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## EUROPEAN UNION LAW - MULTILINGUALISM AND LEGAL TRANSLATION

*U ovom radu autorke se bave značajem višejezičnosti u Evropskoj uniji i značajem kako jezika tako i prevođenja u postupku pridruživanja.*

*Višejezičnost u Evropskoj uniji predstavlja jedno od osnovnih načela i njenih glavnih karakteristika; garantija ne samo očuvanja kulturne i jezičke različitosti, već i jednakog tretmana za sve građane.*

*Jezik je od velikog značaja i za države - kandidate. U fazi pristupanja, višejezičnost podrazumeva prevođenje propisa Unije na zvaničan jezik države koja želi da pristupi Uniji, u cilju ispunjenja trećeg kriterijuma iz Kopenhagena – usklađivanja domaćeg zakonodavstva sa pravom EU. Nakon što jedna država postane članica Evropske unije, obaveza prevođenja proizilazi iz same činjenice da su zvanični jezici država članica ujedno i zvanični jezici Unije.*

**Ključne reči:** višejezičnost, kulturna različitost, prevođenje, EU

### 1. MULTILINGUALISM IN 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. In addition, it is this diversity that makes the European Union what it is: not a 'melting pot' in which differences are rendered down, but a common home in which diversity is celebrated, and where

many mother tongues are a source of wealth and a bridge to greater solidarity and mutual understanding<sup>1</sup>.

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 Article 22 of the Charter of Fundamental Rights of the European Union, 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. As can be seen, together with respect for the individual, openness towards other cultures, tolerance and acceptance of others, respect for linguistic diversity is a core value of the European Union.

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 Barcelona<sup>2</sup> 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.

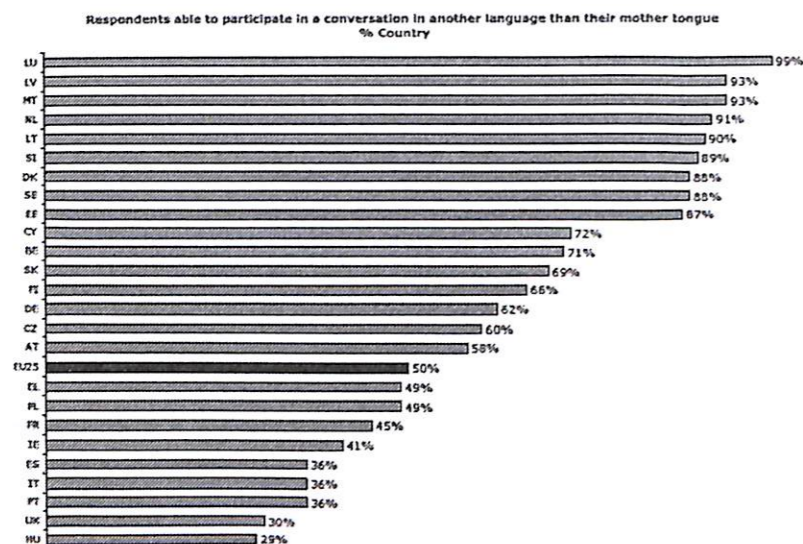
The Commission's long-term objective is to increase individual multilingualism until every citizen has practical skills in at least two languages in addition to his or her mother tongue. As a recent Eurobarometer<sup>3</sup> survey shows, half of the citizens of the European Union state that they can hold a conversation in at least one language other than their mother tongue. The percentages vary between countries and social groups: 99% of Luxemburgers, 93% of Latvians and Maltese, and 90%

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.

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

3 Eurobarometer 63.4.

of Lithuanians know at least one language other than their mother tongue, whereas a considerable majority in Hungary (71%), the UK (70%), Spain, Italy and Portugal (64% each) master only their mother tongue. However, the average number of foreign languages taught in secondary schools is still some way from the target set in Barcelona.<sup>4</sup>



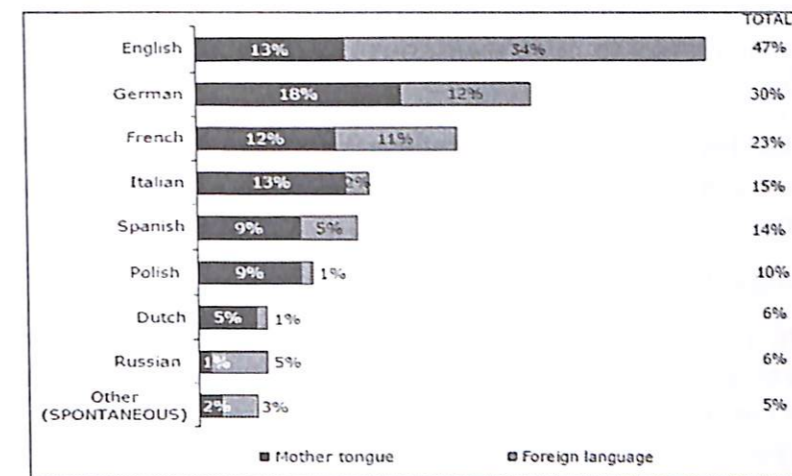
Furthermore, there is a growing tendency for «foreign language learning» to mean simply «learning English»; the Commission has already pointed out that «English is not enough».<sup>5</sup> The following table shows that the English language is the most commonly used language in the EU, and, moreover, the most commonly spoken foreign language. German, on the other hand, is most widely spoken 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 and encourage lifelong language learning. Following

<sup>4</sup> Both tables shown in this paper are taken from the Commission Communication of 22.1.2005..

