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TRANSLATION OF THE ACQUIS IN SERBIA

1. Multilingualism in the European Union

The European Union is founded on ‘unity in diversity’: diversity of cultures, customs and beliefs - and of languages. Multilingualism is one of the basic principles and key features of the European Union. It refers to both a person’s ability to use several languages and the co-existence of different language communities in one geographical area. Bearing in mind that there are 23 official languages of the Union, and 60 or so other indigenous languages and a number of non-indigenous languages spoken by migrant communities, the importance of multilingualism in European Union cannot be understated.¹

Multilingualism is a guarantee of cultural and linguistic diversity, equal treatment between peoples and individuals in Europe, and the right of citizens and entities to interact with European Union institutions in any of its official languages. Formal confirmation of this can be found in Arti-

¹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee And The Committee Of The Regions - A New Framework Strategy For Multilingualism, Brussels, 22.11.2005, COM(2005) 596 final

cle 22 of the Charter of Fundamental Rights of the European Union², which states that the Union shall respect cultural, religious and linguistic diversity. Article 21 of the same Charter prohibits discrimination based on a number of grounds, including language. Therefore, European Union has created special policies for linguistic diversity, aiming to create an environment that is encouraging to the full expression of all languages and in which the teaching and learning of a variety of languages flourishes. Moreover, in March 2002, the Heads of State or Government of the European Union meeting in Barcelona³ called for at least two foreign languages to be taught from a very early age. The activities aimed at achieving this ambitious goal are in the competence of the European Commission, but a major responsibility for making further progress also rests with Member States.

The Commission's multilingualism policy has three aims:

- to encourage language learning and promoting linguistic diversity in society;
- to promote a healthy multilingual economy, and
- to give citizens access to European Union legislation, procedures and information in their own languages.

The Commission's long-term objective is to increase individual multilingualism until every citizen has practical skills in at least two languages in addition to his or her mother tongue.

One of the major steps towards raising awareness on the importance of multilingualism has been taken already in 2001, when the European Year of Languages was jointly organised by the European Commission and the Council of Europe. It gave languages a higher profile than ever before. Since then, the European Day of Languages has been held on 26 September every year to help people appreciate the importance of language learning, raise awareness of all the languages spoken in Europe

² Charter of Fundamental Rights of the European Union 2000/C Official Journal of the European Union 364/01

³ Barcelona European Council, 15 and 16 March 2002, Presidency Conclusions, part I, 43.1.

and encourage lifelong language learning. Following on this, in 2003 the Commission committed itself through an Action Plan⁴ to 45 new actions to encourage national, regional and local authorities to join it in working for "a major step change in promoting language learning and linguistic diversity". Recent developments show that European Union is additionally stressing the importance of this subject. In 2004, for the first time, the portfolio of a European Commissioner explicitly included responsibility for multilingualism – Commissioner Ján Figel from Slovakia was responsible for education, training, culture and multilingualism. As of January 1, 2007, with the accession of Bulgaria and Romania, multilingualism became a separate portfolio, and was transferred to Commissioner Leonard Orban from Romania.

In November 2005, the Commission published a Communication entitled "A New Framework Strategy for Multilingualism", it's first-ever Communication on this subject. Following this, the High Level Group on Multilingualism (HLGM) as an external group was set up in September 2006 to bring about an exchange of ideas, experience and good practice, to develop ideas relevant to policies and practices on multilingualism across the European Union and to make recommendations to the Commission on action in this area. The Group was given the general remit of providing support and advice on developing initiatives, together with fresh impetus for and ideas on a comprehensive approach to multilingualism in the European Union. The HLGM's final report, presented to the Commission on 26 September 2007, presents various aspects of multilingualism.⁵ The Commission also launched an online consultation between 15 September – 15 November 2007, inviting organisations and individuals to write their views and expectations concerning language policy. The outcomes of the survey were published in

⁴ COM(2003)449

⁵ COMMISSION STAFF WORKING DOCUMENT *Accompanying document to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Multilingualism: an asset for Europe and a shared commitment* SEC(2008) 2443

February 2008 and discussed in public in the framework of a Public Hearing on Multilingualism in April 2008. In September 2008, the Commission published a Communication advocating an approach which includes multilingualism across a whole series of EU policy areas.

