IDIOSYNCRASIES IN THE LEGAL DISCOURSE OF THE EUROPEAN INSTITUTIONS

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Abstract

Community legal discourse has a number of characteristics which originate in the specificity of the system itself, and which legitimate it to be labeled as a variety of legal language. Additionally, it exhibits a tendency to be, **impenetrable, vague and poorly written**, practices which are on the verge of officially being recognized as the idiosyncrasies or the mannerisms of Community legal discourse.

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It is common knowledge by now that, national legal languages are products of the legal systems that they serve, reflecting their ambitions and their particular structures. In line with the same logic, it is the Community legal discourse. Closer to facts, Community legal language is produced in a supranational system which is neither a state, nor a federation,[1] but an intricate combination of the two, topped by a multicultural and multilingual facet. In other words, it serves a new and never-elsewhere-existent supranational legal order, shaping its form against a linguistic background that has **no neutral zone** (according to Council Regulation No.1, as amended, there are 23 official and working languages within the European Union) and which, officially, knows no compromise (all primary and secondary EU legislation must exist in all 23 official languages). There are no doubts that, such a context yields conjunctures and difficulties (e.g., political divergent interests searching for consensus, new legal concepts most often coined in traditional national legal terminology, time pressure, etc.), whose imprints become supplementary traits added to the manifestation of Community legal discourse as an instrument that operates in the service of Community law.

Community legal discourse has a number of characteristics which originate in the specificity of the system itself, and which legitimate it to be labeled as a variety of legal language. Additionally, it exhibits a tendency to be, **impenetrable, vague and poorly written,** practices which are on the verge of officially being recognized as the idiosyncrasies or the mannerisms of Community legal discourse.

In the center of the governing system selected by the European Union stands the European legislation corpus or the *acquis communitaire*. Apart from being the sole instrument used by the Community to regulate and order its reality, the acquis also draws the expression through which the European Union introduces itself to all European citizens. Therefore, in theory, Community legislative texts should function as bridges towards a clear understanding of the European concept and as guarantees of certainty in every operation that the Community initiates. Or, as Martin Cutts brilliantly put it, European legislative texts "should seem the shinning product of a hundred brilliant minds, even when it is the result of late-night deals and backroom compromise."[2] In practice, clear and unambiguous Community legislative texts turn into utter utopia. Not rare are the occasions when such texts often generate blockages of understanding that open communication gaps not only for lay people, but also for experts in the legal profession.

Vagueness is not a new phenomenon to any legal language. In fact, it is a subject much debated by theoreticians since it can be approached from two totally divergent points of view. On the one hand, there is the opinion that the presence of flexible (vague) wording in legislative texts is a positive thing. The chief argument invoked to support such a view is that,

vague words permit rules to be interpreted reasonably in situations omitted by the author, insuring their authenticity in time. Furthermore, French specialists in the domain speak of a new trend in the legal drafting practice, the **hipo-normative post modernism**. The manifestation of this trend consists in a softening of the rigidity of regulations in favour of flexibility.[3] On the other hand, there is the general opinion that legal vagueness is part of the pathology of law. Its presence in legislative texts making the very power, principle and mission of the law, that of setting every aspect of human life between precise coordinates, fall under sever and risky doubts.

Often labeled by theoreticians as "legal indeterminacy", vagueness in legal texts has been pinned down through many definitions, each of them drawing on one of its many facets. Either simply explained by Ken Kress as "law is indeterminate to the extent that legal questions lack single right answers"[4] or metaphorically coined in H. L. A. Hart's words "penumbra of uncertainty," vagueness in legal texts comes down to linguistic formulations which are uncertain with respect to their applicability both from a semantic and pragmatic point of view. [5]

