.
- Baaij, Jaap C.J.W. 2015. "EU Translation and the Burden of Legal Knowledge." In *Language and Culture in EU Law: Multidisciplinary Perspectives*, ed. by Susan Šarčević 109–123. Surrey: Ashgate.
- Bajčić, Martina. 2014. "Towards a Terminological Approach to Translating European Contract Law." In *Pragmatic Issues in Legal Translation: from the Different Language Versions of the DCFR to the CESL Proposal*, ed. by Barbara Pasa and Lucia Morra, 125–147. München: Sellier.
- Biel, Lucja. 2007. Translation of Multilingual EU Legislation as a Subgenre of Legal Translation. In *Court Interpreting and Legal Translation in the Enlarged Europe*, ed. by Danuta Kierzkowska, 144–163. Warsaw: Translegis.
- Cao, Deborah. 2007. *Translating law*. Clevedon: Multilingual Matters.
- Cheng, Le and King-Kui Sin. 2008. Terminological equivalence in legal translation: A semiotic approach. *Semiotica* 172–1/4 (2008), 33–45.
- Cheng, Le, King-Kui Sin and Winnie Cheng. 2014. Legal translation: A sociosemiotic approach. *Semiotica* 2014; 201: 17–33.
- Chromá, Marta. 2014. Making Sense in Legal Translation. *Semiotica* 2014; 201: 121–144.
- Engberg, Jan. 2013. Comparative law for translation: The key to successful mediation between legal systems. In *Legal Translation in Context: Professional Issues and Prospects* ed. by Anabel Borja Albi and Fernando Prieto Ramos. Bern: Lang. 9–25.
- Engberg, Jan. 2014. General and Specific Perspectives on Vagueness in Law – Impact upon the Feasibility of Legal Translation. In *Translating the DCFR and Drafting the CESL. A Pragmatic Perspective* ed. by Barbara Pasa and Lucia Morra. Munich: Sellier 147–163. doi: 10.1515/9783866536067.147
- Gémar, Jean-Claude. 1995. *Traduire ou l'art d'interpréter*. 2 vol. Sainte-Foy: Presses de l'Université du Québec.
- Gémar, Jean-Claude. 2001. Seven pillars for the legal translator: Knowledge, know-how, and art. In *Legal translation, preparation for accession to the European Union*, ed. by Susan Šarčević, 111–138. Rijeka: University of Rijeka.
- Glanert, Simone. 2014. Law-in-translation: an assemblage in motion. *The Translator*, 20: 3, 255–272. doi: 10.1080/13556509.2014.945270.
- Groot, Gérard-René de. 2006. "Legal translation." In *Elgar encyclopedia of comparative law*, ed. by Jan M. Smith, 423–433. Cheltenham: Edward Elgar. doi: 10.4337/9781847200204.00044
- Jopek-Bosiacka, Anna. 2013. Comparative law and equivalence assessment of system-bound terms in EU legal translation. In *Linguistica Antverpiensia – New Themes in Translation Studies*. No. 12. 2013. 110–146.
- Kasirer, Nicholas 2001. François Géný's libre recherche scientifique as a Guide for Legal Translation. *Louisiana Law Review*, vol. 61/2. 331–352.
- Kjær, Anne-Liese. 2010. Nonsense: The CILFIT Criteria Revisited: from the Perspective of Legal Linguistics, in Henning Koch, Joseph H. H. Weiler, Karsten Hagel-Sørensen and Ulrich Haltern. *Europe. The New Legal Realism. Essays in Honour of Hjalte Rasmussen*. Copenhagen: Djøf. 217–396.

