Expressing Obligation in Translations of Legal Texts from English into Croatian

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Abstract: Due to various linguistic peculiarities, such as unusually long sentences, frequent nominalization, repetitions, binomial expressions, etc., associated with legal language, it is considered a type of *LSP*, that is, language for special purposes. One of the areas in which the uniqueness of legal language is most clearly manifested is its approach to modality, the grammatical category which determines the relationship between the speaker, what is spoken and extra-linguistic reality. This thesis focuses on the domain of deontic modality, more specifically deontic necessity, a category which encompasses different kinds of obligations that legal provisions impose. As a legal entity encompassing many different cultures and languages, the European Union produces legislation, which has to be translated into all official languages in accordance with the principle of multilingualism. Thus, EU legislation presents an ideal environment for studying different ways in which deontic necessity is translated from English into Croatian. Using both a quantitative and qualitative analysis of the English exponents of deontic necessity and their Croatian translations in two parallel corpora of EU legislation from two different periods (the period prior to the accession of the Republic of Croatia to the EU and the post-accession period), this study aims to uncover the semantic and syntactic regularities associated with different translation choices and to track any potential changes in those patterns in the two periods. By uncovering those patterns the findings of this thesis could contribute to the training of legal translators and thus contribute to the production of more standardized legislation.

Keywords: legal translation, deontic necessity, EU legislation, Croatian, English

1. Introduction

Legal translation is considered one of the most challenging areas of translation for reasons that are related to two different, but interconnected phenomena. On the one hand, the language of the law is marked by a unique register employed by professionally trained jurists with its various properties that set it apart from general language and make it very difficult to understand for the uninitiated. On the other hand, this language reflects different legal systems that have developed as a result of historical, political, social and other processes unique to every society. Naturally, the fact that different societies have different legal systems will be reflected in the legal languages employed in those societies since language can be viewed as a repertoire of the knowledge and experiences of its users.

The fact that legal language is so vastly different from general language has led to it being categorized as an *LSP*, or a language for special purposes. However, compared to other *LSP's* such as the language of medicine, engineering or economics, which overlap with one another to a significant degree because the fields they are related to encompass categories which are standardized and independent of the culture in which they are employed, the language of the law is inextricably bound to the society and culture in which it has developed. As such, legal language has very few, if any, categories which can be characterized as "universal". This results in translators often encountering situations where the language they are translating a legal text into does not have an equivalent term for a source-language concept. This complicated and unique interaction between language and culture as reflected in the language of the law can create major setbacks when attempting to translate legal texts from one language into another.

Even though no two legal systems are exactly the same, certain societies have, as a result of similar or even shared historical processes, developed legal systems that closely resemble one another and can thus be placed under the same category. The two main legal systems that can be found in Europe are the Continental legal system and the Common law system. The Continental legal system originated from Roman law based on statutes and is the most widespread legal system in the world (Black, 1494). The common law system originated from medieval English legal practice and is based on legal precedents (Black, 345). Today, the common law system is employed in countries belonging to the Anglophone world such as most parts of the USA, the UK, most of Canada, Australia and New Zealand. Owing to its strong historical ties with the rest

of continental Europe, the Republic of Croatia has developed a legal system that belongs to the continental group and as such vastly differs from the common law system.

However, the emergence of supranational entities such as the European Union (EU) has made the division into continental and common law insufficient for categorizing and describing the different legal systems to which nations are subject. As Cooper (2011) puts it, the EU has a unique legal system that can be considered relatively new, especially when compared to the other two predominant systems in Europe. Furthermore, this system is based on elements from the Continental and common law systems, especially after the accession of the UK to the Union in 1973, when jurists in the EU started paying more attention to precedents under the influence of the common law system (ibid). When a country becomes a Member State of the EU, as the Republic of Croatia did in 2013, its society becomes subject to EU law in addition to the domestic legal system. As is the case with other legislative systems, that of the EU is highly complex and encompasses many different types of legal texts. In order to limit the scope of this study we will focus on regulations[1] and directives[2] as the most common texts belonging to secondary EU legislation. This decision is based on the fact that their form and content are comparable to Croatian national legislation adopted by the Croatian Parliament, which makes a comparison between them possible.

2. The theoretical background

In this chapter we will discuss the grammatical category of modality and the approaches scholars have applied in dealing with this complex issue. Further, the approaches to legal translation applied in the framework of translation theories will be presented. Next, a brief overview of the process of the accession of the Republic of Croatia to the EU and the translation of the *acquis communautaire* as a pre-condition for Croatian membership in the EU will be provided.

[1] According to the Croatian *Priručnik za prevođenje pravnih propisa EU*: "Regulations are addressed to all Member States; they are legally binding in their entirety and directly applicable without being transposed into national law." (2002: 10)

[2] According to the Croatian *Priručnik za prevođenje pravnih propisa EU:* "Directives are binding on the Member State(s) to which they are addressed but only as regards the objectives to be achieved." (2002: 10)

2.1. Approaches to modality in linguistics

Modality, a cross-linguistic grammatical category which determines the relationship between the source of the proposition, the proposition itself and the extra-linguistic world, was initially discussed in the framework of modal logic, a branch of logic which studies the applicability of one proposition to another, or, in other words, the translatability of propositions into other propositions.[3] It was only with the publication of F. R. Palmer's influential book *Mood and Modality* in 1986 that this topic started to attract the interest of linguists around the world. Palmer offers a definition of modality that remains relevant even today: "Modality is concerned with the status of the proposition that describes the event" (2001: 1).

Building on this definition, Palmer distinguishes between two types of modality depending on whether the proposition reflects "the speaker's attitude to the truth-value or factual status of the proposition" (2001: 8), which he calls *epistemic modality,* or if the proposition refers to "events that are not actualized, events that have not taken place but are merely potential" which he calls *deontic modality* (ibid.). Aside from the status of the proposition, deontic modality differs from epistemic modality in that deontic modality is almost always based on some authority, be it the source of the proposition, societal norms and conventions, moral rules and legislation, etc. (Palmer 2001: 70). While epistemic modality is based on the speaker's knowledge, beliefs, assumptions, rationalizations, i.e. the speaker's internal cognitive capabilities, and reflects how the speaker believes the world to be, deontic modality is based on elements that are external to the speaker, it is rooted in the world of norms and conventions and reflects how the world should be based on these norms and conventions. Due to the fact that legal provisions are inextricably linked to societal norms deontic modality plays a key role in both the construction and interpretation of legal texts.

