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# Interlinguistic Concordance in International Adjudication: The Translation Link in Multilingual Interpretation by the Court of Justice of the EU and the WTO's Appellate Body

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***Abstract.*** *Comparative interpretation practices differ among international adjudicative bodies in cases of insufficient concordance between language versions of multilingual legal instruments. This study examines instances of explicit comparison by the Court of Justice of the European Union (CJEU) and the World Trade Organization's Appellate Body (AB), including the text types and number of languages involved, the cases of divergence identified, the interpretation methods applied, the supporting material used, and more specifically, the discrepancies that may be related to translation issues. This "translation link" can often be inferred in the CJEU's comparative interpretation, with a markedly teleological orientation and a less comprehensive comparison of the EU official languages. In contrast, the AB shows a more systematic application of literal methods when comparing the three language versions of WTO texts, including the frequent recourse to dictionaries, and no evidence of translation issues as the origin of cases of apparent divergence. This research illustrates the key role of high-quality translation in ensuring legal certainty, and the potential benefits of integrating translation expertise into multilingual legal interpretation processes in international adjudication.*

## Introduction

As noted by the International Law Commission of the United Nations, "the different genius of the languages, the absence of a complete consensus *ad idem*, or lack of sufficient time to coordinate the texts may result in minor or even major discrepancies in the meaning of the texts" (United Nations, 1967: 225). When interlinguistic concordance fails and discrepancies between two or more language versions of an international legal instrument are detected by, or brought to, an international court, they call for comparative interpretation in order to reconcile the different languages versions according to Article 33 of the Vienna Convention on

the Law of Treaties (VCLT) (Prieto Ramos, 2014: 322–324). However, this practice is not conducted systematically by all international courts. Previous research points to differences between comparative interpretation frequency and approaches depending on the legal framework (supranational *versus* intergovernmental bodies), the nature of the proceedings and the scope of the relevant language regime (see Prieto Ramos & Pacho Aljanati, 2018 for a comparison between the Court of Justice of the European Union (CJEU), the World Trade Organization's (WTO) Appellate Body (AB)[1] and the International Court of Justice (ICJ); see also Gardiner, 2015; Kuner, 1991; Pauwelyn & Elsig, 2012; Popa, 2018).

As highlighted by Bajčić (2021: 1447), "discrepancies between language versions will not go away as they are inherent to translation and multilingual nature of EU law", something that applies to other settings, as the production of multilingual legal instruments predominantly relies on translation. Aceves (1996: 210–212) also included inaccurate translations among the potential causes for discrepancies in multilingual treaties. However, and despite its interest for translation and legal studies, research on the nature of divergences potentially derived from translation issues remains underdeveloped.

The LETRINT project on institutional legal translation[2] has explored these issues from the perspective of translation quality assurance. The nature and interpretation of translation-related divergences addressed in case-law have been analyzed as an indicator of translation issues that go undetected in multilingual text production (and are not rectified by corrigenda), and of how adjudicators tackle insufficient interlinguistic concordance. In turn, these issues have been compared with the translation errors spotted in corrigenda as the tip of the iceberg of what may go wrong or cause linguistic discrepancies in translation processes (Prieto Ramos, 2020).

Building on previous analyses of multilingual adjudication and comparative interpretation patterns (Prieto Ramos, 2014; Prieto Ramos & Pacho Aljanati, 2018), this study delves into the ways in which translation issues are acknowledged (or can be inferred) and are addressed in CJEU judgments and AB reports explicitly dealing with interlinguistic divergences through the end of 2020.[3] Since the first adjudicative body hears a much higher volume of cases and is conditioned by a

1 It is worth noting that, although the AB interpretations are not binding (a role formally reserved for the WTO's Ministerial Conference and General Council according to Article IX:2 of the WTO Agreement), in practice, they are considered a key reference in subsequent related dispute settlement cases.

2 "Legal Translation in International Institutional Settings: Scope, Strategies and Quality Markers", led by the first author and supported through a Consolidator Grant (<https://transius.unige.ch/letrint/>).

3 In practice, the AB is actually unable to hear appeals since December 2019, when the United States blocked the appointment of new AB members. The term of the last sitting member expired on 30 November 2020. An alternative mechanism, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), was set up by a group of WTO Members in March 2020 as an interim solution under Article 25 of the WTO Dispute Settlement Understanding while the AB remains blocked (see e.g. Pauwelyn, 2023). At the 12th WTO Ministerial Conference of June 2022, the Ministers recognized the urgency of addressing the "challenges and concerns with respect to the dispute settlement system including those related to the Appellate Body", and committed to conducting "discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024" (*MC12 Outcome Document*, WT/MIN(22)/24, para. 4). For more information, see: <https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm>.

much more complex language regime, it also calls for more extensive analysis. Nonetheless, it was relevant to examine the AB's interpretative practice as a point of comparison, precisely to better identify commonalities and institutional specificities, while the few cases previously detected in the ICJ judgments were not considered for the purposes of this study.

The next few sections will provide further methodological details and data regarding instances of explicit comparison by the CJEU and the AB, including the text types and number of languages involved (Section I), the cases of divergence identified, as well as the interpretation methods applied and the supporting material used (Section II), and more specifically, the cases that can be related to translation issues (Section III). In other words, the aim is to delve further into the practices of comparison of the bodies examined and the role played by translation, even when the origin of divergence is not acknowledged.

