# Legal Translation as a Human Right: Ensuring a fair trial through translation quality and training

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ABSTRACT

This paper addresses the issue of the translation of legal texts in criminal proceedings as a human right. Language rights have been recognized in a series of instruments, notably the *Universal Declaration of Human Rights* and more recently the *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings*. The latter has been defined by EP rapporteur Ludford as the first EU fair trial law whereby translation becomes a tool for the inclusion of those who do not speak or understand the language of the proceedings. After an analysis of the Directive in the first part, this paper will tackle its implementation in the member states, which have taken advantage of its vagueness, hardly changing current practices. Finally, a training format developed within the EU project QUALETRA will be presented in the third part of the paper to address the quality requirements set out in the Directive.

KEYWORDS: legal translation, criminal proceedings, EU directive, translator training

## 1. The road to language rights

"People travel. Further and further afield. Whether seeking asylum, travelling for business, politics or pleasure, people are crossing national borders in ever growing numbers. This is the reality in Europe today" (De Mas 2001:1). It was against this background that in the 1990s the treaties of Maastricht (1993) and Amsterdam (1999) set out to create a European area of freedom, security and justice, where citizens could legitimately see their fundamental rights respected, particularly when dealing with a criminal justice system, either within or outside their home country (EULITA 2013:1).

A decade of measures and projects later, and to attain mutual recognition and closer cooperation, on 30 November 2009, the Council of the European Union adopted a ground-breaking resolution (OJ C 295, 4.12.2009) on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings, which was included into the Stockholm programme adopted on 10 December 2009. Measure A of the Roadmap resulted in Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, aiming to ensure that nobody is denied a fair trial for the sole reason that they cannot communicate in the language of the country in which they are arrested (the rights of victims of crime were secured in a subsequent Directive of 2012).

Already back in 1950, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms secured the right of every person arrested or charged with a criminal offence to be informed promptly in a language which s/he understands and have the free assistance of an interpreter if unable to understand or speak the language used in court. Over sixty years have passed, yet Directive 2010/64/EU still needs to address recurring concerns in the field, including miscarriages of justice due to substandard quality levels of the language assistance provided, as a result of the lack of consistent certification requirements across European Member States (MSs).

This paper broadly considers translation and interpretation in criminal proceedings as a single, yet twofold right to language assistance, which undoubtedly belongs to the fundamental human rights, and needs to be secured to grant the inclusion of every person whose first language is not the national one in a Europe without borders. In the first part of the paper, an overview will be given of the contents of the Directive, including the scope of the right to interpretation and translation of essential documents, the cost and quality factors of the translation services, and the training requirements for translation professionals. The second part of the paper will investigate the transposition of the Directive in the MSs, where the discretionary and inconsistent implementation of its requirements has serious consequences in terms of translation quality and legal translator training, ultimately putting at risk the fairness of the proceedings for linguistic minorities. The final part of the paper will propose a training format for the certification of legal translators (LTs), as developed within the EU project QUALETRA (JUST/2011/JPEN/AG/2975), to ensure the quality of legal translation and consequently protect language rights.

## 2. Directive 2010/64/EU: an inclusion tool

Article 1 defines the scope of the Directive, which only applies to criminal proceedings and proceedings for the execution of a European arrest warrant. Given the lack of a definition of "criminal proceedings" in the Directive, such term should be interpreted in accordance with Article 6 of the European Convention on Human Rights (ECHR) (Morgan 2011:8), which does not cover extradition, hence the specific reference to European arrest warrants in the Directive. Furthermore, the scope of this instrument explicitly excludes language rights in the case of minor offences resulting in sanctions imposed by police, unless appealed before a court.

The limitation of the Directive to criminal proceedings can surely be seen as a drawback, since in most countries legal interpreters and translators (LITs) are expected to accept assignments in both criminal and civil proceedings. So much so that EULITA, the European Legal Interpreters and Translators Association, has suggested in the 2013 "Assises de la Justice" that a common regime be applied to both criminal and civil cases, by involving the Civil Justice section of European Commission Directorate-General for Justice in the practical implementation of Directive 2010/64/EU (EULITA 2013:2).

