



TEXT 2

JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS (Training Materials)

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I INTRODUCTION INTO TERMINOLOGY

- (primarily) a linguistic discipline that studies terms, concepts and the conceptual structure of a field
- enables precise specialized communication and knowledge/information transfer. HOW?
- Eugen Wüster*
- applying terminology to the field of law can improve:
 - *legal communication,*
 - *legal drafting,*
 - *statutory interpretation and*
 - *esp. understanding of multilingual EU law*

- lawyers speak in legalese; often obscure, impenetrable by non-lawyers:

“...lawyers speak a peculiar cant and jargon of their own, that no other mortal can understand”,
Johnatan Swift, *Guliver's Travels into Several Remote Regions of the World*, 1880

- legal norms and legal meaning is expressed by legal concepts not words or terms

- key distinction between legal terms and legal concepts:

- different terms for *attorneys; judges*
- *contract, covenant, agreement, Treaty*
- **polysemy** in EU context: e.g. *undertaking, worker, insolvency* (the German practice)

Why does terminology matter for law?

- consider this:
 - wetbacks – unauthorized workers
 - mentally retarded – differently abled
 - social welfare - TANF



II EU Terminology and EU Legal English

- *INTERNATIONAL ENGLISH AS A FACT OF LIFE* (Council of Europe; IVECO; arbitration; commercial contracts)

- the preferred foreign language for cross-cultural situations because it was the most commonly known language

- also the language of business and finance as a result of the UK's traditional role in banking and commerce; later rise of the US in capital and commodities' markets

- in 1973 the UK joined the EEC and English was introduced as an EC language

- however, English legal language is rooted in the common law tradition

- twofold problem: 1) since English was developed for the needs of the common-law tradition it is inapt for the civil law tradition;

2) the fact that is used by 'international' speakers reflects in a lack of polishing (BSE)

- e.g. How would you describe the civil-law concept of *Vorvertrag* (*predugovor*) in English?

- usage of Legal English as the authentic language of a contract may have repercussions!

- authentic vs. authoritative

- text vs. version

- Future of EU English as a Lingua Franca?

- EU MULTILINGUALISM: EQUAL AUTHENTICITY

- Legal basis: Regulation No. 1/1958 determining the languages to be used by the European Economic Community (EU Language Charter)

- Article 342 TFEU (Art. 24)

- Case-law: CILFIT among others

- CILFIT (case 283/81) guidelines on what multilingual judicial reasoning should look like:

1. Community legislation is drafted in several languages and the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.
2. Community law uses terminology which is peculiar to it.
3. Legal concepts do not necessarily have **the same meaning** in Community law and in the law of the various Member States.



4. Every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.
- offers neutrality; dominant administrative language (EU institutions) and drafting language (in 2008 72,5% of texts in the Commission were originally drafted in EN, 11,8% in FR, 2,7% in DE)
 - What will the future bring?
 - only one language to avoid legal uncertainty (due to divergences between language versions); English, French or German? What about Esperanto or Latin?



III COPING WITH LEGAL TEXTS IN ENGLISH

- legal texts:
 - a) prescriptive
 - b) prescriptive but also descriptive
 - c) descriptive
- status: authoritative and non-authoritative
- analyse examples
- legal drafting (Joint Practical Guide; Interinstitutional Agreement on Better Law-making)
- Legal rules usually formulated in conditional sentences expressing logical relations (If A+B, then C)
 - two main parts: **the fact situation** - which expresses the conditions that must be fulfilled in order for the rule to operate; **the statement of law** – which prescribes the legal action to be performed when the rule becomes operative.

Example:

If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State (...) shall be determined by the law of that Member State.

The statement of law contains the normative content of legal rules expressing the legal action prescribing how the addressee:

shall act (commands),
refrain from acting (prohibitions),
may act (permissions) or
is authorized to act (authorizations)

- writing exercise (freewriting)
- revising exercise (if time)

Compare:

A foreign judgment shall not be recognized if any of the grounds for refusal exist.
No foreign judgment shall be recognized if any of the grounds for refusal exist.
Recognitions of a foreign judgment is prohibited if any of the grounds for refusal exist.
It is prohibited to recognize a foreign judgement if any of the grounds for refusal exist.
A foreign judgment may not be recognized if any of the grounds for refusal exist.



IV LEGAL STYLE

- guidelines (PPT); examples (handout)
- words to avoid in legal writing: empty flotsam phrases: in terms of; inter alia; in order to; each and every; foregoing; if and when; in lieu of; as concerns
- writing and editing exercise (handout)



V PRESENTATION SKILLS IN ENGLISH

- legal rhetoric (PPT)
- how to be a good presenter/speaker

Useful expressions for presentations

Greetings

At home

"Welcome to..."