2. European Union and its 23 Official Languages

A strong expression of the principle and importance of multilingualism in the EU lies in the fact that it has 23 official languages⁶. Each Member State, when it joins the Union, determines which language or languages it wants to have declared as official languages of the EU. This means that the official languages are those so determined by the national governments, not EU officials. This principle is embodied in Regulation 1/1958⁷, which is amended every time a new country joins the Union.

Official multilingualism is an important feature of the Union. Since the Union passes legal acts that are directly binding on its citizens and companies, the need for every document to be available to the courts and citizens in a language they can understand is self-explanatory. However, the official multilingualism story does not end there. The European Union institutions also have to be as accessible and as open as possible to the general public. This is guaranteed by the provisions of Regulation 1/1958, which guarantee the right of residents of the Member States to communicate with the EU institutions in their own language.

The concept of multilingualism is also important before the European Court of Justice and the Court of First Instance, as well as before the recently constituted Civil Service Tribunal, institutions which resolve disputed between the parties and provides judicial protection of right guaranteed in the Community law. The European Court of Justice recognised by its Rules of Procedure the right to use all official languages. The applicant

⁶ Within the framework of its 27 Member States, the official and working languages of the EU are the following: Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish.

⁷ Regulation No 1 determining the languages to be used by the European Atomic Energy Community, *Official Journal* 017, 06/10/1958 P. 0401 – 0402.

can choose the language. Usually it is the language in which the action of the applicant has been submitted. In preliminary ruling procedures, the language of the case is the language that the national court must use according to its own national law. All passed judgements and court opinions are also translated in all official languages, in order to make the case law accessible and transparent for everyone.

When it comes to legislation, the initial proposals by the Commission are usually drafted and discussed internally in one or two languages. Once the texts are sent to Parliament, the Council and the Committees for further legislative debate, they have to be translated to all official languages, so that everyone involved could familiarise himself/herself with their content. Naturally, all finalised EU legislative documents have to be published in the Official Journal in all official languages before they can enter into force. Documents that are of major political importance are also translated into all official languages. It is therefore evident that the European Union needs to have a developed and well-structured translation service or services, in order to be able to supply versions of official texts in all official languages.⁸ However, since this is such an overwhelming task, and for purely practical reasons, some concessions have had to be made in order to reduce and speed up the translation.

On the other hand, correspondence with the authorities, associations, business and the public in Member states is translated only to the language or languages spoken by those to whom the correspondence is addressed. This so-called "variable geometry" approach to translation meets two objectives at the same time:

- it safeguards the right of every individual to be informed on the most important EU issues in his/her mother tongue and also the right to communicate with the EU in his/her own language;
- it avoids unnecessary translation and thus, unnecessary spending of taxpayers' money.

⁸ There are translation services for all EU institutions and bodies. They cooperate inter-institutionally through and Inter-institutional Committee on Translation and Interpretation. Council Regulation No 2965/94, amended by Council Regulation No 1645/03 established the Translation Centre for the Bodies of the European Union. The European Commission also has a Directorate General for Translation.

In as much as democratic and transparent this system is, it is not without its flaws. Since all versions of all documents are equally authentic in all languages, when reading and interpreting EU legal documents, particularly Regulations, it is recommendable to read its versions in more than one official language. Sometimes even different language versions of the same document differ in content – however, this seldom occurs.

This is why it is of paramount importance that those employed in EU translation services have perfect command of their mother language, have a very sound knowledge of English, French or German, as a compulsory source language for translation, and, in addition, have a thorough knowledge of a second source language. Each of the three languages must be official language of the EU. Moreover, the Court of Justice has a separate position of a lawyer-linguist. This means that the candidates for this post must hold a law degree awarded in the State or one of the States in which the language for which the recruitment is being organised is spoken, and to meet the mentioned conditions for a translator. Engagement of a lawyer with a thorough knowledge of three official languages is an additional guarantee of consistency and, more importantly, legal accuracy of the translations provided.