Articles 2 and 3 secure the right to linguistic assistance for suspected or accused persons who do not speak or understand the language of the procedure, as well as persons with hearing or speech impediments. These articles state that MSs shall provide a mechanism to assess the actual need for such assistance, either "in the native language of the suspected or accused persons or in any other language that they speak or understand" (recital 22). However, the possibility to choose between these two alternatives might pose a twofold risk. On the one hand, the adoption of a vehicular language in the proceedings might create an asymmetry between the authority and the persons concerned, whereby the latter are not in the position to communicate in their first language, ultimately affecting their rights of defense. This in itself might be seen as a hindrance to inclusion, particularly in the case of "vulnerable" persons, such as victims or witnesses of crime, especially minors, under Directive 2012/29/EU (cf. Rivello 1999:57; Ballardini 2014:63). On the other hand, the linguistic assistance for languages of lesser diffusion is quite often provided by non-qualified persons who only know the language used in the proceedings but have received no LIT training, which might lead to

"procedural delays and/or miscarriages of justice" in police investigations (Katschinka 2014:110) and court proceedings.

On the positive side, suspected or accused persons have the right to oppose any decision if linguistic assistance is not provided (Articles 2[5] and 3[5]). The Directive clearly stresses the urgency of such a right, to be granted as soon as possible – i.e. "without delay" in the case of interpretation and "within a reasonable period of time" for translation – throughout the entirety of the proceedings, i.e. from the time the suspected or accused person is made aware by the competent authorities of an MS, by official notification or otherwise, that they are suspected or accused of having committed a criminal offense up to the conclusion of the proceedings. However, though no reference is made to formal procedural requirements under national law, this provision entails one of the major innovations of the Directive, which goes even beyond the standards outlined in Article 6(3)(e) ECHR. The right to interpretation is extended to communications between the persons concerned and their legal counsel directly pertaining to "any questioning or hearing during the proceedings or [to] the lodging of an appeal or other procedural application" (e.g., an application for bail as per recital 20).

This expansion to the right, both in terms of time and language, might however not be straightforward. For instance, in England and Wales "an interpreter used at a police station or in the course of investigations by other prosecuting agencies [cannot be] engaged to interpret in the courtroom, though an interpreter used by the defense when taking instructions may be used by the court to interpret for the defendant in the courtroom at the discretion of the judge or magistrate" (Hertog & Vanden Bosch 2002:14); in Italy, the translator appointed pursuant to Article 268 of the Italian Criminal Code for the transcription of communications in the foreign language may not be appointed as an interpreter in the same proceeding on incompatibility grounds (Sau 2011). Consequently, this may prevent equal access to foreign – and particularly, minority – language speakers for whose language finding more than one (professional) LIT might be rather difficult.

The expansion of this right compared to Article 6 ECHR also concerns the written translation of "all" documents deemed essential to enable the persons concerned to have sufficient knowledge of the case against them, i.e. "any decision depriving a person of his liberty, any charge or indictment, and any judgment" (Article 3[2]), as well as additional documents

which might be identified in any given case by the "competent authorities" of the MS, possibly upon the suspect's request (Article 3[3]). Similarly, such provisions apply to criminal proceedings for the execution of a European Arrest Warrant (Articles 2[7] and 3[6]).

As noted by Gialuz (2014:84), translation and interpretation within the Directive are to be considered as the two different modes of a single, unified right to linguistic assistance (recital 17), the aim of which is to guarantee the concerned persons' right of defense and to safeguard the fairness of the proceedings. These two modes are not perfectly symmetrical – interpretation being bidirectional as the right of the person concerned to understand and be understood, while translation is unidirectional with the suspect as the sole addressee. Furthermore, interpretation is an inalienable and non-fungible right, even to the extent that "remote interpretation" via videoconference, telephone or Internet can be adopted when no interpreter can be there in person at short notice (2[6]) – though still not a consolidated practice in all MSs (for more, see ImPLI 2012:56); by contrast, the right to translation can be waived (Article 3[8]) or even take the form of partial translation (Article 3[4]), oral sight translation or oral summary (Article 3[7]) instead of a written translation, as long as the fairness of the proceedings is not prejudiced. As will be discussed in the following section, this provision has proven rather risky in terms of national transposition of the Directive, as it can result in an almost complete waiver of the right to translation under Article 3(1). Nevertheless, EULITA argues that the magnitude of this possibility has been "grossly over-estimated", suggesting that "major sections of these documents" can be identified and standardized through the collaboration between professional associations and judicial authorities in a pragmatic, cost-effective approach (Katschinka 2014:110). The QUALETRA project, which will be further described in this paper, has compiled a database of the terminology of the essential documents and the European Arrest Warrant, which might also be of use to this end.