Drawing on Grices' broad definition of linguistic vagueness as a question of explaining borderline cases of application, Timothy A. O. Endicott distinguishes between a semantically vague expression "not knowing whether a statement applying it would be true,"[6] and a pragmatically vague one "not knowing whether it would be appropriate in the circumstances to make such a statement."[7] Under the light of Endicott's distinction, the sources of legal vagueness become easily classifiable. That is, the most common and obvious source of indeterminacies in legal texts is undoubtedly the use of semantically vague phrases that have no specific or definite referent that would enable its precise identification in real instances (e.g., *bad faith*, *good faith, good moral character*, *goods of great artistic value*, *imperfect justification*, *improper service of process, normal mind*). These phrases have in their structure lexical items, also known as "elastic words"[8] or "valve-words,"[9] which are in fact adjectives such as: *abusive*, *great*, *important*, *just*, *normal*, *relevant*, *serious*, *significant*, *simple*, *special*, that leave the door wide open for extensive interpretation. However, semantic vagueness in legislative texts may also spring up from tortuous and intricate syntactical constructions which beat the scheme and pattern of any proper grammatical rule.

The most challenging form of legal vagueness is the pragmatic one. It arises in instances where it is no longer clear whether the general phrase used in the rule should apply or not. The matter of legal pragmatic indeterminacy is not simple. Therefore, L. A. Hart's theory on the **"open texture"** of language comes as an extremely useful tool to any attempt to approach it. Despite the fact that the concept of open texture is most frequently associated to Hart, facts prove that it comes a long way from the works of Wittgenstein in 1930s, later on, being also present in those of Friedrich Waismann.[10] The concept of open texture is not endowed with an explicit definition, but its meaning can be decoded from the discussion Hart has on it. In brief, the concept covers the gap that might appear in legislative texts between the drafter's meaning and intention, and the meaning of the words he uses. As a support for a clear understanding, Hart puts forward a simple example. He claims that the application of the rule "there are no vehicles in the park"[11] is fully dependant on the meaning intended by the drafter when using the term *vehicle*. That is, it is fully dependent on which particular objects the drafter had in mind when he had chosen to embed his aim in the word *vehicle* for the purpose of that rule. The same logic could also be applied to the word *park.* General terms such as *vehicle* and *park* have an open texture or borderline cases for their application. Therefore, when they are encapsulated in legislative texts, the application of the rule which contains them is likely to become, in different instances, uncertain and doubtful. In contrast, in clear cases, general lexical units do not require any interpretation. The identification of the instances enclosed by the legal drafter in the selected word poses no difficulties.

In the context of Community law, vagueness

in legal drafting or the hipo-normative trend, as French specialists euphemistically choose to label it, is not a tolerated practice. Unquestionable arguments to support this position stand the provisions of the *Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation*. What is more, the core principle which motivates the enacting of the measures enclosed in the act is that of legal certainty, part of the Communiy legal order. According to this principle clarity, precision and simplicity are a prerequisite for the proper implementation and uniform application of Community legislation in Member States. The principle of legal certainty requires that Community legislation "must be clear and precise and its application foreseeable by individuals."[12] In essence, this principle stresses one of the major functions of the legal system in general, that of elaborating rules by which people can guide their lives and their social behavior without resorting to help from legal professionals (lawyers, judges). In cases where a supplementary arbitrary decision is needed in order to apply a rule, the probability of injustices to be committed is relatively high. Therefore, legal indeterminacy constitutes the reason why people who wish to exercise some of their rights, abandon any such action. They fear that by doing so, they will end up being penalized.

Despite Community principles and philosophy with respect to clear legislative texts, linguistic vagueness is frequently present in Community acts. In fact, it has relinquished its label of defect of language, to take up the status of mannerism. The implementation of Community legally binding acts becomes an excessively spirited job when key provisions abound in semantic vague words. Take for instance, the following paragraph of Article 2 from *the Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme*. On the whole, Article 2 should describe the scope of the regulation. More exactly, it should specify the condition under which eco-labels may be awarded. Paragraph 2 of the article in question is intended to detail the exact conditions under which product groups (meaning goods and services) can be included in the Scheme proposed by the regulation:

> "2. In order to be included in this Scheme, a product group must fulfil[13] the following conditions:
> (a) it shall represent *a significant volume of sales and trade* in the internal market;
> (b) it shall involve, at one or more stages of the product's life, *a significant environmental impact on a global or regional scale and/or of a general nature*;
> (c) it shall present *a significant potential* for effecting environmental improvements through consumer choice as well as an incentive to manufacturers or service providers to seek a competitive advantage by offering products which qualify for the eco-label; and
> (d) *a significant part* of its sales volume shall be sold for final consumption or use."[14] remain

Since regulations are entirely binding and directly applicable in all Member States, practically leaving no choice of method or form to the national authorities, one would expect to find in their content the utter expression of precision with respect to every condition and provision they put forward. Instead, the content of regulations accommodates foggy formulations as is the case above. To be more precise, the accurate understanding and implementation of the exact conditions under which goods and services can be included in the scheme of awarding eco-labels is blocked by rather vague lexical units such as *significant* which leave room to a wide spectrum of subjective interpretation. What is more, although the drafter makes extensive use of this formulation across subsequent Articles, nowhere in the text is provided an approximate quantification of what *significant* should imply. Other vague wordings present in the same regulation would list: "*balanced participation* of all *relevant interested parties*,"[15] "competent body"[16] used without any explanative details, "requirements related to *the product's fitness to meet the needs of the consumer*,"[17] "*reasonable* period of time".[18]

Another example of semantic vague wording

seasoned with error of style is the atypical construction "sensibly lower," present in article 5(2) of a Commission Regulation[19] on property plant variety. According to this piece of legislation, plant breeders have the right to charge framers who save seed from their crops for sowing on their own plantations. Details with respect to the fee they could charge consist of the phrase "sensibly lower", meaning in fact, as the context and good English demand, "appreciably lower", that is an uninformative specification.

"Where such contract has not been concluded or does not apply, the level of remuneration shall be *sensibly lower* than the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the same area."

A brief search into the other language versions of this regulation would reveal that the poorly crafted expression "sensibly lower" is an overlooked Gallicism, which cries indeterminacy. During the parliamentary debate held in UK on the plant varieties bill, whose provisions must also accommodate the European legislation in the domain, the provision was placed under arbitrary interpretation and the tricky phrase received the following acid comment: "The Bill uses the term 'sensibly lower' in relation to royalty rates—a *curious bit of Euro-speak arrived at* during the discussions on the trade agreements."[20] The fact that such a construction skipped the eye of subsequent possible revisers, suggests that, as hilarious as it may be, non-native English speakers find it easier to understand the Community English variant than native English themselves.

If instances of semantic vague words are sometimes rectified by legal revisers when amending the legislative text containing them, the cases of pragmatic indeterminacy occurring in Community acts most often become background of dispute brought to court. According to article 267 (ex article 234 TEC) of the *Treaty on the Functioning of the European Union*, the only authority that can interpret and provide clarifications with respect to legal indeterminacies, be it linguistic or non-linguistic, present in Community legislative acts is the European Court of Justice:

"The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon."[21]

From the considerable number of cases referred to the European Court of Justice under this article, every year, many include reference to instances of linguistic vagueness present in Community acts. In case C-226/08 *Stadt Papenburg vs Bundesrepublik Deutschland*, completed in January 2010, the questions referred for preliminary ruling required an answer that would include clarifications on the concepts covered by the words "plan" and "project" present in Article 6 (3) (4) of the *Council Directive 92/43/ EEC on the conservation of natural habitats and of wild fauna and flora* as amended by *Council Directive 2006/105/ EC*, also called the *Habitats Directive*. In brief, the case concerns an agreement that the Federal Republic of Germany intends to give to the draft list of sites of Community importance (SCIs) which also includes a site on the river Ems downriver from the area of municipality of Papenburg from Germany. In brief, the agreement depends on the correct assessment and interpretation of some already authorized dredging operations that the seaport near the site must undergo in order to function properly, in the context of the Habitats Directive. Since Article 6 (3) of the Directive reads: "Any *plan* or *project* not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other *plans or projects*, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives (…)",[22] and nowhere else within the directive a

definition of the concepts "project" and "plan" is provided, the problem arising is whether these dredging operations should be interpreted as part of the meaning covered by the two open texture words or not. The Court's interpretation is that "such an activity may be considered to be covered by the concept of "project" in Article 6 (3) of the Habitats Directive."[23]