"I am pleased to welcome you to..."

"I'd like to thank you all for coming..."

"I'm glad you could all get here..."

Away

"I'm delighted/pleased to have this opportunity to..."

"I'd like to thank you for inviting/asking me to..."

Introducing the subject

"What I'm going to do today is..."

"The topic/purpose of today's presentation is..."

Signposting

"There are five main aspects to this topic:

... the first....

...the second...

...a third...

...another...

...the final..."

"I'm going to examine these topics in chronological order..."

"I'm going to start with a general overview and then focus on..."

Introducing a point

"The most important point to make is..."

"My first point is..."

"It is important to underline/emphasize/stress"

Ending a point

"In conclusion then..."

"To conclude this point then..."

Bridging two points

"Having dealt with A, I now want to move on to B..."

"Having discussed A we can see that..."

"... which brings me to my next point..."

"Moving now to..."

Rhetorical questions

"How does this work in practice?"

"What's the answer to this?"

Examples

"A good example of this is..."

"...for example..."



"For instance..."
"We can illustrate/demonstrate/show this by..."

Generalisation

"Broadly/Generally speaking..."
"In general..."
"On the whole..."
"It is usually/generally/often the case that..."

Going into detail

"More specifically..."
"Concentrating on one specific aspect..."
"Focusing on..."

Adding a minor point

"It is worth mentioning that ..."
"It's also true that..."
"One further point to add is..."

Returning to the main theme

"But this is taking us away from the main theme."
"To return to the main point/subject..."

"Going back to what I was saying..."
"Picking up where we left off..."

Returning to an earlier point

"As I said earlier..."
"You will recall that earlier I mentioned..."
"I mentioned earlier..."

Dealing with questions

Telling the audience when to ask questions

"I'll be pleased to answer any questions you may have at the end."
"Please could you save any questions until the end."
"Please don't hesitate to interrupt if you have any questions."

Delaying an answer

"Can I come back to that later?"
"I'll be coming to that shortly."

Answering difficult questions

"That's a tricky question."
"I'm afraid there's no easy answer to that one."
"Indeed, that's a very good point."

Introducing pictures/graphs

Before

"I have prepared a to illustrate this."
"I think this can more clearly be seen on the slide."
"Let's have a look at this picture/slide."

During

"This slide shows..."
"Looking at this ... we can see..."
"...as demonstrated here in this graph."



Clarification

“To put it more simply...”

“This is not to say that...”

“Let me make it clear that...”

“X should not be confused with Y.”

“It is important to distinguish A from B.”

“An important distinction can be made here.”

“In other words...”

“If I can rephrase that...”

Closing

“In conclusion, I'd like to...”

“I'd like to finish by...”

“Finally...”

“I hope I've given you a clearer picture of...”

Summarising

“To summarise, ...”

“Briefly then...”

“The main points therefore are...”

“To sum up...”

“To recap, then...”



VI PREPOSITIONS/CONJUNCTIONS EXERCISE

- different uses of the preposition “by” (common in legal provisions)
- 1. Means of transportation
 - John went to the store by car. But: John went to the store on foot.
- 2. Authorship
 - Please read the textbook by Craig and de Burca. Not: from Craig and de Burca
- 3. Means
 - Most legislation is adopted by the ordinary legislative procedure.
- 4. Time (until)
 - Yes, you may borrow my car, but please return it by 4 o'clock.
- 5. Certain phrases
 - I went to the cinema by myself.
 - The workers were paid by the hour.
- 6. In combination with certain verbs
 - in fields governed by the ordinary legislative procedure
 - frightened by the noise
 - shocked by news of the earthquake
 - excited by the music
 - followed by a debate
- 7. Introducing gerund phrases (-ing form)
 - The Treaty of Lisbon has strengthened Parliament's powers by making co-decision the ordinary legislative procedure.
 - He responded by writing a long letter.
- 8. In passive phrases and sentences „by“ introduces the agent – the person or thing that does the action; can also be in a relative clause.
 - The Commissioners are proposed by the Council for a renewable appointment of five years. (Active: The Council proposes the Commissioners for a renewable appointment of five years.)
 - European primary law consists of the treaties (which have been) ratified by the Member States. (Active: ... treaties which the Member States have ratified.)

A. Write the following passive sentences in active.

1. The judges are assisted by eleven Advocates-General.
2. The President of the Commission is nominated by the European Council.
3. The number of Commissioners will be reduced to two-thirds, unless provided otherwise by the European Council.
4. The Presidency of the Council configurations is held by the ministers of three Member States for a period of 18 months.
5. The European Community has been replaced by the European Union.
6. The EU institutions have been restructured and modernized by the Lisbon Treaty.