2.1. Eurojargon

One additional peculiarity of the EU legal system is its so-called eurojargon. Namely, since the law of the European Union includes a number of legal terms and notions that are very specific, and which sometimes even have a different meaning than they would have in national law, the wording of EU legal documents can be puzzling not only for the general public, but also for those more familiar with EU law. This is often true for the members of the press, particularly those coming from candidate countries and countries negotiating the SAA. This is why the European Union website has a page dedicated to plain language explanation of the eurojargon.⁹ Eurojargon and the specific, autonomous meaning of certain terms in EU law present a specific challenge for translators. This is why it so important

⁹ http://europa.eu.int/abc/eurojargon/index_en.htm

for those working on the translation of EU documents to have in-depth knowledge of the subject-matter of the document they are working on.

As it was explained previously, the languages of all member states are official and working languages in the European Union and there is a principle of equality between the languages. The EU *acquis* is drafted and published in all official languages. The equality of languages is also present before the European Court of Justice which guarantees the use of 23 languages.¹⁰

In regard to the candidate countries the multilingualism has several repercussions. Firstly, it obliges a candidate country even before becoming a member to begin the process of translation in order to facilitate the accession process, but also to make EU *acquis* transparent for each national. The incentive to translate the EU *acquis* also lies in the fact that after the accession all translated documents will become official documents in a new official language of the country in question.

Secondly, it obliges a candidate to recruit a considerable number of translators who will be able to work in the EU institutions as official translators once the candidate country becomes a member state. Finally, translating multilingual instruments places a burden on translators, requiring them to consult not only one but several official languages. The translators have to produce a coherent corpus of law, without misleading and unclear translations. Translations in English languages are mostly used in the process of translating the *acquis*.¹¹

Translation of legal documents is a joint accession requirement, a requirement which is in quantitative and qualitative terms equal for all candidate countries. Legal translation is the key aspect of the process of approximation of national legislation, which entails the harmonisation of the national legislation with the well know *acquis communautaire*¹². The application of the EU *acquis* is one of the most difficult Copenhagen crite-

¹⁰ Article 29 of the Rules of Procedure of the Court;

¹¹ Some countries do fear that with the further enlargement of the EU, the English language will become the dominant and perhaps one of few official languages.

¹² The *acquis communautaire* contains the entire EU legal corpus divided into primary and secondary legislation.

ria which each candidate country must fulfil in order to become the member state of the European Union. However, this process can be endangered without the adequate legal translation. Each candidate country faces the translation of over 180,000 pages of the *acquis communautaire*.

The significance of the legal translation becomes even more important when confronted with the main principles of Community law - direct effect and direct applicability of Community law. Since certain EU legislation is directly applicable and at the same time has direct effect, the citizens of each member state must be able to read and understand the provisions in order to comply with them, but also to be able to control the extent of the transposition of the Community law by a member state.

The translation process is not a mechanical process of substitution but is process which entails the knowledge of EU legislation, familiarity with the structure of EU texts and their application. The process of translation is the responsibility of each applicant country, although the final approval is given by the EU institutions prior to the publication by the Office for Official Publications of the European Communities.

The translation of the Community law is a very difficult and tedious task. This was one of the problems that were common for all former candidate countries from Central and Eastern Europe. Many of them, such as Slovenia, which was generally a very successful story, in a short period of time, almost until the very end before joining the EU, had a backlog of untranslated community legislation.

It is also very important to mention a significant component of the legal translation, which is connected to the drafting of national legislation. The wording, expressions, phrases and even the single terms that translators choose in their daily's work today will be of immense importance for judges and lawmakers.¹³ The best example are directives which are binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.¹⁴ This means that a national legislator if, the issue is not already

¹³ Legal Translation – Preparation for Accession to the European Union, edited by Susan Sarcevic, Faculty of Law, University of Rijeka, 2001;

¹⁴ Article 249 TEC

regulated by the national legislation, is obliged to pass a new law or byelaw in order to transpose a directive. Thus, the translation of the directive serves as a mandatory base for the transposition of norms into the national legal system. Thus, the principle of legal certainty may depend on translators and the language in use.