Other instance of vague wording nicely wrapped in Community legislative texts have been revealed in joint cases C-402/07 and C-432/07 *Sturgeon and Others*, completed in November 2009. In essence, the questions referred in these cases seek to ascertain the meaning of the following formulations "flight delay", "cancellation", and "extraordinary circumstance" used for the purpose of *Regulation (EC) 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing the common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delayed flights*. What is more, except for "flight delay", the other two examples are provided with a definition within the content of the Regulation. For instance, "extraordinary circumstance" is defined by Recital 15 in the preamble as follows:

"*Extraordinary circumstances* should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations."[24]

However, with definitions screaming fuzziness and indeterminacy themselves, as the one above, it is no wonder that open texture words remain indeterminate even when drafters take the trouble of describing them.

Case C-304/08 *Zentrale zur Bekämpfung unlauteren Wettbewerbs Ev vs. Plus Warenhandelsgesellschaft* is also the fruit of a rather vague expression planted in a legally binding Community act. In this case, the seed of uncertainty and confusion is the phrase "commercial practices" encapsulated in *Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market*. There are no doubts that, the drafter has envisaged the necessity of identifying the borderline cases of the semantically vague expression he has used, for the definition comes promptly in Article 2 (d) of the Directive:

"business-to–consumer commercial practices (hereinafter also refereed to as *commercial practices*) means any act, omission, course of conduct, or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale and supply of a product to consumers."[25]

Despite this "effort," the application of the phrase remains unclear with respect to various situations such as the one disclosed by case C-304/08. Furthermore, the Court itself appreciates that the description of the concept that the drafter intended to aim at by using the wording *commercial practices* is "particularly wide."[26]

Certainly the list of illustrations revealing the excessive use of vague wording in Community legislation is inexhaustible. Acts are produced everyday, and both drafters and revisers seem to be more interested in achieving policy ends rather than in the language use. As a result, open texture words exploited with perseverance by Community drafters have ceased to be just an undesirable side effect of the legislative process. Official facts bring to light that, unofficially indeterminacy has become a licensed idiosyncrasy of Community legal discourse.

This excessive tendency and preference for semantically opaque phraseology over technical language is not the product of an unknown cause. On the contrary, there are enough factors that may explain it. One possible, but not undebatable justification may emerge if Community law were approached from a rather controversial perspective, also discussed by the Head of the Jurist Linguist Service at the Council of the European Union, Tito Gallas. In brief, theory holds that Community law can be associated with, **diplomatic law**, a branch of **public international law.** The concept of

diplomatic law is based on the notion of negotiation and compromise. In such a context, the legal norm drops its traditional **function** of social message by means of which certain behaviour is allowed or banned. In diplomatic law, the norm primarily serves as a mnemonic device, used to record and to fix an agreement, while its communicative function recedes into the background.[27]

An explanation based on judging Community law by the features and standards of diplomatic law would only suffice and license a small parcel of the instances of vague wording. More precisely, it would account for those present in Community primary legislation. The nature of the Founding Treaties and the instruments attached to it (Protocols, Accession Treaties) go beyond traditional acts of Community law. That is, they function as a Constitution, setting up principles, criteria and coordinates. Unlike an ordinary national Constitution, the principles and criteria included in the Community primary legislation must also be compatible with all the elements of a pluralistic scene. In this light, it may be argued that Community law has noticeable flavour of negotiated law, being the outcome of a considerable assortment of divergent interests. Put it simply, it rests in the nature of the act itself to adopt a more flexible wording or the hipo-normative trend. However, this indulgement has not been left without a remedy. The European Court of Justice has a broad mandate to fill any existent gap in the Treaties with Community specific theories of interpretation. According to a recurrent refrain, "Much useful Eurolaw would not have been made had clarity been essential."[28]

Vague and fuzzy wording present in other types of Community legally binding acts (e.g., regulations, directives) cannot accommodate their justification in the argument described above. They are designed to stipulate precise measures and solutions to identified and concrete problems. Consequently, such acts cannot be taken as records of agreement, which is typical of norms in international relations.

