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The textual fit of translated EU law: a corpus-based study of deontic modality

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This paper discusses the textual fit of translated EU law – that is, how its language differs from that of nontranslated Polish law – at the level of deontic modality patterns. The study is part of a larger three-year project and was conducted on the following multilingual comparative corpora: (1) The Polish Translation JRC Acquis Corpus, a corpus of acquis built by the European Commission’s Joint Research Centre from which regulations and directives were isolated as separate sub-corpora (14.7m and 7.2m words, respectively), and corresponding English versions of translated regulations and directives. Translated regulations become automatically binding law in Poland while directives undergo intralingual translation by transposition into national law; (2) The reference corpus compiled by the author – the Polish Law Corpus, of 6.8m words, comprising Polish statutes as a source of naturally occurring legal Polish.

The primary functions of law are to impose duty and to confer power. As a result, the language of the law is marked by a high frequency of deontic modals because of its need to express obligation and permission. Obligation and permission-coding modals are strong genre markers and have very high salience in translated and nontranslated law. However, they have a strikingly different distribution across the corpora, as well as within each corpus (between resolutions and directives as well as between codes and ordinary statutes of Polish law), with most modals ranking high in keywords lists. In Polish legislation, obligation and permission are mainly expressed through semi-modals, present tense and special phrasemes (e.g. jest obowiązany do ‘is obliged to’), which are not prompted in translated language. The distribution of modals in the Polish version of EU law directly reflects source language modality patterns, pointing to strong interference, overreliance on literal translation techniques and lack of normalisation to generic conventions of legislative Polish. The differences may also be attributed to a different structure of EU legal instruments (extensive non-normative preambles), the institutional culture of translating (guidelines for translators on how to translate certain modals) and power relations (interaction between majority and minority culture). In view of other differences between translated and nontranslated law, it may be argued that the low textual fit of translated law creates a distinct, more ‘European’ genre within the Polish language of the law, invading the integrity of and colonising the national genre. Such departures from generic conventions require a greater cognitive effort on the part of the reader and may increase interpretive doubts.

Keywords: legal translation; multilingual law; EU translation; deontic modality

The history of legal Polish is inextricably intertwined with translation and contacts, not always voluntary and welcome, with other languages and legal systems – most notably Latin, German, Russian and, more recently, English. Latin and German influences were very strong in the Middle Ages and significantly contributed to the development of legal terminology (cf.

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The Renaissance brought the revival of Polish in legal settings, until the end of the eighteenth century, after which Poland spent 123 years partitioned among Russia, Prussia and Austria, which imposed their own legal systems. In that period, translation was perceived as an agent of degeneration, ‘contaminating’ legal Polish with a flood of lexical and syntactic calques (cf. Klemensiewicz 1999, 647; Zajda 2001, 163–164). These were partly purged from legislation after Poland regained independence in 1918.

The most recent evolution of legal Polish is connected with two landmarks in the history of Poland: (1) the much awaited fall of Communism in 1989, with the transition from a centrally planned to a market economy; (2) accession to the European Union (EU) in 2004, a symbolic event that restored a sense of Poland’s belonging to Europe. After the accession, Polish became one of the official EU languages and now receives a large inflow of translation on a daily basis. A prerequisite for EU membership was to translate the acquis communautaire, the body of EU law, and harmonise national law with EU law. The harmonisation of national law was based directly on translated law, which was translated mainly from English. The pre-accession translation of acquis took place under substantial time pressure. It was supervised by the Polish Office of the Committee for European Integration (UKIE) but was conducted outside the institutional setting. The translated acquis was received critically by the Polish press, public opinion and linguists. The criticism centred on its low quality, translation errors and obscure terminology, as well as irregularities in the award of tenders and public procurement procedures, which were based mainly on price rather than quality criteria. In 2005, UKIE sent corrections amounting to 4500 pages – about 5% of the total translated acquis – to the EU institutions (Uhlig 2005). In recent years the quality of translated legislation has improved, after the process was taken over by the EU institutions’ translation services.

As observed by José Lambert, EU translation has social, cultural and political implications because it is a medium through which rights are granted and obligations imposed: ‘It is (also) about identity, about entering a new world, first of all in terms of discourse, then (later) in terms of rights and commitments’ (2009, 91). The aim of this article is to examine empirically how rights and commitments are communicated through deontic modality in EU law, comparing it to conventional patterns in nontranslated Polish law. The harmonisation of national law was based directly on translated law, which was translated mainly from English. The pre-accession translation of acquis took place under substantial time pressure. It was supervised by the Polish Office of the Committee for European Integration (UKIE) but was conducted outside the institutional setting. The translated acquis was received critically by the Polish press, public opinion and linguists. The criticism centred on its low quality, translation errors and obscure terminology, as well as irregularities in the award of tenders and public procurement procedures, which were based mainly on price rather than quality criteria. In 2005, UKIE sent corrections amounting to 4500 pages – about 5% of the total translated acquis – to the EU institutions (Uhlig 2005). In recent years the quality of translated legislation has improved, after the process was taken over by the EU institutions’ translation services.

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Textual fit

The metaphor of textual fit was proposed by Andrew Chesterman to describe T-universals – that is, translation universals which shape the relation between translations and naturally occurring nontranslated language – in contrast to S-universals, which are responsible for the equivalence relation between the source text (ST) and the target text (TT) (2004, 6–7). T-universals comprise simplification, conventionalisation/normalisation, untypical and less stable collocations and underrepresentation of unique items (Chesterman 2004). Research on translation universals derives from the idea that the language of translations, often referred to pejoratively as translationese, differs from nontranslations. Work in this
area intensified after Mona Baker’s seminal papers (1993, 1996), in which she argued that the distinctive features of translation language are ‘a product of constraints which are inherent in the translation process itself’ (Baker 1993, 246) and are not triggered by interference from the source language (SL) (Baker 1993, 243). Baker’s hypothesis is radical in claiming that translation universals are independent of language pairs, genres and cultures, and are not a product of translation norms (cf. Baker 1993, 246). Criticism has concentrated on the possibility of separating such universals from norms and interference, on imprecise definitions of universals and on the very use of the term ‘universal’ (see House 2008; Chesterman 2004; Pym 2010 for further discussion). This study is not so much interested in the nature of translation universals as such (because of the corpus design, which does not allow for the isolation of translation-process distortions from other types of distortions), but it will use some theoretical concepts proposed in the context of universals which may shape the textual fit of translations.

One of the key factors that potentially affects textual fit is normalisation. Normalisation hypothesises that translators tend ‘to exaggerate features of the target language and to conform to its typical patterns’ (Baker 1996, 183) to ensure that the translation is natural and idiomatic. The hypothesis is supported by the tendency of translators to use unmarked lexicogrammatical patterns rather than untypical grammar and lexis (Mauranen 2006, 96). Normalisation bears resemblance to Gideon Toury’s law of growing standardisation, defined by him as the tendency to choose ‘more habitual options offered by a target culture’ (1995, 268), as a result of which translations show ‘reduced rates of structuration (that is, simplification, or flattening)’ (Toury 1995, 273). This may lead to what Baker refers to as ‘levelling-out’ – that is, the tendency of translations ‘to gravitate towards the centre of a continuum’, as a result of which translations are less idiosyncratic, show lower variance and are more alike than the originals (Baker 1996, 184).

