

Dealing with Syntactic Discontinuities in the Translation of Legal Texts

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Abstract: An important structural feature of the legal discourse is represented by the presence of the qualifications, which are inserted within the structure of the legislative sentence at exactly those points where their meaning is most clearly and most appropriately rendered. This principle is meant to avoid ambiguity, but it often leads to syntactic discontinuities. How do the Romanian translators of European Union legal texts treat such discontinuities? The paper identifies some translation techniques for dealing with this phenomenon as they are reflected by the official Romanian variants of a set of European Union documents originally written in English.

Keywords: legal discourse, EU texts, discontinuities, translation techniques

1. Introduction

One of the essential conditions for the achievement of an appropriate translation, whether literary or specialized, is represented by the use of those linguistic features which best achieve equivalence with the source text. The translator's selection of the linguistic elements making up the target text is, of course, guided by the format of the original (Dejica 2008; Dejica 2010), but it is also subject to various constraints, among which a very important part is played by the rules of the target language as a system, on the one hand, and by the norms of usage valid in the target culture in the case of each particular type of texts, on the other.

In an attempt to illustrate the manner in which the translation is influenced by the linguistic makeup of the source text, and conforms, at the same time, to the various norms of the target context, this paper will focus on the transformations undergone by certain syntactic structures in the legal texts as a result of the process of

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translation from English into Romanian. More specifically, the paper will analyse the manner in which the Romanian translators deal with a phenomenon which is typically displayed by legislative documents originally written in English, namely the syntactic discontinuities. For this purpose, I have selected a bilingual corpus of texts which belong to the field of the European Union (EU) legislation, and which, according to the Directory of European Union legislation (cf. <http://eur-lex.europa.eu>), represent typical examples of “legislation in use” (i.e., regulations, decisions, directives, agreements concluded by the member states as a result of their external relations, etc.). Throughout the paper, reference to the EU documents that I have analysed is made by means of the CELEX number (e.g. 32017R1128, 32015D2458, 22012A1229(01)), which is a unique combination of symbols consisting of elements like the code of the sector to which the document belongs, the year in which the document was adopted, the type of document (represented by a letter), and the number of the document, made up of four figures.

The analysis of the syntactic discontinuities in the texts making up my corpus will be performed from a double perspective. On the one hand, there is the grammatical perspective, which aims at identifying the main types of syntactic discontinuities presented by the English EU documents under analysis. On the other hand, there is the translational perspective, which is meant to reveal some possible techniques for dealing with this phenomenon when EU texts are translated from English into Romanian. The ultimate purpose of the present paper is to arrive at findings that are relevant for the Romanian translators of this category of texts.

2. Types of syntactic discontinuities in the English EU legal documents

The presence of the syntactic discontinuities in legal documents of any kind is a consequence of an important structural characteristic of these texts, namely the presence of the qualificational insertions. As Bhatia explains (1993: 34), qualifications, equally rendered as subordinate clauses and as clause constituents, interact with the main provisionary clause at various points in its structure, with a view to covering all the possible circumstances that are relevant to its application. Even if the inserted qualifications are meant to make the legal provision precise and all-inclusive, the fact that they frequently interrupt the main provisionary clause may cause difficulties of processing, especially in the case of the non-specialist readers.

The English EU documents that I have analysed contain many instances of qualifications of an Adverbial or Attributive nature, and this leads to the separation of a wide range of grammatical elements which are normally expected to occupy adjacent positions, such as Subjects and Predicates, or verbs in the Past Participle and their passive auxiliaries. The main types of syntactic discontinuities that I have identified in the English documents in my corpus are discussed in what follows,

taking into account their presence at the level of the phrase or at the level of the clause.

Most frequently, discontinuities are present at the level of the verbal phrase, when a conjunctive adverb is intercalated between a *modal auxiliary* and its *main verb*: e.g. “MMFs *should, at least bi-annually, conduct* stress testing” (32017R1131); “the Commission *shall also convene* meetings” (32010D0037); “this information *should therefore be mentioned*” (32008R0159).

Another case of discontinuous verbal phrase is that in which the *passive auxiliary* is separated from the *Past Participle*: e.g. “Council Regulation (EC) No 1225/2009 (2) *has been substantially amended* several times” (32016R1036); “all interested parties *are hereby invited*” (32011R0969).

