

European Labour Law and its Challenges in Multilingual Terminology and Translation: A Case Study

El derecho laboral europeo y sus desafíos para la terminología multilingüe y la traducción: un estudio de caso

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ABSTRACT

The translation of legal texts has become a very important activity in our modern, international societies. Globalization has created a great need for multilingual versions of all kinds of legal texts. However, both law itself and legal language and terminology have a special characteristic: they are system-bound. Every country or autonomous region sets up its own legal system, and this has far-reaching consequences not only for the drawing up and especially the translation of legal texts, but also for comparative law and international and European law.

In this article, we describe certain typical features of the terminology of labour law and expand on one particular term to show the problems in translation work. The multilingual character of European law, the need for translation and the specific wording of labour law texts in the individual member states lead to many translation problems and to legal insecurity for citizens. By analysing relevant terms in the transport sector, we discuss current research that compares concepts and terms in European, Polish, Dutch and Belgian labour law.

Keywords: labour law, Dutch legal language, legal translation, Dutch legal terminology, multilingual terminology, Polish legal terminology

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RESUMEN

La traducción de textos legales se ha convertido en una actividad muy importante en nuestras sociedades modernas internacionales. La globalización ha creado una gran necesidad de versiones multilingües de todo tipo de textos legales. Sin embargo, tanto el derecho mismo como el lenguaje y la terminología legales tienen una característica especial: están vinculados a un sistema. Cada país o región autónoma construye su propio sistema legal, lo que tiene consecuencias de gran alcance no solo para la elaboración y especialmente para la traducción de textos legales, sino también para el derecho comparado y el derecho internacional y europeo.

En este artículo, describimos algunos rasgos típicos de la terminología del derecho laboral y nos concentramos en un término en particular para poner de relieve los problemas planteados en la traducción. El carácter multilingüe del derecho europeo, la necesidad de la traducción y la formulación específica de los textos de derecho laboral en estados miembros concretos conducen a múltiples problemas de traducción y a la inseguridad jurídica de los ciudadanos. Al analizar términos relevantes en el sector del transporte, discutimos la investigación actual que compara conceptos y términos en el derecho laboral europeo, polaco, neerlandés y belga.

Palabras clave: derecho laboral, lenguaje legal neerlandés, traducción jurídica, terminología jurídica neerlandesa, terminología multilingüe, terminología jurídica polaca

1. Introduction

In every social order, law is of the utmost importance. One cannot underestimate its impact on citizens, governments and business. We distinguish for example civil law, criminal law, labour law, financial law, corporate law, juvenile law, fiscal law and international and European law. Law is usually seen as inaccessible and incomprehensible, which leads to legal insecurity as well. Law is also often assumed to be rigid and unchangeable. But whoever thinks law is a rusty and old-fashioned business will be surprised. Law is inevitably dynamic, growing organically with society and its social-economic and political changes. As a result, law and legislation have a direct influence on our daily lives. As far as the dynamics of law are concerned, we can currently observe changes legal cultures are undergoing in Europe as a result of harmonization and intense interaction between EU countries (Whittaker 2014: 61).

Naturally, in a globalized world where people travel and work in different legal regions on a daily basis, a correct legal translation practice is of great importance. The mobility of the modern world citizen leads to a great amount of communication with regard to legal matters. This type of communication is complicated by the fact that various concepts are formed in different ways in different legal systems, and develop their own lexical forms. Consequently, translating a legal text does not just entail the transfer from one language to another, but also the shifting of legal concepts from one legal system to another (Šarčević 1997; Cao 2007).

2. The semantics of legal language

Most specialized fields of study, such as medicine, architecture or chemistry, have their own well-defined terminology. This means that words that are polysemous in ordinary usage can get their own unique meaning in a well-defined scientific or technical field. Let us take a look at the word 'sinus'. In general usage, this word is ambiguous:

Sinus:

1. cavity in the substance of a bone of the skull that communicates with the nostrils and contains air
2. opening between the lobes in the blade of a leaf
3. trigonometric function (COTSOES 2003: 81)

In the medical domain, the specialized term 'sinus' has a unique meaning:

An air-filled cavity in a dense portion of a skull bone. The sinuses decrease the weight of the skull. The sinuses are formed in four right-left pairs. The frontal sinuses are positioned behind the forehead, while the maxillary sinuses are behind the cheeks. The sphenoid and ethmoid sinuses are deeper in the skull behind the eyes and maxillary sinuses. (MedicineNet.com: <https://www.medicinenet.com/sinus/definition.htm>)

Traditionally, terminologists presupposed a one-to-one relationship between term and concept. The idea behind this stems from a school of terminology called the Viennese School, initiated by Wüster. This 'univocity principle' is valid in the case of technical concepts, concerning objects like machines and motors. In life sciences, however, we notice a particular terminological phenomenon. In this discipline and also in other disciplines that are subject to profound and dynamic changes, the one-to-one principle is not always applicable. This was analysed in detail by Temmerman (1997 & 2000) and one of her findings is that "only some categories can be clearly delineated", thereby casting a doubt on the 'univocity principle'. Cabré (1998: 188) does the same by stating that realistically we cannot deny that there are competing terms for one concept.

Especially legal language has a much richer vocabulary than restricted technical language which is not always clearly defined. Although this vagueness may sometimes be functional, it is also the cause of many translation problems, due to the very nature of legal language and law. Law concerns almost all areas of life and therefore lacks clear dividing lines. As a result, the division between legal language and general language (LGP, Language for General Purposes) is vague (Heylen & Steurs 2014). In practice, lawyers often make use of the various interpretations to which some terms are open, in order to win their lawsuits. This is the consequence of a special characteristic of legal language: its open texture, which provides the above-mentioned interpretation options and gives a certain flexibility. The cause of this lies within the changing reality. The legislator does not have knowledge of all possible facts and cannot predict all possible situations. For that reason, law should be formulated in a general but at the same time exact way. A greater precision of legal texts can be achieved by formulating definitions. This can be done with intensional definitions, which give the meaning of a term by specifying necessary and sufficient conditions for when the term should be used (Althena 2016: 154)¹.