2.1. TAIEX

The European Commission realised very quickly that the countries of Central and Eastern Europe were facing a very serious problem concerning the translation of community law which was the main prerequisite for the successful approximation of the national legislation with the Community law. Therefore, within the Directorate-General for Enlargement the Commission created a unit TAIEX - the Technical Assistance and Information Exchange Instrument of the Institution Building.

It is operational since 1996 and it provides technical assistance in the field of approximation, application and enforcement of legislation. Its services are complementary to the several alternative assistance programmes the European Commission offers to new Member States, candidates for accession to the European Union, and the countries of the Western Balkans.

The TAIEX mandate to provide assistance to the three groups of beneficiary countries:

- new member states of the EU – Bulgaria and Romania;
- candidate countries – Croatia, Former Yugoslav Republic of Macedonia and Turkey;
- potential candidate countries – Albania, Bosnia and Herzegovina, Kosovo (as defined by the Resolution 1244) and Serbia;
- countries within the European Neighbouring Policy;
- Others - Turkish Cypriot Community in the northern part of Cyprus

TAIEX' main tasks are focus on numerous issues from which the most important is the provision of technical assistance and advice on the transposition of the *acquis communautaire* into the national legislation of beneficiary countries and on the subsequent administration, implementation

and enforcement of such legislation. It also provides information by gathering and making available information on the Community *acquis* and providing database tools for facilitating and monitoring the approximation progress.

The actual beneficiaries of the TAIEX assistance include both public and private sectors, which includes different target groups such as civil servants working in public administrations; civil servants working in administrations at sub-national level and in associations of local authorities; Members of Parliaments and civil servants working in Parliaments and Legislative Councils; professional and commercial associations representing social partners, as well as representatives of trade unions and employers' associations; the Judiciary and Law Enforcement authorities and interpreters, revisers and translators of legislative texts.

TAIEX Programme was opened for Serbia in 2003 after the European Council meeting in Thessaloniki, but the actual utilisation of its benefits began in 2004 when the Serbian representatives commenced to participation at various seminars abroad organised within the framework of TAIEX. From 2005, by following the more appropriate Demand Driven Approach based on the initiative of the beneficiary country, numerous events were organised in Serbia throughout 2005, 2006 and 2007 covering all internal market areas¹⁵.

3. Legal Translation in Serbia – formal grounds

In April 2008, Serbia and the EU signed the Stabilisation and Association Agreement and Interim Agreement on Trade and Trade-related issues. Both agreements were ratified by the Serbian National Parliament in September 2009. As of February 1, 2009, Serbia is unilaterally implementing the Interim Trade Agreement, awaiting the Council decision on its implementation¹⁶ and

¹⁵ It is worth of mentioning the following activities: workshop on asylum, public procurement, consumer protection, safety at work, waste management, police and customs cooperation statistics in agriculture, etc.

¹⁶ On its 2864th and 2865th Council meetings, the Council (General Affairs and External Relations) agreed to submit the SAA to their parliaments for ratification and the Community decided to implement the Interim Agreement as soon as the Council decides that Serbia fully cooperates with the ICTY.

the consequent ratification of the SAA by Member State's national parliaments. As for European partnership, the European Council has adopted a new European Partnership for Serbia in February 2008¹⁷

The two most important obligations Serbia undertook by signing the SAA are the establishment of a free trade zone and harmonisation of Serbian legislation with the *acquis*. Given the scope of the *acquis*, the SAA¹⁸ states that approximation of laws will, at an early stage, focus on fundamental elements of the internal market *acquis*, justice, freedom and security, as well as on other trade-related areas, whilst Serbia shall focus on the remaining parts of the *acquis* at a further stage. Specific time-limits for approximation of laws are set out for the following areas: competition, state aids, intellectual, industrial and commercial property, public procurement, standardisation and consumer protection. However, it must be borne in mind that the above-mentioned European Partnership also sets out detailed short-term and mid-term priorities, concerning both changes to legislation and practice.