## I. Surveying instances of linguistic comparison

For the purposes of our study, we applied corpus analysis techniques to the judgments of the CJEU and the reports of the AB, building on the previous research referenced above. First, cases including explicit references to differences between language versions before 31 December 2020 were retrieved from the text repositories of both institutions using their search engines: (1) WTO Documents Online (AB)[4] and (2) CURIA (CJEU).[5]

4 <https://docs.wto.org/>.
5 <https://curia.europa.eu/juris/recherche.jsf>

**Table 1. Instances of explicit comparison.**

| | Period (official languages) | No. of cases | Cases including comparison between language versions |
|---|---|---|---|
| **CJEU** | 1954-2020<br>(initially 4 languages, 24 from 2013) | 20,613 | 649 (3.15%) |
| | 2013-2020<br>(24 languages) | 7,117 including<br>4,702 direct actions (66.07%)<br>2,415 preliminary rulings<br>(33.93%) | 246 (3.45%) including<br>96 direct actions (2.04%)<br>150 preliminary rulings<br>(6.21%) |
| **AB** | 1995-2020<br>(3 languages) | 148 | 38 (25.67%) |

As shown in Table 1, 148 AB reports were published between 1995 and 2020, and 7,117 CJEU judgments (4,702 judgments in contentious cases and 2,415 preliminary rulings) were handed down between 2013 and 2020. This represents an expansion of data compiled and analyzed in Prieto Ramos & Pacho Aljanati (2018), which covered the period between 1 July 2013, Croatia's accession date, and 1 July 2016. Once again, the focus is on instances of explicitly acknowledged comparison as an indicator of comparative practices by each body (*ibid*: 188). A number of keywords were used to search the databases and compile the CJEU judgments and AB reports: "Vienna Convention", "language/s", "version/s" (including references to "language version/s" for the official languages in each organization followed by "text/s" or "version/s", e.g. "English text", "Finnish text", "Hungarian version", "Greek version"), "text/s", "divergence/s" and "discrepancy/-ies". Any potential implicit comparisons were excluded from consideration.

Instances of comparison were compiled into a single list for each body and were verified manually in order to discard duplicates and establish the final lists of cases. During the reference period, 246 of the total 7,117 CJEU judgments (i.e. 3.45% of cases) include explicit comparison, 96 of them in direct actions (2.04% of the subgroup) and 150 in preliminary rulings (6.21% of the subgroup). Of the 148 reports issued by the AB in the entire period (1995-2020), 38 (25.67% of the cases) included explicit comparison. These findings broadly align with the patterns previously identified for the 2013-2016 and 1995-2016 periods, respectively, and are also consistent with results obtained by Baaij (2012) and Otero Fernández (2020) for the CJEU, and Condon (2010) with regard to the AB.[6]

As opposed to the need for comparison established in the CJEU's case-law (see footnote 7 and Section II), according to Article 33 of the VCLT (on the interpretation of treaties authenticated in two or more languages), language versions are only compared when the semantic unity of the treaty is refuted. Previous research (Prieto Ramos & Pacho Aljanati, 2018) has confirmed the prominent role of parties to trade disputes in refuting such unity. This, together with the higher feasibility of comparing only three language versions and the AB's lower volume of cases, may explain, to a great extent, the proportional differences found.

As would be expected, in the case of the CJEU's case-law, the majority of instances of comparison (221 or 89.84%) are related to EU legal instruments (see Table 2), and only a minority (between 12 and 13 cases) refer to previous judgments or other EU documents (e.g., Rules of Procedure, notices, etc.), with approximately 5% for each of these categories. Within EU legislation, EU secondary legal acts account for most cases (216 or 87.80% of all instances of comparison), while the EU treaties are the subject of only 5 cases. Despite the fact that, on average, the EU approves significantly more regulations than directives every year, the latter were the subject of a similar number of comparisons (100 directives *versus* 98 regulations). They were followed, by far, by decisions (13 or 5.28% of cases). These results may be associated with the heightened atten-

6 Respectively, an average of 3.93% between the 1960s and the 2010s, with a steady increase overtime in the case of the CJEU (Otero Fernández, 2020: 182), and 22.1% of AB reports until 7 October 2009 (Condon 2010: 204).

tion devoted to directives to be transposed by Member States, especially in the context of direct actions about implementation. However, even if (contentious) direct actions are more frequent at the Court than requests for preliminary rulings originating from the national courts (advisory proceedings) (see Table 1), it is in the latter type of proceedings that instances of comparison are more frequent (96 *versus* 150 cases, respectively, in the sample period).

**Table 2. Text types subject to comparative interpretation (CJEU).**

| | No. | % |
|---|---|---|
| **EU law** | **221** | **89.84** |
| Directive | 100 | 40.65 |
| Regulation | 98 | 39.84 |
| Decision | 13 | 5.28 |
| EU treaties | 5 | 2.03 |
| Other EU legal instruments | 5 | 2.03 |
| **EU judgments** | **12** | **4.88** |
| **Other EU documents** | **13** | **5.28** |
| Rules of Procedure | 4 | 1.63 |
| Notices and other EU documents | 9 | 3.66 |

As for the WTO, the majority of instances of comparison found in AB reports refer to the wording of three agreements: the GATT 1994 (10 cases), the Agreement on Subsidies and Countervailing Measures (SCM) (8) and the Anti-Dumping Agreement (7) (see Table 3). The Agreement on Agriculture is the next most frequent (3 cases), while other agreements are mentioned in 6 instances of comparison. Finally, the AB compared the multilingual wording of other legal instruments (e.g. Codex Stan 94 or Foreign Trade Act of Mexico) in 4 cases.