- Kjær, Anne-Liese. 2014. New challenges to the theory of legal translation: transnational legal communication and the autonomization of international law. *Translator* 20 (3): 430–436. September 2014. doi:10.1080/13556509.2014.927700
- Kjær, Anne-Liese. 2015. “Theoretical Aspects of Legal Translation in the EU: The Paradoxical Relationship between Language, Translation and the Autonomy of EU Law.” In *Language and Culture in EU Law: Multidisciplinary Perspectives*, ed. by Susan Šarčević, 91–109. Surrey: Ashgate.
- Koller, Werner. 1992. *Einführung in die Übersetzungswissenschaft*. Heidelberg: Quelle & Meyer.
- Newmark, Paul. 1982. *Approaches to Translation*. Oxford: Pergamon.
- Nida, Eugene and Charles Taber. 1974. *The Theory and Practice of Translation*. Leiden: E.J. Brill.
- Nord, Christiane. 2012. Quo vadis, functional translatology? *Target*, vol. 24. Issue 1. 26–43. doi:10.1075/target.24.1.03nor
- Olsen, Frances, Alexander Lorz and Dieter Stein (eds.). 2009. *Translation issues in language and law*. Basingstoke: Palgrave Macmillan. doi:10.1057/9780230233744
- Prieto Ramos, Fernando. 2014. International and supranational law in translation: from multilingual lawmaking to adjudication. *The Translator*, 2014. Vol. 20, No. 3, 313–331. doi:10.1080/13556509.2014.904080
- Pommer, Sieglinde. 2006. *Rechtsübersetzung und Rechtsvergleichung. Translatologische Fragen zur Interdisziplinarität*. Frankfurt am Main: Peter Lang.
- Schleiermacher, Friedrich. 2012. “On the Different Methods of Translating” (Bernofsky, Susan, trans.). In *The translation studies reader*, edited by Lawrence Venuti, 43–63. London: Routledge.
- Simonnæs, Ingrid. 2013. Legal translation and “traditional” comparative law – Similarities and differences. *Linguistica Antverpiensia, New Series – Themes in Translation Studies* 12, 147–160.
- Stolze, Radegundis. 1992. *Hermeneutisches Übersetzen*. Tübingen: Gunter Narr.
- Stolze, Radegundis. 2016. “Principles of Document Translation.” In *Towards the Professionalization of Legal Translators and Court Interpreters in the EU*, ed. by Martina Bajčić and Katja Dobrić Basanež, 188–210. UK: Cambridge Scholars Publishing.
- Šarčević, Susan. 2000. *New Approach to Legal Translation*. The Hague: Kluwer Law International.
- Šarčević, Susan. 2014. Legal Translation and Legal Certainty/Uncertainty: From the DCFR to the CESL Proposal. In *Translating the DCFR and Drafting the CESL. A Pragmatic Perspective*, ed. by Barbara Pasa and Lucia Morra. Munich: Sellier. 47–70. doi:10.1515/9783866536067.47
- Venuti, Lawrence. 1995. *The Translator’s Invisibility: A History of Translation*. 2nd edition. Oxon: Routledge. doi:10.4324/9780203360064

## Law, (multilingual) interpretation

- Azuelos-Atias, Sol. 2013. “The purposive method of legal interpretation in practice.” *International Journal of Law, Language and Discourse*. Vol. 3.1. 2013, 30–54.
- Baaij, Jaap C.J.W. 2012. “Fifty Years of Multilingual Interpretation in the European Union.” In *The Oxford Handbook of Language and Law*, ed. by Lawrence M. Solan and Peter Tiersma, 217–231. Oxford: Oxford University Press.