Despite its loose definition in the Directive, overall linguistic assistance must meet two specific requirements, namely being free of charge and adequate. As for the former, Article 4 provides that all costs of interpretation and translation shall be borne by MSs irrespective of the outcome of the proceedings and the financial availability of the suspect or accused. As for the latter, the quality of the linguistic assistance can be considered the guiding thread and one of the most innovative aspects of the Directive, not only at the professional level but rather in

the bigger framework of justice (Falbo 2014:21). The quality of the linguistic assistance provided, which is however only referred to in terms of accuracy and completeness in the Directive, is again to be deemed as a prerequisite for the fairness of the proceedings. Article 5(1) stresses the requirement for MSs to ensure that the linguistic assistance provided is sufficient to meet the provisions under Article 2(8) and Article 3(9). When this is not the case, the suspected or accused persons are entitled to complain about the poor quality of the language services provided, which can no longer be considered of assistance. The only concrete measure provided by the Directive is the establishment in EU countries of a register or registers – to be made available to legal counsel and relevant authorities – of independent translators and interpreters who are "appropriately qualified" (Article 5[2]). However, such qualification is in no way further defined, nor are training requirements for LITs provided, since the EU holds no decision-making powers in the area of education policy. Also, the Directive does not allow LITs to have complete access to the files of a case, which would improve the accuracy of the translation. In fact, such an access is almost never granted, with linguists being generally perceived by legal professionals as mere foreign language speakers (Orlando and Gialuz, forthcoming). A code of ethics and good conduct for translators and interpreters is not mentioned in the Directive either, though several such codes are in place in some EU countries. The Directive should have led to the implementation of common ethical standards. While LIT training and accreditation is not covered, Article 6 clearly provides that the training of legal practitioners in the EU "pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication". Though not mentioned in the Directive, in the author's view, attention to the simplification of the language used in legal acts should also be promoted in the training of legal practitioners.

Finally, the Directive, which was to be interpreted and transposed consistently and in full compliance with the standards stipulated by the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and the *Charter of Fundamental Rights of the European Union* (Articles 8 and 9), requires the recording of the provision of linguistic assistance in accordance with the national law, i.e. interpretation in questioning or hearings, translation of essential documents, and waiver of language assistance.

## 3. Pitfalls of the transposition

Despite the assistance provided to MSs during the transposition phase by the EU Commission and relevant stakeholders – including EU projects such as TRAFUT, ImPLI and QUALETRA –, according to EU sources, only seven MSs had communicated their national transposition measures before the deadline of 27 October 2013 (DG Translation 2014:3), of which one country even reported that it did not see any need to adopt any measures (Katschinka 2014:107). After infringement proceedings for non-compliance to the deadline were launched in November 2013, by the end of March 2014 a total of 24 MSs had communicated their implementation measures to the Commission, which had to assess them for a report due by 27 October 2014 to the EP and the Council.