Semantic vagueness is an important characteristic of legal language. This makes legal language and legal texts virtually incomprehensible to laymen. Other characteristics of legal language also have far-reaching consequences for its interpretation and translation. According to Pieńkos (2003: 289), legal language is characterized by a large degree of polysemy, resulting from both the differences between legal systems and the interference of multiple interpretations of legal concepts. In order to have a better understanding of how legal language works, we must first consider some essential features of law.

3. System-bound terminology. Law in all its various forms

Legal history from a Western European perspective usually starts in the Roman period. In those times, several steps were made towards a real Codex, in order to create a unity of law.

In the evolution of law, the Salic (or Salian) law (*Lex Salica*) was an important improvement compared to the unwritten laws. The Salic law led to greater uniformity in jurisdiction. It was gradually replaced by more modern legal systems. In medieval times, differences in legal systems became more and more pronounced. Roman law was studied, the Catholic Church developed its own law, and then there were local law and regional law systems. Parallel to these, a new legal system called 'common law' arose in England. At the end of the eighteenth century, the French Revolution caused a great breakthrough with the installation of a new legal system. The Napoleonic Code brought an end to the privileges of the aristocracy. The *Code Napoléon* or *Code Civil*, as it was called in French, was the French civil code established in 1804. This first codification of French law was widely adopted in the rest of Europe, and its influence also reached many colonies of Western European countries. At the end of the nineteenth century, another important book of law was published: the *Bürgerliches Gesetzbuch* (BGB). It is the most important German civil code to date, at the same time serving as an inspiration for the development of legal systems in other jurisdictions. Both the French and the German movements were founded in the nineteenth-century spirit of liberalism and civil rights. In order to show other variations in law, it is also worth mentioning that there are other systems in the world, such as the socialist legal system (inspired by communism) and the sharia (law influenced by the Islam) (Steurs 2016: 127-130).

This concise overview proves the existence of different legal systems and at the same time shows that legal concepts and terms have their origins in the legal system concerned and are used within this system in a specific way, which makes them system-bound. This is often the cause of terminological incongruence, which in its turn leads to many translation problems.

Within one language, there are as many legal languages as there are legal systems (De Groot & Van Laer 2007). For the Dutch language, we can distinguish at least five legal languages, used in the Kingdom of the Netherlands, the Kingdom of Belgium, the Netherlands Antilles, Aruba and Suriname, respectively. Apart from these, there is a sixth form of Dutch legal language: the Dutch version of European legal language. The same kind of variation is found in French legal language in France, Switzerland, Belgium and Canada; in German legal language in Germany, Austria, Switzerland, and so forth.

4. The translation of legal documents

Without dispute, translating legal texts is a difficult task. The translator should be constantly aware of the system-bound terminology and have at least a certain expertise in various legal fields. That means that in a way he or she is involved in a form of comparative law (De Groot 1990). A translator who has been given the assignment to translate a technical or medical text tries to find equivalents in the target language for terms in the source language. But in most legal texts, this equivalence does not exist because of the specific character of legal language. Searching for equivalents of culture-specific and system-bound terms is fruitless, because these terms can only be found in one legal system. De Groot (1993: 29-30) proposes a number of possible solutions. He suggests using a functional equivalent from the target legal system that refers to a comparable concept. If this is not possible, the translator can leave the term untranslated. By using a term in its source language, the translator makes it clear that it concerns a very specific, system-bound concept and this may be totally unknown in the target culture

or target legal system. This is hardly helpful to the reader of the target text, of course, unless the untranslated term is explained in a footnote. Another option is to give a description of the concept. In that way, its most important features can be emphasized and its meaning can be somehow clarified. A third option is to create a new term, making sure this new term is not already in use in the target language with a specific meaning of its own. This last technique is comparable to the so-called 'secondary term creation' (see Temmerman 2018: 9-10), also called 'secondary term formation' (Sager 1990: 80).

As mentioned above, the comparison of the concepts referred to by the terms should include not only intension but also extension. This means that we must take into account all elements that together form the concept. In the case of legal concepts very often differences between legal systems lie mostly in the extension (Sarčević 1997: 240). In addition, the nature of the documents in which the terms occur should be taken into account (De Groot 1993: 28). The purpose of the translation can also determine whether a certain equivalent is acceptable in the context at hand. It may turn out that the degree of equivalence is not sufficient or that the chosen equivalent may be confusing in the target culture because of the different ways in which the same legal difficulties are handled in different legal systems. For that reason, Šarčević (1997: 250-254) proposes an additional translation solution: a clarification in the form of a footnote or the above-mentioned description in the text itself. This, however, requires extensive and profound knowledge of the subject matter.

As Chromá (2016) states: “legal translation implies both a comparative study of different legal systems and an awareness of the problems created by the absence of equivalent concepts, legal institutions, terms and other linguistic units”. The lack of a suitable equivalent in the legal system of the target culture is a great and common translation problem.

In very rare cases, however, perfect equivalence does occur. The purest example of that is the legislation of a multilingual country, such as Belgium, Canada (in the province of Quebec) or Switzerland. Federally, Belgium only knows one legislation, in Dutch, in French and in German. The Dutch as well as the French and German version of this legislation are declared authentic and therefore all three are legally valid.