On the other hand, translations provide ample counterevidence of oddity and departure from what is typical in the target language (TL) (Mauranen 2007, 41; Toury 1995, 208). One type of oddity is underrepresentation of unique items in translations. Unique items are TL features without straightforward counterparts in the SL; they may be lexical, phraseological, syntactic or textual, and ‘they do not readily suggest themselves as translation equivalents, as there is no obvious linguistic stimulus for them in the source text’ (Tirkkonen-Condit 2004, 177–178). As a consequence, they are expected to appear with lower frequency in translated texts than in nontranslated ones (Tirkkonen-Condit 2004, 178). This hypothesis was inspired by Katharina Reiss’s observation (1971, 19) of ‘missing words’ in translations, due to translators’ failure to exploit the full potential of the TL linguistic resources (Tirkkonen-Condit 2004, 182). The hypothesis was developed by Sari Eskola, who found that translators over-represent those SL features which have direct equivalents in the TL (2004, 96). Kirsten Malmkjær observes that the unique items hypothesis refines our understanding of interference and differences between translations and nontranslations, attributing them to the TL’s unique items rather than ST interference: ‘what determines the outcomes of this interference may be the target pole, if not alone, then as much as or more than the source pole, which we have tended to think of as the major determinant of the shape of the translation’ (2007, 57).

Another factor which affects textual fit is interference, understood as excessive SL influence on the target text. Toury observes that ‘phenomena pertaining to the make-up of the source text tend to be transferred to the target text’ (Toury 1995, 275). Interference may be realised as a negative transfer (deviations from ‘normal codified’ TL patterns) or a positive transfer (‘greater likelihood of selecting features which do exist and are used in
any case’) (Toury 1995, 275). Toury draws attention to the fact that interference is manifested not only as easy-to-observe ungrammatical distortions of TL patterns, but also as more subtle and usually unnoticed distortions of frequency (‘greater likelihood’) in the distribution of TL patterns. He argues that interference ‘is a kind of default’ which requires special efforts and conditions to be overcome by a translator and is caused by cognitive processes activated during rapid bidirectional switches between SL and TL and by socio-cultural conditions, including the translator’s expertise (1995, 275–277).

For the purposes of this paper the metaphor of textual fit will be extended beyond the hypotheses of translation universals and used as a measure of how translated law departs from target language conventions for the legislative genre. It will be understood as a linguistic distance between translations and nontranslations measured in terms of underrepresented and overrepresented lexicogrammatical patterns. In this study the focus will be on those patterns related to deontic modality. It is hypothesised that the textual fit is shaped by various factors, such as translation-process constraints, interference, socio-cultural norms, translation errors and, notably, the hybridity of EU discourse.

**EU translation as a challenge to the central concepts of translation studies**

The translation of multilingual EU law is a category in its own right, which challenges some central concepts of translation studies and is affected by a unique combination of political, ideological, and procedural factors. Anne Lise Kjær convincingly points out that it requires a distinct theoretical framework because traditional theories of legal translation are inadequate to account for it (Kjær 2007, 70, 80). However, EU translation is still a rare object of research within translation studies (cf. Koskinen 2008, 27) and such a theoretical framework has not yet been developed. There are, nevertheless, an increasing number of publications on EU translation from the fields of linguistics and law, and these are throwing more light on the factors which affect the translation process and product.

First of all, translation of EU multilingual law differs from traditional legal translation. In most cases a translated legal text is only a translation, an informative text which loses its prescriptive nature and has no legal force: it ‘is a Verständnishilfe, having the status of a parallel text, a gloss or a commentary to be used as a key of access to the original’ (Garzone 2000, 6). In contrast, the translation of EU multilingual law has an authoritative status. Authoritative translations, as highlighted by Susan Šarčević, ‘enable the mechanism of the law to function in more than one language’ because they are ‘[v]ested with the force of law’ (1997, 21). The legal consequence is that after the authentication procedure, translations are equally authentic as the originals. This procedure is not unique to the EU and may be found in some multilingual countries; however, the translation of EU law differs from other cases due to the unprecedented scale of multilingualism and the complex interplay of supranational and national elements. Under the multilingualism policy, EU-wide legislation is adopted in 24 official languages and is applicable in 28 Member States. This approach, referred to as the principle of equal authenticity (Šarčević 1997, 64), implies that from the legal point of view, all language versions are equally valid. In the case of interpretative doubts, which are resolved by the European Court of Justice with a flexible teleological approach (cf. McLeod 2011, 294), no version is more authentic than another. EU law is interpreted by the Court of Justice by comparing all the language versions, taking into account the actual intention or purpose of an act emerging from all the versions.

Another reason why the translation of EU law deserves to be acknowledged as a category in its own right is the fact that it challenges the central concepts of translation
studies, such as source text, target text, translation process and equivalence. First, unlike in typical translation situations, the drafting and translation of EU legislation take place concurrently and are an intertwined process. Although the proposal for a legal instrument is drafted in a procedural language only (mainly English), it is then translated into the other official languages before it reaches the Council; hence, translation is involved at all stages of the drafting process rather than at the final stage only (cf. Doczekalska 2009, 360). The source text is revised, discussed and circulated for consultation in national languages. The final joint text, after negotiation between the Parliament and the Council, is prepared in English, and then all the language versions are finalised (Meunier 2013).

Second, EU multilingualism blurs boundaries between the ST and TTs (Felici 2010, 105) and replaces them with ‘language versions’. The source text is a collective product rewritten by many authors (Koskinen 2000, 59). Because of the intertwined drafting/translation process, that text is unstable and non-final (Wagner 2000), dynamic and recycled: ‘a fluid and changeable mass of text, composed of recycled translation, new linguistic material from both the core or tool languages as well as national languages incorporated in the core languages’ (Dollerup 2004, 197). In principle, there is no original and there are no translations; all language versions form a single legal instrument presumed to have the same meaning in all the languages. As pointed out by Strandvik, Vavrik, and Beaven (2011), both the complexity of the legislative procedure and the fact that a legal instrument passes through three institutions with their own translation services create problems at various stages of translation. The institutions may work concurrently on the same text and their translation services may work concurrently on its translation; as a result, there is no clear ‘master version’ of the ST and of the translations (Strandvik, Vavrik, and Beaven 2011). After authentication – that is, publication in the Official Journal, which should be seen as the final stage of the translation process – the ST and TTs are substituted by language versions of equal legal force.

Third, it is argued that EU translation requires a new approach to equivalence, also known as concordance between language versions. Šarčević emphasises that ‘the principle of fidelity to the source text is losing ground to the principle of fidelity to the single instrument’ (1997, 112). Equivalence is presumed to exist between all language versions of an instrument – that is, between the original and the target text, but at the same time between translations into other languages. As argued by Kaisa Koskinen, equivalence is ‘an a priori characteristic’ of EU translation: it is ‘existential equivalence’, because the main symbolic function of the language versions is to exist, and this overrides their communicative function (2000, 49, 51). Considering its legal effect, Arturo Tosi names it ‘mandatory legal equivalence’, pointing out that since language versions have the same legal value, they may be ‘invoked indiscriminately by EU citizens’ whether or not they have linguistic equivalence in terms of meaning (2002, 180). Kjær goes as far as to question the use of the term ‘translation’ in the context of EU law, finding it more appropriate to refer to the process as ‘interlingual text reproduction’, because the main focus of EU translation is not to ensure conformity to TL conventions but to ensure consistency among all the language versions (Kjær 2007, 87).

