

On the Usefulness of the Pragmatic Perspective in Translation: the case of the Speech Acts in the EU Legal Texts

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Abstract: Based on the belief that the choice of any lexical or grammatical item depends not only on the meaning or on the use perceived as conventional in a particular language, but also on a wide range of contextual variables, the present paper argues for the necessity and the usefulness of adopting a pragmatic perspective at various stages of the translation process. For illustration, the author focuses on the specific features presented by the speech acts predominantly used in the English versus the Romanian variants of the EU legal texts, and especially on the illocutionary force with which they are associated.

Keywords: EU legislation, illocutionary force, pragmatics, speech acts, translation

1. Introduction

For over ten years now, I have been teaching a course focused on the specific aspects of the process of translating the EU legislation from English into Romanian. The course is addressed to the first-year students in the MA of Theory and Practice of Translation organized by the West University of Timișoara, Romania, and aims at raising their awareness with regard to the problems that might be encountered by the Romanian translators of EU legal texts. On our first meeting as part of this course, I usually ask my students to have a look at the English variant of a EU law, and to identify, in a relatively spontaneous manner, the difficulties that, in their view, the translators of such texts might have. Among the reactions concerning the translation challenges that my students identified in the context of this first-hand experience with the EU texts, there were frequent comments saying that most of the words and the

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structures present in those texts are familiar, but the way in which they are put together is difficult to understand, and, most certainly, even more difficult to transfer into a target language.

The reality is that, even if an appropriate translation depends on the good knowledge of the two linguistic systems involved, this condition is not at all sufficient, because, quite often, the content of an utterance is not completely explicable by the semantic and the syntactic values typically assigned to the linguistic forms used. To be more exact, the choice of any lexical or grammatical item does not depend only on the meaning or on the use perceived as conventional in a particular language, but also on a wide range of contextual variables which frequently extend or even alter an apparently stated meaning, and, consequently, make an essential contribution to the act of interpretation. This is of special relevance for the translators who must rely on various specific contextual factors in order to give a correct interpretation of the source text, on the one hand, and to choose among alternative linguistic expressions in order to build an appropriate target text, on the other.

Given all these, it is important to note that, before actually dealing with the challenges that the lexico-semantic features specific to a certain category of texts might pose in the process of transfer from a source to a target language, translators should try to understand the presence of certain linguistic forms (e.g. the repetition of some lexical items, the use of specific verbal constructions, the preference for a certain type of vocabulary, etc.) from a pragmatic perspective. The pragmatic perspective is useful for the translators, because it goes beyond the study of words or grammatical structures, and focuses on higher units of the text, taking into account the context, the intention of the speaker, and various implicit elements that must be accessed by the addressee. In other words, in the context of pragmatics, language is explored in close connection to the uses to which it is put.

The main purpose of the present paper is to point to the necessity and the usefulness of adopting a pragmatic perspective at various stages of the translation process, from the source-text comprehension to the target-text revision. In order to achieve this purpose, I will focus on the features presented by the speech acts predominantly used in the English versus the Romanian variants of a set of texts belonging to the EU legislation, and especially on the illocutionary force with which they are associated.

2. Some theoretical and methodological considerations

The “speech act theory” was initiated by Austin (1962), who started from the observation that there are certain declarative sentences, like promises or declarations, which, despite their form, cannot be judged in terms of the traditional true/ false dichotomy. The explanation that he offers in this respect is that such utterances represent means of performing intended actions, and, just like other types of actions, they can be successful or fail under certain circumstances. Austin labels these utterances as “performatives”, which are set in contrast with the “constatives”, the

difference between them representing “a distinction between doing and saying” (Austin 1962: 47). The author also tries to clarify the sense in which actions could be said to be performed by utterances by making the distinction between the “locutionary act”, which is the saying of a certain utterance, the “illocutionary act” (or force), that is the intended action of the speaker (for instance, ordering, giving information, etc.), and the “perlocutionary act”, representing the actual effect that the utterance has on the audience (cf. Austin 1962).