- Bengoetxea, Joxerramon. 2011. "Multilingual and Multicultural Legal Reasoning: The European Court of Justice." In *Linguistic Diversity and European Democracy*, ed. by Kjær, Anne-Liese and Silvia Adamo, 97–22. Great Britain: Ashgate.
- Bennet, Robert W. 2016. "Constitutional Interpretation." In *The Oxford Handbook of Language and the Law*, ed. by Lawrence M. Solan and Peter M. Tiersma, 114–128. UK: Oxford University Press.
- Bix, Brian H. 2016. "Legal Interpretation and the Philosophy of Language." In *The Oxford Handbook of Language and the Law*, ed. by Lawrence M. Solan and Peter M. Tiersma, 145–159. UK: Oxford University Press.
- Bobek, Michal. 2007–2008. On the Application of European Law in (Not Only) the Courts of the New Member States: "Don't Do as I Say"? *Cambridge Yearbook of European Legal Studies*, Vol. 10. Cambridge: Centre for European Legal Studies, 1–34.
- Bobek, Michal. 2011. The Multilingualism of the European Union Law in the National Courts: Beyond the Textbooks. In *Linguistic Diversity and European Democracy*, ed. by Anne-Liese Kjær and Silvia Adamo, 123–142. Great Britain: Ashgate.
- Brown, Lionel N. and Kennedy, Tom. 2000. Brown&Jacobs: *The Court of Justice of the European Communities*. London: Sweet & Maxwell.
- Bund, Elmar. 1983. *Juristische Logik und Argumentation*. Verlag Rombach: Freiburg am Breisgau..
- Burnham, William. 2006. *Introduction to the Law and Legal System of the United States*. Fourth Edition. St. Paul: Thomson West.
- Calster, Geert van 1997. 'The EU's Tower of Babel – The Interpretation by the European Court of Justice of Equally Authentic Texts Drafted in More than One Official Language.' *Yearbook of European Law* 17 (1997: 363–393). doi:10.1093/yel/17.1.363
- Ćapeta, Tamara. 2009. Multilingual Law and Judicial Interpretation in the EU. *Croatian Yearbook of European Law and Policy*, Vol. 5 No. 5 November 2009. P. 1–17.
- Crennan, Susan. 2010. Statute Society Paper/London, 1 February 2010: Statutes and the Contemporary Search for Meaning, available at: <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/crennanj/crennanj1feb10.pdf> (accessed: 1 October 2014).
- Derlén, Mattias. 2009. *Multilingual Interpretation of European Union Law*. The Netherlands: Wolters Kluwer.
- Driedger, Elmer A. 1974. *The Construction of Statutes*. Toronto: Butterworths.
- Driedger, Elmer A. 1976. *The Composition of Legislation*. Ottawa: Department of Justice.
- Ellsworth, Phoebe C. 2005. "Legal Reasoning." In *The Cambridge Handbook of Thinking and Reasoning* ed. by Keith J. Holyoak and Robert G. Morrison Jr., 685–704. New York: Cambridge University Press.
- Fennelly, Nial. 1997. *Legal Interpretation at the European Court of Justice*. 20 Fordham Int'l LJ.
- Fish, Stanley. 1993. "How Come you Do me Like you Do? A Reply to Dennis Patterson". 72 *Texas Law Review*, 57 (1993).
- Golding, Martin P. 1984. *Legal Reasoning*. New York: Alfred A. Knopf.
- Hart, H.L.A. 1958. Positivism and Separation of Law and Morals. 71 *Harvard Law Review* 593. doi:10.2307/1338225
- Hart, H.L.A. 1994. *The Concept of Law*. Clarendon.
- Heuston, R.F.V. 1977. *Salmond on the Law of Torts* 56 (17th ed.).
- Kymlicka, Will. 2001. *Politics in the Vernacular*. Oxford: Oxford University Press. doi:10.1093/0199240981.001.0001
- Larenz, Karl. 1983. *Methodenlehre der Rechtswissenschaft*. Berlin/Heidelberg: Springer. doi:10.1007/978-3-662-08713-8