Finally, as noted by Šarčević, the success of multilingual translation is determined by its uniform interpretation and application (1997, 73). This claim may be interpreted in terms of quality requirements. Uniform interpretation and application should be seen as a critical determinant of quality in EU translation.
These challenges demonstrate how EU translation differs from typical legal translation. The next section maps other factors which contribute to the hybridity of EU discourse and affect the textual fit of EU law.

**The hybridity of EU discourse: EU language as translationese**

EU law is a melting pot for national legal systems, languages and cultures. It is described as a hybrid legal system (cf. Mattila 2013, 138; Cao 2007, 150; Koskinen 2000, 63, fn 8). EU law was initially strongly influenced by French and German law, and later by UK common law (Mattila 2013, 138), and it is not an established coherent and independent legal system. As Kjær points out, ‘it owes its existence to the national legal systems in which it is applied’ (2007, 76). Its specific feature is that legislation is drafted in the EU system but is applied in 28 national legal systems (Kjær 2007, 79). The common pan-European system of concepts is not fully developed yet and is heavily based on national conceptual systems (Šarčević 2010, 27; Kjær 2007, 79). Additionally, since case law is still forming, the meaning of legal concepts is devoid of ‘the deep level structure’ and is ‘inherently unstable, fuzzy, and vague’ (Kjær 2007, 81).

Does EU law have a distinct language? Opinions vary. At one extreme, the existence of an independent language of EU law is questioned because it lacks a fully autonomous conceptual system. As underlined by Kjær, ‘EU law has no language of its own. EU law is expressed in the 23 national languages … The problem is that the legal terminology of the 23 official languages is rooted in, and derives its meaning from, the national legal systems of the Member States’ (2007, 79). At the other extreme, there are (much more frequent) voices claiming that EU texts have developed a specific language (cf. Trosborg 1997, 153; Koskinen 2000, 53; Tosi 2005, 385; Catenaccio 2008, 259), which is perceived as a new legal variant of the official languages (cf. Koskinen 2000, 53; Salmi-Tolonen 2004, 1187). Its distinctness is sharpened by a variety of names assigned to it, such as Eurospeak, Eurojargon, Eurolanguage, Eurolect, EUese, Euro-Legalese, Union legalese, Eurofog, to name a few. To reconcile the two extremes, EU language should be perceived as a multilingual legal language realised in distinct legal varieties of national languages with an interdependent conceptual system.

Like EU law, its language is perceived as a hybrid at the intersection of underlying cultures and languages (cf. Trosborg 1997, 147; Tirkkonen-Condit 2001; McAuliffe 2011; Garzone 2000, 53; Schäffner and Adab 2001, 173). The hybridity of EU language is closely connected with multilingualism and the hybridity of EU law, leading to a constant interplay between the supranational and national elements in translation. On the one hand, drafting and translation demonstrate reduced embedding in national cultures and their neutralisation; on the other, such de-territorialisation creates a new territory, with the pan-European culture based on *acquis communautaire* and synthesising constituent national cultures.

The EU language is also affected by:

- Code-switching during multistage multilingual drafting, the source text being discussed and revised in national languages.
- Syntactic simplification of the source text at the drafting stage prescribed in the institutional drafting guidelines to reduce translation problems and inaccuracies.
- Non-native speakers of English and French who write the majority of texts, as well as native speakers who work in multilingual environments and face ‘some erosion
of their ability to speak and write their mother tongue’ (Wagner, Bech, and Martínez 2002, 76).

• Low quality of drafting as a constraint faced by translators, contributing to the low quality of translations (cf. Tosi 2002, 184; Caliendo 2004, 161).

• Institutionalisation of translation: institutional norms devised to rationalise, standardise and control the translation process. This results in high standardisation and formulaicity of EU texts (cf. Trosborg 1997, 151).

• Preference for literal translation strategies at the syntactic and terminological levels; avoidance of cultural adaptation or domestication (cf. Koskinen 2000, 54–56; Garzone 2000, 6; Wagner, Bech, and Martínez 2002, 64).

Differences between the EU and national languages of the law have been identified at a number of levels, including discursive organisation, syntax, terminology and lexis (Catenaccio 2008, 259; Tosi 2005, 385). One of the most visible differences is the macrostructure of EU legal instruments – their unique textual formats and, in particular, their lengthy preambles, with citations and recitals. Such non-normative preambles are untypical, for example, for Polish (Gizbert-Studnicki 1986, 61–63), Danish (Trosborg 1997, 152) and Finnish (Piehl 2006, 185). At the syntactic level, EU texts are marked by a ‘reduced inventory of grammatical forms’ (Schäffner and Adab 2001, 178), frequent use of impersonal constructions, negations and nominalisations (Caliendo 2004, 163–164; see also Trosborg 1997, 154) and extensive chains of modifiers (Koskinen 2008, 133). The distance between EU language and national legal language (the textual fit) will vary between national languages and may be smaller for the drafting languages. The assessment of textual fit will also depend on the drafting tradition. From the perspective of Danish and Finnish, with their strong clarity requirements (cf. Salmi-Tolonen 2004, 1170–1171), EU language has low readability (cf. Trosborg 1997, 154; Koskinen 2000, 56; Piehl 2006, 191). On the other hand, Tosi argues that, compared to legal Italian, EU language is not structurally complex and is devoid of ‘pretentious juridical style’ (2002, 171). At the semantic level, as observed by Tosi, EU language tends to avoid archaisms, direct borrowings and ‘unnecessary technicisms’ (2002, 171). Tosi believes that what is foreignising is ‘lexical vagueness and weak logical connections’ (2005, 385). Similar views concerning abstract language, circumlocutions and redundancy are expressed by Giuditta Caliendo (2002, 166).

Nowadays, English is the EU’s main procedural language, and it may be expected to affect other language versions as a result of interference. EU English originates from translationese: the UK joined the Community in 1973, when a body of Community legislation already existed, and this was translated from what were then the official languages into English. As observed by Šarčević, the fact that English is the main procedural language does not imply a preference for the common law tradition, because EU instruments are formulated in the EU drafting style (2001, 43). EU English is referred to as ‘the new pidgin’ (Seymour 2002), or a Continental variety of English (Dollerup 2001, 287), and has been reported to differ from UK English both in terminology (Catenaccio 2008, 276) – which, given the supranational network of concepts, is not surprising – and in grammatical structure (Salmi-Tolonen 1994, Foley 2001; Trebits 2009; Jablonkai 2010).

In respect of Polish, no thorough studies have been conducted to date. Available studies are based on very small text samples, if any, which do not permit valid generalisations. They report syntactic calques, borrowings, neologisms and stylistic problems encountered in translated EU law (cf. Szczepankowska 2006, 3; Ciostek 2010, 25). It is
clear that more research is needed into the nature of EU language, and this project intends to fill that gap.

Corpus design and methods
The methodology of the project is based on Baker’s pioneering method of studying translations against nontranslations using comparable monolingual corpora (cf. Baker’s seminal papers, 1993, 1995, 1996). On the one hand, some scholars argue that this method of researching translation solely on the basis of comparable corpora without STs has a methodological bias because it does not account for interference (cf. Bernardini and Zanettin 2004, 59; Pym 2010, 82; Bernardini and Ferraresi 2011, 228); on the other, it is emphasised that techniques of comparable corpus analysis are far more advanced and sophisticated than those of parallel corpora (Bernardini and Ferraresi 2011, 228). With these limitations in mind, the main study was based on comparable Polish corpora, but I also use the corresponding English version of the JRC Acquis as reference.