The two main categories on which modal logic is based are those of **possibility** and **necessity**. In both the epistemic and deontic domain various relations between the source of the proposition, the proposition itself and the extra-linguistic world can be interpreted in the framework of these two categories. The three main modal meanings which constitute the domain of deontic modality are obligation, permission and prohibition. All of them can be analyzed in terms of necessity and possibility, or as Palmer puts it: "The modals of permission and obligation

[3] Hrvatska enciklopedija: *Modalna logika*. Leksikografski zavod Miroslav Krleža.

(Permissive and Obligative) can be interpreted (like epistemic Speculative and Deductive) in terms of possibility and necessity" (2001: 72). This simplification can be very useful in deciphering sometimes highly complex language of legal texts because it enables us to look at all legal provisions as either stating that something is possible or that something is necessary in accordance with a set of norms or rules. Thus, a legal provision such as 'Member States shall require the supervisory authorities to provide the following information to CEIOPS on an annual basis…' where *Member States* designates the entity to which the legal provision is addressed (we will call this the referent), *shall* designates the exponent of deontic necessity (obligation) and everything that follows designates the proposition (which we will mark with a capital *P*) can be simplified to 'It is necessary for the referent to P'.

In human language, the grammatical category of modality can be linguistically expressed in many different ways. Some of these include grammatical moods such as the indicative, imperative, conditional, subjunctive, etc., modal verbs such as English *shall, can, will, may*, etc., which are used as auxiliary verbs and can express either epistemic, deontic, or dynamic[4] modality depending on the surrounding context, modal adjectives and adverbs, such as *possible, possibly, necessary, necessarily*, etc. (Palmer, 2001: 100). It is common for languages to employ several or all of these different means to signal modality as is the case with the two languages under study in this thesis: English and Croatian. The most common method of expressing modality in the English language is through the use of modal verbs, which Palmer identifies as "…MAY, CAN, MUST, OUGHT (TO), WILL, SHALL, and marginally, NEED and DARE, including might, could, would, and should" (2001: 100). The criteria Palmer uses for identifying a verb as being modal are that it belongs to the set of auxiliary verbs, that it does not co-occur with other modal verbs, that it has no *–s* form in the third person singular, that it has no non-finite forms, that it has no imperative form, that it has suppletive negative forms, and that it exhibits differences to other modal verbs in terms of negation and tense (ibid). In English, in addition to modal verbs, modal expressions which usually consist of nouns or adjectives that carry a modal meaning such as *have*

[4] In Palmer's classification of modality, deontic and dynamic modality are two subtypes of what he calls *event modality*, the term used to refer to „events that have not taken place, but are merely potential" (2001: 8). Palmer describes the difference between the two: „In the simplest terms the difference between them is that with deontic modality the conditioning factors are external to the relevant individual, whereas with dynamic modality they are internal. Thus, deontic modality relates to obligation or permission, emanating from an external source, whereas dynamic modality relates to ability or willingness, which comes from the individual concerned" (2001: 9).

a duty to, be obliged to, be required to, be entitled to, have a right to, etc. are frequently employed. On the other hand, in the Croatian language modality is much more frequently expressed using moods such as the indicative, imperative, conditional or optative mood.[5] Croatian also has its own set of modal verbs used to express modality, which according to Mikulaco (2008: 172) include: "moći ('may'), morati ('must'), trebati ('need'), valjati ('ought to')." According to Hansen (cited in: Mikulaco 2008) what makes these verbs modal is the fact that they are *polyfunctional*, in other words they can be used to express at least two different kinds of modality. Another Croatian verb that is frequently characterized as modal is *smjeti* ("may"), but Mikulaco does not see it as a full modal because it lacks polyfunctionality since it is limited to the domain of deontic modality and expresses exclusively permission, in other words deontic possibility (2008: 172). There are, of course, other exponents of modality in these two languages such as grammatical moods in English or certain conjunctions in Croatian[6], but due to the fact that they are either not frequent in the language of the law or are not used to express deontic modality, they remain outside the scope of this thesis.

2.2. Translation theories and legal translation

As an interdisciplinary field situated at the intersection of applied linguistics, sociology, discourse analysis, computational linguistics, foreign language teaching, literary studies and many other related fields, translation studies employs the knowledge and methods obtained from these different fields in order to investigate all phenomena related to the practice and process of translation. Depending on the aspect of the translation phenomenon that a particular framework for analyzing and investigating translation chooses to focus on and on the methods it chooses to employ for the purposes of such an analysis, many different theories of translation have emerged, ranging from those that are deeply rooted in linguistics and perceive translation as a process of replacing linguistic signs from one system with the signs from another, to those which emphasize the role that translation plays in society and culture perceive it as a potential form of social activism that should bring about changes in society. As translation theories developed and more

[5] Hrvatska enciklopedija, *Modalnost*. Leksikografski zavod Miroslav Krleža.

[6] According to the entry on modality in Hrvatska enciklopedija the conjunctions *što* and *kao što* are used to express factuality, while the conjunctions *da* and *kao da* are used to express hypothetical situations, both of which fall under the category of modality.

attention was paid to the role translation plays in society, scholars started focusing on the translators themselves as intercultural mediators whose main task is to bridge the gaps between the source and target languages and cultures and thus facilitate inter-lingual communication.

As all other areas of translation, legal translation was also a topic of these discussions. An especially important issue for scholars of legal translation was the question of the translator's faithfulness, i.e. whether the translator should produce a text in the target language that adheres to the norms of the source or target culture practices of drafting legal texts. Another important issue is the degree to which translators should be allowed to interfere in the source text in order to resolve any ambiguities contained in it. Susan Šarčević points to the fact that since the 1980s there has been a shift in the approach to the practice of legal translation with what she calls the "emancipation of legal translators". The legal translator is no longer seen as a passive conveyer of linguistic signs from one language into another, but as an active interpreter, and even drafter of legal texts (Šarčević 2000: 98). According to Šarčević, in multilingual environments, such as the EU, translators have become active participants in the drafting process and as such possess "first-hand knowledge of the legislative intent", which means they no longer have to rely so much on the source text (2000: 112). Šarčević comments the issue of the translator's fidelity: "The translator's first consideration is no longer fidelity to the source text but rather fidelity to the uniform intent of the single instrument, i.e. what the legislator or negotiators intended to say" (2000: 112). In this view traces of what is in translation theory called the domesticating strategy can be noticed. The domesticating strategy, to put it simply, is based on the idea that the source text should be translated with as much adherence to the target language and culture norms as possible so that the target audience cannot recognize it as a translation (Venuti 1994: 5). Adherence to this strategy would lead to a high degree of textual fit, thus making translated legislation resemble the domestic, non-translated legislation of the target legal system and presumably easier for the target audience to read and comprehend.