Vague wording in regulations and directives is more often one of the many products of a Community drafting system that is in the process of being improved and reformed. There is not one single, but many departments responsible for the elaboration and revision of the first drafts of Community legislation. However, any subsequent attempts of making textual changes in the initial form of the draft are received with utter reticence by the drafters who had their hand first in it. There are instances when vague wording is not overlooked, but resistance is posed for their modification. Chances are that in such situations, indeterminacy is created deliberately for political reasons. The literature on this topic also calls this sort of indeterminacy "calculated ambiguity."[29]

A pertinent illustration in this direction is a set of phrases encapsulated in *Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports,* also commented upon by Ian Frame, lawyer-linguist at the Court of Justice of the European Communities.[30] The party that had political interest of presenting the issue of this directive in a smoggy picture was, evidently, the United Kingdom Government. For the act is about introducing restrictions to aircraft noise and England has the largest and most active airport in Europe, it is only logical that such measure is likely to have a negative impact on the commercial interests on Heathrow. This worry sought comfort in some indeterminate phrases. It's worth mentioning that, the English version is a translation from French. Therefore, the version in the source language makes the intention of dragging smog over the issue even more evident in the English one. The "tuned" phrases in question are "deterioration in the noise climate"[31] for "aggravation de la pollution sonore," "assessment of the noise impact"[32] for "évaluation des incidences des nuisances sonores" and "policy approach to address aeroplane noice"[33] for "une méthode d'action pour traiter des nuisances sonores générées par les avions."

Vague wording placed on purpose in Community legislation is not a practice with

impunity. In fact, the *Joint Practical Guide* reads:

"Provisions that are not clear may be interpreted restrictively by the Community courts. If that happens, the result will be just the opposite of what was intended by the incorporation into the text of grey areas intended to resolve problems in negotiating the provision."[34]

Additionally, the Guide cites as an example Case C-6/98 *ARD vs. ProSieben*. The dispute in this case was generated by the wording of Article 11(3) of the *Television without Frontiers Directive*.[35] The article in question provides that the permissible number of interruptions by advertisements of films shown on television is to be calculated by reference to a period referred to as "the programmed duration" or "scheduled duration" as it appears in the amended version. In the end, the controversial formulation received two contrasting interpretations, one belonging to the Court and the other to the Advocate General Jacobs who, at point 53 of his Opinion, made the following suggestive comment:

"…the provision in question appears to be, in the light of the arguments advanced in both sides, not only equally open to two conflicting interpretations, but perhaps deliberately ambiguous. An ambiguity – and particularly deliberate ambiguity – cannot be invoked to restrict a fundamental freedom."[36]

Community discourse is the indispensable instrument that articulates the European project, conveying conceptual tangibility to its components. For it serves to describe a reality never-before created, its necessity and usefulness has never been doubted. Despite this, there emerged a negative reaction towards it whose claim is that it sounds, if not bizarre, at least uncommon and alienating.

The numerous polemic articles against Community discourse reveal that the target of attacks is, in fact, Euro-speak, the terminology created to coin the newly created concepts, operated only in the context of the European Union. Roger Scruton, for instance, puts his view straight forward on display in the heading of one of his articles *Enter Europeak: an Insidious Replacement for the Marxist Newspeak*, insisting throughout the text on the potentially dangerous mystery shelled in the new EU terminology.[37] In the *Economist*, an article entitled *Decoding a Euro-diplomat takes more than a dictionary* describes Euro-speak as "a form of dead, bureaucratic English."[38] In line with this reaction also come Emma Wagner's guidelines to fight the "disease of Eurospeak,"[39] and the attempts of the *Simple Language Campaign* initiated by Alliance of Liberals and Democrats for Europe in the Committee of the Regions in September 2008 to end the "impenetrable Euro-speak." Nevertheless, the massive volume of critical allegations on the expense of Euro-speak is only partly justified.