The comparable corpora used in the study are the JRC Acquis Corpus of translated EU law and the Polish Law corpus of nontranslated legislation:

- The JRC Acquis Corpus was created by the European Commission’s Joint Research Centre (JRC) for the purpose of building large-size parallel corpora; its design is discussed in detail in Steinberger et al. (2006). Version 3.0 of JRC Acquis (released in 2007) was downloaded as an independent Polish corpus from the JRC website http://optima.jrc.it/Acquis/, then converted and cleaned of some noise. It comprises a variety of instruments, such as regulations, directives, decisions, recommendations, opinions, case law, agreements, EP resolutions, common positions, communications, etc., subsumed under the broad category of acquis. The instruments cover the period from 1958 to 2006. The structure of EU law is different from that of Polish law; therefore, to ensure comparability of the translation and nontranslation corpora, the JRC Acquis was sorted manually to isolate two types of secondary legislative instruments: resolutions (R-Acquis) and directives (L-Acquis). Resolutions, which have general application, are binding in their entirety and are directly applicable in all the Member States, while directives are binding as to the result to be achieved upon each Member State to which they are addressed, but leave the choice of form and methods to national authorities (Article 249 EC Treaty). Other types of secondary legislation – decisions which are binding only on those to whom they are addressed, and ‘soft law’, or recommendations and opinions, which have no binding force – were excluded. The corpus also excludes the Treaties (the primary legislation) because they correspond more closely to international legal instruments, in contrast to secondary legislation, which is closer to national legislation (cf. Kjær 2007, 78; Felici 2010, 10). This selection of instruments is believed to ensure comparability of the JRC Acquis and PLC corpora. The corresponding Resolutions and Directives sections of the English JRC Acquis were also isolated to check if untypical distribution may result from interference.

- The Polish Law Corpus (PLC) is a reference corpus for translated acquis which was compiled by the author. It contains nontranslated Polish legislation in force as at 1 August 2011. The files were downloaded from the online legislation database Lex Omega. The corpus was designed to cover the full range of variability of primary legislation of general application passed by the Polish Parliament, i.e. the Constitution.
and various types of acts of parliament known as ustawa – all substantive law and procedural codes (ustawa kodeks), law-type statutes (ustawa prawo), tax and election statutes (ustawa ordynacja), and the remaining standard (thematic) statutes – as well as a representative selection of repetitive and less influential statutes: budgetary acts, repealing statutes and ratifying statutes. The PLC corpus covered 71% of the population of Polish acts of parliament at the cut-off date.

Table 1 shows basic statistics for the corpora.

Owing to the different sizes of the corpora, all frequencies obtained in the study were normalised to one million words. The corpus analysis software used was Wordsmith Tools, version 6.0.

Deontic modality

The primary functions of law, according to H.L.A. Hart, are to impose duty and to confer power (1961, 27). These functions are realised through deontic modality – that is, modals and related patterns which convey obligation and permission. Such modals also play an important role in ‘the realization of the speech acts that constitute a legal text’s pragmatic force and legal validity’ (Garzone 2013, 68). Deontic modality was chosen for the present analysis of the textual fit because among the grammatical categories that vary across languages, modality is supposed to be one of the features which vary the most (cf. Palmer 2001). Palmer’s observation is true for legislation and is supported by the keyword lists of the corpora. The keywords of the translation corpora contain high-ranking obligation modals, such as musi [(it/s/he) must] (#27 in the list), muszą [(they) must] (#32), należy [(it should)] (#35) and powinni [(they) should] (#83), while the keywords of the non-translation corpus (PLC) contain a large number of variant forms of obowiązek [obligation] and obowiązany [obliged], indicating that this is an area of large difference. The choice was also dictated by the central role of deontic modals in the formulation of legal norms and their high frequency in legal language (reported in Gizbert-Studnicki 1986, 82; Maley 1994, 20). Because of their central role, high frequency and related cognitive salience, deontic modals are a key generic feature of legislation.

For ease of presentation, modals and semi-modals were divided according to the duty-imposing (deontic obligation) and power-conferring (deontic permission) functions of law. This division entails a certain degree of simplification, because most modals are polysemous and their meaning often changes when they are negated. For example, obligation-coding shall may express prohibition (shall not) or permission when combined with certain verbs, such as shall be empowered, shall be entitled, shall be authorised. In the following sections, discussion will focus solely on obligation and permission modals.
The use of modals in enacting terms is subject to institutionalisation.⁸ The English Style Guide⁹ (2012, 35–36) requires EU drafters to use modals as summarised in Table 2.

According to the institutional guidelines, obligation should be imposed in English by using shall. Let us first check the distribution of obligation modals in the English Acquis. The data show that the most frequent modal is shall, but must and should – which, according to the guidelines, must not be used in enacting terms – are also common in the corpora (see Table 3).

While shall fell victim to the ‘modal revolution’ under the Plain Language Movement in most jurisdictions (cf. Garzone 2013, 69), this was not the case with EU legislative language. As shown in the table above, shall accounts for nearly 70% of obligation modals in the Acquis. Not all uses of shall express obligation. As noted by Giuliana Garzone, shall can also assume a ‘diluted’ performative meaning by ‘bring[ing] about a new state of things or a modification in the previous state of things’ (2001, 157). This meaning (declarative terms) is required by the English Style Guide (2012, 35) to be communicated through the present tense (see Table 2), but this is not always the case. Shall is one of the most abused modals; for example, Richard Foley reports that it is unmotivated in 60% of cases in his EU law corpus (2001, 192). The high salience of must

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**Table 2. Verbs in enacting terms (main clauses).**

<table>
<thead>
<tr>
<th>Imperative terms</th>
<th>Positive command</th>
<th>Negative command</th>
<th>Positive permission</th>
<th>Negative permission</th>
<th>Declarative terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>shall</td>
<td>This form shall be used for all consignments.</td>
<td>The provisions of the Charter shall not extend in any way the competences of the Union ...</td>
<td>This additive may not be used in foods. (prohibition)</td>
<td>This test need not be performed in the following cases:</td>
<td>Regulation ... is (hereby) repealed.</td>
</tr>
<tr>
<td>shall not</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>may not</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>may</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>For the purpose of this Regulation, ‘abnormal loads’ means ...</td>
</tr>
<tr>
<td>need not</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**Table 3. Obligation modals and semi-modals in EN Acquis; distribution per one million words.**

<table>
<thead>
<tr>
<th>EN R-Acquis (Regulations)</th>
<th>EN L-Acquis (Directives)</th>
</tr>
</thead>
<tbody>
<tr>
<td>shall</td>
<td>8879</td>
</tr>
<tr>
<td>must</td>
<td>1154</td>
</tr>
<tr>
<td>should</td>
<td>2169</td>
</tr>
<tr>
<td>is/are to</td>
<td>439</td>
</tr>
<tr>
<td>has/have to</td>
<td>135</td>
</tr>
<tr>
<td>need to</td>
<td>32</td>
</tr>
<tr>
<td>ought</td>
<td>2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>12810</td>
</tr>
</tbody>
</table>
in the Acquis, which was until recently unusual (cf. Trosborg 1995, 42–43), is now neutralised by the growing use of must in other jurisdictions. For example, a recent study by Garzone shows that UK legislation has now practically replaced shall with must and the semi-modal is/are to; as a result, the frequency of must has grown by around 17 times since the mid-1970s and is now even higher than its frequency in the Acquis (2013, 70, 75). On the other hand, the high frequency of should contrasts with its rarity in UK statutes, which avoid it due to its ‘weak’ imposition of obligation (cf. Trosborg 1995, 42–43; Garzone 2013, 70).