The doctrine of the “illocutionary act” was subsequently developed by Searle (1969, 1979). In his view, speech acts can be analyzed in terms of an illocutionary force, which operates on a propositional content. According to Searle, there are five illocutionary points that speakers can achieve on propositions in an utterance, namely the assertive, directive, commissive, expressive and declaratory illocutionary points. He also introduces the concept of “illocutionary force indicator” (Searle 1969: 30), which is based on the possibility of linking the illocutionary force (i.e. the speech act function) to some linguistic features of the utterances under analysis.

The illocutionary force embedded in an utterance represents the core of most of the studies that linguists and discourse analysts have dedicated to speech acts in general (cf., for instance, Bach and Harnish 1979, Bazzanella, Caffi and Sbisà 1991, Allott and Shaer 2018). The present study will also focus on the illocutionary acts revealed by the EU texts making up my corpus, highlighting the types of speech acts which are predominantly used in these documents, as well as the specific devices by which they characteristically indicate their function in the English texts, on the one hand, and in their Romanian variants, on this other. I consider that this approach is useful, because it points to the problems that might occur at this level during the process of translating EU texts from English into Romanian. As a general rule, any translator should be familiar with the types of speech acts conventionally displayed by the category of texts which s/he deals with, because failure to recognize the illocutionary force of a certain source-text utterance, or to render it properly into the target text, may undermine the communicative purpose of that text and, consequently, may lead to an inappropriate translation.

My analysis is based on elements taken from various approaches contributed to the theory of the speech acts. First of all, in the identification of the various types and sub-types of speech acts contained by the texts in my corpus, I will use the categories and the terminology suggested by Searle (1976, 1979) and by Bach and Harnish (1979). Additionally, my analysis will incorporate an interesting insight coming from van Dijk (1982), who claims that speech acts in a discourse do not present only a sequential, linear organization, but also a hierarchical one, thus leading to the formation of global macro-structures, which he calls “global speech acts”.

Having clarified issues regarding the theoretical framework of the present research, I must refer to the corpus of texts which represent the focus of this study. Thus, my corpus is bi-lingual in nature, containing 60 EU legal texts written in English, as well as their Romanian official variants. There are two main criteria that guided the selection of my corpus. First of all, I decided to restrict my choice to texts

which, according to Article 288 of the Treaty on the Functioning of the European Union, represent “legal acts”: regulations, directives, decisions, recommendations and opinions, as well as delegated and implementing acts. All these documents illustrate the secondary legislation, which is the law adopted by the European institutions in accordance with the Treaties, and which is translated, from English, German and French, into the languages of all the Union’s member states. Secondly, I selected texts referring to various domains of activity, being guided, in this sense, by the directory of legal acts which is available on the official site of the European Union law, and which divides the EU legal texts into 20 thematic chapters. Each of these chapters is represented by three texts in my corpus. Reference to the texts in my corpus is made by means of the Celex number, which is a unique combination of elements, giving information on the code of the sector to which the document belongs (the first figure), the year in which the document was adopted (the next four figures), the type of document (represented by a letter), and the number of the document (made up of the last four figures).

3. Speech Acts in the EU Texts: A Translation-oriented Analysis

Based on the theoretical and methodological data presented in the previous section, my endeavour aims at identifying and interpreting the various speech acts contained by the EU documents, the indicators of the functions they perform in the discourse as a whole, as well as their combination into larger structures. In the case of the individual acts, the boundary is represented by the finite clause, while the macro-speech acts are interpreted in the context of the overall discourse. Moreover, the focus will be on the speech acts typically displayed by the main clauses in the utterances contained by the EU documents, because I consider that, in the subordinate clauses, most verbal forms are determined by grammatical or logical considerations, and do not necessarily represent a feature of the text-type in question.