Provided that Euro-speak verbalises a new reality, it cannot but be expected that it comes wrapped in brand new phrases. In fact, the roots of this negative reaction against Community discourse lie only in one segment of Euro-speak, and not in Euro-speak as a whole. That is, they lie in that segment made up of infelicitously refashioned words and concepts. Put it simply, what nurture the uncommon sound in Community discourse, especially the legislative one, are several curious phrases joined by some newly formed lexical constructions, divorced from the ordinary feel of common language. However, despite criticism, tolerance towards the practice of crafting unusual and inappropriate phrasing is growing turning it into a peculiarity of Community discourse. Infelicitous coining of European concepts occurs in all languages, but since much of the written communication in the Community institutions is done in English, the English variant of this evil reputed segment is more consistent, than the others.

Among the newly crafted lexical items which make the voice of Europe sound awkward is *proratisation,* meaning the division of percentages payable by different countries to a person entitled to a pension and who worked and paid non-voluntary pension premiums in different Member States.[40] Although English has a corresponding noun derived from the verb *prorate* ("to divide, to assess, to distribute

proportionally"[41]), that is *proration*, which could be used to create a more palatable coinage for the above stated Community concept, the cumbersome derivation populates legislative texts, leaving even native speakers of English speculating with respect to its exact meaning.

Flexicurity is undoubtedly an unmatched specimen of new word on the European scene. The word is evidently a hybrid resulted from the fusion of two distinctive words: *flexibility* and *security*. Those responsible for this coinage are the Dutch, although the concept it encapsulates is most often associated with the Danish policy aimed at reducing unemployment and boosting the size of the active workforce.[42] According to the definition posted on the web page of the Commission of Employment, Social Affair and Equal Opportunities, *flexicurity* is "a policy strategy to enhance, at the same time and in a deliberate way, the flexibility of labour markets, work organisations and labour relations on the one hand, and security – employment security and income security – on the other." However, a clearer description of the term is provided by Carol Goar. She claims that "the *flex* part of the phrase applies to employers,"[43] the State simplifying the conditions of firing and hiring workers. On the other hand, "the curity part of the phrase applies to workers"[44] who are assisted by the State with special programmes in order to help them adjust to the economic instability. Disregarding the positive concept that lies behind it, the sound of *flexicurity* in the ears of native speakers of English elicits comments such as "intriguing", "silly oxymoron," "abomination," "faintly Orwellian" and the list could continue in the same style.

The noun *communitisation*, joined by the past participle *communitised* can step into the same line of awkward-sounding and confusing newly created lexical items. Its use is related to the Amsterdam Treaty in 1997, and it served to describe the involvement of the first pillar of the European Union (the European Commission and the European Parliament) into the law-and-order policies in Europe which until then have been decided only by governments and the third pillar of the European Union.[45] If not refashioned, its use and utility are likely to remain in the past, for the Treaty of Lisbon, recently ratified, dissolves the pillar system.

Additionality is another newly crafted term. Its formal and phonic resemblance to the *additionally* tricks any fast or careless reader. The creation of the term is related to the *Kyoto Protocol*. More precisely it emerged in the context of the *Clean Development Mechanism* and it describe the fact that "a carbon dioxide reduction project (carbon project) would not have occurred had it not been for concern for the mitigation of climate change. More succinctly, a project that has proven *additionality* is a beyond business as usual project."[46]

Although it does not have behind it a key concept referring to the functioning of the European Union, *toilettage* is another specimen of Euro-neologism. Not surprisingly, the term is the craft of translators and revisers of Community legislation for it designates the process of examining new law and treaties to make sure they are free of errors and in accordance with the existent legislation.[47]