Qualifications may also create discontinuities between *Subject Complements* and their *copulas*: e.g. “it *is therefore appropriate* to make reference” (32010L0062); “it *is also expedient* to specify the procedures” (32016R1035).

In all the examples offered so far, verbal phrases are interrupted by relatively short adverbial elements which are represented either by simple adverbs, or by compound adverbs with a preposition. However, my corpus also reveals some spectacular cases of discontinuities at the level of the verbal phrase, when there is a larger amount of separation between the head of the verbal group and the auxiliary verb accompanying it: e.g. “The powers ... *shall, as regards the General Secretariat of the Council, be exercised*” (32011D0444); “Member States *shall, while respecting freedom of expression and information, and freedom and pluralism of the media, encourage* the media to take self-regulatory measures” (32016L0800).

Qualifications may also create discontinuities at the level of the noun phrase, but they are clearly not as frequent as in the case of the verbal phrases. Thus, the texts that I have analysed contain just a few examples in which *Attributes* are separated from their *head nouns*: e.g. “the *delegation, to an executive agency, of tasks*” (32009D0336).

Moving on to the level of the clause, my corpus also reveals several types of discontinuities. First of all, the *Subject* can be separated from its *Predicate*, since, quite often, there are very many clause constituents of various types that occur between these two elements. Some examples in this respect are: e.g. “*the Council, in its conclusions of 21 May 2014, stated* that cultural heritage encompasses a broad spectrum of resources” (32017D0864); “the following *information, if applicable, shall be supplied* in triplicate” (32010L0062).

A second type of discontinuity at the level of the clause is that when the Objects present in the EU texts are separated from their head verbs by means of phrases with various degrees of complexity, which usually function as Adverbials. Examples like the ones offered here are very frequent in my corpus: “*offering, where necessary, mediation* on procedural matters” (32011R0969); “Mauritius *may accept, upon request by EUNAVFOR, the transfer* of persons.” (22011A0930(01)).

Thirdly, I want to mention the discontinuities that are created at the level of certain subordinate clauses, when, between the introductory conjunction and the Subject of the clause in question, the text producer introduces other more or less complex constituents of Adverbial nature: e.g. “**Where**, in the case of processed agricultural products listed in Table 2 of Annex II to Regulation (EC) No 1216/2009, a preferential **agreement** provides for the application” (32011R0514); “The introduction of new amendments means **that**, for reasons of clarity, **Decision** 2005/56/EC has to be replaced” (32009D0336). By delaying the basic information offered by that clause, such discontinuities increase the level of difficulty associated with the understanding of that utterance.

From all the examples offered above, it is obvious that discontinuities are well illustrated both at the level of the phrase and at the level of the clause. Moving on from this descriptive approach to a more applied one, in the next section I will deal with the syntactic discontinuities specific to the EU documents from a translational perspective. The idea is that the translator’s awareness of the positions occupied by the qualificational insertions, as well as of the contribution that each of these qualifications makes to the overall meaning of the source utterance is very likely to enable him/ her to produce a target variant which, in addition to conveying a similar message, is also clear to its intended audience.

3. Techniques for dealing with syntactic discontinuities in the translation of the EU texts from English into Romanian

After identifying the main types of syntactic discontinuities revealed by the English EU documents in my corpus, in what follows, I will discuss the manner in which this phenomenon is dealt with in the official Romanian variants of these texts. More specifically, I will analyse the techniques used by the Romanian translators working in the EU field for rendering the syntactic discontinuities specific to this category of texts.

However, before presenting the results of my analysis, I want to make some conceptual clarifications. As I explained in the introductory section of this paper, the translator’s choice of the linguistic elements making up the target text is influenced not only by the original, but also by a wide range of norms specific to the target language and culture. How are the various translation norms actually attained in practice? Chesterman (1997: 88) offers an answer in this respect by putting forward the concept of translation strategy, which is defined as a kind of process by which the translator seeks to conform to norms. Strategies are presented as solutions for a translation problem related either to the text as a whole, or to some segment in it.