5. Dutch legal language in the Netherlands and Belgium

Although there is only one official Dutch standard language, the system-bound character of law creates great differences between the legal language of Belgium and that of the Netherlands. For example, there are differences in the type of crimes included in criminal law. The distinction is based on the type of sentence that can be imposed:

- a crime punishable by a criminal sentence is called a *misdaad* ('crime')
- a crime punishable by a correctional punishment is called a *wanbedrijf* ('misdemeanor')
- a crime punishable by a police penalty is called an *overtreding* ('offence')

In the Netherlands, there are two categories: the only distinction made is between a *misdrif* ('criminal offence') and an *overtreding* ('offence'). Both are also called a *delict*. These terms originate in common criminal law, but are also applied within social criminal law.²

There are also clear differences between the Netherlands and Belgium when it comes to the terminology and concepts of labour law. Terms such as *werkstudent* ('working student'),

jobstudent ('job student') and *vakantiewerker* ('holiday worker') have different applications, depending on the country, with different rights and different conditions stipulated by the employment contract. In the Netherlands, some common terms in the world of labour and employment are *UWV* (*Uitvoeringsinstituut Werknemersverzekeringen*, 'employee insurance agency'), *WIA* (*Wet Werk en Inkomen naar Arbeidsvermogen*, 'Work and Income (Capacity for Work) Act'), *BWOI* (*Bovenwettelijke regeling Werkloosheid personeel Onderzoek Instellingen*, 'extra-legal unemployment arrangement for employees of research institutes') or *transitievergoeding* ('transition compensation'). Belgium has the *RVA* (*Rijksdienst voor Arbeidsvoorziening*, 'national employment office'), *brugpensioen* ('early retirement'), *werkloosheid met bedrijfstoelage* ('unemployment with company allowance'), *ontslagvergoeding* ('severance pay'), etc. A number of these concepts are absent in the Netherlands, which makes it difficult to compare and to translate.

Looking at the rules governing dismissal, there is an agreement on an international level: the International Labour Organization signed a treaty in 1982 concerning the rules around termination of the employment contract. There is also the European Social Charter³, which states that there has to be a valid reason for dismissal and that dismissed employees are entitled to some sort of sufficient compensation. But individual countries must ratify this charter, and Belgium takes a different stand in this than the Netherlands. At first sight, the rules governing dismissal are very different in these countries. A quick study of the legal rules governing dismissal might lead to the conclusion that the Belgian system is quite 'flexible', whereas the Dutch system could be characterized as 'inflexible' in relation to the ease with which an employer can dismiss an employee. In the Netherlands, a dismissal must first be checked by an independent third party, which makes the Dutch dismissal system almost unique in Europe. In Belgium, things are different. A Belgian employer is just obliged by law to give notice of dismissal to the employee. Of course there are additional restrictions and all kinds of arrangements laid out in the collective bargaining agreement, but fundamentally it is a different situation (Zekić 2011).

6. Labour law in European Legislation

On a European level, numerous guidelines have been drawn up. Both the European and the national legislator are involved in the implementation of the law. First, a guideline is established on the European level. The Commission draws up a proposal. The Council of Ministers and the European Parliament will decide in most cases on the text of the guideline. The procedure differs per policy area, but it often takes more than a year. After that, the European guideline must be incorporated into domestic law by the national governments and parliaments. The European Commission supervises the correct implementation of European legislation.

6.1. The relevance of social affairs and labour law in the EU

That social affairs and labour law are important themes on the European level is clearly shown by the prominent position of the member of the European Commission responsible for employment, social affairs and labour mobility. The responsibilities are considerable and concern all aspects of employment and the labour market, such as the development of programs for the stimulation of employment, dealing with youth unemployment, modernizing the labour market

and contributing to the social dialogue. Important aspects are the free mobility of employees and the development of a policy to attract migrants from outside the EU. Lifelong learning and extra training are also on the agenda.

Undoubtedly in EU legislation there is great emphasis on the equality of employees. This is clearly reflected in directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. Article 2 of this directive refers to Principle No. 5 of the European Pillar of Social Rights, which is an important document with regards to the upholding of fair and equal conditions on the European labour markets. The new and more effective rights for citizens, built upon 20 key principles, take up a central role in it⁴. This way, Europe takes up important stands that must be adopted by the various member states. They are structured around three categories:

- equal opportunities and access to the labour market;
- fair working conditions;
- social protection and inclusion.

6.2. The specific field of the transport sector and labour law in Belgium, the Netherlands and Poland

The importance of the European Pillar of Social Rights cannot be underestimated, especially for industries in which violation of labour law and exploitation of employees are reported, for example the international transport sector.

European law gives EU citizens the opportunity to take on jobs in other member countries, thanks to the free mobility of goods, capital, services and persons. Ideally, these employees will be appointed under the same conditions as any other employee working in a certain industry. However, this is not always the case, the transport sector being an example of this. For that reason, we would like to describe in broad outline the working conditions in this sector, focusing on the labour law relations between Belgium, the Netherlands and Poland.

The numbers below demonstrate clearly that the problem we are dealing with is a significant one. The number of EU citizens living and working abroad in another Member State is 17 million. Almost 1.4 million EU citizens commute to another member state to go to work and there are 2.3 million posting operations to carry out services in another member state⁵. According to data from 2007 (Corpeleijn 2007: 178) the Poles temporarily employed in Belgium and the Netherlands represented no less than three quarters of all economic migrants in the Netherlands, and this is an ongoing situation.