To transpose the Directive, Italy – whose legislation provides for the exclusive use of the national language – has amended a series of articles of the national Code of Criminal Procedure (c.p.p.) through Legislative Decree no. 32/2014 of 4 March 2014, published in the Official Gazette no. 64 of 18 March 2014 and entered into force on 2 April 2014. In keeping with the spirit of the Directive, the Decree overcomes the distinction between oral and written acts of the previous legislation, whereby – in the absence of a specific rule – the translation of written documents was to be decided on a case by case basis. Paragraphs 1 and 2 of the amended Article 143 c.p.p. almost literally transpose Articles 2(1-2) and 3(1-2) of the Directive, thus ensuring free-of-charge interpretation rights throughout the entirety of the proceedings as well as the translation of essential documents, irrespective of the outcome of the proceedings, unlike previously. This shall be the case even when the judge, public prosecutor or police officer knows the foreign language of the person concerned. However, there is no mention of assistance for persons with hearing or speech impediments. Also, the new legislation does not explicitly concern the European Arrest Warrant and extradition, which nevertheless might be included in the scope of these rights through reference to Law no.69(9)(5) of 22 April 2005 and Article 714(2) c.p.p. (cf. Cocomello & Corbo 2014:4).

By contrast, in France, where the written translation of documents was not guaranteed prior to the Directive, the new legislation (a Law of 5 August 2013 and a Decree of 25 October 2013) enlists very few documents always to be translated, thus leaving, in the author's view, too much discretion to court authorities and making the extensive use of the oral translation alternative as the norm – and not the exception –, which is clearly against the spirit of the

Directive (Brannan 2014). In Romania, Article 12(3) of the new Criminal Procedure Code (as modified by Law no. 255/2013) only provides for the mandatory translation of indictments, with no mention of other essential documents (Ilie & Pârgaru 2014). In everyday practice, in many MSs it is still up to the suspected or accused person to request linguistic assistance.

Back to Italy, the amended Article 143 c.p.p. finally distinguishes the two professional figures of interpreters and translators, overcoming the prior classification which called 'interpreter' any language assistant and 'translation' the activity of transposing the message through languages, both oral and in writing. Ideally, the new distinction should also limit the specific competences and area of expertise for each profession, with positive outcomes in terms of the quality of the service provided.

As could have been expected, quality has proven a weak link in the transposition of the Directive. In both Italy and France, the new legislation provides for the verification by the judicial authority of national language competence in case of doubt; however, no clear mechanism or standard has been determined. Particularly, a further distinction should be made between the mere, superficial understanding of the foreign language and the ability to express one's thoughts in such a language beyond being capable of answering "yes/no" questions. Also, though such verification falls with the judicial authority, no reference is made to those circumstances where the police deals with suspects not in the presence of judicial authorities, e.g., during an arrest or search immediately following a crime and before the actual initiation of the proceedings, to record the statements made by the concerned person (Cocomello & Corbo 2014:6).

The Decree implementing the Directive in Italy has transposed the endeavor of MSs to establish a register of independent translators and interpreters to be taken care of by the relevant professional associations. However, the determining phrase "appropriately qualified" and any further explanation has not been included in the transposed text. For instance, a Scottish Government framework agreement is in place, whereby the possession of a Diploma in Public Service Interpreting (Scottish legal option) is one of the standard conditions to ensure interpretation quality (Scottish Government 2014:2). There is nothing of this kind in Italy, where the appointment is up to the judge, whose decision might be more affected by the tight timing of pre-trial proceedings rather than by actual competence, particularly when it

comes to languages of lesser diffusion. Curiously enough, despite the inclusion of the translation professions in court registers, no provision has been adopted to have judicial authorities only hire registered LITs, as provided for in general by Article 221 c.p.p. for other external experts. The sole criteria for not appointing an LIT are inability and incompatibility, as discussed in the previous section; no reference to qualification requirements or to the possibility of adopting remote interpreting under Article 2[6] is made. Hence, it should come as no surprise that, at the time of writing, many unfortunate episodes are still reported due to this case-by-case approach. For example, on 3 May 2014 a trial against about 50 Bosnian Roma accused of a series of thefts in Turin was postponed to following autumn because no interpreter mastering the Khorakhané dialect was found; on the same day, two Vietnamese and a Chinese accused of possession of a kilogram of methamphetamine were released for the same reason (even though the Police had found an interpreter right after the arrest) as they could not acquire sufficient knowledge of the case against them and exercise their right of defense.