- Legrand, Pierre. 2008. Word/World of Primordial Issues for Comparative Legal Studies in Paradoxes of European Legal Integration ed. by Hanne Petersen, Anne-Lise Kjær, Helle Krunke and Mikael Rask Madsen. Great Britain: Ashgate. 185–235.
- Luttermann, Karin. 2009. Multilingualism in the European Union, Status quo and perspectives: The reference language model. In Grewendorf & Rathert (eds.). *Formal Linguistics and Law*. Berlin: Mouton de Gruyter. 315–338.
- Madsen, Mikael R. 2008. “Introduction: An Ever Closer Union – An Ever Larger Market: Lawyers and the Transnational Construction of European Institutions and Markets.” In *Paradoxes of European Legal Integration*, ed. by Hanne Petersen, Anne Lise Kjær, Helle Krunke and Mikael Rask Madsen, 67–75. Great Britain: Ashgate.
- Mayrand, Albert. 1994. “L’autorité du précédent au Québec.” *Revue juridique Thémis*, vol. 28, numéros 2 et 3, Available at: <https://ssl.editionthemis.com/revue/article-4404-l-autorite-du-precedent-au-quebec.html>. Accessed 5 September 2016.
- McAuliffe, Karen. 2013. The Limitations of a Multilingual Legal System, *Int J Semiot Law* (2013) 26: 861–882. doi: 10.1007/s11196-013-9314-0
- Nedzel, Nadia E. 2008. *Legal Reasoning, Research, and Writing for International Graduate Students*. Second edition. Aspen Publishers, Wolters Kluwer.
- Peruginelli, Ginerva. 2010. Accessing Legal Information Across Boundaries: A New Challenge. *International Journal of Legal Information*: Vol. 37: 3, article 4.).
- Pokrajac, Đuro. 2001. Kaznena djela zloborabe položaja i ovlasti iz čl. 337. i zloporabe ovlasti u gospodarskom zposlovanju iz čl. 292. KZ te njihova primjena u praksi. *Hrvatski ljetopis za kazneno pravo i praksu*. Zagreb, vol. 8, No. 2/2001. 171–178.
- Robertson, Colin. 2015. “EU Multilingual Law.” In *Language and Culture in EU Law: Multidisciplinary Perspectives*, ed. by Susan Šarčević, 33–53. Surrey: Ashgate.
- Samardžija, Višnja and Hrvoje Butković. 2010. *From the Lisbon Strategy to Europe 2020*. Zagreb: Institute for International Relations.
- Šarčević, Susan. 2013. Multilingual Lawmaking and Legal (Un)Certainty in the European Union. *International Journal of Law, Language and Discourse*. Vol. 3.1. 2013, 1–29.
- Savigny, Friedrich Karl von. 1802. *Juristische Methodenlehre*. (Anleitungen zu einem anderen Studium der Jurisprudenz. 18032/3) Hrsg. V. Gerhard Wesenberg. Stuttgart 1951.
- Schilling, Theodor. 2010. “Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of a Community Law.” In *European Law Journal* 16. 47–66. doi: 10.1111/j.1468-0386.2009.00496.x
- Schübel-Pfister, Isabel. 2004. *Sprache und Gemeinschaftsrecht – Die Auslegung der mehrsprachig verbindlichen Rechtstexte durch den Europäischen Gerichtshof*. Berlin: Duncker & Humboldt.
- Solan, Lawrence. M. 2007. “Statutory Interpretation in the EU: The Augustinian Approach.” Brooklyn Law School, *Legal Studies Paper* No. 78. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=998167](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=998167) (accessed 1 September 2014). doi: 10.2139/ssrn.998167
- van Hecke, Georges A. 1962. “A Civilian Looks at the Common-Law Lawyer.” In *International Contracts: Choice of Law and Language*, ed. by Willis L.M. Reese, 5–13. Thirtieth Anniversary Symposium. Parker School Studies in Foreign and Comparative Law. Dobbs Ferry, New York: Oceana Publications Inc.
- Wank, Rolf. 1985. *Die juristische Begriffsbildung*. München: Beck.
- White, James Boyd. 1987. “The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education.” In *A Student’s Guide to the Study of Law: An Introduction*, by L.H. LaRue. New York: Matthew Bender.

Zweigert, Konrad and Hein Kötz. 1998. *An Introduction to Comparative Law*, 3e ed. trad. Par Tony Weir, Oxford, Oxford University Press [Einführung in die Rechtsvergleichung, 3e ed., Tübingen, J.C.B. Moh, 1996].

## Case law:

### *UK, US and Australian case law*

Heydon's case (1584) 3 Co Rep 7a at 638 [76 ER 637 at 638]  
*Mownsell v Olins* (1975) AC 373  
*Commonwealth v. Webster*, 59 Mass (5 Cush.) 295, 320 (1850)  
*King v. Burwell* 576 U.S. \_ (2015) 570 U.S. \_ (2013)  
*Lucy v Zehmer*, 196 Va. 493; 84 S.E.2d 516 (1954)  
*Adams v New Jersey Steamboat Co.* 1896. 151 N.Y. 163, 45 N.E. 369.  
*Conagra, Inc., v George A. Hormel, & Company*, 990 F.2d 368 (8th Cir. 1993)  
*Rovira v Boget*, 240 N.Y. 214, 148 N.E. 534, 535  
*Nix v Hedden*, 149 U.S. 304 (1893)  
*Pillwotex Corp. v United States*, 171 F.3d 1370, 1373 (Fed.Cir. 1999)  
*JVC Co. of Am., Div. Of US JVC Corp. v United States*, 234 F.3d 1352 (Fed. Cir. 2000)  
*Erie v Pap's A.M.* (529 U.S. 277, 2000)  
*McCutcheon v Federal Election Commission* 572 U.S. Supreme Court, 2014  
*McBoyle v United States*, 283 U.S. 25 (1931)  
*Newberry v Simmonds*, [1961] 2 Q.B. 345  
*Smart v Allen*, [1963] 1 Q.B. 291  
*Chicago Health Clubs*, 347 F.Supp. 955 [N.D. Ill. 1972]  
*King v. Burwell* 576 U.S. \_ (2015)  
*United States v. Windsor* 570 U.S. \_ (2013)  
*Re Ferrero Litigation*, 794 F.Supp.2d 1107 (2011).