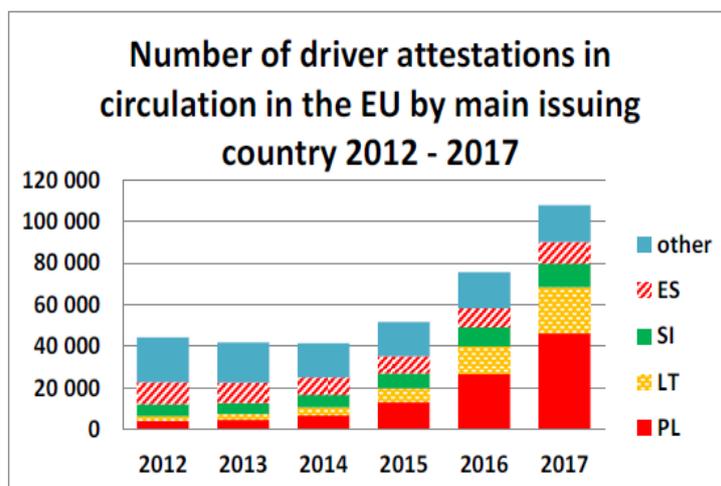
Specifically in the European transport sector we are dealing with large numbers of Polish employees. Based on data collected by the FNV (the largest Dutch trade union) and the Stichting VNB (a corporation that checks that collective bargaining agreements are properly carried out), we can draw the conclusion that the number of Poles employed in international road transport has strongly increased, because the number of driver attestations issued to Polish nationals grew from 5,353 in 2012 to 65,192 in 2017, while the total number in the whole of the EU amounted to 108,233. According to current studies, this number has further increased over the last years (Vervoorn 2019). This shows how large the Polish part in European road transport is.

Figure 1. FNV data regarding the driver attestations (Vervoorn, 2019)

Driver attestations in road freight transport 2012-2017

(information provided in accordance with Article 17(2) of Regulation (EC) No 1072/2009)

Number of driver attestations issued in ...							Number of driver attestations in circulation at the end of ...						
	2012	2013	2014	2015	2016	2017		2012	2013	2014	2015	2016	2017
EU	28 059	27 163	33 621	46 505	74 832	108 233	EU	44 316	41 822	41 605	51 666	75 520	107 614
BE	72	100	120	125	125	103	BE	208	141	114	99	72	94
BG	19	16	8	26	49	97	BG	88	119	89	131	101	156
CZ	797	631	455	530	581	533	CZ	1 088	981	727	813	1 121	835
DK	0	0	0	0	0	0	DK	3	3	3	3	1	3
DE	1 184	1 223	958	714	832	708	DE	2 462	3 040	2 888	2 578	2 582	2 380
EE	245	101	188	152	225	424	EE	429	377	357	309	384	636
IE	7	5	0	1	0	0	IE	17	7	0	1	1	0
EL	13	8	5	9	6	8	EL	14	13	14	10	12	15
ES	5 893	5 212	4 994	5 803	6 878	7 748	ES	10 599	9 875	8 321	8 292	9 124	10 513
FR	135	112	132	127	111	114	FR	372	329	287	318	199	317
HR	0	13	10	20	53	144	HR	0	7	10	20	53	117
IT	1 406	1 214	1 275	663	749	548	IT	5 064	4 737	4 098	4 080	4 439	3 533
CY	3	0	0	1	2	1	CY	12	12	12	13	15	16
LV	1 130	1 541	2 144	2 239	2 854	2 869	LV	4 020	2 852	1 433	1 789	2 136	2 444
LT	3 259	3 850	6 715	6 959	9 868	13 628	LT	2 277	2 782	3 895	6 636	13 481	22 331
LU	35	29	32	21	31	28	LU	45	33	33	28	29	31
HU	189	152	194	314	550	858	HU	259	240	251	353	490	622
MT	32	28	22	31	18	43	MT	32	28	22	22	12	19
NL	101	53	37	15	16	25	NL	187	138	145	78	54	32
AT	805	384	374	242	217	149	AT	2 114	1 876	1 560	1 289	1 040	761
PL	5 353	5 841	9 255	20 785	41 391	65 192	PL	4 221	4 771	6 809	13 238	26 624	46 138
PT	823	718	610	684	627	614	PT	3 607	3 033	3 148	3 162	2 892	2 907
RO	13	13	3	10	17	58	RO	71	44	31	72	55	81
SI	5 876	5 755	5 481	6 418	8 973	12 332	SI	5 776	5 254	6 058	7 169	9 212	11 234
SK	249	298	347	380	844	1 801	SK	391	344	474	452	856	1 810
FI	355	227	302	277	222	208	FI	758	711	761	687	694	653
SE	65	43	4	19	15	4	SE	222	97	39	44	51	36
UK	0	0	0	0	0	0	UK	0	0	0	0	0	0



The problem of unequal treatment of foreign employees in the European road transport sector is inarguable. There is no doubt that the Polish chauffeurs are underpaid compared to their Western European colleagues. Companies compete with wages and work conditions and there is also the social aspect of Polish truck drivers staying away from home for weeks, in far from ideal living circumstances. Their living space is as large as the cabin of their truck.

Because of this, FNV trade union started a campaign against the exploitation of chauffeurs from Central and Eastern Europe. The problem was also dealt with on a European level. In reaction to the situation, Jean-Claude Juncker remarked in his 2017 State of the Union Address: “In a Union of equals, there can be no second-class workers. If you do the same work in the same place, you should earn the same pay.” As a result of the legal discussion concerning the

application of the Posting of Workers Directive in international road transport, the new EU regulations with regards to posting concerns the transport sector. This will be a fact as soon as the Commission's Road Transport Strategy for Europe has come into effect. The term 'posting' (*detachering* in Dutch) is the key term of the Posting of Workers Directive and the amendments to it, the most important document determining the working conditions in international transport. Below, we will scrutinize this term, situating a detailed terminological analysis in the context of translation.

7. Methods

In our analysis, we take an approach similar to Peruzzo's (2014: 50ff). Not only do we look into the degree of equivalence between the terms in the two legal languages for Dutch under investigation, but also we use text material to gain insight into the underlying conceptual system. In addition, we take into account certain propositions made by Kerremans, Temmerman & De Baer (2008). With this analysis, we are specifically trying to prove their meaning and also the possible ways to interpret them with regard to both their lexical and situational contexts.