In close connection to the communicative purpose of the EU legislation, each of the legal texts in my corpus – be it an English original text or its Romanian translation – may be summed up as a *directive*, because, just like in the case of any type of legislation, these documents are issued by an authority with the specific purpose of achieving a certain type of behaviour on the part of the addressees. As it will be illustrated in what follows, this main act is supported, on the one hand, by a number of macro-speech acts performed by the various sections of the EU documents, and, on the other, by the multitude of individual acts that each of these sections includes.

3.1. Speech Acts in the Preamble

The Opening text together with the Enacting formula, although separated by a considerable amount of text, count as a *declaration*, which marks the successful enactment of the law: e.g. “The European Parliament and the Council of the European Union, ... have adopted this regulation”/ “Parlamentul European și Consiliul Uniunii

Europene, ... adoptă prezentul regulament” (32018R0673); “The Administrative Commission for the Coordination of Social Security Systems,... hereby recommends to the competent services and institutions that”/ “Comisia administrativă pentru coordonarea sistemelor de securitate socială, ... recomandă serviciilor și instituțiilor competente următoarele” (32019H0429(01)).

The section of the Citations, in conjunction with that of the Recitals, may be identified as an act of *justification*, because these two sections establish the legal basis and the grounds on which the document is issued. This process of justification is backed up by a number of individual speech acts performed by the utterances included in these two sections. If the Citations consist only in a number of justifications signalled by verbs in the participle (cf. “having regard to”), the Recitals are characterized by a greater variety of speech acts. In the vast majority of cases, these acts represent the class of *assertives*, because their function is to provide information on certain aspects that may constitute arguments for the formulation of the legal provisions contained in the document.

The multitude of assertives included in the section of the Recitals can be further sub-categorized according to the function that they are assigned in each particular case. Thus, in building their arguments, the texts in my corpus make frequent use of:

- *informatives*: e.g. “In practice, most NCAs apply national competition law in parallel to Articles 101 and 102 TFEU.”/ “În practică, majoritatea autorităților naționale de concurență aplică dreptul intern în materie de concurență în paralel cu articolele 101 și 102 din TFUE.” (32019L0001);
- *descriptions*: e.g. “Party events, such as congresses, and the electoral campaigns of the national parties are appropriate and efficient additional means of making this affiliation known...”/ “Evenimentele organizate la nivel de partid, cum ar fi congresele și campaniile electorale ale partidelor naționale, reprezintă mijloace suplimentare adecvate și eficiente de a face cunoscută această afiliere...” (32018H0234);
- *predictions*: e.g. “The measurements carried out in accordance with that procedure will provide robust and comparable CO2 emissions and fuel consumption data ...”/ “Măsurătorile efectuate în conformitate cu procedura respectivă vor oferi date fiabile și comparabile privind emisiile de CO2 și consumul de combustibil ...” (32018L0956);
- *reporting*: e.g. “In his State of the Union address 2017 (1), President Juncker proposed the establishment of a ‘European Labour Authority’...”/ “În discursul său din 2017 privind starea Uniunii (1), președintele Juncker a propus crearea unei Autorități Europene a Muncii...” (32018D0402).

It is interesting that, in both the English and the Romanian texts under analysis, the illocutionary force indicators in the case of all these assertives are never represented by illocutionary verbs, but only by the declarative form of the utterances, the Indicative Mood of the main verbs and the unmarked order of the clause

constituents. In addition to these elements, which are valid for any type of assertion, the acts of reporting are signalled by verbal tenses with past reference (such as Past Simple or Present Perfect), sometimes in association with adverbial phrases denoting some past moment, predictions are indicated by the future tense of the main verb, while descriptions are generally associated with a nominal type of predicate.

