

## ***Legal Translation vs Legal Certainty***

**Issues of Legal Translation in  
Legal Approximation and Application of EU Law**  
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***PROFESSIONALIZATION VS. DEPROFESSIONALIZATION***  
***Building Standards for Legal Translators and Interpreters***

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## **MULTILINGUALISM IN THE EU**

- ✦ Art. 22 of the EU Charter of Fundamental Rights:
- ✦ ***"The Union shall respect cultural, religious and linguistic diversity"***
- ✦ European Commission, DG Translation:
- ✦ ***"Multilingualism is a fact of life in the European Union [...]"***
- ✦ The EU currently has 24 official languages
  - ✦ EU multilingualism is based on the mandatory equal treatment of all the official languages



## **EU LANGUAGE LEGISLATION**



- **EU PRIMARY LAW**
- The EU's Founding Treaty states that EU citizens have the right to communicate with the EU institutions in the official language of their choice, and to receive a reply in the same language
- **EU SECONDARY LAW**
- Council Regulation 1/1958/EEC of 15 April 1958 determining the languages to be used by the European Economic Community, Articles 1, 4 and 5
  - Regulations and other documents of general application shall be drafted in all official languages and published in the Official Journal of the European Union.

## **PRINCIPLE OF EQUAL AUTHENTICITY / PRINCIPLE OF LANGUAGE EQUALITY**



- **EU PRIMARY LAW**
- Article 33(3) of the Vienna Convention on the Law of Treaties:
  - the terms of a multilingual treaty are presumed to have the same meaning in each authentic text
- **EU SECONDARY LAW**
- ECJ Case C-283/81, CILFIT v Ministero della Sanità [1982] ECR I-3415:
  - *"Community legislation is drafted in several languages and [...] the different language versions are all equally authentic."*

## LEGAL TRANSLATION & LEGAL CERTAINTY



- **EU MULTILINGUAL APPROXIMATION PROCESS  
GUARANTEE OF LEGAL CERTAINTY**
  - **EU LEGISLATION**
    - **ACCESSIBLE** to all EU citizens in their own language
    - **RELIABLE** in the sense they can rely on the EU legal act to have the same meaning as those translated into other official languages
    - **UNIFORM INTERPRETATION**
    - **UNIFORM LEGAL APPLICATION**

## ISSUES OF LEGAL TRANSLATION IN LEGAL APPROXIMATION AND APPLICATION OF EU LAW



- ✘ **EXAMPLES:**
  - ✘ Mistranslations of the EU *acquis* into different MS's languages
  - ✘ Translation issues during MS accession negotiations
  - ✘ Translation errors in different language versions of directives, regulations, CJEU judgments and other sources of EU law published in the Official Journal of the European Union
  - ✘ Different interpretation and legal application of legal expressions deriving from the EU *acquis* in various MS
  - ✘ Different legal meaning of linguistically equivalent EU and MS legal terms
  - ✘ Etc.

## **MORTGAGE CREDIT DIRECTIVE Example No. 1** **English language version**



- **CREDIT INTERMEDIARY DEFINITION:**
- “natural or legal person who is not acting as a creditor or notary and not ***merely*** introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:
  - a) presents or offers credit agreements to consumers;
  - b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements ***other than as referred to in point (a)***; or
  - c) concludes credit agreements with consumers on behalf of the creditor”

## **MORTGAGE CREDIT DIRECTIVE Example No. 1** **Legal translation into Croatian language**



- **CREDIT INTERMEDIARY DEFINITION:**
- “natural or legal person who is not acting as a creditor or notary and not ***merely*** introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:
  - a) presents or offers credit agreements to consumers;
  - b) assists consumers by undertaking preparatory work or other pre-contractual administration ***in respect of credit agreements, which are not those from point (a)***; or
  - c) concludes credit agreements with consumers on behalf of the creditor”

## **MORTGAGE CREDIT DIRECTIVE Example No. 2** **English language version**



- **CREDITWORTHINESS ASSESSMENT :**
- "Member States shall ensure that where a creditor concludes a credit agreement with a consumer the creditor shall not subsequently cancel or alter the credit agreement ***to the detriment of the consumer*** on the grounds that the assessment of creditworthiness was incorrectly conducted. This paragraph shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information ***within the meaning of Article 20.***"

## **MORTGAGE CREDIT DIRECTIVE Example No. 2** **Legal translation into Croatian language**



- **CREDITWORTHINESS ASSESSMENT :**
- "Member States shall ensure that where a creditor concludes a credit agreement with a consumer the creditor shall not subsequently cancel or alter the credit agreement ***to the detriment of the consumer*** on the grounds that the assessment of creditworthiness was incorrectly conducted. This paragraph shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information ***within the meaning of Article 15.***"

### **MORTGAGE CREDIT DIRECTIVE Example No. 3** **English language version**



- **ANNUAL PERCENTAGE RATE OF CHARGE:**
- APRC means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including **the costs referred to in Article 17(2)** and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.
- [...] This shall be done by providing the consumer with an **additional** APRC which illustrates the possible risks linked to a significant increase in the borrowing rate. [...] This provision shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place in order to agree on a new fixed rate for a further material period, for which an **additional**, illustrative APRC is provided for in the ESIS.