Despite being highly emphasized by professional associations, the importance of hiring only qualified translators and interpreters was not taken up in the implementation of domestic legislations. For instance, in Romania, the new Code itself allows for translation to be carried out by any person who can communicate with the accused person when no authorized translator is available (Ilie et al. 2014); in France, anybody could be appointed and "the right to complain about an interpreter in pre-trial proceedings is limited to an observation in the file and the possibility to replace the interpreter, without the previous interviews becoming null and void" (Brannan 2014). Since the Italian Decree for the transposition did not provide any amendments in this respect, the general rules still apply, with the only criterion by law for replacement of a translator being a missed deadline; it is up to the judge, and most likely upon request of the accused person, to replace the incompetent "interpreter/translator". During the 18th annual University Conference entitled "Translating and interpreting for our citizens" (27-28 March 2014), the DG Justice Legislative Officer, Gonçalo Braga da Cruz, said that complaints had in fact started to be submitted (DG Translation 2014:3). Braga da Cruz also recalled the unfortunate episode of an unspecified MS customarily hiring a football player to serve as an interpreter in criminal proceedings. All over Europe the press has covered many examples of substandard language services in legal proceedings. In May 2014, the Daily Mail reported some "farcical" episodes in UK courts, which were the result of the "shambolic"

privatization of court foreign language services in January 2012, leading to the recruitment of the next-best person in an attempt to dump prices. This resulted in 10,000 complaints in the first 18 months of the contract with Applied Language Solutions – which has since been bought by Capita Translation and Interpreting –, during which the agency "had failed to send interpreters to a fifth of trials, sent people speaking the wrong language, or translators who are simply incompetent" (Drury 2014). Standards were apparently so low that "the director of another translation company was able to sign up his cat Masha as a translator – who was then offered jobs" and a court interpreter at a murder trial in Winchester "confessed he was an unqualified stand-in for his wife, who was busy" (Drury 2014).Within the same week, the Danish daily, *Politiken*, reported that in Denmark, where no state-controlled stringent training for LITs exists, unskilled interpreters of, in particular, Arabic, Turkish, Somali and Farsi in legal matters are often so incompetent that they put the rights of the accused at risk (Jakobsen 2014). According to the head of the Danish National Defence Lawyers Association, Henrik Stagehorn, such bad translations result in judges passing wrong verdicts. So much for the protection of human rights.

As recommended in the ImPLI Final Report (2012:21), remuneration of qualified professionals "should also be regarded as a measure of quality assurance for interpreting", which is a "highly specialised service and should be paid accordingly". While the outsourcing of language services to agencies may appear to be an attractive solution, contracts lack transparency about the intermediary fees (Katschinka 2014:111-112). According to the British Ministry of Justice in response to Freedom of Information, the bill for language assistance outsourced to Capita TI soared from £7.9 million in 2012 to £15.5 million in 2013 (Drury 2014), because of cases collapsing, suspects being remanded in custody, and unqualified and unprofessional LITs being replaced by language experts from the National Register of Public Service Interpreters on an ad-hoc basis.

As highlighted in the overview above, bad-quality linguistic assistance in criminal proceedings is both an issue of public money and a violation of the human right to fair access to justice. For translation and interpreting to constitute a fundamental inclusion tool in our globalized society, the recruitment of qualified professionals is crucial. This is particularly critical for speakers of languages of lesser diffusion, e.g., migrants and language minority participants who do not speak the national language as a first language or at least to a

sufficient level. By way of example, by July 2013 foreign national prisoners from 160 different countries accounted for 13% of the prison population in England and Wales, over one-quarter of which was from a minority ethnic group (Berman et al.2013:10). It is in fact for such minority languages that finding a professional LIT is more difficult yet all the more necessary to enable these prisoners to exercise their right of defense. This has direct implications for LIT training, which should also enable the development of competences and the qualification of experts of less established languages, and for the training of judicial stakeholders, so as to raise awareness of the quality requirements and working conditions of LITs in criminal proceedings; however, no provision in this respect has been implemented after the transposition of the Directive. As can be read in the Transposition Note submitted by Scotland, "it will be for those responsible for the training of the judiciary and prosecutors to make the necessary training arrangements. Those responsible are aware of the requirements in the Directive", some of which "are to be transposed by administrative arrangements".