In the following section, we will thoroughly study the term 'posting', restricting ourselves to this term because of its importance in the context of labour law regarding international transport. The analysis is made by means of a corpus consisting of the Posting of Workers Directive (hereafter referred to as PWD)⁶, the Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 (hereafter referred to as Enforcement Directive 2014/67/EU)⁷ and the Directive 2018/957/EU of the European Parliament and of the Council of 28 June 2018 (hereafter referred to as the Amended PWD 2018/957/EU)⁸ in English, in Dutch and in Polish, as well as the collective bargaining agreement for road transport⁹ and haulage and its Polish translation, and finally the Polish act of 10 June 2016 concerning the posting of employees (*Ustawa z dnia 10 czerwca 2016 r. o delegowaniu pracowników w ramach świadczenia usług*) and the Polish act concerning temporary employees (*Ustawa z dnia 9 lipca 2003 r. o pracownikach tymczasowych*). Each of the documents is approximately 100 pages long. Our terminological analysis was supported by Sketch Engine¹⁰.

8. Terminological problems in labour law: the case of the concept posting of workers and its related terms in Dutch and Polish

The term 'posting' (Dutch: *detachering*) plays an important role in the international transport sector and, as mentioned before, there is a lot of debate on the term 'posting' itself in the light of the Posting of Workers Directive and the amendments to it in publications on labour law (Benio 2014; Houwerzijl 2004 & 2020; Mitrus 2018; Verschueren 2015). The term was found in the corpus and is used with regard to the PWD and the above-mentioned directives that are part of EU legislation dealing with international transport.

The key word analysis of the Dutch version of the directives made with Sketch Engine showed that the term *detachering* occurs 67 times in the corpus, of which 35 times in the Enforcement Directive, 32 times in the Amended PWD and not once in the original Posting of

Workers Directive. Also striking is that the term *terbeschikkingstelling* ('labour leasing'), usually considered a synonym of *detachering*, occurs considerably less frequently in the corpus. This term is used in 21 cases, of which only 4 times in the Enforcement Directive and as many times in the Amended PWD. This is not a coincidence and has something to do with the way in which the original term 'posting' was translated into Dutch. With regard to the Polish version of these directives, there is no inconsistency in the translation of the documents: in all three, only one equivalent is found for the term 'posting': *delegowanie*. In the rest of the discussion, we will look into this problem and try to outline the relationship between the two Dutch terms that have been identified.

With regard to the observed inconsistency in the Dutch translation, it is interesting from a terminological viewpoint to look at the way in which the term '*detachering*' is dealt with in IATE¹¹. Searching for the term 'posting' is not efficient, as it gives us 850 results, most of which are irrelevant in this context. However, when we look up the term 'posting of workers', we get 7 results with English as source language, and Dutch and Polish as target languages, all of which are relevant in the context of the analysed source text. Entry ID 883053 is the most relevant and has also, in both target languages, been worked out in more detail than the other entries. For that reason (and also because in the case of Dutch we find two connected terms), we want to further investigate the above-mentioned entry. Apart from the two terms themselves, IATE gives us a definition, a source and a reference. Only under the term '*detachering*' do we find a reference to the Enforcement Directive 2014/67/EU (see Figure 2). This term is marked as preferred term in this entry. Also noticeable is that the other terms, *posting of workers*, *terbeschikkingstelling* and *delegowanie pracowników*, respectively, give a reference to the Posting of Workers Directive 96/71/EC. This is closely connected to our earlier remark about the frequency of the two Dutch terms, and requires further explanation.

Figure 2. IATE entry 'posting of workers'

The screenshot shows the IATE search results for the term 'posting of workers'. The search results are displayed in a table-like format with three main entries, each corresponding to a different language (en, nl, pl). Each entry includes a reference to a specific directive and a definition.

Language	Term	Reference	Definition
en	posting of workers	Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, Article 2(1), CELEX:31996L0071	situation whereby a worker carries out his/her work, for a limited period, in the territory of a Member State other than the State in which he or she normally works
nl	detachering van werknemers	- Sociale Verzekeringsbank (NL), "SYB Beleidsregels" http://www.svb.nl/int/nl/over_de_svb/actueel_kennis/beleidsregels/beleidsregels/index.jsp?id=02_H1_S2_P7_SP2 (12.03.2013); - Richtlijn 2014/67/EU van het Europees Parlement en de Raad van 15 mei 2014 inzake de handhaving van Richtlijn 96/71/EG betreffende de terbeschikkingstelling van werknemers met het oog op het verrichten van diensten [...], passim, CELEX:32014L0067/NL	
nl	terbeschikkingstelling van werknemers	Richtlijn 96/71/EG van het Europees Parlement en de Raad van 16 december 1996 betreffende de terbeschikkingstelling van werknemers met het oog op het verrichten van diensten CELEX:31996L0071/NL	
pl	delegowanie pracowników	dyrektywa 96/71/WE Parlamentu Europejskiego i Rady z dnia 16 grudnia 1996 r. dotycząca delegowania pracowników w ramach świadczenia usług CELEX:31996L0071/PL	wysłanie pracownika na terytorium innego państwa członkowskiego, gdzie przez ograniczony okres ma wykonywać swoją pracę

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If we want to analyse the Polish translation of the term 'posting', there is no doubt that the right translation choice was made. We can draw the conclusion that in this case we are dealing with a now recognised equivalent of the original term. The Polish term, *delegowanie (pracowników)*, is taken from the official translation of the Posting of Workers Directive and as such this Polish term appears to be the most suitable, because it is also used in later amendments of the document, as shown by the analysis of the corpus. Its definition in this entry is extremely concise and it could be stated that it does not contain all of its distinguishing features, but in case of doubt a translator could refer to the text of the directive.

We would also like to come back to the fact that in Dutch, the entry presents us with two terms: *detachering* and *terbeschikkingstelling*. At first sight, these terms could be seen as synonyms. There is no mention of a difference between them. Each provides us with a reference to a different legislative text: the Enforcement Directive 2014/67/EU and the PWD, respectively. No explanation is given and the difference between the two terms is not elucidated in these documents. This means that, without extensive knowledge of how these terms function in the domestic law of Belgium and the Netherlands, the problems related to the use of the term *terbeschikkingstelling* in this context could not be understood.