**Table 3. Text types subject to comparative interpretation (AB).**

| | No. | % |
|---|---|---|
| **WTO Agreement** | **28** | **73.68** |
| GATT 1994 | 10 | 26.32 |
| SCM Agreement | 8 | 21.05 |
| Anti-Dumping Agreement | 7 | 18.42 |
| Agreement on Agriculture | 3 | 7.89 |
| **Other WTO agreements** | **6** | **15.79** |
| **Other legal instruments** | **4** | **10.53** |

As regards the languages compared, while the CJEU has established that all language versions must be considered when interpreting EU law,[7] only 10.57% of CJEU judgments in our subcorpus explicitly refer to comparisons involving the 24 currently official languages of the EU (see Table 4). In fact, as observed in previous research (e.g. Schilling, 2010: 59–60; Prieto Ramos & Pacho Aljanati, 2018: 198; Otero Fernández, 2020: 154), the feasibility of comparing so many languages is highly impractical, especially for citizens and the national courts. When all languages are explicitly compared, the CJEU normally uses a generic formula to refer to all of them, for example: "The use of expressions which are not exactly the same in all the language versions of […]"; "Although […] is not identically worded in all language versions […]."

7 "When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of the versions in all four languages" (Case 29/69, *Erich Stauder v. City of Ulm – Sozialamt*, EU:C:1969:57, para. 3). The equal authenticity and mandatory comparison of all language versions of EU legislation were also subsequently confirmed for national courts, even when the number of EU languages had already grown from four to seven: "[a]n interpretation of a provision of Community law thus involves a comparison of the different language versions" (Case 283/81, *Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health*, EU:C:1982:335, para. 18).

**Table 4. Number of languages mentioned in instances of comparison (CJEU).**

| No. of languages | No. of cases | % |
|---|---|---|
| 1-3 languages | 75 | 30.48 |
| 1 | 25 | 10.16 |
| 2 | 31 | 12.60 |
| 3 | 19 | 7.72 |
| 4-6 languages | 62 | 25.20 |
| 4 | 24 | 9.76 |
| 5 | 24 | 9.76 |
| 6 | 14 | 5.69 |
| 7-9 languages | 27 | 10.98 |
| 10-15 languages | 14 | 5.69 |
| 16-23 languages | 5 | 2.03 |
| 24 languages | 26 | 10.57 |
| N/A | 37 | 15.04 |

More than half of the judgments (55.69%) refer to between one and six language versions. This means that explicit comparison is more frequent with regard to a small number of languages and decreases as the number of languages mentioned increases. The highest number of explicit comparisons include references to two languages (31 cases or 12.60%). In 25 cases (10.16%), only one language is mentioned as the focus of interpretation, often in conjunction with vague references to other languages, such as "a number of other language versions", "most of the other language versions", "certain language versions", "several language versions" or "a minority of the language versions". Furthermore, in 37 cases (15.04%), there is no reference to specific languages but to an indeterminate number of language versions compared. This is what Otero Fernández (2020: 193) calls "non-exhaustive comparison" or "abstract comparison". Overall, the CJEU examined versions of all the 24 official languages in our sample at least in one judgment, except for Irish Gaelic. This is not surprising, as this language was the subject of a derogation between 2007, when it gained its status as an official EU language, until 1 January 2022, which meant that only the treaties, and not EU legal acts, were translated into Irish during that period.

**Table 5. Languages examined in instances of comparison (CJEU).**

| Language | No. of cases | % |
|---|---|---|
| FR | 155 | 63.01 |
| EN | 145 | 58.94 |
| DE | 132 | 53.66 |
| ES | 86 | 34.96 |
| IT | 85 | 34.55 |
| NL | 55 | 22.36 |
| PT | 47 | 19.11 |
| SV | 32 | 13.01 |
| PL | 32 | 13.01 |
| RO | 29 | 11.79 |
| DA | 27 | 10.98 |
| FI | 26 | 10.57 |
| EL | 23 | 9.35 |
| CS | 21 | 8.54 |
| SK | 18 | 7.32 |
| BG | 16 | 6.50 |
| HU | 14 | 5.69 |
| LT | 13 | 5.28 |
| LV | 10 | 4.07 |
| ET | 10 | 4.07 |
| SL | 8 | 3.25 |
| HR | 4 | 1.63 |
| MT | 3 | 1.22 |
| GA | - | - |

The five languages most frequently compared by the CJEU (French (FR), English (EN), German (DE), Spanish (ES) and Italian (IT)) are also the five most spoken in the EU (see Table 5). The first three have traditionally been the main working languages of the EU institutions, and procedural languages of the European Commission. They are led by French, the working language of the CJEU (and therefore the language of deliberations and drafting of judgments at the Court) and the prevalent language for drafting (and an official language in three of the six founding Member States) when the European Economic Community was created. French is closely followed by English, which became the predominant *lingua franca* for drafting and communication since the big enlargement of 2004 in particular (see Otero Fernández, 2020: 189 for a diachronic account of the increase of references to English in cases of comparison). German, the EU language with the highest number of native speakers and the most frequent language of the case in preliminary rulings (see Baaij, 2015: 59), ranks third.

The history of each language within the EU and their international relevance and number of speakers seem to play a factor in the attention received within judgments, regardless of the Member State from which requests for preliminary rulings originate or the specific linguistic issue addressed in each case. Polish (PL), for example, the language of the most populated country among those that joined the EU in 2004, is the most frequently mentioned (32 cases) among the languages added with that enlargement; while Maltese (MT), with the smallest number of speakers among the same group of Member States (and subject to a derogation for drafting EU acts until April 2007), ranks last (3 cases), that is, even behind Croatian (HR) (4 cases), the latest official language to be added in 2013.