There are no similar institutional guidelines for Polish translators on how to translate modals. DGT’s Vademecum tłumacza, a Polish institutional style guide, does not have a separate section on the use of verbs; it contains only some passing comments with regard to equivalents of shall and should. This results in lower institutional control over the Polish version of EU law.

Standard ways of expressing obligation in Polish legislation include verbs in the present tense, verbs in the future tense, modal verbs and semi-modals, as well as phrasemes (cf. Grzybek, Kaczmarek, and Matulewska 2012). This discussion will centre on modals and deontic phrasemes identified in the keyword lists as an area of large difference. Polish has a range of modal and semi-modal structures; some are person and gender-inflected (musi, powinien and its older form winien), while others (należy, trzeba) are used only in impersonal structures as a substitute of an inflected modal with a passive voice verb. Musi is the closest equivalent of must and powinien is the closest equivalent of should, both in terms of their grammatical behaviour and their strength of obligation. Należy and trzeba are unique in terms of their grammatical behaviour as they form impersonal subjectless sentences. They do not have a direct equivalent in English and may be approximated by (one) should, it is necessary to. As shown by their profiles in the National Corpus of Polish, trzeba is most frequent in spoken language and is absent in official language while należy displays the opposite distribution pattern – that is, it is most frequent in official Polish and is rare in spoken language.

Table 4 shows the distribution of obligation modals in the translation corpora (R-Acquis/regulations and L-Acquis/directives) against Polish law (PLC).

The data reveal that these modals have a strikingly different distribution across the corpora. All obligation modals are strongly overrepresented in translations, the most frequent being musi, należy and powinien. It is tempting to jump to the conclusion that the overrepresentation is proof of normalisation – the translators’ tendency to exaggerate TL features – however, closer analysis shows that other explanations are more plausible.

Musi, the closest equivalent of must, appears with abnormal frequency in the Acquis, being 14 times more common in regulations and 41 times in directives than in Polish law.

Table 4. Obligation modals; distribution per one million words.

<table>
<thead>
<tr>
<th></th>
<th>Translated EU law</th>
<th>Nontranslated PL law</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R-Acquis</td>
<td>L-Acquis</td>
</tr>
<tr>
<td>1</td>
<td>musi [must]</td>
<td>958</td>
</tr>
<tr>
<td>2</td>
<td>należy [should – impersonal]</td>
<td>1640</td>
</tr>
<tr>
<td>3</td>
<td>powinien [should]</td>
<td>1494</td>
</tr>
<tr>
<td>4</td>
<td>winien [should – archaic]</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>trzeba [should – impersonal]</td>
<td>9</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>4121</td>
</tr>
</tbody>
</table>
This modal is very rare in Polish law and appears in only 20% of statutes in the corpus. Its frequent left collocates are relative pronouns (jaki, który) which introduce a subordinate clause, e.g. dane, jakie musi zawierać wniosek [data which an application must contain]. In some cases it communicates obligation: Oskarżony musi mieć obrońcę [A defendant must have counsel]; however, it tends to be coded indirectly and the focus is on the beneficiary of obligation, as in this example. In very rare cases it codes obligation directly. Interestingly, most such cases are concentrated in a single statute on explosives for civil use, which transposes Council Directive 93/15/EEC and which contains about 10% of all musi occurrences in the PLC corpus. A comparison with the Polish version of the Explosives Directive reveals that during the transposition musi was copied from the Polish version (row 1 in Table 5), which demonstrates the impact translated EU law may have on national legal language. Some musi were transposed in a more conventional way as the present tense (row 2).

The avoidance of musi in Polish law may be due to its everyday, slightly colloquial flavour and its very strong imposition of obligation, which may be perceived as too emotional and personal, and hence less impartial. It creates an impression that the EU legislature departs from the traditional declarative present tense because it lacks authority and needs to urge the recipient strongly to ensure compliance.

The overrepresentation of musi in the translated law is a result of interference; it is a straightforward equivalent of must with close formal similarity and has nearly identical distribution. Instead of looking for a more natural domesticated equivalent, translators resort to the literal equivalent, which supports Mason’s observation that calques are a default strategy in translation (cf. 2012, 406).

The analysis of the 10 directives with the highest occurrence of musi (representing 10% of musi in the total number of directives) shows that 98% of musi appear in annexes, only 0.6% in preambles and 1.4% in enacting terms. Its high occurrence in annexes is also confirmed by the top 10 regulations (8% of all musi occurrences), with 82.5% of musi in annexes, 0.5% in preambles and 17% in enacting terms. Although formally annexes are non-enacting terms in EU law (e.g. English Style Guide 2012, 36), they contain detailed rules, requirements, procedures and technical data which are not placed in the normative section for practical reasons (cf. Interinstitutional Style Guide). Annexes are untypical of Polish law, which incorporates similar requirements into the main body of a statute. This

Table 5. Equivalents of must in the Explosives Directive and the transposing statute.

<table>
<thead>
<tr>
<th>English version of Explosives Directive</th>
<th>Polish version of Explosives Directive</th>
<th>Polish transposing statute</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 The applicant must place at the disposal of the notified body an example representative of the production envisaged, hereinafter called ‘type’.</td>
<td>Wnioskodawca musi udostępnieni [must make available] notyfikowanej jednostce egzemplarz-wzór reprezentatywny dla danej produkcji, zwany dalej „typem”.</td>
<td>Wnioskodawca musi udostępnieni [must make available] jednostce notyfikowanej próbę reprezentatywną badanego rodzaju wyrobu pirotechnicznego, zwaną dalej „typem”.</td>
</tr>
<tr>
<td>2 The manufacturer must affix the CE mark to each explosive ...</td>
<td>Wytwórcza musi umieścić [must place] oznakowanie WE na każdym materiale wybuchowym ...</td>
<td>Producent umieszcza [places] oznakowanie CE na wyrobie pirotechnicznym ...</td>
</tr>
</tbody>
</table>
may be illustrated with the Explosives Directive, where safety requirements were set out in an annex which, during transposition, was integrated into the enacting terms of the Polish statute. In fact, annexes of EU instruments often impose obligation by listing requirements to be met by public and private bodies. This is evidenced by the top left collocates of musi in directives: jednostka notyfikowana [notified body], państwo członkowskie [Member State], władze [authorities], producent [producer], wytwórca [manufacturer]. This use of musi is untypical in the Polish legislation; therefore, translation of must as musi, as in the following examples, is inconsistent with the Polish drafting conventions:

EN Acquis: The notified body must audit the quality system to determine whether it meets the requirements
PL Acquis: Jednostka notyfikowana musi dokonać audytu [must perform an audit] systemu jakości, w celu ustalenia, czy spełnia on wymogi

In a few cases must was translated in conformity with the Polish law conventions, using the present tense:

EN Acquis: The manufacturer must inform the notified body which approved the quality system of any plan for substantial changes
PL Acquis: Wytwórca informuje [informs] jednostkę notyfikowaną, która zatwierdziła system jakości o wszelkich planach odnoszących się do istotnych zmian

Other cases show the phraseme jest obowiązany [is obliged]:

EN Acquis: In order to receive benefits in kind under Article 19 of the Regulation, a worker must register himself and the members of his family with the institution
PL Acquis: Aby korzystać ze świadczeń rzeczowych na podstawie art. 19 rozporządzenia, pracownik obowiązany jest zarejestrować [is obliged to register] siebie i członków swojej rodziny w instytucji.