The usage problem of *terbeschikkingstelling* has to do with the fact that Belgian lawyers regard it as a tricky term because of its special connotations. More specifically, in Belgian labour law it is inextricably bound-up with a fundamental prohibition (see: Wet betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers / 'Act on temporary work, temporary agency work and hiring out of workers for the benefit of users', or 'Act on labour leasing'). The discussion about this term is reflected both in legislation and in scientific publications (see: Schoukens, *et al*, 2016 Van den Bergh & Hendrickx 2017). There is a 'fundamental prohibition of labour leasing' when a third party is involved in which case the authority is shifted. Article 31, § 1 of the Act of 24 July 1987 on temporary work, temporary agency work and hiring out of workers for the benefit of users (the 'Act on labour leasing') prohibits legal persons and natural persons from leasing their employees to a third party who uses these employees and "has part of the authority over them that would normally pertain to the employer". If there is a shift of authority, this means work is undertaken, which may happen for instance when painting work is done at someone's private home by employees of painting businesses. Labour leasing (*terbeschikkingstelling*) entails a triangular working relationship, which is similar to agency work but cannot be seen as agency work. The term implies that the employer lends out employees to a user (Van den Bergh & Hendrickx 2017: 293). We also read that in practice the term *detachering* is used, although from a legal perspective this term is mostly used in the context of cross-border posting of workers.

Although the words are similar, lawyers should never assume their meaning is identical (Tiersma 1999: 182). To lawyers who know the interpretation of legal terms this is obvious, but anyone without this knowledge could be led by the entry to use the two terms indiscriminately. The terms *terbeschikkingstelling* and *detachering* can be regarded as no more than near synonyms. Although in legal practice they may be used indiscriminately in certain contexts, there are clear conceptual differences. The first difference lies in the fundamental prohibition of *terbeschikkingstelling* in Belgian labour law; the second lies in the fact that *detachering*

is linked to cross-border posting of workers. The *Sociaalrechtelijk Woordenboek* (1977: 71), a dictionary of social law, gives us the following definition of *detaching*: “action of an employer who at his own expense lets an employee do temporary work abroad, such as the installing of a machine”¹². This shows that the term *detaching* is used quite frequently in an international context. In sectors such as international transport, the normal term is *detaching*. This is reflected in the Posting of Workers Directive and also in article 12, § 1 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

As mentioned above, two legal texts are referred to in IATE: the Enforcement Directive 2014/67/EU of 15 May 2014 under the term *detaching*, and the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (PWD) under the term *terbeschikkingstelling*. This is a consequence of the fact that the term 'posting' in the Posting of Workers Directive was originally translated as *terbeschikkingstelling*, a word that even appears in the document title itself. Because of the fact that the term *terbeschikkingstelling* in Belgian law is characterized by the fundamental prohibition of labour leasing and also because the term *detaching* implies an international context, this translation choice may raise doubts because of the terminological incongruence with the original term 'posting'. In the amended versions of the Posting of Workers Directive, the term was replaced by *detaching*, which in the course of negotiations about the form of the directive was established as the preferred term. The translation was adapted after all, but only in the amended parts of the Directive.

In this context, it is worth mentioning a judgement by the Court of Justice of the European Union in which the problem of divergent language versions of European legislative texts was discussed. The judgement was made in the Balandin case¹³. Especially article 31 is important, which refers to the Gusa judgement, in which the Court of Justice emphasized that no language version can override another and that all language versions should be regarded as authentic in the interpretation of EU legislative texts, because “provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages”. This brings us to the findings of M. Derlén (2014: 22) with regard to the divergent language versions of EU law: “the wording of a single language version cannot be the sole basis for an interpretation or be allowed to override other language versions”. The Court of Justice is often confronted with this type of problems and must take action in order to reconcile the inevitable terminological incongruences and divergences between different language versions. Taking into account that legal translation is by nature imperfect, it is unrealistic to expect all language versions of EU legislation to convey exactly the same message (Šarčević 2014: 47).

Let us return to the terminological entry in IATE where *detaching van werknemers* is marked as the preferred term, which in the context of posting of workers directive is correct. For translators in the field, it would clarify matters if the field 'note' in IATE were to be used to include information about the conceptual difference between these terms based on Belgian law, and to add the advice to avoid the term '*terbeschikkingstelling*' in this context. That the term is actually used and to what extent it can contribute to the understanding of terminological differences becomes clear when we take a close look at the problematic use of these national legislation terms in the translations of the directives. The above-mentioned discussion relates

to terms originating from and used in the context of EU legislation. We would like to point out that EU terminology is not always congruent with legal terminology used in the national legislation of the individual EU member states, and the transposition of certain texts pertaining to European legislation into national legislation clearly shows these differences (Biel 2015: 142; Peruzzo 2014: 54-55). Legal terms should always be analysed in their own context and for that reason we will also look at the terms discussed above in the context of national law.

In the Belgian as well as in the Dutch and Polish legal systems, most collective bargaining agreements regulate terms and conditions with regard to wages, working hours, period of notice and other essential matters. Quite often they include arrangements that are more favourable than the terms of employment specified by the law and if, after consultation with the proper ministry, they are valid for the whole industry, they are then declared universally applicable. That is why they are of great importance to employees. In the international transport sector, workers from Poland, supplying cheaper labour, are often employed in the Netherlands and Belgium. These employees should know what their rights. For this reason a translation was made of the brochure¹⁴ informing employees about their rights and duties towards a Dutch employer. We are now looking into a number of terms selected from the information brochure on the common agreement for the road transport and haulage, written in Dutch and its translation into Polish. Strictly speaking it is not a legal text, but it does contain a large number of legal terms, including the term 'posting'. Considering that the regulations of documents like common agreements have to be implemented and complied with in every member state, we will consider the translation choices in the context of national legislation.