<sup>5</sup> COM(2003)449.

Languages most commonly used in the European Union: %.



Ability to hold a conversation in a foreign language

on this, in 2003 the Commission committed itself through an Action Plan<sup>6</sup> 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. For the first time, the portfolio of a European Commissioner explicitly includes responsibility for multilingualism – Commissioner Ján Figel from Slovakia is responsible for education, training, culture and multilingualism. Most importantly, in November 2005, the Commission has adopted a Communication addressed to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – entitled «A New Framework Strategy For Multilingualism».<sup>7</sup> This document is the first Commission Communication to explore this policy area. It complements the Commission's current initiative to improve communication between European citizens and the institutions that serve them. It also reaffirms the Commission's commitment to multilingualism in the European Union, sets out the Commission's strategy for promoting multilingualism in European society, in the economy and in the Commission itself and proposes a number of specific actions stemming from this strategic framework. These are the following:

<sup>6</sup> COM(2003)449.

<sup>7</sup> COM(2005) 596 final.

- National strategies, which should establish clear objectives for language teaching at the various stages of education and be accompanied by a sustained effort to raise awareness of the importance of linguistic diversity;
- Better teacher training, implying that the curricula and structures for training teachers of a foreign language need to respond to changing demands about the language skills that pupils and students should acquire;
- Early language learning;
- Content and language integrated learning – a system by which pupils learn a subject through the medium of a foreign language, thus providing greater opportunities within the school curriculum for exposure to foreign languages;
- Languages in higher education – it is stated that higher education institutions could play a more active role in promoting multilingualism amongst students and staff, but also in the wider local community. However, the Commission has also pointed out that the trend in non-English-speaking countries towards teaching through the medium of English, instead of using the national or regional language, may have unforeseen consequences for the vitality of these languages;
- Developing the academic field of multilingualism;
- Work on the European Indicator of Language Competence.

The Communication also addresses an issue that is closely linked to the early origins of European Communities – the contribution of language skills to the competitiveness of the EU economy. In order to be able to trade with companies in other Member States, European businesses need skills in the languages of the European Union, as well as in the languages of our other trading partners around the globe. This is particularly true for medium-sized, high-growth, job creating companies. Moreover, for the Single Market to be effective, the Union needs a more mobile workforce. Skills in several languages increase opportunities on the labour market, including the freedom to work or study in another Member State. Therefore, the Commission intends to strengthen the follow-up of its 2002 Action Plan on Skills and Mobility. Language skills will be among the issues addressed during the European Year of Workers' Mobility in 2006.

## 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 languages<sup>8</sup>. 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 1/1958<sup>9</sup>, 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 can choose the language. Usually it is the language in which the action of the applicant has been submitted. In procedures for preliminary ruling, 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.

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.<sup>10</sup> However, since this is such an

8 Within the framework of its 27 Member States, the official 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, Slovenian, Spanish and Swedish.

9 *Regulation No 1 determining the languages to be used by the European Atomic Energy Community*, OJ 017, 06/10/1958 P. 0401 - 0402.

10 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,

overwhelming task, and for purely practical reasons some concessions have had to be made in order to reduce and speed up the translation.

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.

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.

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.

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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.

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.<sup>11</sup> This is an example of its content:

### Acquis communautaire:

*This is a French term meaning, essentially, «the EU as it is» – in other words, the rights and obligations that EU countries share. The «acquis» includes all the EU's treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice. It also includes action that EU governments take together in the area of «justice and home affairs» and on the Common Foreign and Security Policy. «Accepting the acquis» therefore means taking the EU as you find it. Candidate countries have to accept the «acquis» before they can join the EU, and make EU law part of their own national legislation*

Eurojargon and the specific, autonomous meaning of certain terms in EU law present a specific challenge for translators. This is why it is so important 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.

## 3. MULTILINGUALISM AND THE ACCESSION COUNTRIES

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

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<sup>11</sup> [http://europa.eu.int/abc/eurojargon/index\\_en.htm](http://europa.eu.int/abc/eurojargon/index_en.htm)

Justice which guarantees the use of 21 languages, including the Irish<sup>12</sup> (still not the official language of the EU).

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 great number of translators which 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*.<sup>13</sup>

#### 4. LEGAL TRANSLATION AND THE ACQUIS COMMUNAUTAIRE

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*<sup>14</sup>. The application of the EU *acquis* is one of the most difficult Copenhagen criteria 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

12 Article 29 of the *Rules of Procedure of the Court*.

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

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

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 substation 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.<sup>15</sup> 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.<sup>16</sup> This means that a national legislator if, the issue is not already 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.