## 4. Addressing the Directive's requirements: QUALETRA

With the purpose of protecting the basic rights referred to in Directive 2010/64/EU, in October 2012, the Criminal Justice Programme of the European Commission co-funded a two-year project on the quality of legal translation, called QUALETRA, in an attempt to fill in the lacunae outlined above with regard to the pressing issues of translation quality in criminal proceedings. The QUALETRA consortium – KU Leuven (Coordinator), Council of Bars and Law Societies of Europe (CCBE), Dublin City University, European Criminal Bar Association (ECBA), EULITA, ISIT Paris, London Metropolitan University, Riga Graduate School of Law, Universidad Alcalá de Henares, Universidad Pontificia Comillas ICAE-ICADE and Università di Trieste – is carrying out a series of activities aimed at establishing common minimum standards and identifying best practices in order to ensure a system of quality assurance for translation services in criminal proceedings. The five main activity lines, called Workstreams (WSs), each yielding practical results to be used directly by practitioners and policy makers in their respective MSs, are outlined below:

1. *WS 1:* to develop a series of supporting materials for translators, including a terminological database as well as corpora and translation memories, all focusing on the essential documents referred to in Article 3 of the Directive;
2. *WS 2:* parallel to WS 1, to conduct the analysis of the European Arrest Warrant as a special case;

3. *WS 3:* to develop training formats and materials for legal translators and for the language training of legal practitioners;
4. *WS 4:* to develop testing, evaluation and assessment procedures and materials for legal translation in criminal proceedings;
5. *WS 5:* to provide a wide forum to discuss best practices and practical implementation of the project results.

## 5. Proposal for a syllabus for legal-translator training

Translation studies lack the curriculum-research tradition of other disciplines with longer academic standing (Hurtado Albir 2007). Nevertheless, Gambier (2012:163) points out that since the first few teaching courses in translation at university level in the 1930s, more attention is being paid to translator-training programmes (cf. Delisle 1980, 1993; Hurtado Albir 1999; Kiraly 2000; González Davies 2003; Kelly 2005), with more frequent specialized conferences and publications; still, "no consensus on a basic methodology of translation training" exists.

In an attempt to counteract "the lack of a theoretical model based on empirical evidence about the knowledge and skills involved in professional translation activities" (Kiraly 1995:3), the QUALETRA project has developed a series of recommendations for the training of qualified legal translators specializing in the translation of the most recurring texts in the specific domain of criminal proceedings. Following an initial review of the training opportunities for legal translators and interpreters in Europe, the QUALETRA group outlined the recommended syllabus based on a survey conducted by the University of Trieste as coordinator of Qualetra WS 3 on "Training" in cooperation with EULITA, CCBE/ECBA, EMT, EUATC and CIUTI. The survey aimed to investigate and assess current practices in legal translator training[1] provided by professional associations, ad-hoc training schemes, training institutes and higher education institutions in the EU, so as to assess the fulfilment of the requirements set out in the Directive. The results of the QUALETRA WS 3 survey, which was initially administered in April 2013 and at the time of writing has collected 59 responses from 19 nations, will be contrasted with the recommendations set out below. Finally,

[1] The list of skills to be rated by respondents was compiled based on relevant Directives as well as recommendations and reports by former and current EU projects (e.g., *Aequitas*, *Status Quaestionis*, *Reflection Forum on Multilingualism and Interpreter Training*, *Special Interest Group on Translation and Interpreting for Public Services*, *Building Mutual Trust*, *Judicial Training in the EU Member States*).

additional evidence against which the proposed model will be tested is currently being collected by the author through an empirical study aimed to investigate translation problems encountered by legal translation trainees.