3.1. Institutional Framework for the Translation of the Acquis

In the last few years the translation process was sporadic and uncoordinated and depended on the interest and financial resources of each ministry of other state administration body. This resulted in lack of uniform translation of the *acquis* both in terms of its quality and translation of common notions in areas falling within the Community competence. Moreover, this approach impeded the creation of a standardized glossary of EU terms.

Significant progress which marked a new phase in the translation process began with the establishment of the Translation and Coordination Department (TCD) within the EU Integration Office which laid foundations of this process. Soon after, at the initiative of this Office, the Govern-

¹⁷ 2008/213/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC

¹⁸ Article 72, paragraph 3 of the SAA

ment of Serbia at its session of 16 April 2009, adopted the “Information on Preparation of the *Acquis Communautaire* in Serbian Language”. The institutional framework of the translation process was set up by this Information, whereby the European Integration Office is the central coordination mechanism, while the Republic Secretariat for Legislation, line ministries and other public administration bodies will carry out legal and expert review. A special Working group composed of members from all institutions involved is in charge of final verification of the translated documents.

3.2. *Translation Process – Structure of the Translation Process and Achieved Progress*

The European Integration Office represents a key state authority in this matter with the task of coordinating the translation of the European Union priority regulations into Serbian and coordinate of translation of Serbian legislation into English language¹⁹. However, in order to improve the efficiency of the process all line ministries and the Secretariat for Legislation appointed coordinators within their institutions, responsible to maintain cooperation with the Translation and Coordination Department within the European Integration Office. Bearing in mind the previous sporadic translation of the *acquis* it was agreed by the aforementioned Information that all state authorities are required to submit to the TCD all previously translated *acquis* documents into Serbian, as well as translations of domestic legislation into English language. In order to achieve a desirable level of uniformity, the TCD ensures their proper classification and coordinates legal, expert and language reviews. For this purpose, the European Integration Office prepared two major tools to assist the translators in this process. One of them is the Translation Manual recently revised with the Secretariat for Legislation which offers comprehensive guidelines for translating the *acquis* into the Serbian language. The other significant achievement is the *Evrotermis*, a database of terms that is created in the process of translating legal acts of the European Union into the Serbian language. The initial data entry included around 6600 terms extracted from the multilin-

¹⁹ Article 2 of the Decision of the Government of the Republic of Serbia on the establishment of the European Integration Office (“Official Gazette of RS”, No. 75/05 and 63/06).

gual lexicon EUROVOC, although it is expected that some of them will be revised in time. The main advantage of this database is the existence of terms in six languages (Serbian, English, French, German, Italian and Spanish), as well as the fact that each entry can have term equivalents in different languages.

The translation process officially began in November 2008 within the framework of the EU funded project “Translation of the *Acquis* in Serbia” with the mission of translating 16,000 pages of the *acquis*. At the very beginning it involved the translation of the primary legislation which was previously partially translated with the aim of properly translating the foundations of the EU corpus of law and facilitating the translation of all other sources of EU law. This process is still ongoing. However, due to the obligations deriving from the Stabilisation and Association Agreement the European Integration Office, that is, the Translation and Coordination Department, decided to start with the translation of the EU secondary legislation. Although there were concerns that this process will be significantly delayed due to the need to verify the priority legislation to be translated with the line ministries, the overall results so far are very promising. One of the reasons is the fact that the list of EU legislation to be translated is prepared according to priorities established by the National Programme for Integration of the Republic of Serbia with the European Union (NPI)²⁰, based on the priorities contained in the Stabilisation and Association Agreement and on European Partnership recommendations. No less important is the commitment of the European Integration Office to the overall translation process and its efforts to overcome obstacles. This was evident when the Office prepared an interim list of priorities to be translated within the framework of the aforementioned EU project, although its obligation is only to annually prepare the Action Plan for the translation of the *Acquis Communautaire* in Serbian language²¹.