When the text-producer's intention is no longer primarily to inform, but rather to persuade the addressees, neutral speech acts like the assertions mentioned above do no longer serve the communicative purposes of the text. In such cases, the Recitals use speech acts from the category of the directives, which are characterized by a stronger illocutionary force. Thus, the macro-speech act of justification is often supported by *suggestions*, whose main illocutionary force indicators are, in English, the modal verbs *can* or *may*, and, in Romanian, the verb *a putea*, in its possibility sense, as well as the impersonal verb phrase *este posibil*: e.g. "Such means can include identification documents used on a provisional basis and residence cards issued to such family members."/ "Astfel de mijloace pot include documente de identificare utilizate cu titlu provizoriu și permise de ședere eliberate acestor membri de familie." (32019R1157).

The Recitals also reveal numerous cases of *recommendations*: e.g. "For reasons of legal certainty, Decision 2011/381/EU should be repealed."/ "Din motive de securitate juridică, Decizia 2011/381/UE ar trebui abrogată" (32018D1702); "It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities ..."/ "Consiliului îi revine obligația de a adopta măsuri privind stabilirea și alocarea posibilităților de pescuit ..." (32018R2025). Recommendations are signalled, in English, by the modal verb *should* and by evaluative adjectives such as *important*, *necessary*, *appropriate*, *essential* or *incumbent*, and, in Romanian, by the verb *trebuie* (sometimes in its weaker form *ar trebui*) and by a series of phrases containing adjectives like *recomandabil*, *oportun*, *important*, *necesar*, or the noun *obligația*.

3.2. Speech Acts in the Enacting terms

The macro-speech acts mentioned so far – i.e. the declaration rendered by the sections of the Opening text and of the Enacting formula, and the act of justification signalled by the Citations and the Recitals – are actually meant to prepare the ground for the main macro-act of the EU document, which is the act of *prescribing* performed by the section of the Enacting terms. The individual acts performed in this section do not present the variety of the acts used in the explanatory part of the text, but they certainly play a major part in the achievement of the communicative purpose specific to the EU legislation.

The macro-speech act of prescribing is realized by means of individual speech acts belonging to the broad category of the *directives*, on the one hand, and to that of the *declarations*, on the other. A great percentage of the directives is represented by the *commands*, which are either positive:

- e.g. ST: “Those additional measures shall include one or more of the additional measures set out in points (a) to (c) and (g) to (i) of Article 8.”
TT: “Aceste măsuri suplimentare includ una sau mai multe dintre măsurile suplimentare prevăzute la articolul 8 literele (a)-(c) și (g)-(i).”
(32019R0758)

or negative:

- e.g. ST: “That decision shall not prevent olive oils labelled prior to the date on which that decision takes effect from being marketed until the stocks are exhausted.”
TT: “Această decizie nu împiedică comercializarea până la epuizarea stocurilor a uleiurilor de măsline etichetate înainte de data la care decizia respectivă produce efecte.”
(32018R1096)

As the examples above illustrate, in English, these commands are marked by the presence of the mandatory *shall*. It is interesting that, in the Romanian variants of the documents, the obligatory character of the legal provision does not involve any special illocutionary force indicator, and it is rendered by means of the present tense of the Indicative Mood. There are some cases when the English texts use *must* instead of *shall* in order to render the imperative force of the law, situations in which the Romanian translator resorts to the impersonal verb *trebuie*: e.g. “The address must indicate a single point at which the manufacturer can be contacted.”/ “Adresa trebuie să indice un singur punct de contact pentru producător.” (32019L0882); “The penalties provided for must be effective, proportionate and dissuasive.”/ “Sancțiunile prevăzute trebuie să fie eficace, proporționale și cu efect de descurajare.” (32019R1890). However, as the English Style Guide (2019: 54) stipulates, in order to impose an obligation or a requirement, the EU legislation normally uses *shall*.