In contrast, AB's explicit comparisons systematically consider the three authentic versions (English, French and Spanish) of disputed provisions, with only one exception for Spanish and three for French. This is due to the focus on the interpretation of a particular language version in the context of some disputes, especially when the parties rely on a language or point to a diverging version to support their arguments. Interestingly, 17 of the 38 instances of comparison refer to the English wording without actually mentioning the language (e.g. in WT/DS31/AB/R, "Canada submits that the broad meaning of 'payment' in Article III:8(b) is confirmed by the fact that the word 'payment' in the French text of the GATT 1994 appears as 'attribution', and not as 'paiement'"). In practice, even if the three official languages of the WTO are equally authoritative, English is indicated as the language of the "original" of AB reports and is most often implicitly used as the reference text for comparison with the other languages (see also Condon, 2010: 215; Prieto Ramos & Pacho Aljanati, 2018: 192; and Section III).

## II. Examining discrepancies between language versions

The comparison of language versions is generally conducted to support or clarify an interpretation or to examine discrepancies between several language versions and eventually resolve semantic divergences and ensure uniform interpretation. Although some instances of comparison may not contribute to further clarifying meaning or can be borderline for classification purposes (e.g. Otero Fernández, 2020: 178; and Pacho Aljanati, 2022: 171, with regard to the CJEU's comparative practice), it is generally straightforward to

identify cases where the adjudicators refer to divergent versions or language differences in their legal analysis.

In our CJEU subcorpus, these cases account for 72.76% of all instances of linguistic comparison, as opposed to only 23.68% in the AB reports including comparison (see Table 6). These figures reaffirm the pattern previously identified in the analyses covering until July 2016 (Prieto Ramos & Pacho Aljanati, 2018), where the CJEU, rather than the parties (predominant initiators in the context of the WTO) or the referring court or body, was more often the initiator of comparison than in the case of the AB. In other words, overall, the explicit comparison of language versions is proportionally less frequent in CJEU judgments, but the fact that the CJEU itself elicits more discrepancies in its comparisons suggests that the exposure to risks of divergence is heightened by the EU's multilingual regime.

**Table 6. Cases of divergence elicited in the context of linguistic comparison.**

| | Comparison | | Divergence | |
|---|---|---|---|---|
| **CJEU** | YES | 246 | YES | 179 (72.76%) |
| | | | NO | 67 (27.24%) |
| **AB** | YES | 38 | YES | 9 (23.68%) |
| | | | NO | 29 (76.32%) |

Before we delve into the potential translation issues that may cause discrepancies (Section III), we will focus on the interpretation methods and the supporting materials or sources explicitly mentioned in each context of comparative linguistic analysis. In the case of the EU, as observed by Itzcovich (2009: 539), "there is no provision concerning the interpretation of [EU] law, there is no explicit legal norm on the matter." However, the landmark *Stauder* case (see footnote 7 above) already established not only the "impossibility" of relying on a single language version, but also the marked teleological orientation of the CJEU interpretation, as it must consider the author's intention and the aim sought (Case 29/69, *Erich Stauder v. City of Ulm – Sozialamt*, EU:C:1969:57, para. 3). This purpose-driven teleological approach is often intertwined with the systematic method of interpretation, since, as pointed out by Lenaerts & Gutiérrez-Fons (2013: 25), "it is by virtue of the latter", i.e. considering the scheme of the EU legal framework, that the Court "may identify the objective pursued by the EU law provision in question". In fact, according to Bengoetxea (1993), "functional interpretation" in the pursuit of EU law effectiveness (or *effet utile*) can be considered a type of teleological interpretation that cannot be isolated from systematic interpretation.

For Lasser (2004: 287–289), the Court oscillates between this "micro-teleological" approach focused on the *effet utile* and purpose of the provision, and a broader "meta-teleological" approach in light of "systemic meta-policies" and the wider context of the EU legal order. This kind of teleological approach, encom-

passing purposive and contextual considerations, has been highlighted as a distinctive feature of the Court's interpretative practice over the years, not only in scholarly work but also in the views expressed out of court by Advocates General such as Nial Fennelly (1996) or Francis Jacobs (2003). For Doroga and Mercescu (2021: 107–108), as a result of the Court's insufficient clarity regarding the choice of "narrower or ampler objectives" as criteria, its "purposive interpretation may be viewed more as a tool to justify the Court's choice of outcome, rather than a constraining legal reasoning tool on which the result is based". In practice, as noted by Lenaerts and Gutiérrez-Fons (2013: 48), "all the methods of interpretation employed by the ECJ may operate in a mutually reinforcing relationship". Bengoetxea (2011) even argues that "multilingual judicial reasoning" by the CJEU would entail applying linguistic techniques and all interpretation methods to all language versions, as well as being aware of the implications of translating the wording of its own reasoning into all the EU official languages.

While linguistic comparison is intrinsically focused on textual analysis and is associated with literal interpretation, our discourse analysis of cases of divergence revealed a strong teleological component, often intertwined with systematic elements. In an overwhelming 84.9% of cases analyzed, the CJEU applies both literal and teleological approaches. Only the remaining 15.1% of cases resort exclusively to literal (or textual) interpretation. These results are consistent with those obtained by Otero Fernández (2020: 213) for the period between 1960 and 2018, with only 16.9% of language cases not including any teleological interpretation. She posits that "the Court uses the literal method only to confirm the result received through the application of the teleological approach", and "in case of incompatibility, it reserves the right to give priority to a teleological argument even though it contradicts the literal wording" (*ibid*: 147–148). For Baaij (2012), however, based on his analysis of cases of discrepancies between 1960 and 2010, the literal method tends to be the primary argument of the Court. Both views may be compatible in that, as observed above, a broader purpose-driven approach may justify the interaction between methods for the sake of effectiveness or reconciliation between language versions, and it might be difficult to identify the ultimate overriding consideration when combining several methods leading to a particular outcome.