While there is no doubt about the translation of most key terms in this document, such as *employment contract*, *disability*, *terms of employment*, *road transport* and *haulage and working hours*, certain translation choices do not seem to be entirely well-founded. Even the translation of the title of the actual document on which the brochure is based is unacceptable. The term 'common agreement' has been translated as *umowa zbiorowa*. Consulting the Polish Labour Code (*Kodeks Pracy*), we clearly see that in Polish, such an agreement is called *układ zbiorowy pracy* and its meaning is the same as in the Dutch legal system. For that reason it appears to be the most suitable term, also because *umowa zbiorowa* is not used in Polish legal language.

The same can be observed with regard to the above-discussed term *detaching*. Whenever the term *detacheringsrichtlijn* occurs in the document, the translator is choosing the official equivalent: *dyrektywa dotycząca delegowania pracowników*, which is used in the official translation of the directive from English in to Polish, adding a footnote to refer to the original legal text. When it comes to the term *detaching*, we can notice an inconsistency, as becomes clear from the following passage:

De rechtspositie van de werknemer*De gevolgen bij interne herplaatsing*

Er is sprake van geslaagde interne re-integratie, wanneer de werknemer is teruggekeerd in het arbeidsproces bij de eigen werkgever en daarin zes maanden heeft gefunctioneerd, hetzij in de oude functie hetzij in een aangepaste of nieuwe functie.

De gevolgen bij externe plaatsing binnen of buiten de sector

Er is sprake van geslaagde externe re-integratie, wanneer de werknemer is teruggekeerd in het arbeidsproces bij de externe werkgever en daarin zes maanden heeft gefunctioneerd. Als **detachering** een tijdelijk karakter heeft omdat terugkeer in arbeid bij de eigen werkgever op termijn mogelijk is, dan wordt in het kader van het plan van aanpak periodiek gesproken over de mogelijkheid het werken bij de eigen werkgever te hervatten. (p. 83)

Stanowisko prawne pracownika*Skutki wewnętrznego przyznania stanowiska pracy*

Reintegrację wewnętrzną uważa się za skuteczną, jeżeli pracownik powróci do pracy u swojego pracodawcy i wykonuje pracę przez sześć miesięcy zarówno na swoim starym stanowisku, jak i na dostosowanym lub nowym stanowisku.

Skutki zatrudnieni poza spółką w sektorze lub poza nim

Reintegrację zewnętrzną uważa się za skuteczną, jeżeli pracownik powróci do pracy u zewnętrznego pracodawcy i wykonuje pracę przez sześć miesięcy. Jeżeli **delegacja** ma charakter tymczasowy, ponieważ powrót do pracy u dotychczasowego pracodawcy będzie możliwy w dłuższej perspektywie czasowej, możliwość powrotu do pracy u dotychczasowego pracodawcy pracownika będzie omawiana okresowo w ramach planu działania. (p. 83)

English version

Legal position of the employee*Consequences of internal replacement*

An internal reintegration can be called successful if the employee has returned to the work process with his own employer and has functioned there for six months, either in their own position or in an adapted or new position.

The consequences of an external placement inside or outside of the sector

An external reintegration can be called successful if the employee has returned to the work process with an external employer and functioned there for six months. If the posting of a worker has a temporary character because returning to work with their own employer is still a future possibility, the plan of action should include periodical talks about the possibility to resume work with their own employer. (p.83)

Reading the translation of the term *detachering* in this passage, it becomes clear that it is incorrect. The term *detachering* ('posting') should be translated as *delegowanie*. That would not only correspond with the translation of the EU texts into Polish, but also with the term used in Polish national legislation. This term is used in the Polish Act of 10 June 2016 concerning the posting of workers in the framework of the provision of service (see: *Ustawa z dnia 10 czerwca 2016 r. o delegowaniu pracowników w ramach świadczenia usług*). The term *delegacja* is absent in the Polish act. In the translation of the information brochure on the collective agreement, we are presented with a term that often occurs in Language for General Purposes instead of the specific legal term that should have been used here. If we compare the definitions of *detacheren* and *delegowanie*, it is clear that in the context of the collective agreement *delegowanie* is the appropriate term. The Polish act is an implementation of the Posting of Workers Directive and the Enforcement Directive, and for that reason the terms are interpreted in the way defined by the directives. The incorrectly used term *delegacja* is a general word for a business trip, and as such it is unacceptable equivalent of the original term. Despite this obvious mistake, the context makes it clear that the Polish language version is talking about *detachering* (posting) rather than a business trip. However, that does not alter the fact that these terms should not be used indiscriminately.

In light of the above, it is interesting to look into the translation of a term signifying other types of temporary labour. In the information brochure on the collective agreement we also

find the term *uitzendkracht* ('temporary worker'). This term has been translated as *pracownicy z agencji pracy tymczasowej*, while in the Polish act concerning temporary workers (pl. *Ustawa z dnia 9 lipca 2003 r. o pracownikach tymczasowych*) we find the term *pracownik tymczasowy*, which without a doubt can be considered a suitable equivalent of the term 'temporary worker'.

Artikel 9

Uitzendkrachten

1. Bij de inleen van arbeidskrachten van in Nederland en/of in het buitenland gevestigde uitzendbureaus of payroll-bedrijven, mag alleen gebruik worden gemaakt van NEN 4400/1 en/of 4400/2 gecertificeerde uitzendbureaus of payroll-bedrijven die ingeschreven zijn in het register van de Stichting Normering Arbeid (SNA).

De werkgever is gehouden op schriftelijk verzoek van een werknemersorgaan aan te geven van welk(e) uitzendbureau(s) of payroll-bedrijf(f)ven gebruik wordt (worden) gemaakt.