Using competences as the "main yardstick for developing guidelines in curriculum design" (Hurtado Albir 2007:165), the QUALETRA project has proposed a legal translation competence model (Scarpa and Orlando, forthcoming) informed by previous paradigms on general translation competence (TC). Research over the past few decades has yielded a series of at least partially overlapping TC conceptualizations which resulted in terminological and conceptual ambiguity (e.g., Bell 1991; PACTE 2003; Kelly 2005; Göpferich 2009; for legal translation competence, Prieto Ramos 2011; Piecychna 2013). For the purposes of this study, an attempt to harmonize terminology was made by adopting the definition of TC developed by the European Master's in Translation Network (EMT), whereby competence is "the combination of aptitudes, knowledge, behavior and knowhow necessary to carry out a given task under given conditions", to be "recognised and legitimised by a responsible authority" (EMT Expert Group 2009:3). The model of legal translation competence developed within the QUALETRA project can be superimposed on the EMT framework of reference, which identifies six interdependent macro-competences serving as "the minimum requirement[s] to which other specific competences may be added" (ibid.). With a top-down approach, these macro-competences – i.e. translation service provision, language, intercultural, information mining, thematic and technological competence – have been integrated with a conceptual list of sub-competences relevant to legal translators. Such an integrative approach has direct implications on specialized legal translator training.

From a training perspective, the proposed core competences for legal translation in criminal proceedings have been operationalized into thematic modules with specific learning objectives, very much like in Hurtado Albir's curriculum design (2007). As a continuation of objective-based learning, which was first developed in the 1960s, the scholar's model addresses the challenges faced by higher education today, namely adapting teaching to (1) a model that is comparable and recognizable at an international level; (2) a model that adheres more to the demands of society; and (3) new, integrated pedagogical models, e.g., 'competence-based training' (Hurtado Albir 2007:164). Though a simplified version, the syllabus proposed here follows a similar modular approach, which reflects the "Skills Card"

developed by the QUALETRA consortium in collaboration with the European Certification and Qualification Association (ECQA). The ECQA "Skills Card" is a standard model to provide an EU-wide framework for the accreditation of qualified professionals who, in the specific case of QUALETRA, are legal translators specializing in criminal proceedings in line with the Directive (Scarpa et al. 2014). In the ECQA model, each certified profession ("Domain") has a modular structure in the form of logical topics ("Units") divided into sub-components ("Elements") with a set of learning objectives ("Performance Criteria").
The proposed syllabus, to be adopted as either a stand-alone course or part of a larger programme, should be offered in either academic or Continuous Professional Development (CPD) establishments, as either language-specific or language-independent. Despite the special focus on criminal law provided by the scope of the project, such recommendations are kept general so as to allow for customization at localized level. The outline and summary of topics are schematized in Table 1 below in a list of core modules with the relevant competences involved.

Table 1. Proposed syllabus for legal translator training

| Recommendations for legal translator training | |
|---|---|
| *Modules* | *Competences involved* |
| **Introduction to criminal law and procedure** | Thematic competence |
| **Legal translation practice** | Language competence<br>↕↕↕<br>Intercultural competence<br>(Textual dimension)<br>↕↕↕<br>Translation service provision competence<br>(Production dimension) |
| **Specialized legal sources (documentary, terminological, phraseological)** | Information mining competence<br>↕↕↕<br>Technological competence |
| **Professional practice and code of conduct** | Translation service provision competence<br>(Interpersonal dimension)<br>↕↕↕<br>Intercultural competence<br>(Sociolinguistic dimension) |

Within the proposed training format, a special focus lies on the development of the *thematic competence*, i.e. the specific legal knowledge required to produce an accurate legal translation. Introductory modules to national, comparative and European criminal law and procedure should help trainees attain:

- familiarity with the main domains and sub-domains of law;
- knowledge of the different procedures in the legal systems involved (e.g., levels of jurisdiction, legal structures, settings);
- awareness of current legal issues, e.g., EU Directives relating to legal translation;
- mastery of legal concepts and asymmetries between different legal systems.

Looking at the findings of the QUALETRA WS 3 survey, legal knowledge was deemed as an important component of legal translator training by almost all respondents, especially at MA and CPD-level. However, with reference to the branch of law dealt with by each programme, national and comparative law appear to significantly outweigh EU law, the latter being the lowest ranking of the lot. This might represent a hindrance for the fulfilment of the requirements of the Directive.

The second core module is on legal translation practice, consisting of theoretical lectures and more practical seminars and workshops where theory can be applied. Consequently, this module (or set of modules) addresses different interdependent competences, i.e. language, intercultural and translation service provision competence.