These are, however, rare cases and must tends to be calqued as musi.

The next verb, należy, is often used in Polish law as a non-modal verb – an ordinary verb in the present tense carrying the literal sense of ‘belong to’ (one third of cases), accompanied by a deverbial noun. Thanks to the present tense, it imposes duties and tasks or grants authority:

Do zadań Funduszu należy zaspokajanie roszczeń z tytułu ubezpieczeń obowiązkowych
The Fund’s tasks shall include [literally: to the Fund’s task belongs] satisfaction of claims under compulsory insurance

Podejmowanie uchwał należy do walnego zgromadzenia
The General Meeting shall take resolutions [literally: Taking resolutions belongs to the General Meeting]

This use is rare in translated law. In Polish law należy is also a modal in definitions: należy przez to rozumieć [(one) should understand by that] (one quarter of cases) and in the salient pattern do wniosku/pisma należy dołączyć [to the application/letter (one) should attach]. As a modal, należy combines with an infinitive to form an impersonal agent-defocusing structure, in which an entity on which the obligation is imposed is not mentioned in the subject position or at all. This shifts the focus to a verb and its object. Although należy does not have a direct equivalent in English, it
is overrepresented in translations, being prompted by should, shall and must accompanied by the passive voice; it is also prompted by it is necessary to. Należy is three times more common in regulations and five times more common in directives than in Polish law. Its use differs in and across translations where it functions as a modal accompanied by an infinitive, imposing an obligation, in particular in annexes to directives:

EN Acquis: The tests shall be performed according to the protocols specified by the Member States designated as rapporteur.
PL Acquis: Badania należy przeprowadzić [(one) should perform the tests] zgodnie z protokołami określonymi przez Państwa Członkowskie wyznaczone jako sprawozdawcy.

The expression is also used as a modal specifying necessity, usually in the process of inference in preambles of regulations:

EN Acquis: It is therefore necessary to provide for an extension of the transitional period during which the use of conventional feedingstuffs may be authorised.
PL Acquis: Należy zatem przewidzieć [(one) should therefore provide for] przedłużenie okresu przejściowego, podczas którego dozwolone jest stosowanie konwencjonalnych pasz.

Other inference patterns include należy zauważyć, że [it should be noted that] and należy wziąć pod uwagę [it should be taken into account]. It is worth noting that the first top collocate of należy in the Regulations corpus is zatem [therefore], which has significantly lower frequency in the Directives corpus and is absent in nontranslated law. Its top collocate in the Directives corpus is podać [give/report], collocating with informacje [information] and dane [data], which is uncommon in the other corpora. Differences are further attested by the fact that 58% of należy in regulations and 26% in directives appear in the initial part of instruments (the first 1000 words) – that is, mostly in preambles. Preambles are non-enacting terms with citations which establish the legal basis of the instrument and complex recitals of political considerations and rationales for adopting an instrument (Wagner 2000). Non-enacting terms – that is, preambles and annexes – should use non-mandatory language to avoid confusion with enacting terms (Joint Practical Guide). Non-enacting terms are untypical in some national drafting styles, for example in Polish. Therefore, another plausible explanation of the overrepresentation of należy is the different structure of EU instruments, with extensive non-enacting parts which use modals in an epistemic rather than deontic meaning.

The modal powinien, which is the closest equivalent of should, functions only as a modal verb followed by an infinitive. It is also more ambiguous because it imposes weaker obligation than należy. It is three times more frequent in directives and twice as frequent in regulations. Similar to należy in translated law, it also appears more frequently in the initial parts of regulations compared to directives, due to the high distribution of should in preambles. The main difference in the use of powinien between translated and nontranslated language is that its main collocation is the passive voice, which is two times more common in translations:

EN Acquis: A cultivation contract shall be concluded for each marketing year.
PL Acquis: Umowa kontraktacji powinna być zawierana [should be concluded] na każdy rok gospodarczy.
The Polish translation sounds unnatural because Polish does not ‘like’ the passive voice (cf. Brajerski 1995 [1972], 373–381) and prefers other impersonal structures which conventionally set the authoritative tone. A more natural translation would be a się impersonal structure such as in the declarative sentence Umowę kontrakcji zawiera się na każdy rok gospodarczy [a cultivation contract concludes itself for each marketing year]. This example, taken from enacting terms, also shows that the overrepresentation of powinien in translations may be due to translators’ idiosyncratic decision to translate shall as powinien instead of the standard present tense, which reduces the force of obligation. In nontranslated law, powinien appears much more often in subordinate clauses, where it does not impose an obligation, and in the salient pattern powinien zawierać [should include], where it does.

The distribution of obligation modals (as well as permission modals, to be discussed later) is twice as high in directives as in regulations, and this ratio is higher than in the corresponding English versions. According to Guideline 2 of the Joint Practical Guide the choice of verb and tense should correspond to the nature of an act. Rights and obligations in regulations, which are acts of general application, should be formulated in a straightforward way and addressed directly to the addressee without references to national authorities, e.g. Every company shall keep a register ... Regulations have a performative power connected with their direct applicability and due to the fact that ‘the norm does not prescribe a command but automatically performs it’ (Caliendo 2007, 245). Directives, which are addressed to the Member States, indirectly define rights and obligations via the intermediation of the Member States, e.g. Member States shall ensure that every company keeps a register ... They impose an obligation on the Member States to ensure that an objective will be attained. Directives are worded in a more general way to leave discretionary power to the Member States in transposition. Caliendo observes that modals in regulations ‘are instrumental in establishing a binding legal status which denies any margin of noncompliance’, while modals in directives, which are more prescriptive, are used ‘to raise expectations in terms of a future behaviour on the part of the addressee’ (2007, 257). This indicates that modality is very sensitive to text type and function.

Another standard way of imposing obligation in Polish law involves a number of alternative phraseological patterns containing obligation-denoting lexemes, such as obowiązany [obliged] and obowiązek [obligation] (see Table 6).

The corpus data show that the most salient pattern is jest obowiązany [is obliged], a slightly archaic form restricted to legal language only (NKJP data). It consists of to be in the present tense and an adjectival passive participle:

PLC: Pracodawca jest obowiązany pokryć koszty poniesione przez pracownika...
[The employer is obliged to cover costs incurred by the employee]

Table 6. Phraseological substitutes of obligation modals; distribution per one million words.

