

LANGUAGE AND CULTURE IN EU LAW  
MULTIDISCIPLINARY PERSPECTIVES

Edited by  
Susan Šarčević

# Language and Culture in EU Law

Multidisciplinary Perspectives

*Edited by*

SUSAN ŠARČEVIĆ  
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ASHGATE

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Published by  
Ashgate Publishing Limited  
Wey Court East  
Union Road  
Farnham  
Surrey, GU9 7PT  
England

Ashgate Publishing Company  
110 Cherry Street  
Suite 3-1  
Burlington, VT 05401-3818  
USA

[www.ashgate.com](http://www.ashgate.com)

#### **British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

#### **The Library of Congress has cataloged the printed edition as follows:**

Language and culture in EU law : multidisciplinary perspectives / By Susan Šarčević.  
pages cm. -- (Law, language and communication)

Includes bibliographical references and index.

ISBN 978-1-4724-2897-4 (hardback) -- ISBN 978-1-4724-2898-1 (ebook) -- ISBN 978-1-4724-2899-8 (epub) 1. European Union countries--Languages--Law and legislation.

2. Law--Translation--European Union countries. 3. Law--European Union countries--Language. 4. European Union--Language policy. I. Šarčević, Susan, editor.

KJE5306.L36 2015

341.242'2014--dc23

2014030037

ISBN 9781472428974 (hbk)

ISBN 9781472428981 (ebk – PDF)

ISBN 9781472428998 (ebk – ePUB)



Printed in the United Kingdom by Henry Ling Limited,  
at the Dorset Press, Dorchester, DT1 1HD

# LANGUAGE AND CULTURE IN EU LAW

# Law, Language and Communication

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## Acknowledgements

First of all I would like to thank the authors for their valuable contributions providing multidisciplinary perspectives on the role of language and culture as driving forces in the dynamics of EU law. Special thanks go to Nada Bodiroga Vukobrat, Director of the Jean Monnet Inter-University Centre of Excellence Opatija and Professor of European Law at the Faculty of Law of the University of Rijeka, for her assistance in organizing the conference which served as the starting point of this book. Organized in cooperation with the Department of Foreign Languages of the Rijeka Faculty of Law, the conference was a key activity in the Jean Monnet Programme of Professor Bodiroga Vukobrat's EU Lifelong Learning Project and was also supported by my national research project 'Strategies for translating the EU *acquis*'. I am especially grateful to the Jean Monnet Inter-University Centre of Excellence Opatija, the Hanns Seidel Foundation and the municipality of Opatija for their financial support which made the conference possible. Thanks are also due to Martina Bajčić and Adrijana Martinović for their dedicated work in organizing and coordinating the conference logistics.

Susan Šarčević  
Zagreb, Croatia

# List of Abbreviations

ABGB	Allgemeines Bürgerliches Gesetzbuch (Austrian General Civil Code)
BDÜ	Bundesverband der Dolmetscher und Übersetzer (German Federal Association of Translators and Interpreters)
BeVReStG	Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren (German Act on Strengthening Procedural Rights of Accused Persons in Criminal Proceedings)
bg	Bulgarian
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BVerfGE	Entscheidungen des Bundesverfassungsgerichts (Decisions of the German Federal Constitutional Court)
BVerwG	Bundesverwaltungsgericht (German Federal Administrative Court)
CESL	Proposal for a Common European Sales Law
CFR	Common Frame of Reference
CISG	UN Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Reports
Cr.App.R.	Criminal Appeal Reports
CRC	Coordination and Revision Centre (Czech Republic)
cs	Czech
da	Danish
DCFR	Draft Common Frame of Reference (Principles, Definitions and Model Rules of European Private Law)
de	German
DG	Directorate-General
DGT	Directorate-General for Translation
EAEC	European Atomic Energy Community
EC	European Commission
EC	European Community
E.C.C.	European Commercial Cases
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Communities (pre-Lisbon)
ECLI	European Case Law Identifier
ECR	European Court Reports
ECSC	European Coal and Steel Community

ECtHR	European Court of Human Rights
EEC	European Economic Community
ELF	English as a <i>lingua franca</i>
EMT	European Master's in Translation
en	English
EP	European Parliament
es	Spanish
et	Estonian
EU	European Union
EULITA	European Legal Interpreters and Translators Association
Euramis	European Advanced Multilingual Information System
EWCA Civ	England and Wales Court of Appeal (Civil Division)
FG	Finanzgericht (German Financial Court)
fi	Finnish
fr	French
GVG	Gerichtsverfassungsgesetz (German Court Constitution Act)
HGB	Handelsgesetzbuch (German Commercial Code)
hr	Croatian
hu	Hungarian
IATE	InterActive Terminology for Europe (EU's Multilingual Term Bank)
IEHC	High Court, Ireland
ISO	International Organization for Standardization
it	Italian
JVEG	Justizvergütungs- und Entschädigungsgesetz (German Judicial Remuneration and Compensation Act)
K.B.	King's Bench
LSP	Language(s) for Specific Purposes
MEP	Member of the European Parliament
MT@EC	Machine Translation at European Commission
nl	Dutch
OJ	Official Journal of the European Union
PCC	UNIDROIT Principles of International Commercial Contracts
PECL	Principles of European Contract Law
pl	Polish
pt	Portuguese
Q.B.	Queen's Bench
ro	Romanian
sk	Slovak
sl	Slovene
StGB	Strafgesetzbuch (Criminal Code, Austria and Germany)
StPO	Strafprozessordnung (Code of Criminal Procedure, Austria and Germany)
sv	Swedish