### *ECtHR's case law:*

*Cengiz and Others v Turkey* (applications nos. 48226/10 and 14027/11).  
*Sramek v Austria* (application no. 8790/79).

### *CJEU's case law:*

Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121  
 Case C-279/93 *Finanzamt Köln-Altstadt v Schumacker* [1995] ECR I-225  
 Case C-196/04 *Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue* [2006] ECR I-07995  
 Case C-449/93 *Rockfon A/S v. Specialarbejderforbundet i Danmark* [1995] ECR I-4291.  
 Case C-30/77 *Régina v Pierre Bouchereau* [1977] ECR 1999  
 Case C-102/81 *Nordsee v Reederei Mond* [1982] ECR 1095  
 Case C-219/95 *P. Ferriere Nord SpA v The Commission of the European Communities* [1997] ECR I-4411



- Case 296/95 *The Queen v Commissioners of Customs and Excise, ex parte: EMU Tabac SARL and others* [1998] ECR I-1605
- Cases C-72/95 *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeouteerde Staten van Zuid-Hollan* [1996] ECR I-5403
- Case 80/76 *North Kerry Milk Products v Minister for Agriculture* [1977] ECR 425
- Case C 100/84 *Commission v UK* [1985] ECR 1169
- Case 13/61, *Kledingverkoopbedrijf de Geus en Uitdenbogerd v Robert Bosch GmbH and Maatschappij tot voorzetting van de zaken der Firma Willem van Rijn* [1962] ECR English special edition 45
- Case C-76/90 *Saeger v Denneweyer* [1991] ECR I-4221
- Case C-55/94, *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, [1996] ECR I-4165
- Case C-361/01 P, *Christina Kik v Office for Harmonisation in the Internal Market* [2003] ECR I-8283
- Case C-283-81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982] ECR 3415
- Case C-372/88 *Milk Marketing Board of England and Wales v Cricket St Thomas Estate* [1990] ECR I 1345
- Case C-149/97 *The Institute of the Motor Industry v Commissioners of Customs and Excise* [1998] ECR I 7053
- Case C-296/95 *The Queen v. Commissioners of Customs and Excise, ex parte EMU Tabac SARL. The Man in Black Ltd. John Cunningham* [1998] ECR I-1605
- Case C-9/79 *Marianne Wörsdorfer, née Koschniske v Raad van Arbeid* [1979] ECR 2717
- Case 489/07, *Pia Messner v Firma Stefan Krüger* [2007] I-7315
- Case C-372/04, *Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health*, [2006] I-04325
- Case C-157/99, *Geraets-Smith and Peerbooms* [2001] ECR I-5473
- Case 203/99, *Henning Veedfald v. Århus Amtskommune* [2001] ECR I-03569
- Joint cases C-159/91 and C-160/91 *Poucet v. Assurances Generales de France and Pistre* ECR I-00637 *FENIN v. Commission* c-205/03 (1s1/07/2006) ECR I-6295
- Case C-452/13 *Germanwings GmbH v Ronny Henning*: Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 12 August 2013
- Case C-409/12 *Backaldrin Österreich The Kornspitz Company GmbH ECLI:EU:C:2014:2141. v Pfahnl Backmittel GmbH* [2014] ECR not yet available; judgment of 6 March 2014. ECLI:CU 2014:130.
- Case 26/62 *Van Gend en Loos v Netherlands* [1963] ECR 1
- Case 2/74 *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* [1974] ECR 631
- Case 14/83 *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891
- Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135
- Case C-334/92 *Teodoro Wagner Miret v Fondo de Garantía Salarial* [1993] ECR I-6911
- Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 1203
- Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* [1978] ECR 629
- Case 249/81 *Commission v Ireland* [1982] ECR 4005.
- Case C-243/08 *Pannon GSM Zrt. v Erzsébet Sustikné Györfi* [2009] ECR I-04713