Apart from the newly created terms, the unusual sound of the Community legislative discourse also emerges from the constant presence of a series of impenetrable and incomprehensible phrases, intended to embody key European concepts. More precisely, these terms are generally related to the functioning of the Community institutions and to the policies they elaborate e.g., *transposition* for the manner European directives are implemented in national law, *open method of coordination* for a new intergovernmental method of governance in the European Union, centered on the cooperation of Member States, *democratic deficit* for the inaccessibility of the European Union for its citizens due to the complexity of its methods of operation, *hard core* for a limited number of countries able to develop *closer cooperation*, that is an instrument created in the context of the Amsterdam Treaty for European integration.

What makes such phrases infelicitous verbal coinages of new concepts is the fact that they defy one of the basic principles governing the formation of terminological neologisms. These

principles are stipulated by ISO *Standard R 704* approved in 1968, and periodically revised. The main neglect revealed by the above examples rests in the fact that the selected lexical units which enter the construction of the terms lack sufficient transparency with respect to the conceptual load they are intended to carry. According to the guidelines and recommendations for naming, established by *ISO Standard R 704*, successful verbal coinages of concepts occur when the characteristics which describe the concept are also present in the literal sense of the lexical units which make up the term.[48]

This principle comes conjugated with the basic function of terms, namely, that of clearly and "sharply delineating meanings identified as necessary within a particular domain."[49] Unlike simple words, terms allude to the semantic elements or characteristics which define the concept they designate and help distinguish it from other concepts in its system. To take the logic further, terms should function as short versions of the intensional definitions of concepts, where an intensional definition of a concept according to Felber, consists of "a specification of characteristics of the concept (…) which differentiate the concept to be defined from other concepts of the same level of abstraction (…) called restricting characteristics."[50]

If the principle stated by *ISO Standard R 704* is met, the newly created terms are in little need of a definition in order to be understood by its potential users. Unfortunately, in the case of the Community terminology many phrasings are built on elements deprived of significant information. Therefore, the probability for ordinary citizens to easily grasp the meaning and to feel comfortable with terms such as *non-paper, rendez-vous clause, Community bridge, harmonization* and *mainstreaming,* present in Community legislative discourse, is very low, indeed. Instead of accommodating efficient and transparent terms designating European concepts, the Community legislative discourse is populated by phrases which, in the comprehension process, yield nothing more than the undesirable semantic noise.[51]

Poor literal translations from one language (French) into another (English) also add to the sources which give the Community discourse its peculiarity. *Third countries* from the French *pays tiers* for non-member countries, *deepening* (*approfondissement* in French) used to describe "the strengthening of certain policies which may be coupled with institutional reforms designed to develop European integration,"[52] *public service*[53] (*service public* in French) meaning bodies providing services, including the general-interest services they provide, *Internal Market* for single European market are just a few examples of alienating terminology.

The term *acquis*, an evident loan from French, stands for the most sacred and complex concepts yielded by the European project, or, in fewer words, it stands for the EU as it is. Although overused, it is still out of place in the setting of ordinary spoken language. Nevertheless, more palatable English versions have been brought into discussion (e.g., *Community patrimony*, *body of EU law*), but without chances of replacing the popular and exotic *acquis*.

The Community legislative text is unfortunately modeled and shaped in a way that has an ironic effect. That is, instead of convincing European citizens of the benefits that a unified Europe brings, the choice of language and style adopted by the Community legislative drafting practice makes Europe loose touch with its citizens. Vague wording and unusual phrases in legal acts gives the impression that the European Union has something to hide.

The Community discourse is the only type of legal discourse for which erroneous uses of language (English) develop into a mannerism. If indeterminacy and unusual uses of language also occur accidentally in national legal discourses, language mistakes are a rare breed, indeed. But not for Community discourse.

The predilection for making mistakes is evidently for vocabulary which is most often mixed up. There is the natural tendency to use the same word, or better said, the same form of the (French) word in a different language (English), although the meaning attached to it differs substantially from one language to

another. It is, in fact, the issue of *false friends* which in Community legislative discourse becomes norm.