Chesterman (1997: 92) makes a basic distinction between comprehension strategies, on the one hand, which have to do with the whole nature of the translation commission, and production strategies, on the other, which concern the manner in

which the translator manipulates the linguistic material in order to produce an appropriate target text. Focusing on the latter category, Chesterman (1997: 94-112) offers a comprehensive classification of the possible changes to which translators might resort when they are not satisfied with the target variant that immediately comes to their mind. Thus, drawing on sources like Vinay and Darbelnet (1958) or Catford (1965), Chesterman (1997: 94-112) proposes a classification which comprises three main groups of strategies: mainly syntactic, mainly semantic and mainly pragmatic, acknowledging that the groups he suggests overlap to a certain extent, and that the individual strategies can be further broken down into other sub-groups.

I consider that Chesterman's (1997) typology of production strategies is very useful, because it is practice-oriented and quite accessible to translation research, and, consequently, I will use the categories proposed by him in my analysis of the linguistic evidence of the transfer operations performed by the Romanian translators of the texts in my corpus. However, in my endeavour, I will refer to all the changes performed by the translator by using the term *technique*, and not *strategy*, like in the original approach. This happens because, in full agreement with Lucía Molina and Amparo Hurtado Albir (2002), I consider that strategies represent the procedures which are used by the translator in order to solve the problems that occur during the translation process, and which "open the way to finding a suitable solution for a translation unit" (Molina and Hurtado Albir 2002: 508). The solution is, then, materialized by means of a particular translation technique, which, in Molina and Hurtado Albir's (2002: 509) formulation, represents an analytical tool which allows us to study the manner in which the result of the translation process functions in relation to its corresponding unit in the source text.

Having clarified the exact reference of the concepts that I am about to use, I will present, in what follows, the main techniques used in the English – Romanian translation of the syntactic discontinuities specific to the EU documents under analysis.

Trying to respect, as much as possible, the structural characteristics of the original text, the Romanian translators resorted, in many cases to the *literal translation* of the structures characterised by syntactic discontinuities. Thus, under the influence of their English originals, the Romanian translations also present cases when various types of constituents are placed between the modal auxiliary and the main verb (e.g. "The European Year of Cultural Heritage *can therefore offer* opportunities"/ "Anul european al patrimoniului cultural *poate, prin urmare, oferi* ocazii" – 32017D0864), the Subject Complement and its copula (e.g. "It *is also necessary* to provide"/ "*Este, de asemenea, necesar* să se prevadă – 32016R1036), or between an Object and its head verb (e.g. "relevant national safety authorities *should include, where necessary, the possibility* of contracting tasks"/ "autoritățile naționale

de siguranță corespunzătoare ar trebui să **includă**, atunci când acest lucru este necesar, **posibilitatea** delegării unor atribuții” (32016L0798).

In very many situations, however, the specific characteristics of the Romanian linguistic system does not allow the translators to exactly render the source language forms, and, consequently, they resort to other techniques. In more rare cases, they perform a **phrase structure change**, and the discontinuity remains at the level of the original phrase, but with a change in position. This example is illustrative in this respect: “Procedural documents **shall also be served** ...”/ “Actele de procedură **sunt de asemenea comunicate** ...” (32011D1001(02)). If, in English, the adverb separates a modal auxiliary from its main verb, in the Romanian variant the same element creates discontinuity between the passive auxiliary and the past participle of the verb.

However, a more frequent choice among the Romanian translators is the technique of **clause structure change**, which involves a change in the order of the clause constituents. This happens especially when, in the context of the English text, a certain Adverbial is inserted between the main verb and the auxiliary of a verb phrase functioning as Nominal or Modal Predicate. Since the Romanian language does not allow such an intercalation, the translator, in an attempt to be as close to the original as possible, chooses to move the initial qualification in another position in the clause, thus creating another type of syntactic discontinuity. In most of the cases, the newly created Romanian EU text is characterized by the separation of an Object from its verb: e.g. “the competent judicial authorities **may, in appropriate cases, set** the damages as a lump sum”/ “autoritățile judiciare competente **pot stabili, în cazuri adecvate, o valoare** forfetară pentru daunele-interese” (32016L0943); “the national coordinating body **shall closely consult and cooperate** with a wide range of relevant stakeholders”/ “organismul național de coordonare **se consultă și cooperează îndeaproape cu** o gamă largă de **părți interesate** relevante” (32010D0037). I consider that the examples just offered represent good illustrations of felicitous changes performed at the level of the Romanian texts, because, if the translator had preserved the word order in the source document, the result would have been a translation which had sounded utterly unnatural in the target language.