Nevertheless, a clear pattern emerges as to the frequent use of the "majority rule" in comparative interpretation, that is, the preference for the meaning supported by the majority of language versions, especially when this appears to be a solid interpretation and a minority of language versions (one or several) contain some drafting error or potential translation issues (e.g. Baaij, 2012; Derlén, 2011; Jacobs, 2003). In our corpus, 44 CJEU judgments (24.58% of cases of divergence examined) refer to this majority argument.

As for the AB, it has traditionally applied textual interpretation as its primary method in line with the customary principles of treaty interpretation set out in the VCLT (e.g. Abi-Saab, 2010; Mavroidis, 2008; van Damme, 2010). According to the general rule of interpretation established in Article 31 of the VCLT, treaties "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"; and, according to Article 33(4), when "a comparison of the authentic texts discloses a difference of meaning which the application of articles

31 and 32[8] does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted." As pointed out by Labuschagne (1999: 327), teleological interpretation "is the final resort in the assignment of meaning to multilingual treaty texts." In practice, the combination of literal and teleological interpretation methods in AB reports is not rare, albeit significantly less frequent than in the CJEU's judgments. In five of the nine cases analyzed, the AB resorts to both methods, while in the remaining four, it only applies the literal approach to address divergences between language versions. The majority rule, however, appears to have little relevance in the context of comparing three languages.

The AB's more formalistic approach is reflected in its textual analysis. All the reports mention the "ordinary meaning", most often including a reference to the VCLT rules of interpretation (e.g. "[…] we proceed to interpret the terms 'variable import levies' and 'minimum import prices', using the customary rules of interpretation as codified in the Vienna Convention. […] in employing these rules, we discuss the ordinary meaning of these terms in their context, and in the light of their object and purpose", WT/DS207/AB/R, para. 231). In all cases but one, the AB also refers to dictionaries as sources for the semantic analysis (e.g. "Relevant dictionary definitions of the preposition 'under' include 'subject to', 'subject to the authority, control, direction, or guidance of', 'in the form of', and 'in the guise of'", WT/DS449/AB/R, para. 4.75) (on the use of dictionaries by the AB "as a useful starting point",[9] see also van Damme, 2010). For Mavroidis (2008: 470), the AB "uses the VCLT in a compartmentalized manner: the conclusion about the interpretation of a certain term will, in the overwhelming majority of the cases, be reached when examining the ordinary meaning of the terms and will merely be confirmed through recourse to other VCLT elements." The same author argues against the AB's reliance on dictionaries (often the *Oxford English Dictionary*) and contends that conclusions about the "meaning of terms should come after exhaustion of all the elements of VCLT Article 31 and not after a superficial look at a dictionary or two" (*ibid*: 471).[10]

In contrast, references to the VCLT are marginal in the CJEU cases analyzed, even if the Court's interpretation methods reviewed above are congruent with the VCLT principles. References to the "usual/ordinary meaning" or "(generally) accepted meaning" of a certain word or phrase are also much less recurrent than in AB reports, as they are found in 11 (6.14%) of the CJEU cases of divergence (e.g. "The term 'holder' must be understood, according to its generally accepted meaning, as referring to the person identified by the patent as the recipient of the protection conferred by the patent", Case C539/13, ECLI:EU:C:2015:87, para. 35), and without any explicit references to dictionaries.

The most frequent source type mentioned to support interpretation in our CJEU subcorpus, Advocate

8 On the supplementary means of interpretation, "including the preparatory work of the treaty and the circumstances of its conclusion".

9 As expressed by the AB itself, for example, in the case *India – Additional Import Duties* (WT/DS360/AB/R, para. 167, footnote 324).

10 According to the same scholar, this is supported by the AB's position in the *US – Gambling* case, where the body found that the fact the "the Panel's reasoning simply equates the 'ordinary meaning' with the meaning of words as defined in dictionaries" was "too mechanical an approach" (WT/DS285/AB/R, para. 166).

General opinions, are found in 19.55% of instances, often including this kind of expression: "As the Advocate General [has] stated in point[s] […] of his Opinion […]." In fact, according to Otero Fernández (2020: 186), the CJEU "has never self-reportedly ignored the Advocate General when it comes to comparison of language versions." Finally, in four cases, the Court refers to linguistic comparisons and discrepancies in previous judgments, for example: "It should be noted that, in paragraph 31 of the judgment of […], the Court, first of all, noted that there was some divergence between the different language versions of that provision, as regards the use of the adjective 'personalised' […]" (Case C-287/19, ECLI:EU:C:2020:897, para. 70).

## III. The translation link

The divergence between language versions may be due to differences in semantic nuance or conceptual asymmetries that are intrinsic to the nature of the languages and legal orders under scrutiny (e.g. Margiotta Broglio & Ortino, 2024; Dengler, 2010) or may emerge as a result of inaccuracies in the context of multilingual text production. The extent to which some of these differences could have been overcome in the translation process may be questionable depending on the issue at hand and the languages involved. What seems apparent is that professional staff of institutional translation services, regardless of their job titles at each organization, are responsible for ensuring concordance between all the language versions of each legal instrument as a key requirement for translation quality and legal certainty (Prieto Ramos, 2014). Yet, what we refer to as the "translation link" in cases of divergence, i.e. imperfections or discrepancies arising from inaccuracies or errors introduced when conveying the intended meaning of the original (or the "vanishing original" in the case of the EU, as expressed by Dollerup, 2004) into all the official languages, tends to remain latent rather than explicitly acknowledged, as highlighted in previous studies (on the CJEU, see Baaij, 2012; Bajčić, 2021; and Derlén, 2009).