This view is also supported by the Croatian *Priručnik za prevođenje pravnih propisa EU,* a guide for legal translators issued in 2002 in order to instruct translators on how best to approach the task of translating EU legislation into Croatian. Reflecting on the question of the domesticating versus foreignizing approach the guide states that:

> Since translations that follow the ST too closely run the risk of being unclear or incomprehensible, the emphasis is definitely on the TL in translations of EU legislation. Anything else could pose a threat to the uniform interpretation and application of Community law. (2002: 11)

However, not all scholars agree regarding the adoption of the domesticating strategy in translation of legal texts. Some are afraid that such an approach would inevitably lead to translators interpreting legal provisions motivated by the desire to make the text more comprehensible to the target reader. Biel (2009) points out that disambiguation, which can result from the translator's decision to interpret legal provisions as non-experts in the field of law, could be potentially harmful since sometimes drafters intentionally make the provisions in a legal text ambiguous so as to leave room for other legal experts to interpret them. Biel concludes that:

> Disambiguation is perceived as overstepping one's authority as a translator since translators are expected to retain the same degree of ambiguity and leave disambiguation to courts (2009: 11).

Šarčević also recognizes the dangers of allowing translators too much freedom in interpreting legal provisions when she says that:

> […] translators must guard against overstepping their authority when resolving such ambiguities. Whereas it is legitimate for judges to use their discretion to construe the normative content of an ambiguous statement of law in light of the purpose and object of the text as a whole, translators have no such decision-making authority (2001: 147).

2.3. Accession of Croatia into the EU and translation of the *acquis communautaire*

The Republic of Croatia officially became a Member State of the European Union on July 1, 2013 after almost eight years of preparation and negotiations. The two important criteria that all candidates for EU membership must fulfill before accessing the EU is to make sure that their domestic legislation is in line with EU legislation and to adopt the *acquis communautaire*, which refers to the entirety of European Union law, into the domestic legal system (Biel, 2022). Translation played an immensely important role in both of these processes, although it can be said that it was more important in the process of adopting the *acquis communautaire* than it was

in demonstrating that domestic legislation was harmonized with EU legislation. While the translations produced in the framework of the latter process were of merely informative character, which means that they had no legal force and were simply produced to inform legal experts working for the EU of the degree to which Croatian legislation is harmonized with EU legislation, the translations produced in the process of translating the *acquis communautaire* were of normative character, which means they acquired the status of legally binding documents once they were published in the Official Journal of the European Union as authoritative texts (Ramljak, 2008). It is also important to emphasize that these two processes of harmonizing domestic legislation with EU legislation and adopting the *acquis communautaire* went hand in hand, as Šarčević points out:

> The purpose of the translation of the *acquis* is twofold: First, on the date of accession, the translations enter into force and serve as the basic texts for the application of EU law by the national courts of the new member state. Secondly, the translations are intended to serve as an aid to lawmakers for the purpose of harmonizing national law with the EU *acquis* (2009: 195).

What this means is that there is a possibility that Croatian legislation drafted during the pre-accession period came under great influence of European legislation not merely in terms of the normative content, but also in terms of language and drafting practices.

There are many different types of legal documents produced in the EU, ranging from the founding documents and treaties which form the primary legislation of the EU (the most important of which are the Treaty on European Union and the Treaty on the Functioning of the European Union, which can be compared to a constitution, although the EU does not formally have one) to secondary legislation such as regulations, directives, decisions, recommendations and opinions (*Priručnik za prevođenje pravnih propisa EU,* 2002: 10). As Felici (2012: 55) explains, the main difference between primary and secondary legislation is that primary legislation is enacted by the legislative branch of government, whereas secondary legislation is law made by an executive authority under delegated powers. The most important documents of secondary EU legislation are regulations and directives which are "enacted by the EU institutions in the form of Community acts" and which, according to the Croatian *Priručnik za prevođenje pravnih propisa EU* formed "the greatest bulk of legislation to be translated" (ibid.). Biel (2014:

339) explains that regulations and directives are the closest equivalents of member states' national legislation that the EU drafts because of their similarity in both form and content. The difference between regulations and directives is that while regulations are "legally binding in their entirety and directly applicable without being transposed into national law" directives are "binding on the Member State(s) to which they are addressed but only as regards the objectives to be achieved" (*Priručnik za prevođenje pravnih propisa EU* 2002: 10). This means that member states are obligated to implement regulations in their entirety and when they are adopted they immediately become part of the national legislation of the member states, while with directives member states have the freedom to decide on the methods of implementing the aims of the directive.

The translation of EU legislation into Croatian can be said to have occurred in two distinct phases: the pre-accession phase in which Croatia was required to translate the *acquis communautaire* in order to qualify as a candidate for membership, and the post-accession phase which has lasted from July 1, 2013 to this very day. In the pre-accession period, the Ministry of European Integrations took on the task of arranging preparations for the enormous task of translating the European *acquis* in 2001, which intensified when Croatia officially submitted its application for EU membership on February 21, 2003 (Ramljak 2008: 166). Like many other countries which went through the process of translating the European *acquis* in order to become members of the EU, Croatia faced many difficulties over the course of conducting this task. As Biel points out, the pre-accession translation of the *acquis* is left almost entirely to the individual candidate state in both financial and logistical terms, while the EU institutions provide guidance and publish the translations in the Official Journal once they've been reviewed and revised (2022: 2). Biel emphasizes that in the case of Poland the fact that the government institutions underestimated the complexity of this task combined with a desire to finish the task as quickly as possible in order to be able to move on to fulfilling other requirements for EU membership led to translations of insufficient quality, many of which were not revised because of time constraints (2022: 5).