Currently, the priority list includes legislation from the field of competition law, intellectual property law and other related internal market leg-

²⁰ <http://www.seio.sr.gov.yu>

²¹ The Action Plan sets out the list of priorities, dynamics of the process and cost forecasting for the upcoming year.

islation. Besides, this initial phase of translation includes legislation from the following fields: justice and home affairs, finance, health, environment, agriculture, telecommunications, culture and labour law. However, the intensive “hyper-production” of new legislation in the EU, as well as the continuous amendments of the legislation in force renders the preparation of priority lists more difficult. An initial pool of translators was chosen through the EU funded project, although the European Integration Office already started to widen the list by organising its own competition. Despite the fact that there were serious concerns as to the quality of translators who will be in charge of translation the current progress demonstrates a good quality of translated texts.

Two other problems should be mentioned. One is the technical preparation of the EU *acquis* in any official language which proves to be a very demanding and time consuming process which may delay the overall translation process. This is partly due to the amount of newly published documents in the Official Journal of the EU and partly due to lack of staff in the European Integration Office. The other problem is the expert proof-reading of translated texts which again might slow down the process. Bearing in mind the variety of fields covered by EU law²² the number of experts capable of revising the translated *acquis* is very limited. Although the aforementioned Information of the Government entrusted line ministries with the task of performing the expert proofreading, this phase of the translation process is still problematic. Not all ministries have staff with the adequate knowledge of at least one official language or with the in-depth knowledge of the EU law which is required for this process.

4. Conclusion

It is evident that the importance of languages in the functioning and development of the European Union cannot be understated; moreover, they is now more in focus than they were a decade ago.

²² The accession negotiations cover 35 chapters of the *acquis* which proves the complexity and extensiveness of this endeavour.

Serbia, as an aspiring candidate country, has embarked on a demanding and somewhat overwhelming task of translating the EU *acquis* into Serbian language. The approach to this task taken by Serbian authorities is founded on experiences and good practices of other countries, and some lessons have definitely been learned from the 6-month pilot translation project conducted under the auspices of the Serbia and Montenegro EU Integration Office in 2004.

The results accomplished so far are promising.

However, the project has once again brought attention to an important issue – lack of qualified human resources. The majority of translators currently working on the project have studied languages and have very little knowledge of law and legal language, with all its peculiarities, which often present an obstacle in understanding a legal text written in mother tongue, let alone a foreign language.

The Translation Manual and *Evrotermis* present an excellent but insufficient tool. Legal and expert review of all translated documents are well conceived, so as to ensure both legislative and subject-matter accuracy, but at least in the first phase of the project, have proven to be a somewhat more demanding task than initially anticipated.

However, this can be expected to change – as the project develops, the translators will adopt relevant legal and EU-related terminology. This is why it is of paramount importance that this pool of translators, once formed, be preserved throughout the project, hopefully reinforced by additional qualified staff.

It has also become evident that in Serbia there is a general lack of professionals with the potential to qualify as jurist-linguist, a professional indispensable in EU institutions and agencies, particularly those with legislative powers. Given Serbia's determination to become a member of the EU, foreign language learning should be given a more important role in legal studies.

As already mentioned, the body of law to be translated into Serbian language is ample and complex and this task will take years to be achieved. It is therefore understandable that very little attention has been given so far to the fact that in some municipalities in Serbia minority languages may, under certain conditions, also be declared as the official language. At this

stage of the association process, it is clear that the first priority is the translation of primary and secondary legislation into Serbian language, but once Serbia becomes an EU member state, it will have to take additional steps in order to ensure that EU legislation is accessible to all its citizens in a language they can understand. Given the number and structure of Serbian minorities, at least a part of this problem is already resolved, since the neighbouring countries, from which many of the minorities originate, have already translated EU law, and it is easily accessible on the EU website. However, in the long term, TCD will have to consider finding and training translators for other minority languages, for individual cases and documents.