- common conjunctions: can you give alternatives for the following conjunctions:
- by virtue of
- without prejudice to
- since (meaning?)
- whereas (unusual meaning in EU legislative texts)

Considering the following:

- where (meaning if)
- pursuant to (in line with/adhering to)
- in respect of/with respect to/as regards/in terms of
- notwithstanding (points 1 to 4); What about irrespective of? Irregardless? (semiliterate blend of irrespective and regardless... use regardless instead!)
- accordingly

e.g. *If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1, the Preservation Order shall be revoked, or shall terminate and the parties shall be informed accordingly.*

Is there another conjunction you could use here? Respectively? Often unnecessary.

Consider this:

In particular, it seeks to ensure respect for private and family life, the protection of personal data, the right to property, and the right to an effective remedy and to a fair trial as established in Articles 7, 8, 17 and 47 thereof respectively. (Reg. 655/2014, (44)).

Never use *respective* or *respectively* without first determining whether the sentence says the same thing without it.

e.g. Each shareholder is to be paid his or her respective share of the dividends.
Better: Each shareholder is to be paid his or her share of the dividends.

- unless (agreed otherwise)

Exercises: Formulate one sentence from two, using the most appropriate conjunction:

John didn't get the job. He has all the necessary qualifications. (although, in spite of the fact, however)



The profits were down. The partners invested more capital into the partnership. (although, despite the fact, nevertheless)

The Articles of Association are important to the shareholders. They contain their rights as to the payment of dividends. (because, since)

Jack can drive. It's not raining. (provided)

Jack can drive. It's raining. (unless)

UK judges base their decisions on statutes and judge-made law. (rewrite using not only ... but also)

Judges interpret legislation and they apply relevant case law in judicial review.



VII Regulation 805/2004 – TERMINOLOGY OVERVIEW

- relevant terms and concepts demarcation
- order vs. writ
- judgment/decisions/verdicts/arbitral awards
- JUDGMENT (Article 2 (a)):
'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.
- domicile/residence
- Article 15 (3) domiciled or habitually resident (DE Wohnsitz oder gewöhnlicher Aufenthalt; HR domicil ili uobičajeno boravište)
- residency – place of residence. i.e., the place where one actually lives, as distinguished from a domicile
- residence usu. just means bodily presence as an inhabitant in a given place; domicile usu. signifies bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile (Black's Law Dictionary)
 - proceedings–continue
(initiate/instigate/stay/discontinue/conclude/suspend/dismiss)
- stay – ausgesetzt, zastao (discontinue – eingestellt, prekinut)
- conclude within a reasonable time
- parties to (civil) proceedings : defendant and plaintiff (UK claimant)
- enter an appearance (DE sich auf ein Verfahren einlassen; HR upustiti se u postupak); BUT give judgment in default of appearance – mistranslated: HR u odsutnosti tuženika!; in absentia, DE wenn sich der Beklagte auf das Verfahren nicht eingelassen hat)
- lodge documents (with the court)



- matter/dispute/litigation/case
- claim (hear/determine)/action (e.g. civil claim for damages/restitution/the recovery of/counter-claim
- title/ownership/property
- rights in rem (in immovable property/tenancies of immovable property)
- tenancy – possession or occupancy of land under a lease (and the period of such possession or occupancy (life tenancy; life interest; life tenant) Pacht und Miete.

Gap-filling exercise

Fill the blanks by using the following words:

lay down, court proceedings (x2), uncontested (x2), enforcement, enforce, recognize, judgment, European Enforcement Order, declaration, enforceability, collection of debts, Member State, debtor, authentic, access

In the EU there are 2 ways to seek to have a _____ enforced in a different EU jurisdiction:

- 1) the _____ (EEO) procedure or
- 2) obtain a _____ of enforceability in the Member State where enforcement is sought.

The EEO allows the creditor to avoid the need to obtain a declaration of _____ in the Member State where enforcement is sought.

EC Regulation 805/2004 created the European Enforcement Order (EEO) mechanism to allow the _____ in the EU.

This allows the enforcement of a judgment obtained in another _____. It also allows a person or business to obtain a judgment in its State and obtain a European Enforcement Order which will allow its _____ in other EU states.

Note that the EEO can only be obtained for _____ claims.

However an _____ claim is regarded as uncontested if:

the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of _____; or

the debtor has never objected to it in the course of the _____; or

the _____ has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings; or

the debtor has expressly agreed to it in an _____ instrument.