Given its focus on legal translation quality assurance in institutional settings, the LETRINT project has investigated instances of divergence from a translation perspective in order to determine the actual cause of insufficient interlinguistic concordance and the potential connection with translation issues. The project was particularly interested in exploring the nature of the quality gaps that go unnoticed in the translation process and the extent to which they converge with the issues addressed in corrigenda (Prieto Ramos, 2020). Ultimately, the same types of translation issues may be brought to the attention of adjudicators when they are not solved prior to publication or formally corrected after publication.

Identifying the "translation link" in instances of comparative analysis can be a very challenging task, especially when 24 languages are potentially involved. Indeed, few studies have attempted to expose and quantify cases of translation-related divergences in a systematic way. Despite the difficulties of dealing with cause-effect implicatures, our analysis of the CJEU's legal argumentation enabled us to identify evidence of translation-related divergence in most cases analyzed, particularly when the texts include verbal cues denoting or implying that errors or inaccuracies could have been avoided in the linguistic transfer process (see Table 7). In only 19 cases (10.61%), it was impossible to find sufficient evidence of the connection with translation or determine whether intrinsic interlinguistic differences could have been avoided, for example:

> On account of the differences between the language versions of that directive and the divergences between the laws of the Member States with regard to the concept of "legal transfer", that concept must be given a sufficiently flexible interpretation in keeping with the objective of that directive […]. (Case C194/18, ECLI:EU:C:2019:385, para. 29)

**Table 7. Translation link in cases of divergence (CJEU).**

| | No. | % |
|---|---|---|
| Yes, explicit | 12 | 6.70 |
| Yes, implicit | 148 | 82.68 |
| Insufficient evidence | 19 | 10.61 |

In the remaining cases, the translation-related origin of divergence was either mentioned or inferred. Among these, the explicit acknowledgment of translation-related issues by the CJEU reached 6.70% of cases (12). Albeit small, this fraction exceeds previous findings by Otero Fernández (2020: 206), who identified explicit references to errors in at least one language version in 6 of the judgments issued through the end of 2018, including one reference to a "mistranslation".

Explicit references in our dataset include the word "error" in 6 cases (e.g. "The French-language version of the contested decision mentions in that connection a '*principe de traitement équitable*' (principle of equitable treatment) which is a translation error of the expression 'principle of equal treatment'"; Cases T760/15 and T636/16, ECLI:EU:T:2019:669, para. 139), and less frequently, other denominations, such as "inconsistency" (2 cases), "mistake" (1) or "mistranslation" (1) (e.g. "Consequently, the discrepancy between the language versions of Article 6(3) of Regulation No. 1407/2013 is the result of a mistranslation of the Italian language version of that provision"; Case C-608/19, ECLI:EU:C:2020:865, para. 37). In the following case, the knock-on effect of reproducing an inaccurate term when translating from English as a pivot language (e.g. using the English translation of the initial original as the basis) came to surface in the argumentation:

> The use of the term 'customer' in the English language version of the Sixth Directive was a mistake, which was, moreover, made only once, in Article 26(1). Since the later translations of the Sixth Directive were based on that English language version, the term was frequently reproduced in those translations, as well as in numerous language versions of Articles 306 to 310 of the VAT Directive. (Case C-189/11, ECLI:EU:C:2013:587, para 22)

In two CJEU judgments, "typographical error" and "clerical error" refer to translation-related errors:

> The lack of reference to the goods and services on which the opposition is based in the French-language version of Rule 15(2)(f) of Regulation No 2868/95—an omission which is clearly a typographical error—does not allow that provision to be interpreted as not requiring an indication, in the notice of opposition, of those goods and services. (Case T-126/15, ECLI:EU:T:2016:307, para. 28)

> As regards the English version of the Notice of 18 March 2013, it was as a result of a clerical error that the expression "length of service" was used where the French version used the expression "*durée de [l']activité professionnelle*". (Case F-20/14, ECLI:EU:F:2015:107, para. 44)

In the largest proportion of cases (148 or 82.68%), however, the translation-related origin of the divergence was not explicitly mentioned but inferred from other elements of the Court reasoning, especially when the focus was on one or several versions diverging from the interpretation that was supported by the majority of language versions, for example: "none of the other language versions of Article 160 of Regulation No 2454/93 contain a second reference to the 'third party' to whom royalties or licence fees are payable" (unjustified addition in Case C-173/15, ECLI:EU:C:2017:195, para. 66); "However, the Czech, Latvian and Slovak language versions of Article 11(1) of Directive 86/653 do not contain wording which could be translated as 'to the extent that'" (omission in Case C-48/16, ECLI:EU:C:2017:377, para. 36).

Despite the challenges of assessing the actual issue with the wording of certain provisions and how language versions diverge, in order to gain a better understanding of the nature of the translation issues explicitly or implicitly identified, issues were classified using the taxonomy applied in a LETRINT study on the translation-related errors rectified by corrigenda in the EU, the UN and the WTO (Prieto Ramos, 2020: 108).