## Dictionaries and term databanks:

- A Dictionary of the English Language: A Digital Edition of the 1755 Classic by Samuel Johnson.  
 Edited by Brandi Besalke <http://johnsonsdictionaryonline.com/>.
- Burton, William C. 2007. *Burton's Legal Thesaurus*. Fourth edition. New York: McGraw Hill.
- Garner, Bryan A. 2007. *Black's Law Dictionary*. 8. edition. St. Paul, Minnesota: Thompson West.
- Creifelds Rechtswörterbuch. 2000. Sechzehnte 16. Auflage. München: C. H. Beck.
- Croatian National Termbank: STRUNA (<http://struna.ihjj.hr>)
- Dietl, Clara-Erika and Egon Lorenz. 2005. *Dictionary of Legal, Commercial and Political Terms with Commentaries in German and English*. 5. Auflage. München: C. H. Beck OHG.
- EuroVoc <http://www.eurovoc.europa.eu>
- Gačić, Milica. 2010. *Englesko-hrvatski rječnik prava međunarodnih odnosa, kriminalistike i forenzičnih znanosti, kriminologije i sigurnosti*. Zagreb: Školska knjiga.
- Guralnik, David E. 1968. *Webster's New World Dictionary of the American Language*. New York: Popular Library Inc.
- IATE <http://www.iate.eu>
- Jovanović, Jasmina and Svetlana Todorović. 2003. *Rečnik pravnih termina: srpsko-englesko-francuski*. 3. edition. Beograd: Savremena administracija.
- Köbler, Gerhard. 2001. *Rechtsenglisch: deutsch-englisches und englisch-deutsches Rechtswörterbuch für jedermann*. Unter Mitarbeit von Gregor Schusterschitz. 5. edition. München: Vahlen.
- LOIS <http://www.loisproject.org>
- Merriam-Webster <http://www.merriam-webster.com/dictionary/marriage> (accessed 1 February 2016).
- Romain, Alfred, B. Sharon Byrd and Carola Thielecke. 2002. *Dictionary of Legal and Commercial Terms*. Verlag C.H. Beck OHG, Munich Helbing&Lichtenhahn, Basel, Wien: Manz'sche Verlags- und Universitätsbuchhandlung.
- Urban Dictionary <http://www.urbandictionary.com>
- Von Beseler, Dora and Barbara Jacobs-Wüstefeld. 1991. *Law Dictionary. Fachwörterbuch der anglo-amerikanischen Rechtssprache einschließlich wirtschaftlicher und politischer Begriffe*. Deutsch-Englisch. 4., neubearbeitete und erweiterte Auflage. Berlin – New York: Walter de Gruyter.

## Other

- Bryson, Bill. 1990. *Mother Tongue. The Story of the English Language*. UK: Penguin Books.
- Bryson, Bill. 2003. *A Short History of Nearly Everything*. USA: Broadway Books.
- Isaacson, Walter. 2011. *Steve Jobs*. US: Simon & Schuster.
- Carroll, Lewis. 1872. *Through the Looking-Glass*. London: Macmillan and Co.



# Appendix 1

## a. Legislative acts:

Treaty on the Functioning of the European Union, OJ C 115/47 of 9 May 2008

Abbreviation: *TFEU*

Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ 2000 L 310)

Abbreviation: *Council Directive 2009/310/EC*

Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157).

Abbreviation: *Council Directive 2003/49/EC*

Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OJ 2003 L 157)

Abbreviation: *Council Directive 2003/48/EC*

Council Directive of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225)

Abbreviation: *Council Directive 90/434/EEC*

Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225)

Abbreviation: *Council Directive 90/435/EEC*

Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336)

Abbreviation: *Council Directive 77/799/EEC*; Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production (OJ 2007 L 337)

Abbreviation: *Regulation no .1535/07*

Information from the Commission of 17 February 1996 – Community framework for state aid for research and development. (OJ 1996 C 045)

Abbreviation: *Information from the Commission of 17 February 1996*

Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ 1998 L 205)

Abbreviation: *Regulation no. 994/98*

Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ 2001 L 10)

Abbreviation: *Regulation no. 69/2001*

Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment (OJ 2002 L 349)

Abbreviation: *Regulation no. 2204/2002*

Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ 2005 C 2673)

Abbreviation: *Commission Decision 2005/842*

Council Directive 2003/49/EC of 26 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157)

Abbreviation: *Council Directive 49/2003/EC*

Guidelines on regional national aid 2007–2013 (OJ 2006/C 54/08)

Abbreviation: *Guidelines on regional national aid*

Commission Notice of 11 March 2000 on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ 2000 C 71)