<table>
<thead>
<tr>
<th></th>
<th>Translated EU law</th>
<th>Nontranslated PL law</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R-Acquis</td>
<td>L-Acquis</td>
</tr>
<tr>
<td>1     jest obowiązany [is obliged]</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>2     jest zobowiązany [is obliged]</td>
<td>67</td>
<td>93</td>
</tr>
<tr>
<td>3     ma obowiązek [has an obligation]</td>
<td>8</td>
<td>19</td>
</tr>
</tbody>
</table>
The sentence is a declarative descriptive statement; yet there is no doubt as to its normative nature. Obligation is conventionally communicated by placing the emphasis on the final stage/result of the process: the obligation has been imposed and the subject is now under the obligation. In nontranslated law jest obowiązany tends to collocate with individuals and private institutions (ubezpieczyciel [insurer], podatnik [taxpayer], bank [bank]), while obligation-coding present-tense verbs tend to collocate more frequently with public institutions (minister [minister], komisja [commission]).

While jest obowiązany is extremely common in PLC, even more common than the top ranking modals in the same corpus, it is virtually non-existent in translated law. Jest obowiązany seems to be a unique item which is not prompted in translation. As confirmed empirically by Sonja Tirkkonen-Condit, if unique items are underrepresented, translations are perceived as ‘less normal’ (2002, 209). The absence of this key generic structure may give EU legislation a feeling of translationese.

The rare occurrences of jest obowiązany in translated law are usually triggered by shall:

EN Acquis: The masters of Community fishing vessels fishing for a stock or group of stocks shall keep a logbook of their operations
PL Acquis: Kapitanowie statków rybackich Wspólnoty łowiący zasoby lub grupy zasobów obowiązani są [are obliged] prowadzić dziennik połowowy

Occasionally the same function is played by must, need and corresponding phrasemes: owes an obligation, shall be/is obliged to, are required to.

EN Acquis: The originator’s institution, any intermediary institution and the beneficiary’s institution (...) shall each be obliged to execute that credit transfer
PL Acquis: Po otrzymaniu zlecenia na transgraniczny przelew bankowy instytucja zleceniodawcy (...) są, każda z osobna, obowiązane [are obliged] zrealizować przelew bankowy

The synonymous variant of jest obowiązany which is more frequent in general Polish and also appears in other genres, jest zobowiązany, has a similar distribution in translated and nontranslated law. In fact, it is even more common in translated law than jest obowiązany. This may indicate that patterns which are more frequent and hence cognitively salient in general Polish are likely to be chosen by translators at the expense of patterns which are less common in general language but more common in legal language. In fact, as semi-expert users of legal language, translators may not be fully aware of TL legislative conventions. Another related pattern, mieć obowiązek [to have a duty], is not as common in PLC; however, it is even more rare in translated law, which shows a clear preference for modals.

Permission

The second group of modals confers power and rights (permission) and communicates lack of prohibition. This group is markedly less frequent than obligation modals. Permission is mainly expressed through may in English (see Table 7).

In Polish, permission is realised through modal equivalents of may: the singular personal form może (a PLC keyword), the plural personal form mogą (an Acquis keyword due to combinations with Member States) and impersonal variants można and wolno (see Table 8).
Permission modals are 1.5 times more frequent in directives than in regulations. This supports Caliendo and colleagues’ observation that they are ‘an instrumental necessity’ in directives, ensuring ‘a margin of manoeuvre and flexibility’ to account for diverse legal and linguistic contexts during transposition (Caliendo, Martino, and Venuti 2005, 388) and enabling Member States to choose from a range of options to meet the prescribed objective (2005, 387). Interestingly, in contrast to regulations, the distribution of modals in directives is nearly identical to that in nontranslated law, which contradicts the leveling-out hypothesis, according to which translations tend to be more similar to themselves. The data indicate that the distribution of permission modals is closely linked to text type, which overrides its translated/nontranslated nature as well as translation-process constraints. This may also be caused by a symmetric use of these structures in EU English directives and Polish law, and may not be true for other language pairs.

Nontranslated law also communicates permission through a number of verbal phrasemes (see Table 9).

| Table 7. English permission modals in EN Acquis; distribution per one million words. |
|----------------------------------|----------------------------------|
| EN R-Acquis (Regulations) | EN L-Acquis (Directives) |
| may | 2244 | 3245 |
| can | 414 | 617 |
| could | 201 | 130 |
| might | 52 | 81 |
| need not | 19 | 70 |
| TOTAL | 2930 | 4143 |

<p>| Table 8. Polish permission modals; distribution per one million words. |
|----------------------------------|----------------------------------|</p>
<table>
<thead>
<tr>
<th>Translated EU law</th>
<th>Nontranslated PL law</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-Acquis</td>
<td>L-Acquis</td>
</tr>
</tbody>
</table>
| 1  
może, mogą [may] | 2676 | 4083 | 4248 |
| 2  
można [may – impersonal] | 426 | 631 | 341 |
| 3  
wolno [(it) is allowed to – impersonal] | 9 | 34 | 27 |
| TOTAL | 3111 | 4748 | 4616 |

<p>| Table 9. Permission-coding phraseological patterns; distribution per one million words. |
|----------------------------------|----------------------------------|</p>
<table>
<thead>
<tr>
<th>Translated EU law</th>
<th>Nontranslated PL law</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-Acquis</td>
<td>L-Acquis</td>
</tr>
</tbody>
</table>
| 1  
przysługuje [is entitled] of which | 22 | 17 | 783 |
| 2  
przysługuje prawo [is entitled to a right] | 1 | 3 | 88 |
| 3  
ma prawo [has a right] | 30 | 45 | 199 |
| 4  
zachowaj prawo [preserves a right] | 2 | 2 | 24 |
| 5  
nabywa prawo [acquires a right] | 0 | 0 | 39 |
| 6  
jest uprawniony [is entitled] | 42 | 31 | 85 |
| 6  
jest dozwolony [is allowed] | 22 | 42 | 12 |
| TOTAL | 118 | 137 | 1142 |
Przysługuje [is entitled to], which is one of the PLC keywords, is strongly underrepresented in translation corpora. It often collocates with nouns denoting a right, such as prawo, uprawnienia. With the exception of ma prawo [has a right], the remaining expressions have low frequency in the corpora. Ma prawo is underrepresented in translated law, where it is occasionally prompted by shall have the right/power to. Overall, the deontic phrasemes have a markedly higher distribution in nontranslated law and are rarely prompted in translations.

**Discussion and conclusions: consequences of divergent textual fit**

The corpus data show sharp differences in the distribution of modals in translated and nontranslated law, in particular a strong overrepresentation of obligation modals and a strong underrepresentation of deontic phraseological patterns in translated law. The textual fit of translated EU law, measured in terms of overrepresentation and underrepresentation of the deontic modality patterns covered by the study, may be assessed as divergent due to significant departures from target readers’ expectations and target language conventions for the legislative genre. In light of other departures from the TL conventions, which were observed for most generic lexicogrammatical patterns in the corpora, the divergent textual fit of translated EU law contributes to the emergence of a new ‘European’ variety of legal Polish (a Eurolect). The study confirms that EU law is communicated in distinct varieties of national languages – varieties that are hybrid and foreignising.