**Table 8. Translation-related issues in cases of divergence (CJEU).**

| Translation issues | No. | % |
|---|---|---|
| Incorrect meaning/inaccuracy | 98 | 61.25 |
| Incorrect terminology | 21 | 13.13 |
| Unjustified addition | 15 | 9.38 |
| Unjustified omission | 12 | 7.50 |
| Concordance/cohesion | 6 | 3.75 |
| Opposite meaning | 5 | 3.13 |
| Spelling/typographical error | 3 | 1.88 |

The majority of the translation issues identified are related to inadequate content reformulations (see Table 8), in particular, issues of semantic nuance or inaccuracies, i.e. semantic issues not included in the other subcategories (61.25% of cases), followed by incorrect terminology (13.13%), unjustified additions (9.38%), unjustified omissions (7.50%) and opposite meaning (3.13%). Only 9 cases (5.63%) are related to minor problems of concordance/cohesion (6), such as number agreement, or spelling/typographical errors (3). These results are consistent with the patterns of the most recurrent translation issues found in the above-referenced study on corrigenda (Prieto Ramos, 2020). The following additional examples illustrate the most frequent types of cases of semantic nuance and terminology-related issues:

> […] it may appear from the use in Article 2(b) of Directive 2000/31 of the verb *anbieten* in its German

language version that that article refers to the idea of an "offer", and thus to a certain form of advertising. […] The other language versions of the Article 2(b), inter alia those in Spanish, Czech, English, French, Italian, Polish or Slovak, use verbs which do not imply the idea of an "offer" or of advertising. (Case C-484/14, ECLI:EU:C:2016:689, paras. 51-53)

It should be pointed out that, in certain language versions of that provision, including the English, German, Italian and Romanian versions, the effects on the environment must be "probable", whereas in other language versions substances must 'be able to' have effects on the environment. (Case T-115/15, ECLI:EU:T:2017:329, para. 173)

[…] it should be noted that the Spanish, English, French and Italian versions of that provision use a term equivalent to the word 'resources', that concept, in accordance with its usual meaning, being capable of referring to all the financial means available to an applicant for long-term resident status, irrespective of their origin. On the other hand, the Dutch and German versions of that provision use terms equivalent to the concept of 'income', which refers more restrictively to personal resources, such as, in particular, those resulting from the economic activity of the applicant for long-term resident status, which would tend to exclude resources from a third party, such as a member of his family. (Case C-302/18, ECLI:EU:C:2019:830, para. 27)

In the different language versions of that regulation, the term equivalent to the term "*loi* (legislation)" has a different scope. Thus, the wording used, for example, in the English-, Polish- and Slovak-language versions is similar to the concept of "*droit* (law in the general sense"), which can have a wider scope than "loi (legislation)." Certain other versions, for example, the Bulgarian-, Spanish-, Czech-, German- and French-language versions, have a more restrictive scope. (Case C-528/15, ECLI:EU:C:2017:213, para. 31)

As illustrated by some of the examples, in spite of the explicit references to languages (see also Section I), the total number of language versions affected by the lack of concordance is not always clear.

In the case of the AB, the findings point to a very different pattern, as the potential translation link was found in only one of the 9 instances addressed as discrepancies, but it was finally ruled out as the cause of divergence. In the case *Mexico — Anti-Dumping Measures on Rice*, Mexico, the appellant, argued that the Panel had relied on an "inaccurate English translation" of a Mexican act, where "[c]orresponde a la Secretaría sancionar las siguientes infracciones" should have been translated using the verb "to pertain" or "to belong", rather than as "[i]t shall be the responsibility of the Ministry to punish the following infringements" (WT/DS295/AB/R, para. 328). When examined in context, the AB did not correct the Panel's interpretation. This is the only case of discrepancy where French is not included in the comparison due to the specific issue with a Spanish-English translation of a national piece of legislation.

In practically all the other cases, the divergence referred to "superficial" differences between language versions that were used by the disputing parties to support or challenge a particular interpretation. Again, no evidence of translation-related issues was found, but the divergence can be attributed to structural or lexical differences between languages that were reconciled by the AB as unproblematic. The only borderline case where a different translation might have prevented doubts about interlinguistic concordance among

the parties was in connection with the translation of "governmental purposes" in Article III:8(a) of the GATT 1994 as "les besoins des pouvoirs publics" in French and "las necesidades de los poderes públicos" in Spanish. The AB examined the ordinary meaning of the wording and noted that:

> The term "purposes" thus corresponds to the terms "besoins" and "necesidades", respectively, in the French and the Spanish texts. Both the French and the Spanish terms correspond closely to the English term "needs". As such, the French and the Spanish text can be read harmoniously with an interpretation of the word "purposes" in English as referring to purchases of products directed at the government or purchased for the needs of the government in the discharge of its functions. By contrast, the words "besoins" or "necesidades" cannot be read harmoniously with the definition of the term "purpose" as "objectives" or "aims" of the government, because neither the word "besoins" in French, not the word "necesidades" in Spanish encompass the notion of an aim or objective. (WT/DS426/AB/R, para. 5.67)

The first interpretation reconciles all the language versions and this interpretation is further supported by the AB's analysis of the terms in context, including Article XVII:2 of the GATT 1994. In a similar case, the contested French and Spanish versions of the preposition "under" in "under an established and uniform practice" ("*en vertu de*" and "*en virtud de*", respectively) are considered consistent with relevant dictionary definitions of the preposition in the sense of "in the form of", and "in the guise of" (WT/DS449/AB/R, para. 4.75).

Likewise, in other cases, where a non-literal translation may have misled a party to believe that a semantic divergence existed, the analysis of potential discrepancies did not reveal any added ambiguity or significant semantic discrepancy as a result of translation. For example, in the case *Chile — Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, the translation of "ordinary customs duties" in Article 4.2 of the Agreement on Agriculture and Article II:1(b) of the GATT 1994 as "*droits de douane proprement dits*" in French and "*derechos de aduana propiamente dichos*" in Spanish was justified based on the analysis of the use of the terms in context (WT/DS207/AB/R, paras. 264-289). The remaining cases are about the conceptual scope of "public body" or "government agency" in English as opposed to "*organisme public*" in French and "*organismo público*" in Spanish (2 cases), the divergent use of commas (2 cases) and a structural difference in the expression "use of any subsidy" in the three language versions.