In Croatia, the body in charge of preparing and conducting this task was the *Sektor za prevođenje Ministarstva vanjskih i europskih poslova*, which published two manuals, one for translating EU legislation into Croatian and one for translating Croatian legislation into English

for informative purposes. The total number of translated pages of EU legislation was around 200 000 thousand, of which some 150 000 thousand were published in the Special Edition of the Official Journal.[7] What is interesting is that, as Ramljak (2008: 168) points out, Croatia, like most other countries which joined the EU in the 21st century translated EU legislation from the English language even though the legal system in the English-speaking world is conceptually quite distant from the system of the EU. Although the EU legal system is a hybrid of both the civil and common law systems, there is no doubt that the influence of the civil law system is much greater due to the fact that the countries that formed the EU practiced it, while the UK, the only member state of the EU in which the common law system is dominant, joined the Union much later in 1973. However, due to the fact that the EU legal system has over the years emerged as an independent and unique entity that encompasses elements from many different systems but also many elements which are unique to it alone, it is to be expected that the features under investigation in this study did not emerge as features of the English language used in common law jurisdictions such as the UK or the USA but as features of a special sub-genre of legal English used exclusively in the EU context that differs from the other genres of legal English, and which Biel calls an *Eurolect* (2022: 1). It can be said that all languages of the EU have their own legal *Eurolect* which differs from the legal language of domestic legislation, which makes it legitimate to compare them

3. Methodology

This chapter of the thesis presents the aims of the study and formulates the hypotheses to be tested in the study. Due to the complexity of the topic under discussion, this study will test several hypotheses and combine both a quantitative and qualitative approach to prove or disprove them. This will be followed by a detailed description of the methods and resources used for the purpose of collecting, analyzing and interpreting the data needed for this study.

3.1. The aims of the study

In order to successfully analyze how provisions expressing deontic necessity in texts written in English and produced by EU institutions are rendered in their translation to Croatian a study needs to approach it from more than one angle. The phenomenon under investigation is

[7] https://mvep.gov.hr/ministarstvo/sektor-za-eu-dokumentaciju/rad-sektora-tijekom-pristupanja-eu/9623

complex and encompasses issues discussed in the fields of syntax, semantics, pragmatics, translation theory, law, legal drafting and many other related disciplines. As this study is of a limited scope, we cannot aim to tackle the aspects of this phenomenon related to all of the above mentioned disciplines. The scope of this study will be limited mainly to the issues related to the linguistic and translational aspects. The first issue that a study like this must necessarily address is related to the exponents of deontic necessity in both of the languages under investigation. Without determining which linguistic means are used to express deontic necessity, which is the modal meaning in the focus of this thesis, in the two languages we cannot move on to the next step, which is to investigate the different ways in which translators render the English exponents of deontic necessity in EU legal texts translated into Croatian. Of course, merely listing various Croatian equivalents of English modal expressions would not tell us much about what may have motivated the translator to pick that solution instead of some other. This is why an important role in this study is played by a syntactic and semantic analysis of the context in which these modal expressions appear in both English and Croatian in an attempt to uncover potential patterns in the translators' choices.

Since legal translation in the EU context is an example of a highly institutionalized translational practice in which "the institutional impact grows with the in-house processing of texts, which further diverge from 'natural' language, combined with the competing trend of added readability" (Biel 2022: 8) the translators' choices in translating exponents of deontic necessity cannot be said to be based solely on linguistic criteria, but also to a significant extent to be influenced by the norms and practices of the institutions for which they work. As has already been mentioned in Chapter 1, translations of EU legislation into Croatian were produced in two distinct phases: the pre-accession phase of translating the *acquis* in which translators had limited access to translation tools and aid of EU institutions and the post-accession phase in which translators have full access to EU termbases, translation memories, manuals, etc. and also participate in both the drafting and revision of the legal instruments (Šarčević 2000: 121). In order to find out if there exists a relationship between the translators' solutions and the institutional circumstances in which the translations were produced, the study will compare translation solutions found in texts from the pre-accession and post-accession periods. Thus, the research questions this study is based on are the following:

1. What linguistic means are used to render the English exponents of deontic necessity in EU legal texts written in English?

2. What linguistic means are used to render the English exponents of deontic necessity in translations into Croatian of EU legal texts written in English?

3. Can any differences be observed in the translators' choices of means to render the English exponents of deontic necessity in translations produced in the pre-accession and post-accession periods?

3.2. The hypotheses

Each of the research questions presented in 3.1 is based on a particular hypothesis that this study will aim to prove or disprove. These hypotheses were formulated during the process of reading the relevant literature and collecting the data for the study. Since this study is based on a mixed approach employing both quantitative and qualitative analysis some of these hypotheses were reformulated or even developed during the process of analyzing the data. The hypotheses to be tested in this study is are the following:

Hypothesis 1: In translating deontic necessity from English into Croatian the translators' choices can be related to certain syntactic and semantic patterns.

In Croatian translations of the same exponents of deontic necessity from the English version of the text we observed variations. It was noticed that, for example, the English modal verb *shall*, which is the main exponent of deontic necessity in the English *Eurolect*, could be translated into Croatian using the present indicative, modal verbs, the future tense or some other way of expressing modal meanings. Literature on modality and legal drafting (Gozdz-Roszkowski 2011; Kaczmarek 2016; Biel 2014) has shown that there are certain syntactic, semantic and pragmatic criteria that a particular legal provision needs to meet for a specific exponent of deontic modality to be used in it. This study will attempt to find out what those criteria are and if there is a relationship between these criteria and the translators' solutions.

Hypothesis 2: Translations produced in the pre-accession period exhibit a higher degree of variance in expressing deontic necessity than translations produced in the post-accession period.

Literature dealing with the experiences of different countries, including Croatia, in translating the EU *acquis* (Šarčević 2001; Ramljak 2008;) has shown that in the pre-accession period translators had limited access to translation tools and resources, known for improving the consistency of translations. On the other hand, upon accession to the EU the translation of EU legislation is no longer managed by national authorities but by dedicated translation units operating as part of different EU institutions. Thus, we assume that a higher degree of institutionalization of translation which accompanies accession to the EU will result in a higher degree of consistency and uniformity when compared to translations from the pre-accession period.