Another category of directive speech acts revealed by the Enacting terms is that of the *permissives*, which are signalled by the presence of the modal verb *may/ a putea*:

- e.g. ST: “In justified cases, the Member States may take longer than the time limits laid down in paragraphs 1 and 3.”
TT: “În cazuri justificate, statele membre pot să depășească termenele prevăzute la alineatele (1) și (3).”
(32019L0997)

When the legal provisions are marked by the negative form of the verb *may/ a putea*, they represent *prohibitions*, whose force is very similar to that of the negative commands: e.g. “Unless otherwise provided for in Articles 9, 10 and 11, the data may not be disclosed or transmitted ...”/ “Cu excepția cazului în care se prevede altfel la articolele 9, 10 și 11, informațiile nu pot fi divulgate sau transmise ...” (32018R1672).

In addition to speech acts from the area of the directives, the prescribing part of the EU documents that I analyzed also contains numerous *declarations*, which represent the direct manner of implementing the legal provision in question: e.g. “The Member States are hereby authorised to give their consent ...”/ “Prin prezenta decizie, statele membre sunt autorizate să își exprime consimțământul ...” (32019D2008). These declarations are very close to the acts which Austin (1962) first conceived as performatives, a proof in this respect being the frequent use of the adverb **hereby** in the EU documents written in English. However, the presence of **hereby** is not compulsory for a certain statement to be interpreted as a declaration, and the English texts in my corpus reveal numerous situations when the speech acts of this type are simply marked by verbs in the present tense of the Indicative Mood: e.g. “The Annex to Implementing Directive (EU) 2016/2109 is amended in accordance with the Annex to this Directive.”/ “Anexa la Directiva de punere în aplicare (UE) 2016/2109 se modifică în conformitate cu anexa la prezenta directivă.” (32018L1028). As far as the Romanian renderings of these acts are concerned, the two examples offered above clearly indicate that declarations do not present any special illocutionary force indicators, and that, in the target texts, it is only the intended meaning that differentiates these acts from the commands discussed earlier.

A special place among the declarations contained by the category of texts under analysis is represented by the definitions, which are actually declarations concerning the language use itself (cf. Coulthard 1985: 25). This type of language-oriented speech acts is not specific to the EU documents, being used whenever a text producer wants to specify the exact terms in which an important concept is to be understood in a particular context. The vast majority of the texts in my corpus reveal instances of such definitions: e.g. “‘international waters’ means waters falling outside the sovereignty or jurisdiction of any State”/ “„ape internaționale” înseamnă apele care nu se află sub suveranitatea sau jurisdicția vreunui stat” (32018R2025). The indicators of illocutionary force for these acts are represented, in English, mainly by the verb *to mean*, and, in Romanian, by the verbs *a însemna*, *a desemna* or *a se înțelege*.

3.3. Speech Acts in the Concluding formulas and the Annex

The last two sections of the EU texts have an auxiliary role in relation to the main prescriptive act of these documents. Thus, the section of the Concluding formulas, which includes the place and the date when the document was signed or adopted, followed by the signature(s), counts as an *informative*: e.g. “Done at Brussels, 15 November 2018.”/ “Adoptat la Bruxelles, 15 noiembrie 2018.” (32018R1785).

An auxiliary role is also played by the section of the Annex, which can be interpreted as an act of *providing additional information*. Quite frequently, the macro-speech act performed by this text segment is supported only by technical data offered under the form of lists or tables, which are not so relevant from the point of view of the speech acts. However, when the Annex contains complete utterances, its global function is backed up by a wide range of speech acts, depending on the nature of the

additional information provided in each particular document. Thus, the section under discussion often includes numerous speech acts similar to those identified in the Enacting terms, especially when the Annex informs how a law is to be amended:

- *commands*: e.g. “The Union shall, where appropriate, endeavour to support the adoption of the following actions by the CEEAF ...” / “Atunci când este cazul, Uniunea depune eforturi pentru a sprijini adoptarea de către CEEAF a următoarelor acțiuni ...” (32019D1570),
- *declarations*, especially definitions: e.g. “‘temperature coefficient’ (C) means a correction factor that accounts for the difference in operating temperature”/ “„coeficient de temperatură” (C) înseamnă un factor de corecție care ține cont de variația temperaturii de funcționare” (2019R2018), or
- *permissives*: e.g. “Two of the three bunkering operations may be replaced by approved simulator training on bunkering operations as part of the training in paragraph 8.1 above.”/ “Două dintre cele trei operațiuni de bunkerare pot fi înlocuite cu o formare pe simulator aprobată privind operațiunile de bunkerare, efectuată în cadrul cursului de formare menționat la punctul 8.1 de mai sus.” (32019L1159).