Abbreviation: *Commission Notice*

Communication from the Commission of 3 July 2000 concerning the prolongation of the Framework on State aid to shipbuilding (OJ 2008 C 173/03)

Abbreviation: *Communication 2000*

Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244)

Abbreviation: *Communication 2004*

Framework on State aid to shipbuilding of 30 December 2003 (OJ 2003 C 317)

Abbreviation: *FSAS*

Communication from the Commission to the Council and the European Parliament – Mutual Accountability and Transparency A Fourth Chapter for the EU Operational Framework on Aid Effectiveness 643/2010

Abbreviation: *Communication 2010*

## **b. Case law:**

Case C 170/05 *Denkavit International BV i Denkavit France SARL v Ministre de l'Economie, des Finances et de l'Industrie* [2006] ECR I-11949

Abbreviation: *Denkavit*

Case C-196/04 *Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue* [2006] I-07995

Abbreviation: *Schweppes*

Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht*. [2003] ECR I-7747

Abbreviation: *Altmark*

Case C-379/98 *PreussenElektra AG v Schleswig AG, Altmark* [1998] ECR I-7747

Abbreviation: *PreussenElektra*

Case C-279/93 *Finanzamt Köln-Altstadt v Schumacker* [1995] ECR I-225

Abbreviation: *Schumacker*

Case C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark* [1995] ECR I-4291

Abbreviation: *Rockfon*

### c. Textbooks:

Bacon, Kelyn. 2009. *European Community Law of State Aid*. Oxford University Press: 2009

Abbreviation: *Bacon*

Dahlberg, Mattias. 2005. *Direct Taxation in Relation to the Freedom of Establishment and the Free Movement of Capital*. The Hague: Kluwer Law International

Abbreviation: *Dahlberg*

Takacs, Peter. 1998. *Das Steuerrecht der Europäischen Union*. Wien: Wirtschaftsverlag Ueberreuter.

Abbreviation: *Takacs*

Terra, Ben J.M. and Peter Wattel. 1997. *European Tax Law*. London-Boston-The Hague: Kluwer Law International

Abbreviation: *Terra and Wattel*



## Appendix 2

### a. Legislative acts:

Competition Act (Official Gazette, No. 122/03, NN br. 79/09)

Abbreviation: *CA*

State Aid Act, (Official Gazette No. 140/05)

Abbreviation: *SAA*

State Aid Regulation, (Official Gazette No. 50/06)

Abbreviation: *SAR*

Income Tax Act (Official Gazette Nos. 177/04, 90/05, 57/06, 146/08, 80/10)

Abbreviation: *ITA*

General Tax Act (Official Gazette Nos. 147/08, 18/11)

Abbreviation: *GTA*

Accounting Act (Official Gazette No. 109/07)

Abbreviation: *AA*

### b. Books and articles:

Bodiroga-Vukobrat, Nada, Hana Horak and Adrijana Martinović, A. 2011. Temeljne gospodarske slobode u Europskoj uniji. Inženjerski Biro: Zagreb

Abbreviation: *Bodiroga-Vukobrat*

Samardžija, Višnja and Hrvoje Butković. 2010. *From the Lisbon Strategy to Europe 2020*. Zagreb: Institute for International Relations

Abbreviation: *Samardžija and Butković*;

Žunić Kovačević, Nataša. 2006. Kodeks ponašanja na području oporezivanja poduzetnika u 244 Zb. Prav. fak. Sveuč. Rij 2006, v. 27, br. 1, 241–266

Abbreviation: *Žunić Kovačević, Zbornik*





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This book focuses on legal concepts from the dual perspective of law and terminology. While legal concepts frame legal knowledge and take center stage in law, the discipline of terminology has traditionally been about concept description. Exploring topics common to both disciplines such as meaning, conceptualization and specialized knowledge transfer, the book gives a state-of-the-art account of legal interpretation, legal translation and legal lexicography with special emphasis on EU law. The special give-and-take of law and terminology is illuminated by real-life legal cases which demystify the ways courts do things with concepts. This original approach to the semantics of legal concepts is then incorporated into the making of a legal dictionary, thus filling a gap in the theory and practice of legal lexicography. With its rich repertoire of examples of legal terms in different languages, the book provides a blend of theory and practice, making it a valuable resource not only for scholars of law, language and lexicography but also for legal translators and students.

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