Hypothesis 3: *It is expected that differences in the preferred ways of rendering deontic modality in Croatian translations in the two periods will be observed.*

Our final hypothesis is that the various differences in the approach to legal translation between the *pre-accession* and *post-accession* period will be reflected in the translations of the English exponents of deontic necessity into Croatian. These differences are expected to manifest themselves both in terms of the grammatical means employed in translating the English exponents of deontic necessity and in terms of the frequency with which the same grammatical means are used in the two corpora.

3.3. The methodology

This research is conducted relying on corpus linguistics and the methods and principles employed in that discipline. Thus, the first step in conducting the study was creating a corpus that would serve as the basis for extracting and analyzing the necessary data.

3.3.1 Building of the corpus

In order to extract the necessary data two parallel corpora were compiled. Building of the corpus used in the study started with downloading regulations and directives from the pre-

accession and post-accession periods both in the English versions as well as the corresponding Croatian versions from the EUR-Lex website.[8]

In accordance with Biel's recommendation that only the enacting terms[9] of regulations and directives be used when building corpora in order to make them as similar as possible to domestic legislation which does not contain lengthy preambles and annexes (2018: 4), the non-enacting parts of these documents were manually removed in a text editor. These documents were then aligned using the *LF Aligner* program in order to create *TMX* files that can be used for building parallel corpora. The corpora were built in the *Sketch Engine* software using the 'Create Corpus' option. Two different corpora were created for the purposes of this study: a parallel corpus of pre-accession legislation (316 147 words), and a parallel corpus of post-accession legislation (343 426 words). Each of the parallel corpora consists of 10 documents: 5 regulations and 5 directives.

3.3.2. The quantitative analysis

The first step in the quantitative analysis of the corpus was to determine the frequency of the exponents of deontic necessity in each of the corpora employed using the 'Wordlist' option in *Sketch Engine*. Next, the 'Parallel Concordance' option available only in the parallel corpora was used to check how each exponent of deontic necessity in English was translated into Croatian and with what frequency. Since the Croatian tagset used by *Sketch Engine* is not able to directly identify one of the most frequent exponents of deontic necessity in Croatian, the present indicative, some specialized *CQL*[10] searches had to be conducted. Thus, in order to extract only the provisions in which *shall* was translated using the present indicative the following *CQL* query was conducted: in the *Parallel Concordance* menu: [lemma="shall"][word !="not"] where Croatian does not contain [lemma="morati"] | [lemma="trebati"] | [lemma="smjeti"] | [lemma="htjeti"]. The aim was to eliminate all the provisions which contain the modal expression *shall not* since it expresses prohibition, which was not of interest in this analysis. Provisions containing the other most frequent Croatian translations of *shall* such as *morati*,

[8] The EUR-Lex website can be accessed here: https://eur-lex.europa.eu/

[9] According to the *Interinstitutional Style Guide* of the European Union, enacting terms: "constitute the normative part of the act and are divided into articles"

[10] CQL (*Corpus Query Language*) is "a special code or query language used in Sketch Engine to search for complex grammatical or lexical patterns or to use search criteria which cannot be set using the standard user interface" (https://www.sketchengine.eu/documentation/corpus-querying/)

trebati, smjeti, htjeti were eliminated and we were, for the most part, left only with provisions in which *shall* is translated with the present indicative. Of course, since *Parallel Concordance* cannot exactly determine how a particular expression is translated, but is instead based on extracting concordances in which the criteria set for the source and target language are met, in some instances *shall* was not translated with the present indicative, and thus those concordances were removed.

3.3.3. The qualitative analysis

In addition to this purely quantitative analysis, a qualitative analysis was also conducted on source and target text legal provisions in order to gain a deeper understanding of the phenomenon under investigation. Thus, for most English exponents of deontic necessity parallel concordances were extracted into the *Microsoft Excel* spreadsheet where they were analyzed on the basis of certain categories. These categories were obtained mostly from reading the relevant literature on legal translation and legal drafting (Šarčević 2000; Biel 2022; Jelovšek 2021), although some of them are based on observation during the process of reading the legislation itself. For the qualitative analysis conducted in this thesis, the term deontic necessity, which is usually used synonymously with the term obligation, is used to cover several different meanings including obligation, requirement, authorization, statutory definition, as well as constitutive and performative provisions. This is motivated by the fact that all of these meanings are fundamentally rooted in the modal meaning of necessity, in particular necessity which stems from the position of the law as an entity which determines and enforces the norms and rules of conduct governing the functioning of human society. The provisions expressing an obligation are usually those in which an agent, which can be directly mentioned in the provision but does not have to be, is commanded by the law to do something. The provisions expressing a requirement are those which describe what needs to happen or be the case before the state of affairs expressed in the provision can be realized (Krapivkina 2017: 310). The provisions expressing an authorization are those in which the law grants an agent the freedom to act in a particular manner in a particular situation. What separates these authorizations from simple permissions is the fact that the law expects these freedoms to be exercised in particular situations for it to continue functioning. As far as statutory definitions are concerned, Šarčević points out that "Although they do not impose obligations or grant rights, definitions in the substantive provisions can be

regarded as having a lawmaking function" (2001: 154). The institutions, entities and relationships that these statutory definitions create become a part of the legal system by virtue of being expressed in these legal provisions and, as Šarčević puts it they are "Vested with the force of the law (…) and are widely regarded as being prescriptive" (2001: 153). Therefore, they can also be considered expressions of deontic necessity. As far as constitutive provisions are concerned, Felici (2012: 54) defines them as those that produce legislative effects at the time when they come into force. They do not impose or prescribe anything but simply set up a new state of things or a change in the previous state of things. Finally, performative legal provisions are those which have an immediate impact on the world outside of the realm of law by virtue of being expressed in a legislative text, i.e. in them „the act or the command is not only prescribed, but also performed"(ibid.).