The divergent textual fit of translated EU law against national law has been shown to result from a combination of factors: interference, preference for literal translation strategies, translators’ idiosyncratic decisions/errors, asymmetries between the source and target language, different functions and contexts of use of EU and national law, different structures of EU and national law instruments and institutionalisation of drafting and translation. Institutionalisation is much higher in the English version due to explicit guidelines and the status of English as a procedural language. In the absence of detailed guidelines for Polish translators, Polish translations are less institutionalised and normalised. Deontic modals in translated EU law show close structural similarity to modals in the English Acquis, which is a risk-aversion option (cf. Pym 2005) for translators who resort to literal translation strategies, rarely striving to overcome interference and conform to natural conventions of the national language of the law. Thus, the data do not support the normalisation hypothesis. The divergent textual fit is also caused by asymmetries between EU English and Polish, a Slavonic language. Sandra Halverson, who argues that such asymmetries shape the language of translations, explains the nature of overrepresentation in TTs through ‘a gravitational pull’ exerted by highly salient structures of the SL which prompt corresponding TL structures (Halverson 2003, 223–224). This was observed, for example, for the salient must which prompted the corresponding musi in translation. The overrepresented obligation modals musi, należy and powinien have high salience in everyday Polish and may seem natural; however, they are untypical of the legislative genre. The shifts are therefore subtle: the structures are not grammatically incorrect but differ in terms of frequency of distribution for the genre. In respect of underrepresentation, Halverson hypothesises that if a TL structure is not shared with the SL or is weakly connected, it will not be prompted and will be underrepresented in translation (2003, 223–224). This was confirmed for deontic phrasemes, such as jest obowiązany, which were not prompted in translation. Other asymmetries which contribute to the divergent textual fit are text structure and function. EU instruments have a different structure, with extensive non-normative preambles and annexes which in principle do not impose obligations and
are required to use non-mandatory language. This applies in particular to preambles which use modals in a non-deontic way (should, należy, powinien); however, as demonstrated in the analysis, musi and należy tend to impose obligation in annexes. In respect of text function, it has been shown that deontic modality is highly sensitive to text type and the frequency of modals reflects subtle differences between the function of regulations and directives. For example, the frequency of może in L-Acquis is more similar to its frequency in nontranslated law than that in R-Acquis, which provides evidence against the levelling-out hypothesis. To sum up, the divergent textual fit of translated EU law cannot be attributed to the constraints of the translation process only but is shaped by a combination of factors, the impact of which is difficult to single out.

As noted by Shamaa, an untypical distribution may contribute to the translation-like flavour of a text by creating ‘a vague impression of being culturally exotic’ (1978, 172). Cultures may differ in how they perceive new varieties of national languages. Anthony Pym observes that native speakers of English and Spanish, who are frequently confronted with other varieties and non-native distortions of their language, have higher tolerance for Eurospeak and its opacity (2000, 6). By contrast, speakers of a less used language, who are ‘emotionally much less equipped to handle its newly won status as an international language’, are more prone to perceive EU language as alien – something which has been confirmed in terms of both Finnish (Koskinen 2000, 53) and Danish (Trosborg 1997, 153). Given the hostile reception to translated acquis, this observation may be extended to Polish, whose speakers are rarely exposed to its ‘distorted’ forms. With time the new hybrid variety of legal Polish may be expected to be assimilated into the national consciousness and no longer be perceived as alien. The assimilation is typical of hybrid texts, which do not meet TL norms but become established and accepted in the target culture because they fulfil their purpose (Schäffner and Adab 2001, 176). The process is facilitated by the growing convergence of EU and national law due to harmonisation.

The most critical type of translation error in EU legislation is an error which leads to a different, unintended regulation of rights and duties of private and public entities in the Member States (Kapko 2005, 2). In most cases a non-standard translation of deontic modals will not adversely affect the uniform application and interpretation of EU law; however, overrepresentation and underrepresentation of key generic features may negatively influence reception of translated law and distance recipients from its content. In particular, the voice of the Union is distant when imposing obligation: it gives an impression of overemotional pleading in order to assert authority (in contrast to the traditional depersonalised authority of national legislature, communicating through declarative and phraseological patterns). Since imposing an obligation is a face-threatening act, because the legislature influences the addressees’ behaviour and limits their freedom (Trosborg 1995, 34), it seems important to use culturally acceptable ways of mitigating such imposition. A different type of distance was identified by Koskinen in her study of modals: she reports a change in tenor from ‘shouldness’ in English documents to ‘maybeness’ in Finnish translations, as a result of which an obligation is imposed less forcibly on Finnish recipients (Koskinen 2008, 144). It should be also observed that departures from generic conventions require greater processing efforts on the part of recipients. While unmarked natural patterns provide familiar cognitive frames which optimise processing, marked patterns draw attention to themselves and may distract the reader from the content.

Last but not least, the divergent textual fit may be interpreted in terms of power relations as an unequal interaction between majority and minority culture. Having supreme status over national law, translated EU law is recontextualised against Polish
law via its hybrid variety and serves as a basis for transposition. The European version of legal Polish invades the integrity and colonises the genre of national legislation. Its translatedness is very noticeable; it demonstrates a lack of respect for TL genre conventions at a level which is easy to domesticate, and where domestication would not adversely affect uniform interpretation and application of multilingual law. Therefore, the translation of EU law presents a paradox: on the one hand, it preserves the status of national languages and prevents linguistic disenfranchisement of EU citizens; on the other, it is communicated in a foreignising and colonising language.

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Notes
1. The universal features proposed by Baker include: (1) explicitation; (2) simplification and disambiguation; (3) normalisation/conservatism; and (4) levelling out (1996, 180–185).
2. Departures from prototypical translation situations are increasingly frequent in the globalising world – see for example Dollerup (2004) on the ‘vanishing original’ and complex translation scenarios.
3. The policy was provided for in Council Regulation No. 1 of 1958, which determined the languages to be used by the European Economic Community, and elaborated by the Court of Justice in Case 282/81 Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health: ‘Community legislation is drafted in several languages and (...) the different language versions are all equally authentic.’
4. The policy was established in Case 282/81 Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health, Case C-268/99 Jany v. Staatssecretaris van Justiti, Case 30/77 Régina v. Pierre Bouchereau. For a more detailed discussion, see Doczekalska (2009), Paunio (2011) and Baaij (2012).
5. A total of 24 languages after Croatia’s accession in 2013.
6. Combinations of shall, must and may with not account for 4% of all modal forms in R-Acquis and 6% in L-Acquis.
7. Such combinations are however rare: they account for 0.5% of all occurrences of shall in the English version of Acquis.
8. The EU drafting guidelines refer to the normative part of instruments as enacting terms.
10. It is 10 times more frequent in the Acquis (the comparison with UK statutes is based on data from Garzone 2013, 70).
12. Present-tense verbs may also be found among the keywords of both translation and nontranslation corpora. For example, Acquis keywords include przyjmuje [adopts], wiąże [binds] and oznacza [means], while PLC keywords, which contain more present-tense verbs, include stosuje [applies], podlega [is subject to], rozumie się [is understood].
15. According to the data obtained from the National Corpus of Polish ([www.nkjp.pl](http://www.nkjp.pl) [accessed on 1 March 2014]), *musi* has the highest distribution in spoken language, the press and the Internet.

16. Since *musi* corresponds to the distribution of *must* in the English Acquis, these findings contradict Foley’s data that *must* is particularly common in recitals (2001, 191) and also show that the *English Style Guide*’s recommendation to avoid *must* in enacting terms is not always adhered to.


19. Deontic modality, discussed in this paper, is one of the variables analysed in my textual fit project (Eurofog). Other variables include if–then mental models of legal reasoning, patterns of purpose, causal patterns, textual mapping patterns, etc. (cf. Biel 2014, forthcoming).

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**References**

The underlying research materials for this article can be accessed at [www.eurofog.eu](http://www.eurofog.eu)