As previously mentioned, this training format is based on the idea that a legal translator is a translator first. Presupposing a mastery of the working languages (C1-C2 level of the Common European Framework of Reference for languages) and the more general EMT competences for translation, *language competence* in this context should not concern the development of foreign language skills, but rather the mastery of the specific genre conventions of legal documents. By also addressing the textual dimension of the *intercultural competence*, the learning outcomes for this module include:

- mastery of the rhetorical standards of different types of legal documents (e.g., essential documents and EAWs in criminal proceedings);
- ability to recognize function and meaning in varieties of legal language usage;
- ability to relate a given legal text to its specific legal context;
- familiarity with the overall structure of legal documents;
- ability to identify the essential information in and purpose of legal documents.

Once these objectives are achieved, theory turns into practice in the translation of the relevant documents so as to develop the necessary transfer skills, i.e. the production dimension of the *translation service provision competence*. In particular, given the specific scope of the project, the recommendations for this module include the translation of the essential documents and the European Arrest Warrant as listed in Directive 2010/64/EU. As a matter of fact, though translation-oriented skills have been generally deemed as 'Essential' by most

respondents of the QUALETRA WS 3 survey, the most recurring text types in criminal proceedings appear not to be the object of study in class. Other learning objectives are the ability to offer a translation appropriate to the source and target criminal legal systems, and to solve possible problems resulting from the discrepancies in such systems.

The other dimension of the translation service provision competence outlined by the EMT Expert Group is the interpersonal dimension, strictly related to the sociolinguistic dimension of the *intercultural competence*. The development of these competences, which have been deemed as 'Important' by the trainers who took the QUALETRA WS 3 survey, is incorporated in the "Professional practice and code of conduct" module, which entails an awareness of:

- the role of the legal translator;
- the relevant professional associations;
- professional practice issues, e.g. need to be briefed, personal safety and documentary security, legal obligations and responsibilities (such as confidentiality);
- professional ethics;
- the rules for interaction between the specific parties involved, such as legal professionals and clients.

Finally, special attention should be paid to the development of the (interdependent) *information mining* and *technological competences*. Trainees should develop the following:

- ability to identify specific legal sources
- ability to evaluate the reliability of and differentiate between legal sources (e.g., national, international, EU level)
- ability to extract relevant information and terminology
- mastery of tools

These abilities should enable trainees to create a terminological database where each term entry can be adjusted to address the conceptual and linguistic differences between legal systems. The use of other tools should be mastered, including CAT tools, terminology management tools and electronic corpora, such as the QUALETRA multilingual translation memories, term bases and parallel and comparable corpora which are available online for

public use by professional legal translators.[2] Finally, technologies for remote language assistance should also be included in a professionalizing training for legal translators. Data mining resources have been marked as 'Essential' in the QUALETRA survey, whereas the ability to use translation memories and terminology memory systems, which are in fact both very important in legal translation, were ranked at the lower end of the 'Important' benchmark. Though it can be assumed that specific modules will be provided for the development of such competences during translator training, trainees should in fact be able to retrieve and manage information properly, so as to ensure translation consistency and accuracy.

## 6. Conclusion

Despite having had a longer than usual 3-year period for the transposition of the Directive in the domestic legislation, not all MSs have implemented its requirements, either in full or partially. The minor amendments to domestic laws which have been carried out in some MSs risk maintaining the status quo that the Directive aimed at overcoming, e.g., in Italy (Falbo 2014:22).

Language assistance in criminal proceedings should not be left to chance or improvised due to the urgency of the proceedings, as ensuring the improved quality of such assistance results in shorter proceedings and, even more importantly, fair verdicts.
Despite the rather gloomy picture painted above, the Directive is a first step in the right direction. With both a didactic and professional approach, the QUALETRA project managed to achieve common minimum standards in the field of legal translation – more precisely, by identifying the competences required of professional LITs, quality criteria as well as reference materials for both translation trainees and professionals.

The road ahead is still long before the requirements of the Directive are met and language rights are satisfactorily ensured; still, as QUALETRA has shown, changes are incremental.

[2] All QUALETRA materials can be accessed at [http://www.eulita.eu/qualetra-final-report-package].

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