The EEO is a certificate which enables judgments, court settlements and instruments on uncontested claims to be _____ and _____ in another EU State, without the need to bring any additional proceedings in the other EU State.

The purpose is to simplify _____ to enforcement of judgments in other member states without the need for additional court proceedings.

The procedure for enforcement is _____ in the national law of the Member State of enforcement.

Available at: <http://businessandlegal.ie/how-to-obtain-a-european-enforcement-order>



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VIII PRESENTATION SKILLS PRACTICE

- listening to a speech
- summarizing a speech
- presenting in tandem



IX Regulation 655/2014 - TERMINOLOGY OVERVIEW

- relevant terms and concepts
- European Account Preservation Order (DE: Europäischer Beschluss zur vorläufigen Kontenpfändung; HR: europski nalog za blokadu računa)
- forfeit/seize/confiscate (forfeiture used more as a noun; seize as a verb; also freezing orders – for property; EU confiscation orders)
- The latest executive order (EO) emanating from the White House October 9 now claims the power to freeze all bank accounts and stop any related financial transactions that a “sanctioned person” may own or try to perform – all in the name of “Iran Sanctions.” USA Federal Rules of Criminal Procedure (search and seizure: warrant; account holder gets notice of seizure; bank account seizure; freeze bank accounts; England: freezing injunction is a court order which prevents a party from disposing of or dealing with its assets.
- Regulation itself uses blocking the preserved amount!; Art.28 uses the word SEIZURE (amounts exempted from seizure)
- NB English term *order* – denotes different concepts! (meaning of writ; warrant, decision)
- material vs. relevant e.g. relevant information; relevant circumstances in the Reg.) In the law of evidence material=having some logical connection with the consequential facts; relevant=tending to prove or disprove a matter.

Exercise: Use either material or relevant in the following phrases:

- _____ truth
- _____ evidence
- _____ damage
- How to translate?
- inadmissible/unfounded (DE: unzulässig/unbegründet; HR neprihvatljivi ili neosnovani)

Exercises/gap filling

Explain the difference between: ground(s)/reasons/rationale/reasoning



The Member States should be able to maintain or introduce in their national law _____ for liability other than those specified in the Regulation.

Part B shall include a description of the subject matter of the case and the court's _____ for issuing the Order.

The debtor or creditor may apply to the court that issued the Preservation Order for a modification or a revocation of the Order on the _____ that the circumstances on the basis of which the Order was issued have changed.

Use: immediately/without delay/promptly to fill the following blanks:

The court shall decide on the application _____. The authority shall, upon receipt or the request, _____ instruct the bank concerned to effect the release of the overpreserved amounts. The decision revoking or modifying the Preservation Order and the decision limiting or terminating the enforcement of the Preservation Order shall be enforceable _____.

- Use either order/writ/injunction or warrant in the following phrases:

standing _____
freezing _____
seizure _____
_____ of execution
enforcement _____

This Regulation applies to _____ (in money) claims.

- Try to rewrite this sentence: To lodge an application for---
- Principal (main/) claim

Fill in the blanks by using the following words:

debts, make payment, serve, fair, recover, effective, contest, notice, security, balanced, delay, freeze, assets, debtor, application

In order to succeed in an _____, a creditor must prove an urgent need of the courts protection. It must be proved that there is a real risk the _____ will conceal or destroy his _____ or have them disposed of under value. Once an EAPO is granted the Bank must _____ the account without _____. The court must take a _____ approach before granting an EAPO. The court must consider the debtor's previous history, the relationship between the parties and the nature of the assets. In a situation where an EAPO is being applied for pre-judgment, the court may require the creditor to provide _____ as compensation for any damage caused to the debtor from the order.

An application for an EAPO is made without _____ to the debtor. While the debtor is not made aware of the application, in order to ensure its effectiveness, the debtor may _____ the Order once it is granted. To safeguard the debtor's right to a _____ trial and right to an _____ remedy, a copy of the Order must be _____ on the debtor after the implementation of the Order.



The effect of the EAPO is to prevent, not only the debtor himself, but any third party authorised by the debtor to _____ through an account, from using the funds (for example a Standing Order or Direct Debit).

With Regulation 655/2014, creditors now have an additional and more efficient method with which to _____ cross-border _____.

Available at: <https://www.lavellesolicitors.ie/european-account-preservation-order/>



X PRESENTATIONS BY PARTICIPANTS ON A SELECTED TOPIC

- presentations by participants (5-10 minutes)

V VIDEOS

http://ec.europa.eu/dgs/scic/cooperation-with-universities/speech_repository.htm

Tort Video (if time)

VI SOURCES

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Useful databases:

IATE

EUROVOC

EurLex

e-Justice

Struna