The next category used in the qualitative analysis is concerned with the kinds of relations that a particular legal provision regulates. Thus, according to Šarčević, legal provisions can be divided into two main types: substantive provisions, which "set forth the obligations and rights of legal actors" and administrative provisions which "regulate the legal machinery by means of which those obligations and rights are declared and enforced" (2001: 128). Another category which will be used in the qualitative analysis that has to do with the nature of the legal provisions themselves is that of mandatory versus directory provisions. Šarčević provides a clear definition of these two types of provisions:

> Mandatory provisions are compulsory and non-compliance is punishable by sanction or may render the instrument or procedure invalid. On the other hand, directory provisions should be complied with, however the court may rule that non-compliance is a mere error without invalidating the instrument (138)

The other categories employed in the qualitative analysis are mainly concerned with the syntax of the analyzed legal provisions. The reasoning behind analyzing the syntactic context in which exponents of deontic necessity are used is that this context could potentially be a factor in the decisions of legal translators on how to translate a particular modal expression. Thus, the analysis will investigate whether the main verb accompanied by the modal expression was used in the active or passive voice, whether the main verb in the clause was a dynamic or stative one,

whether the modal expression was used in the main or subordinate clause, whether the clause in which the modal expression appears has an agent or is agentless, and whether that clause is conditional or not.

Finally, because the English modal verb *shall* has a remarkably high frequency of occurrence in the parallel corpora (more than 3 000 occurrences in both corpora) not all of its occurrences could be analyzed. Because of time limitations the analysis of *shall* translated into Croatian with the present indicative had to be limited to 500 randomly selected parallel concordances.

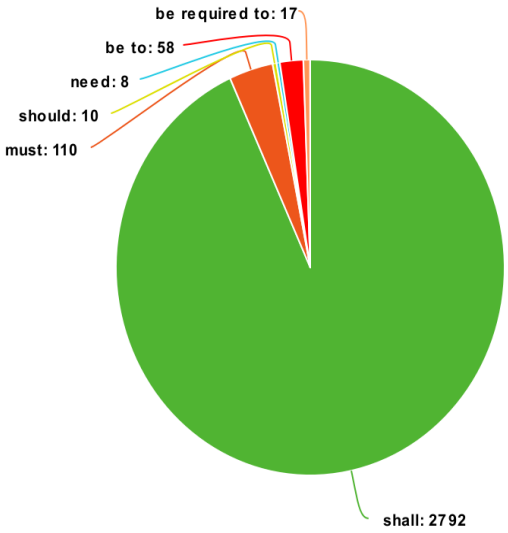
4. Findings of the quantitative analysis and discussion

In this chapter we will present the results of the quantitative analysis of the use of the exponents of deontic necessity in the English texts constituting the corpus and in the corresponding texts translated from English into Croatian. The analysis is limited to English modal verbs and modal expressions and their renderings in translations into Croatian since these are the most frequent exponents, which is not to say that others, such as modal adjectives and adverbs, do not exist. Having in mind the limited scope of this study it was decided that only the most frequent and prominent exponents would be included in the analysis.

4.1.1. Quantitative analysis of the exponents of deontic necessity in the English texts corpora

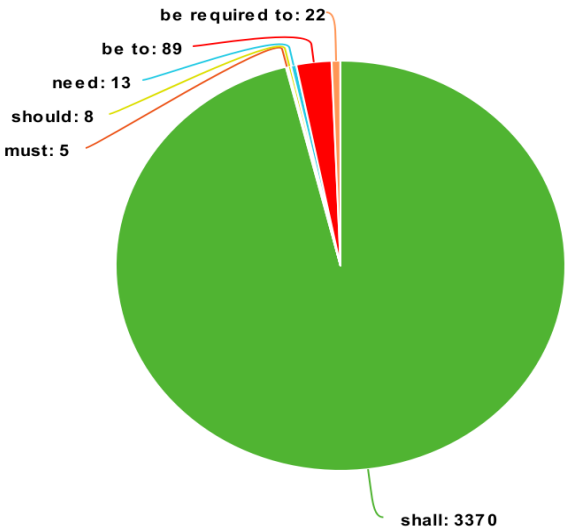
The exponents of deontic necessity in English that have been analyzed in the two parallel corpora are the modal verbs *shall, must, should, need* and the modal expressions *be to* and *be required to*. Charts 1 and 2 represents the distribution of these exponents in the pre-accession and post-accession English corpora.

Chart 1:



Distribution of the exponents of deontic necessity in the corpus of pre-accession EU legislation.

Chart 2:



Distribution of the exponents of deontic necessity in the corpus of post-accession EU legislation.

As can be seen from the above charts, the modal verb *shall* is the most frequent exponent of deontic necessity in both the pre-accession (13 840 pmt) and the post-accession (15 390 pmt)[11] corpus. This finding is in line with most guides on legal drafting which advise the use of *shall* for imposing obligations. However, many scholars (Felici 2012; Cooper 2011; Tiersma 1999; Krapivkina 2017) have pointed out that legal drafters have a tendency not to follow this

[11] The abbreviation *pmt* stand for 'per million tokens' and it reflects the frequency of a particular word

recommendation and use *shall* to express, among other things, requirements, prohibitions, permissions, future actions and other different meanings. This is contrary to the principle of clarity of legal language which many groups both within and outside the legal profession have been championing. The proponents of this principle are grouped around the *Plain Legal English Movement* which seeks to improve the clarity of legal language and change the "language, or form, to give those being regulated the rights to understand that legal text, and, particularly legislative and regulatory texts, which govern their lives…" (Cooper, 2011: 11). The issue of *shall* expressing various different meanings has been observed in the corpora under investigation as well and will be addressed in Chapter 5, where the findings of the qualitative analysis are presented.

The most important difference between the pre and post-accession corpus in expressing deontic necessity can be seen in the usage of the modal verb *must*. While in the pre-accession corpus it appears 110 times and is the second most used exponent of obligation with a frequency of 545 pmt, in the post-accession corpus it appears only 5 times to express obligation and is the least frequently used exponent. We can see that there has occurred a shift between the pre and post-accession drafting practices since the modal verb *must* is now barely used as opposed to previous periods. One potential explanation for this shift is the desire of EU institutions to increase the uniformity of its legislative texts by expressing the same modal meaning using a single exponent of modality. However, scholars (Cooper 2011; Šarčević 2000; Gozdz-Roszkowski 2011;) are not in complete agreement over whether there exist semantic differences between the modal verbs *shall* and *must* in their deontic usage and what these potential differences are. For instance, Cooper (2011: 16) claims that the difference between the two is that, while *must* expresses logical necessity in the domain of epistemic modality and is thus avoided in legal language, *shall* does not have such connotations. Kimbel (1982: 66) claims that *shall* is used to create a duty, whereas *must* is used to create a condition precedent, a provision which determines what needs to happen or be the case before something else can happen. The qualitative analysis will attempt to find out in what contexts *must* was preferred to *shall* in the pre-accession legislation.