### **MORTGAGE CREDIT DIRECTIVE Example No. 3** **Legal translation into Croatian language**



- **ANNUAL PERCENTAGE RATE OF CHARGE:**
- APRC means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including **the costs referred to in Article 12(2)** and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.
- [...] This shall be done by providing the consumer with an **new** APRC which illustrates the possible risks linked to a significant increase in the borrowing rate. [...] This provision shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place in order to agree on a new fixed rate for a further material period, for which an **additional**, illustrative APRC is provided for in the ESIS.

## LEGAL TRANSLATION & LEGAL TERMINOLOGY



- ECJ Case C-283/81, CILFIT v Ministero della Sanità [1982] ECR I-3415:
- *"It must also be borne in mind, even where the different language versions are entirely in accord with one another, that **Community law uses terminology which is peculiar to it.***

*Furthermore, it must be emphasized that **legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.**"*

**LEX SPECIALISSIMA**  
Consumer Credit Act



**LEX SPECIALISSIMA**  
**DEROGAT**  
**LEGI SPECIALIS**

**LEX SPECIALIS**  
Consumer Protection Act

**LEX SPECIALIS**  
**DEROGAT**  
**LEGI GENERALI**



**LEX GENERALIS**  
Obligations Act



## TRANSPOSITION OF EU TERMINOLOGY INTO CROATIAN LAW Example No. 4



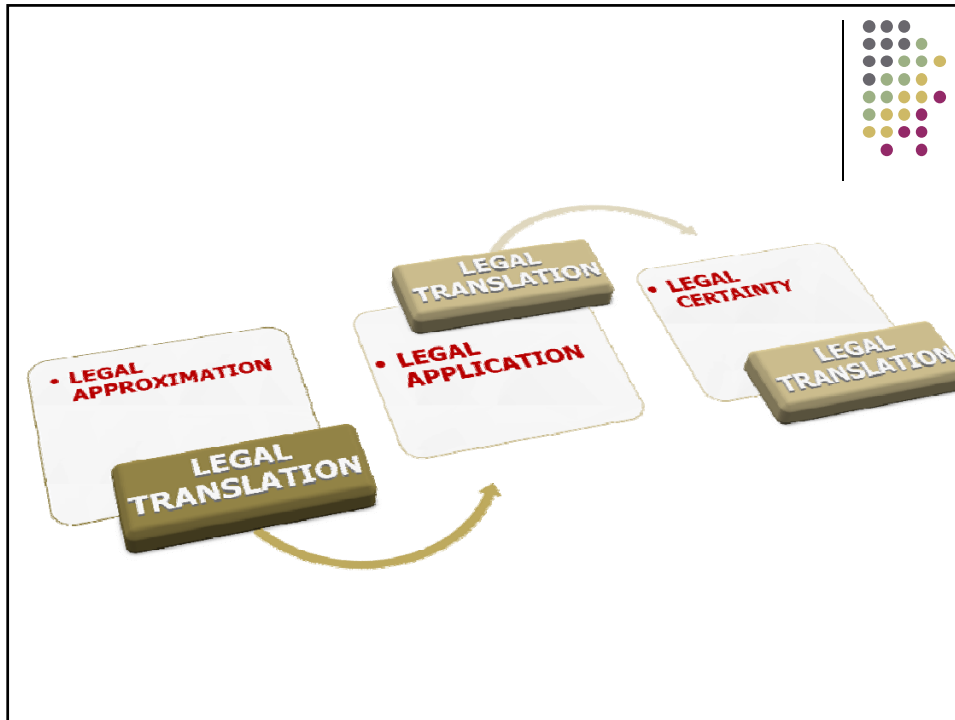
- **RIGHT OF WITHDRAWAL:**
- Consumer Protection Act, OG No. 96/03:
  - **"right to terminate the contract"**
  - **"right of unilateral termination of contract"**
- Consumer Protection Act, OG RC Nos. 79/07, 125/07, 75/09, 79/09, 89/09, 133/09, 78/12 and 56/13:
  - **"right to terminate the contract"**
  - **"right of unilateral termination of contract"**
- Consumer Protection Act, OG Nos. 41/14:
  - **"right of unilateral termination of contract"**
- Consumer Credit Act, OG Nos. 75/09, 112/12, 143/13, 147/13-*corrigendum* and 9/15:
  - **"right of withdrawal"**

## TRANSPOSITION OF EU TERMINOLOGY



- **RIGHT OF WITHDRAWAL:**
- **CJEU Case C-489/07, Messner [2009] ECR I-7315:**
- "The provisions of the second sentence of Article 6(1) and Article 6(2) of Directive 97/7 [...] on the protection of consumers in respect of distance contracts must be interpreted as ***precluding a provision of national law which provides in general that, in the case of withdrawal by a consumer within the withdrawal period, a seller may claim compensation for the value of the use of the consumer goods*** acquired under a distance contract. If the consumer were required to pay such compensation merely because he had the opportunity to use the goods while they were in his possession, he would be able to exercise his right of withdrawal only against payment of that compensation."