Artykuł 9

Pracownicy z agencji pracy tymczasowej

1. W przypadku zatrudniania pracowników z agencji pracy tymczasowej lub firmy obsługującej wypłatę wynagrodzeń z siedzibą w Holandii i/lub zagranicą, można korzystać jedynie z agencji/firm posiadających certyfikaty zgodności z normą NEN 4400-1 i/lub NEN 4400-2 oraz zarejestrowanych w Rejestrze Standardów Pracy (Register Normering Arbeid) prowadzonym przez Stichting Normering Arbeid (SNA).

Na pisemny wniosek związku zawodowego pracodawca jest zobowiązany podać, jaka agencja/agencje pracy tymczasowej lub firma/firmy obsługujące wypłatę wynagrodzeń zostały wykorzystane.

English version:

Article 9

Temporary workers

1. When hiring temporary workers from employment agencies or payroll companies in or outside of the Netherlands, only the services of NEN 4400/1-certified and/or 4400/2-certified employment agencies or payroll companies that have been entered in the register of the Labour Standards Register (Stichting Normering Arbeid or SNA) should be contracted.

The employer is obliged, when asked in writing by a trade union, to report which employment agency/agencies or payroll company/companies has/have been called in.

On the basis of Article 2, § 2 of the Act, the following definition can be established: “An *uitzendkracht* (temporary worker) [is] an employee who had been assigned by the employment agency to do temporary work exclusively for and under the supervision of the user employer.”¹⁵ If we compare this to the Dutch definition of *uitzendkracht*, there is no doubt that the terms refer to virtually identical concepts and therefore it seems logical to select the term that is used in Polish legislation.

9. Conclusion

Lawyers primarily concentrate on the concepts that form a framework for legal knowledge. For that reason, it is important to pay attention to the problem of conceptualization. This would not only lead to an easy communication between specialists and laymen, but would also be conducive to an efficient transfer of knowledge (Bajčić 2017: 20-21). We tried to demonstrate this with the detailed analysis of the term 'posting' and how it is used in different language versions of the legal documents.

The terminological analysis in the context of translation shows the complexity of legal terminology, in which near synonyms of legal terms should be avoided. The fact that in the official Dutch translation two different terms of the Enforcement Directive are used may cause confusion and will be incomprehensible to a translator who is unaware of the complete context. The original Dutch translation of the PWD contains the term *terbeschikkingstelling*,

which was then replaced by the term *detaching* in the references to the PWD. Apart from that, it turns out that the inconsistency in the translation may cause confusion. This might not be visible to every reader of the text, but will undoubtedly catch the eye of lawyers and other people with inside knowledge.

The presence of two levels of legislation cause even more translation problems than those already existing in the translation of domestic law. The European dimension of the legal translation and the specific interpretation of texts concerning labour law lead to translation problems, but also to legal insecurity for citizens. It is impossible to translate legal texts without taking into account the underlying framework of concepts, where translators have to avoid the use of terms that have a special connotation and terms that are near synonyms, as we clearly demonstrated in the above. Translators, who usually work under time pressure, do not have the opportunity to thoroughly check each term and its meaning in the legal system, and for that reason terminological work is essential.

Considering the small size of the texts we analysed, we must state that this is only a case about labour law terminology that is part of a broader corpus-based study. For that reason, this can be seen as the first step towards a wider study that uses larger comparative and parallel corpora. Besides, in our terminological analysis we took into account some of the views presented by Peruzzo (2014) and Kerremans, Temmerman & Baer (2008).

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- Ustawa z dnia 10 czerwca 2016 r. o delegowaniu pracowników w ramach świadczenia usług. <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000868/T/D20160868L.pdf>
- Ustawa z dnia 9 lipca 2003 r. o pracownikach tymczasowych. <http://prawo.sejm.gov.pl/isap.nsf/Doc-Details.xsp?id=WDU20031661608>
- Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0883>
- Wet betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers, 1987 ('Act of 24 July 1987 on temporary work, temporary agency work and hiring out of workers for the benefit of users, or Act on labour leasing'). http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1987072431&table_name=wet.

Notas

1. Intensional definitions are discussed in detail in the ISO 704:2009 standard Terminology Work – Principles and methods (see ISO 704: 2009).
2. <https://www.linguee.com/dutch-english/translation/misdaad.html>
3. Treaty of the Council of Europe, concluded on 3 May 1996
4. See The European Pillar of Social Rights in 20 principles, https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en
5. See Fair mobility in the EU, <https://www.consilium.europa.eu/en/policies/labour-mobility/>
6. The full title of the directive is Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
7. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
8. Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
9. The source language of the CAO is Dutch: <https://www.fnv.nl/cao-sector/transport-logistiek/cao-beroeps-goederenvervoer-tln>
10. See Kilgariff, A., Baisa, V., Bušta, J. et al. (2014) and <https://www.sketchengine.eu/>
11. IATE: Interactive Terminology for Europe: <https://iate.europa.eu>
12. In the original Dutch text: “handeling van een werkgever die een werknemer voor zijn rekening tijdelijk arbeid doet verrichten in het buitenland, b.v. installeren van een machine”.
13. See the full text of the judgement: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=210185&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15300138>.
14. <https://www.fnv.nl/cao-sector/transport-logistiek/cao-beroepsgoederenvervoer-tln>
15. The original definition is the following: “Art. 2. Użyte w ustawie określenia oznaczają: [...] pracownik tymczasowy – pracownika zatrudnionego przez agencję pracy tymczasowej wyłącznie w celu wykonywania pracy tymczasowej na rzecz i pod kierownictwem pracodawcy użytkownika”. Translated into Dutch: “Een uitzendkracht [is] een werknemer die door het uitzendkantoor wordt tewerkgesteld uitsluitend om het uitzendwerk uit te voeren voor en onder de leiding van de werkgever-gebruiker”.