The modal expressions *be to* and *be required to* are the only other exponents of deontic necessity with more than 10 occurrences in both corpora. They show a similar distribution in both

the pre-accession and post-accession corpus and are, together with *shall* and *must*, used to express strong obligation. The modal verb *should*, which is used to express weaker obligation (Palmer 2001: 127), has less than 10 occurrences in the studied corpora, and the situation is similar with the modal verb *need* which, although it does express strong obligation, is not frequently employed by legal drafters for similar reasons as is the case with the modal verb *must*.

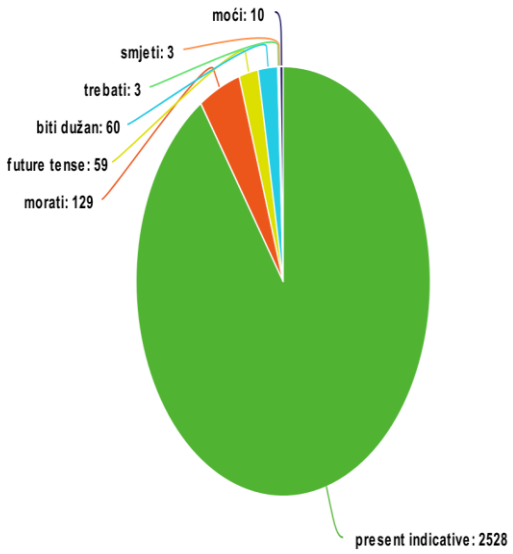
4.1.2. Quantitative analysis of the translations of English exponents of deontic necessity into Croatian

This section of the thesis presents the data on various ways in which English modal verbs and modal expressions carrying the meaning of obligation are translated into Croatian.

4.1.2.1 Quantitative analysis of the translations of *shall* into Croatian

As it was established in 4.1.1 , the modal verb *shall* is the most frequent exponent of obligation in the English corpus. Charts 3 and 4 show the frequency of various translations of the modal verb *shall* into Croatian in the pre-accession and post-accession corpora.

Chart 3



Distribution of the Croatian translations of the English modal verb *shall* in the pre-accession corpus.

Chart 4:

Distribution of the Croatian translations of English modal verb *shall* in the pre-accession corpus.

Charts 3 and 4 clearly show that the most frequent Croatian exponent of deontic necessity used to translate the English modal verb *shall* is the present indicative. As Nurmi (2019: 144) points out, "Deontic obligation is not always expressed explicitly. When a text is normative in nature, also the present indicative can be used in a deontic sense". Another explanation for the dominance of the present indicative in translating strong obligation is the fact that, as Felici puts it, the law is 'constantly speaking' (2012: 54). The practice of translating English exponents of deontic necessity with the present indicative is, as Erić-Bukarica points out, especially common "in the continental legal systems […] due to the fact that the language of the law is perceived as 'always speaking'" (2009: 83). A different explanation for the preference of the present indicative in the continental legal system is offered by Šarčević, who claims that in these "jurisdictions […] the use of the imperative is considered too direct, as a result of which the present indicative is preferred in mandatory provisions as well" (2001: 139). She calls this usage of the present indicative to impose obligations 'normative indicative' and claims that it is employed in certain jurisdictions as a method used by legal drafters to avoid being overly direct (ibid).

Aside from the present indicative, the only other Croatian exponent of deontic necessity used to translate the English modal verb *shall* that has a noteworthy number of occurrences in both the pre and post-accession corpora is the modal verb *morati*. It has a similar number of occurrences as a translation solution for *shall* in both of the corpora. In her article Knežević defines *morati* as a fully-fledged modal due to its polyfunctionality, i.e. the fact that it can be used to express two types of modality (deontic: obligation/necessity and epistemic: probability) (2012: 119). Knežević (2012: 142) notes that *morati* is the "modal with the highest degree of obligation meaning in Croatian" and that in translating from Croatian into English its counterpart is in most cases the English modal verb *must*. One potential explanation for translating *morati* as *must* could be the impact of the conventions of the non-legal genres of the English language, in which *must* is used far more frequently than *shall*, on the translator. This line of reasoning could lead us to conclude that in translating from English into Croatian the appearance of *must* would be a prompt for the translator to use *morati*, which makes it all the more surprising that *morati* has slightly more occurrences in the post-accession corpus in which *must* has only 7 occurrences, as opposed to the pre-accession corpus in which *must* has 110 occurrences. The Croatian modal

verb *morati*, as it turns out, is not reserved exclusively as a translation solution for English *must*, but also as a translation solution for *shall*.

The most remarkable difference in the translation of the English modal verb *shall* into Croatian between the two corpora is in the occurrence of the modal expression *biti dužan* and the use of the Croatian future tense for expressing obligation. Some scholars, such as Šarčević (2001: 103) point out that:"the future tense is not used to express commands" and even the Croatian *Priručnik za prevođenje pravnih propisa EU* warns that

> Probably the most common and serious error is translating the English shall in legal commands with the future tense in Croatian, which automatically changes the intended legal effect (2002:13).

It could be argued that such recommendations have over time led to a decline in the use of the future tense to impose obligation in translations of EU legislation from English into Croatian, but this does not explain the situation with the modal expression *biti dužan*, the use of which decreased nearly tenfold between the pre and post-accession period in the investigated corpora. Unlike the future tense, scholars of legal translation do not seem to have any issues with this modal expression and many, such as Mikulaco, analyze it as one of the legitimate translation options for expressing obligation in Croatian (2018: 172). A potential explanation for the decrease in the occurrence of both of these exponents of deontic modality is a general trend of creating more uniform and consistent EU legislation facilitated by translation tools such as translation memories, terminological bases, style guides, etc.

The rest of the Croatian modal expressions found as translation options for the English modal verb *shall*, the modal verbs *smjeti, trebati*, and *moći,* occur very rarely in the analyzed corpora and as such will not be included in this analysis.