Overall, most of these examples illustrate how disputing parties may problematize minor or superficial differences in the language versions, usually taking English as the "master" language and implicitly blaming multilingualism for potential discrepancies. In fact, these cases can be described as "false alerts". Given the broader accessibility of the three international languages that are official at the WTO, this kind of false divergence seems more frequent in trade disputes than in CJEU cases, and also easier to detect.

## Concluding remarks

Our analysis of multilingual interpretative practices of the CJEU and the AB has highlighted that, paradoxically, the comparison of all language versions, despite being established in the CJEU's case-law, is rarely acknowledged in the Court judgments; whereas the

WTO's AB engages in comparative language analysis more often (proportionally), even if, according to the applicable VCLT principles, comparison is only mandatory when the presumption of semantic unity is contested. In such instances, issues of divergent language versions are examined more frequently in the CJEU judgments (approximately 73% of cases of comparison), and in almost 90% of these, a translation link can be identified explicitly (6.70% of cases) or implicitly (the majority of cases) as the origin of divergence. The reverse pattern is found in the AB reports, with approximately 24% of cases of apparent divergence and no evidence of translation-related causes among them.

In line with previous research, these findings suggest that the first body, like the EU's highly multilingual regime in general, is more exposed to the risk of divergence due to the intrinsic differences between a greater number of languages and the inaccuracies that may go undetected during the multiple translation processes involved. As opposed to the WTO's regime, interlinguistic concordance control mechanisms may simply be more aspirational than systematic in the context of the EU's extended multilingualism. The Court itself, the referring national courts and the parties in CJEU cases, especially in advisory proceedings, do detect issues of insufficient interlinguistic concordance that call for reconciliation between language versions, in particular semantic inaccuracies and terminology-related issues. These issues are also consistent with the most recurrent reformulation errors that tend to trigger corrigenda of EU documents (Prieto Ramos, 2020). Yet, the total number of translation-related cases of divergence represent a marginal 2.25% of CJEU cases in the 2013-2020 sample period examined.

In contrast, the AB seems more exposed to the disputing parties having recourse to arguments of gaps in interlinguistic concordance to support their interpretation, often based on expectations of formal correspondence between the three language versions. The greater accessibility of the three official languages of the WTO facilitates not only the feasibility of comparison but also the in-depth analysis of the language-specific issues raised in dispute settlement proceedings. Comparative interpretation is much more impractical with 24 languages, including many lesser-diffusion languages, in the EU context. This contributes to the CJEU developing a generally less comprehensive comparison of the official languages, which, in turn, often hinders the traceability of the linguistic issues under scrutiny. In fact, in almost 11% of cases, there is not sufficient evidence to determine the exact origin of the divergence or all the languages affected, particularly due to the vague wording used in the legal reasoning about these matters.

The marked teleological approach applied by the CJEU in comparative interpretation, encompassing purposive and contextual considerations, also appears to respond to the above specificities for the sake of effectiveness. In our corpus, only 15.1% of CJEU cases referred exclusively to textual methods. The Court's strong teleological orientation may prove a necessity for conciliatory interpretation and pragmatism, including recourse to the "majority rule" in almost 25% of the cases analyzed, at the cost of being less predictable, reliable or beneficial for legal certainty. Conversely, the AB shows a more systematic application of literal methods according to the VCLT, in particular the search for the "ordinary meaning" of the disputed provisions and a remarkable reliance on dictionaries, while teleological or contextual elements are considered additionally in just over half the cases examined.

Despite the significant differences between the interpretative practices of the AB and the CJEU, the approach of the latter is also compatible with the VCLT rules of interpretation, but these are applied in a more functional *sui generis* manner in the context of the EU. The CJEU's purposive approach may also contribute to embracing minor language differences as less problematic than in more literal interpretation approaches. The AB's reasoning provides a useful point of comparison, as the cases of apparent divergence addressed by this body refer to minor or superficial differences raised by the parties but, finally, they were considered unproblematic. This kind of difference might not even surface in CJEU judgments.

In some of the instances of dismissed divergence or "false alert" in the AB reports, comparative analysis of the three language versions actually helped to clarify the sense of the original provision. The reformulations, sometimes non-literal, were fit idiomatic translations when analyzed in context, thus illustrating the expertise of translators in grasping and conveying the intended meaning. This contrasts with the abovementioned expectations of formal correspondence between languages that often permeates the argumentation of the disputing parties. Translation expert knowledge, and not only dictionaries and contextual considerations, may have served to further debunk the underlying perception of translation as "imitation" of the original and the concomitant expectation of very literal reformulations in the target languages.

Overall, processes of multilingual legal interpretation by international adjudicators may benefit from the expertise of legal translators as intercultural professionals at the frontline of dealing with legal and linguistic asymmetries and ambiguity. The kind of contrastive analysis and decision-making conducted by translators to dissect and reformulate concepts and provisions could enrich the analysis of cases of potential divergence. This would entail further acknowledging the role of translation as a central component of multilingual text production, rather than viewing it as a "concealed" operation implicitly associated with the probability of imperfections. Since interlinguistic concordance is achieved through translation, the heuristic value of translation in undeniable. As expressed by Margiotta Broglio & Ortino (2024: 497), it can be "a catalyst for understanding and accuracy, constituting a distinct and pivotal characteristic" of international law.

This reminds us of the responsibility of translation professionals in ensuring high accuracy and semantic correspondence as the best preventive action against the risk of divergence and, therefore, of legal uncertainty and unreliability of the institutional framework behind multilingual law-making and implementation. This should encompass appropriate mechanisms to ensure concordance across all official languages, and not only quality assurance measures implemented per translation language pair. Our study illustrates the converging interest of drafters, translators and adjudicators in developing mutual understanding and cooperation for the success of these processes, including enhanced awareness of the key role and further potential of legal translation expertise in multilingual legal interpretation.

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