TC of LAS	Terminology Commission of the Latvian Academy of Sciences
TCU	Translation Coordination Unit
TEAEC	Treaty establishing the European Atomic Energy Community (EURATOM Treaty)
TEU	Treaty on European Union (post-Lisbon)
TFEU	Treaty on the Functioning of the European Union
TransCert	Trans-European Voluntary Certification for Translators
TTC	Translation and Terminology Centre (Latvia)
UfR	Ugeskrift for Retsvæsen, Denmark
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UN	United Nations
VAT	value added tax
VGH	Verwaltungsgerichtshof (German Court of Appeal for Administrative Matters)
vol.	volume

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# Chapter 1

## Language and Culture in EU Law: Introduction and Overview

Susan Šarčević

### Introduction

The accession of Croatia to the EU on 1 July 2013 provided an opportune occasion for European scholars and EU practitioners to gather at the Jean Monnet Inter-University Centre of Excellence in Opatija for a multidisciplinary conference to discuss the vital role of language and culture as driving forces in the dynamics of EU law. The chapters in this volume are based on the papers presented at the conference although all of them have been expanded and fine-tuned. Each chapter examines certain aspects of the unique role of language and culture in shaping EU law, which is founded on the principles of linguistic and cultural diversity. The goal therefore is not only to investigate the multilingual and multicultural character of EU law, but first and foremost to show how multilingualism and multiculturalism have influenced its development.

Since EU law is made by the EU institutions but must be integrated into national law and applied by the national courts, the linguistic and cultural processes at work have a direct impact on both EU and national law. The pluralistic character of the authorship enables the multi-levels of these interactive processes to be examined from a multitude of perspectives. First, there are ‘insider’ and ‘outsider’ perspectives. Quite logically, the insider perspectives are provided by the practitioners who work in the EU institutions and have a hand in shaping these processes from within, while the scholars from European universities present the perspectives of ‘outsiders’ who are active participants in these processes at national level. Second, the views presented are multidisciplinary in nature thanks to the mixed backgrounds of the authors who include both lawyers and linguists representing a wide variety of specialist domains. The academic authors on the legal side are from the areas of European private and public law, comparative law and philosophy of law, on the linguistic side from translation studies, terminology studies, cultural studies and communication studies. The practitioners from the EU institutions also have mixed backgrounds: a lawyer-linguist from the legal department of the Council and a linguist from the Commission’s Directorate-General of Translation (DGT) who is a specialist for quality management.

The individual chapters cover a broad spectrum of topics, all of which shed light on two complementary but also contradictory strands running throughout the



book – the linguistic and cultural diversity of EU law, on the one hand, and the desire and need to build unity in diversity, on the other. Two dynamic processes of Europeanization are at work to achieve this goal: the creation of a common language for expressing EU law that will be equally ‘foreign’ to all Member States (chapters 5, 6, 7, 8)<sup>1</sup> and the construction of a common European legal culture of shared values and standards (chapters 2, 6, 10).<sup>2</sup> Another common leitmotif that stands out is the vital role to be played by educators and universities in shaping these processes with the aim of building a ‘common culture’ through the Europeanization of legal education (chapters 2, 5 and 10).<sup>3</sup> From the insider point of view, a ‘shared culture’ already exists and is founded in the treaties of primary law (Chapter 3). At the level of secondary law, outsiders, especially comparative law scholars, have joined forces throughout Europe in an attempt to create a common terminology in areas of private law as a precondition for achieving greater harmonization aimed at removing barriers to cross-border transactions (Chapter 2).<sup>4</sup> As a result, considerable progress has been made over the past decade by the completion of the academic Draft Common Frame of Reference (DCFR),<sup>5</sup> which has been followed up by the Commission’s Proposal for a Common European Sales Law (CESL) (Chapter 5).<sup>6</sup>

These efforts have resulted in a new variety of a neutralized English<sup>7</sup> which is taking on the role of a *lingua franca*. Instead of diminishing the need for translation, the use of a neutral *lingua franca* opens up new frontiers for legal translation in which EU translators have the task of deculturalizing their national

1 See Dannemann (2012: 96–119); also Pozzo (2012: 184–200).

2 See Helleringer and Purnhagen (2013: 3–15) on the impact of a European legal culture; also Smits (2007: 143–51) who describes legal culture as ‘mental software’.

3 On the Europeanization of legal education, see Arzoz (2012), also Simantiras (2013), who discusses the possibility of building a common culture through legal education. Citing the advantages of the McGill Law School’s programme of trans-systemic law teaching, De Mestral suggested over a decade ago that students would ‘cease to think in terms of a single national legal paradigm’ if law were taught from a multi-systemic perspective at European universities (2003: 805–6). In this context the Europeanization of higher education in other areas should also be mentioned, especially the EMT – European Master’s in Translation (see Chapter 13).

4 See Dannemann et al. (2007: XXXIII–XL); also Ajani and Rossi (2006: 90).

5 In light of the DCFR and other events since the publication of his celebrated book *A New European Legal Culture* (2001), Hesselink speaks about a transformation from a ‘rather formal, dogmatic and positivistic legal culture into a more substance-oriented and pragmatic European legal culture’ (2013).

6 See Perfumi’s analysis of the DCFR and the CESL and their role in the emergence of a common contract law terminology which could lead to a ‘shared European culture’. As she puts it: ‘In striking a balance between unity and diversity, a common terminology should express at the same time a shared European culture and the respect of diversity in language, culture and traditions’ (Perfumi 2013: 135).

7 Robertson (2012: 1233) regards EU legal English as a new genre.