Sometimes, the technique of **clause structure change** is accompanied by that of **emphasis change**. This happens when the translator moves the place of the inserted qualification to the initial position in the respective clause, thus giving it more emphasis. This translation solution is used for various types of source text syntactic discontinuities, such as between Subject and Predicate: (e.g. “**The framework, if used and further developed by the Member States, could help** them ...”/ “**Dacă va fi folosit și dezvoltat de către statele membre, cadrul le-ar putea ajuta** ...” – 32009H0708), between Subject Complements and their copulas (e.g. “It **is therefore important**”/ “**Prin urmare, este important**” – 32010D0037) or between a modal auxiliary and its main verb (e.g. “No transferred person **shall, in accordance**

with Mauritius Abolition of Death Penalty Act, **be charged** with an offence”/ “În conformitate cu Actul privind abolirea pedepsei cu moartea din Mauritius, **nicio persoană transferată nu este acuzată** de o infracțiune” – 22011A0930(01)).

There are also situations when the Romanian translator resorts to the technique of **unit shift**, rendering a certain source text unit (morpheme, word, phrase, clause, sentence, etc.) as a different type of unit in the target text. In the following example, in which the qualification, expressed in English as an Adverbial of Time, is translated into Romanian as an Adverbial Clause of Time, unit shift is accompanied by emphasis change: “The Agency **may be empowered** by the Commission, *after receiving the opinion of the Committee for Executive Agencies, to carry out* tasks ...”/ “După ce a primit avizul Comitetului pentru agențiile executive, agenția **poate fi delegată** de Comisie să **îndeplinească** sarcini ...” – 32009D0336

Finally, I must mention that the EU texts in my corpus also reveal some cases in which the source text syntactic discontinuities are rendered by the technique of **implication**. In such cases, translators leave out the elements which create those discontinuities, considering that the target text reader is able to infer them. In the documents that I have analysed, there are several instances of implication, but these instances are generally restricted to source text qualifications expressed by the compound adverb **hereby**. This adverb, and other archaic elements consisting of an adverb and one or two prepositions, such as *hereinafter*, *thereof*, *hereto*, *therefrom*, represent a stylistic mark of the English legal discourse discussed by numerous theorists over the years (e.g. Crystal and Davy 1969, Hiltunen 1990, Williams 2004). Since these words do not have one-to-one equivalents in our language, the Romanian translators try to find appropriate equivalents for their rendering, but there are also frequent cases when they prefer to leave them implicit: e.g. “A review of Implementing Regulation of the Council (EU) No 400/2010 **is hereby initiated**”/ “**Se deschide** o reexaminare a Regulamentului de punere în aplicare (UE) nr. 400/2010 al Consiliului” – 32011R0969; “The Agency **is hereby established**”/ “Agenția **se instituie**” – 32009D0336.

However, implication is not restricted to qualifications rendered by archaic adverbial compounds. In some rare cases, translators omit other types of elements as well, but only as far as they can be implied by the target reader: e.g. “Following the publication of Directive 2008/126/EC on 31 January 2009, a reasonable deadline **must however be given** for the transposition of that Directive.”/ “În urma publicării Directivei 2008/126/CE la 31 ianuarie 2009, **trebuie stabilit** un termen rezonabil pentru transpunerea acesteia.” (32009L0056).

My analysis of the techniques used for the translation of the syntactic discontinuities specific to EU texts has revealed that, in many cases, these elements are preserved in the Romanian variants of the English documents; in other cases, however, the translations present differences from their originals. Some of these differences are caused by the characteristics of the two linguistic systems, while

others are a consequence of the translator's desire to create a text which is both clear and functional in the target context.

4. Conclusion

Irrespective of the complexity presented by the legal provision in the original text, the Romanian translator working in the EU field must try to respect, as much as possible, the structural characteristics of the original text, and this also includes the syntactic discontinuities that it may contain. But, since there is not one-to-one correspondence between the structure of the English and the Romanian linguistic systems, the translator is often forced to change the place occupied by the source language qualifications and to assign the constituents of the target text clauses and phrases such positions where, in his/her opinion, they best promote clarity. The only thing that the translator must pay attention to when he decides to change the place occupied by the various qualificational insertions in relation to the main provisionary clause is that the resulting structure does not affect, in any way, the sense conveyed by the source legislative provision.

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