Commands, declarations and permissives are clearly the predominant types of speech acts that can be found in the Annexes of the EU documents. However, this section also makes use of speech acts which are similar to those identified in the Recitals, but they have a poorer representation. Thus, we can find examples of *informatives* (e.g. “The tables in this Annex set out TACs and quotas expressed in tonnes of live weight by stock.”/ “Tabelele din prezenta anexă stabilesc TAC-urile și cotele, exprimate în tone de greutate în viu pe stoc” – 32019R2236), *descriptions* (e.g. “Internal production control is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4 of this Annex ...”/ “Controlul intern al producției este procedura de evaluare a conformității prin care producătorul îndeplinește obligațiile prevăzute la punctele 2, 3 și 4 din prezenta anexă ...” – 32019L0882), as well as more forceful *suggestions* (e.g. “The development of language competence and of linguistic awareness can be integrated transversally into the curricula.”/ “Dezvoltarea competenței lingvistice și sporirea sensibilizării în privința limbilor pot fi integrate transversal în programa de învățământ.” – 32019H0605(02)) or even *obligations* (“These levels of biodegradation must be achieved within 10 days of the start of degradation ...”/ “Aceste niveluri de biodegradare trebuie atinse într-un interval de 10 zile de la începerea biodegradării ...” – 32018D1702).

It seems, therefore, that, in the Annex, the types of speech acts do not follow an identifiable pattern, as it was the case in both the Recitals and the Enacting terms. In other words, the producers of these texts use any speech act, which, in their opinion, contributes to achieving the purpose of this section, as well as of the text as a whole. If, in the case of the English texts, the presence of the mandatory *shall* helps the recipients identify the commands among the other speech acts used in the Annex,

in the Romanian translations of the EU documents the situation is somehow different. Thus, in Romanian, the commands are signalled by the same type of verbs in the present tense of the Indicative Mood, which are used for the declarations, as well as for the informatives or the descriptions contained by these sections. This means that the English variants of the EU legal texts present more clarity from this point of view, and that it is quite easy for their addressees to recognize the type of speech act used in each particular case. Things are likely to be more problematic for the target audience of the Romanian translations of the EU documents, because the correct understanding and interpretation of the speech acts displayed by these texts has to rely more on considerations of semantic and conventional nature than on the linguistic features of the utterances expressing them.

4. Conclusion

The relationship between the linguistic realization of an utterance and its illocutionary force in a concrete situation of communication is not fixed and is rarely established in a spontaneous manner, being determined, to a large extent, by certain conventions. This is very well reflected by the texts that I have analyzed, because, very often, the interpretation of the speech acts was based on the type of context in which the various utterances appeared, and not necessarily on the linguistic elements that they contained. Thus, it was in the explanatory segment of the text that various English utterances containing adjective like *incumbent* (32018R2025, 32019R2236) or *imperative* (32019L1159) were interpreted as recommendations, and not as obligations. Similarly, it was the context of the prescribing part of the legal document that determined a series of assertion-like Romanian utterances with verbs in the present tense of the Indicative Mood to be interpreted as commands.

It can be concluded that the familiarization with the specific mechanisms by which speech acts structure the interaction in a particular communicative context is essential for the translator both at the stage of source text comprehension, and at that of target text production. This conclusion clearly proves that the pragmatic perspective is very useful in the translation process, because it helps the translator understand why texts (must) have certain linguistic features, and ultimately makes an important contribution to the production of an appropriate translation.

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