#### 4.1. 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.

15 *Legal Translation - Preparation for Accession to the European Union*, edited by Susan Sarcevic, Faculty of Law, University of Rijeka, 2001.

16 Article 249 TEC.

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:

- Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia
- Bulgaria, Romania and Turkey [and now Republic of Croatia]
- Turkish Cypriot Community in the northern part of Cyprus

The ten new Member States will remain beneficiary countries for TAIEX assistance, and will continue to receive TAIEX support to institution building in the first years after Accession.

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 includes 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.

## 5. LEGAL TRANSLATION IN SERBIA

As it was already said the legal translation is the key aspect of the process of approximation of Serbian legislation with Community law. It is a responsibility which rests on the Serbian government, that is the relevant state institutions. The translated documents must meet the high standard set by the EU institutions. Since the Community law is directly applicable in all Member States, the translation must be precise and correct. Also, over the years the process of European integration

has introduced an entire vocabulary of new terms into the various European languages.

The translation of Community law in Serbia covered so far only the translation of founding and amending treaties.<sup>17</sup> Very little secondary legislation was translated. The main problems in translation concern primarily the lack of uniform EU glossary and the lack of translators specialised for certain fields, such as competition law, environment, energy and many others. Until recently there was no uniform EU terminology, which is an urgent challenge for the country. The Government recently adopted the Manual containing the translation of basic EU expressions. However, there is some dissent within the academic community as to the choice of certain terms. For instance, according to the Manual the widely-accepted term *acquis communautaire* should be translated as «*pravna tekovina EU*», which roughly translates as «EU legal attainment». The problem with the term lies in the fact that in Serbian language it does not bear the necessary association to a body of community law, but rather to a more vague notion of custom and practice. Another term the authors do not fully agree with is the translation of the term «directive». The proposed Serbian term «*smernica*», although a linguistically correct translation, does not imply the legally binding nature of the act. Moreover, the Manual does not explicitly propose the Serbian version of the often-used term «Community law» – however, careful reading of the Manual indicates that the correct translation is «*pravo Zajednice*», which means that the term that is already in wide use within the academic community «*komunitarno pravo*» stays outside the scope of official terminology.

Efforts made by the Government of the State Union in regards to translation of EU law into Serbian have so far been limited to a six month pilot project conducted under the auspices of the Serbia and Montenegro EU Integration Office. The project was completed in the end of 2004 with somewhat disputable results. Although fairly well conceived, envisaging engagement of translation professionals and proofreading by lawyers specialised in EU law, the project was carried out under extreme pressure of short time-limits, additionally complicated by a considerable initial delay in provision of necessary software by the EU. This resulted in the fact that the proofreaders in fact did not have a final say in the translation of legal terminology and that the final versions of the texts were edited in a hurry, which may have lead to some mistakes.

However, this project has once again reinforced the need to establish a central language service which would make translation process efficient and uniform. This Office would gather the translators and lawyers with a very good knowledge of

17 These translation were edited by Dr Dusko Lopandic.

at least one official language of the EU and specialisation in a specific field. This Office would ensure the terminological consistency and correct translation of legal notions which is essential in the translation of the entire *acquis*.

Moreover, it has become evident that the translators must be familiar with the EU law and in basic legal concepts of community and national systems. It would be advisable to have more translators with the legal background, and consultants or proofreaders who are expert in specific fields not only of law, but also of the given subject-matter. For instance, highly technical terminology used in legal texts concerning telecommunications, energy, environment protection simply have to be double-checked by those expert in these fields. The same is also true for documents concerning financial services, company law, taxation, and the like. A strategic approach to the translation of *acquis* not only in terms of terminology but also regarding the careful selection of human resources that are to be engaged in the process full-time or part-time is paramount for successful understanding of EU legal system and the transposition of its principles and details in our national legal system. Those involved in the process must always bear in mind the possibility of their translation becoming an official version of the document within the European Union.

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#### **EUROPEAN UNION LAW - MULTILINGUALISM AND LEGAL TRANSLATION**

*The authors tried to emphasise the importance of multilingualism in the EU not only in respect of the fulfilment of pre-accession and accession criteria, but also in regard to the national language in the phase following the membership.*

*In the pre accession and accession phase the multilingualism implies the translation of the Community law in national language in order to fulfil the third Copenhagen criterion which entails the approximation of the national legislation with the *acquis*. The very important component of this harmonisation process is the legal translation which proved to be a very difficult task for each candidate country. The European Commission responded quickly to fill this gap and created TAIEX, service which provided technical assistance to candidate countries, but also to those who just became members. In the phase after an applicant country becomes a member, the obligation to translate all legal documents derives from the concept of multilingualism and the EU with 20 official languages.*

*Serbia faces this complex assignment which will imply the recruitment of well trained and specialised legal translators covering all sorts of different fields of work in the EU. Unfortunately, no preparation have been done yet, both in term of personnel and in term of political commitment to the whole process. Bearing in mind the possible signing of the SAA, this should be a next key step in the harmonisation process.*

**Key words:** multilingualism, legal translation, TAIEX, EU