## LEGAL TRANSLATION VS LEGAL APPROXIMATION

- **CONFLICT WITH GENERAL APPROXIMATION RULE**
  - Art. 114 TFEU (ex Art. 95 TEC)
- **CONFLICT WITH SPECIFIC APPROXIMATION MEASURE**
  - **Recital 19 of the Mortgage Credit Directive:**
    - *"For reasons of legal certainty, the Union legal framework in the area of credit agreements relating to residential immovable property **should be consistent with and complementary to other Union acts** [...]"*
    - *"[...] so that the **same terminology refers to the same type of facts** [...]"*
    - *"MS should therefore ensure, in the transposition of this Directive, that there is **consistency of application and interpretation in relation to those essential definitions and key concepts.**"*

## LEGAL TRANSLATION VS LEGAL APPLICATION



- **Principle of uniform interpretation and application of EU law**
- **Principle of EU consistent interpretation**
  - **In practice**
    - courts and other authorities of each MS, usually rely on the text in their own language
  - **In theory**
  - **ECJ Case C-19/67, *Van der Vecht* [1967] ECR I-445:** “*The need for a uniform interpretation of Community regulations prevents the text of a provision from being considered in isolation, but **in cases of doubt requires it to be interpreted and applied in the light of the versions existing in the other three languages***”
  - **ECJ Case C-29/69, *Stauder* [1969] ECR I-419:** “*When a single decision is addressed to all the Member States the **necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of, the versions in all four languages.***”

## LEGAL TRANSLATION VS LEGAL CERTAINTY



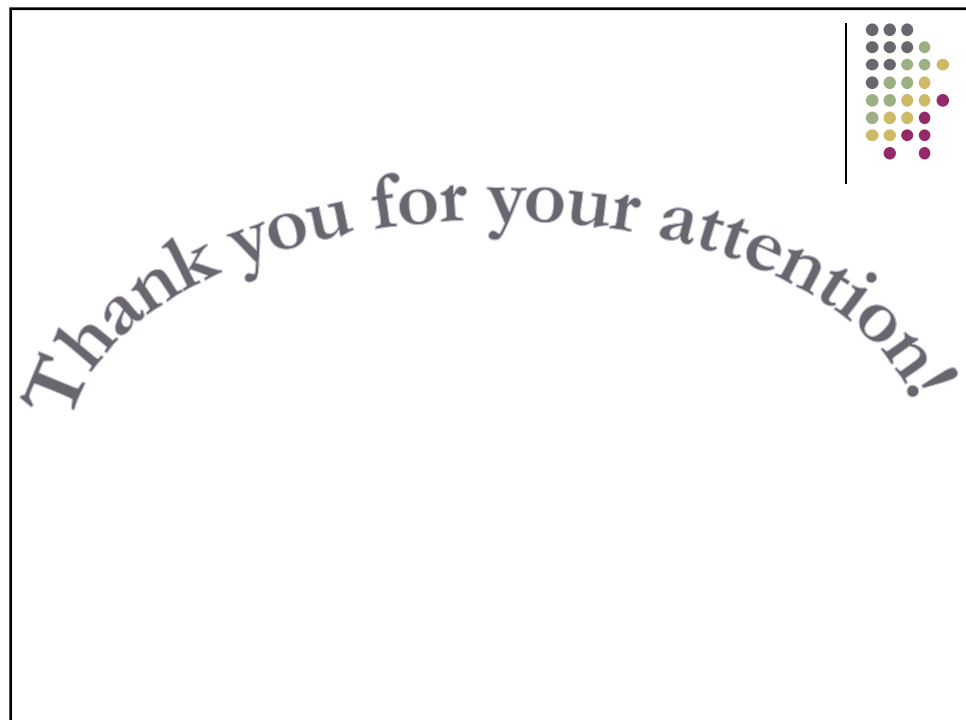
- **ECJ Case C-1/02, *Borgmann* [2004] ECR I-3219:**
- “*Furthermore, where it is necessary to interpret a provision of secondary Community law, **preference should as far as possible be given to the interpretation which renders the provision consistent with the EC Treaty and the general principles of Community law** (Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 9) **and, more specifically, with the principle of legal certainty.***”

## CONCLUSION



- *Susan Šarčević*, Legal Translation and Legal Certainty / Uncertainty: From the DCFR to the CESL Proposal:

***"[...] efforts to remove the stigma of legal uncertainty from EU multilingual legislation remains a high priority on the agenda of linguists and lawyers [...]"***



*Thank you for your attention!*