Adequate meaning in English "sufficient to satisfy a requirement"[54] is used for the French *adéquate* meaning "suitable."[55] The term usually appears in the construction *adequate and sufficient* which in English turns into a pair of nearly perfect synonyms devoid of part of the intended meaning.

"No product referred to in Article 15(1) shall be authorized unless the applicant for such authorization has *adequately and sufficiently* demonstrated that it satisfies the requirements of paragraph 1 of this Article."[56]

Other such examples would list: *statute* (from the French *statute*) for *staff regulations, eventually* for *possibly* ("to avoid growth of pathogenic bacteria *eventually* present in the products"),[57] *candidates* for *applicant countries*, *modalities* for *procedure*, *actual* for *current*, *specificities* for *details*, *sensible* for *sensitive*, etc.

Set out, a phrasal verb dear to Community drafters when the intention is to make certain reference to previous parts of the act or to other acts, is sometimes replaced with *set* followed by the preposition *in.* Although the difference in meaning between the two is made explicit by any dictionary of English, over confident drafters use it without checking. The resemblance in meaning between the two is rather distant. *Set out* clearly means "to present, to explain, to state,"[58] whereas *set* plus the preposition *in* occurs in contexts indicating the place of action of a film, novel, etc, in a particular time and place,[59] which is not the case in illustrations such as the following extracted from articles of various Community regulations:

"In order to reach the targets *set in* paragraphs 1 and 2 of this Article Member States may, inter alia, apply the following measures (…)."[60]

"Due consideration is given to the definitions and conditions *set in* the Codex Guidelines."[61]

"In the case of natural or legal persons established or resident in a third country, the statement shall be lodged with the Commission, either directly or via the authorities of the third country concerned, within the time-limit *set in* paragraph 1."[62]

There are no doubts that vocabulary mistakes are a consequence of the handicap that most drafters of Community acts have. Namely, they are writing in a foreign language, in this case, in English. There are no doubts that first drafts of Community legislative texts are always submitted to other committees for further discussion. The trouble is that the members of these committees, who make textual suggestions, are very likely to be non-native speakers of English, as well. As a result, the chances for slipped errors to be spotted and corrected are very low. On the contrary, there is high probability that they increase in number, for the suggestions they make are thought into one language and written into another. In her article, *Just Fix the English*, Catherine Rawson labels such mistakes "signature errors," explaining that these occur "when language learners transfer some of the patterns of their mother tongue to English."[63]

Native English drafters and revisers are aware of the fact that their non-native English peers have a predilection for slipping language mistakes in the English versions of the documents they draft. Subsequently, when the opportunity comes, they lend a helping hand and make all the necessary corrections. Ironically, there are cases when overzealous and overconfident native English speakers working on Community legislative drafts make language mistakes themselves. Robert William, translator, reviser and editor for the European Patent Office speaks of such an instance. He claims that, he himself came across a native English drafter who refused to accept the revisers' correction of "ton" to "tonne". He justified his refusal that, although "tonne" had been in all documents submitted to him, he took the trouble to check the word in a dictionary where he saw that the correct spelling in English was "ton". Williams' comment on this case refers to the unawareness of the drafter that "a tonne or metric ton is 1000 kg while a British ton is 2 240 lb (1.016 tonnes)."[64]

The analysis reveals that the process of reformation of legal language is only at its very beginnings. Community legal drafting practice

is still attached to sufficient inefficient features of legal language, especially in terms of simplicity and precision. The present analysis reveals that the detrimental elements that Community legal drafting practice did shed display a visible effort in reaching a reasonable level of intelligibility and clarity. Nevertheless, in parallel, Community legal drafting practice crafts itself a set of specific traits with mannerist flavour, which make the challenge of producing an efficient and reformed legal discourse even more thorny. These specific characteristics are the exclusive product of the never-before-existent context in which Community legal discourse is created.

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