4.1.2.2. Quantitative analysis of the translations of *must* into Croatian

The English modal verb *must* is, as has already been mentioned in 4.1.1, the source of the largest difference between the pre and post-accession corpora in the ways of expressing deontic necessity. In the pre-accession corpus it numbers 110 occurrences and is the second most frequent exponent of deontic necessity, while in the post-accession corpus it numbers only 5. Therefore, it would be redundant to carry out a comparison of its translations between the two

corpora, which is why in this section only the translations found in the pre-accession corpus will be analyzed. Of the 110 occurrences of the modal verb *must* 64 were translated with the Croatian modal verb *morati*. We have already discussed the potential influence of the conventions of non-legal genres on translators when they encounter this modal verb. Another potential explanation for choosing to translate *must* as *morati* could be the translator's uncertainty about whether there is a difference between *shall* and *must* in expressing obligation. It is possible that the translator, faced with this dilemma, would opt to render legal provisions containing *must* differently into Croatian than those containing *shall*. Scholars of legal translation have pointed out that there is in fact a difference between the two modal verbs. Thus, for example Kaczmarek et al. quote Chapter 311 of the US Code Construction Act, which states that while *shall* "imposes a duty" *must* "creates or recognizes a condition precedent" (2016: 5). Jelovšek (2021: 29) also agrees that the modal verb *must* is different from *shall*: "in its deontic sense, the verb must in legal texts is by rule used for requirements that express the existence of an obligation that is usually procedural" Nonetheless, she acknowledges that, in accordance with the DGT (Directorate-General for Translation)'s *English Style Guide* "although 'most English-speaking countries now generally use must instead of shall' (…) in EU legislation, shall should be used" (2021:41).

The situation with *must* between the two corpora is similar to that of the Croatian future tense and modal expression *biti dužan*, i.e. its number of occurrences decreased most likely because of the desire to produce more uniform and consistent legislation, but in this case that desire was realized not by translators themselves, but by legal drafters. It is likely that legal drafters noticed that translators tend to render the modal verb *must* differently from the modal verb *shall* even in cases when no real difference in meaning was intended by legal drafters, either because they were unsure about the existence of a semantic difference or because they felt compelled to use a different translation solution in the target text under the influence of the source text. This is corroborated by the fact that in the pre-accession corpus the modal verb *must* was translated only once by the present indicative, the most frequent translation solution for the modal verb *shall*:

Example 1:

(EN) *The assets representing the Solvency Capital Requirement* ***must be kept*** *within the Member State where the activities are pursued up to the amount of the Minimum Capital Requirement and the excess within the Community.*

(HR) *Imovina koja predstavlja potrebni solventni kapital* ***drži se*** *do iznosa minimalnog potrebnog kapitala u državi članici u kojoj se obavljaju djelatnosti, a višak u Zajednici.*

The only other exponent of deontic necessity used as a translation solution for *must* is the modal expression *biti potrebno* which numbers only four occurrences in the pre-accession corpus. Its use is illustrated in example 2.

Example 2

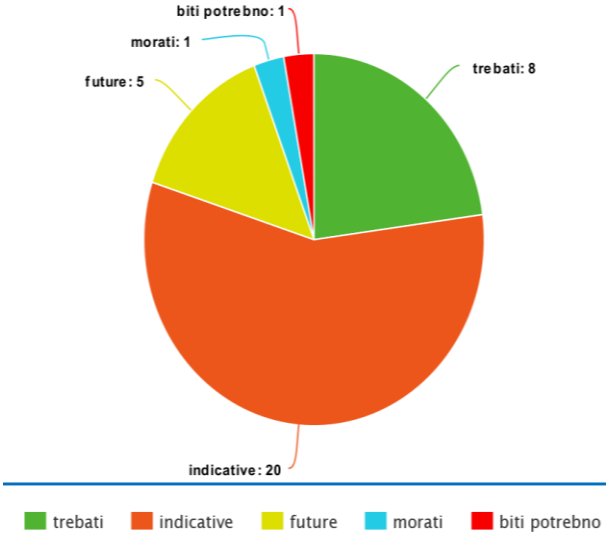
(EN) *The statement issued by the organiser of the sale by public auction* ***must specify*** *separately the amount of the transaction, that is to say, the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.*

(HR) *U obračunu koji izdaje organizator prodaje na javnoj dražbi* ***potrebno je*** *zasebno specificirati iznos transakcije odnosno cijenu robe postignutu na dražbi, umanjenu za iznos provizije koja je dobivena ili koja će biti dobivena od komitenta.*

4.1.2.3. Quantitative analysis of the translations of *be to* into Croatian

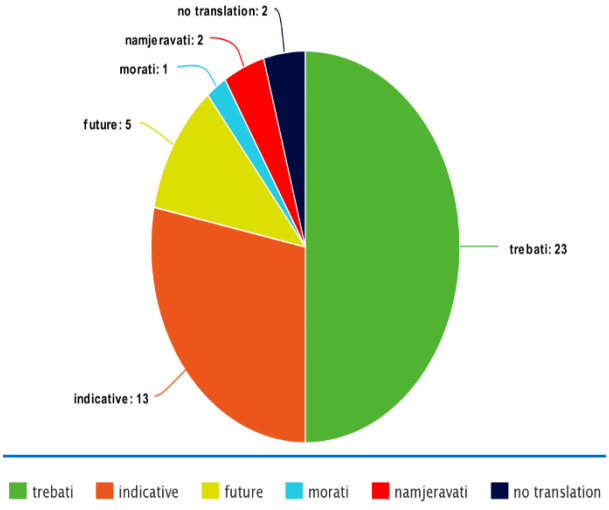
The modal expression *be to* is the only exponent of deontic necessity other than *shall* that has a relatively high number of occurrences in both of the analyzed corpora. Charts 5 and 6 show the frequencies of various translation solutions used to render the modal expression *be to* into Croatian in the pre-accession and post-accession corpora:

Chart 5:



Distribution of the translations of the modal expression *be to* into Croatian in the pre-accession corpus.

Chart 6:



Distribution of the translations of the modal expression *be to* into Croatian in the post-accession corpus.

Despite the fact that in comparison to the modal verb *shall* the modal expression *be to* is less frequently used, it is rendered with a greater number of different translation solutions than *shall* in both of the corpora. The two most frequent of these solutions are the modal verb *trebati* and the present indicative, which have switched places between the two corpora: the present indicative is the favored option in the pre-accession period followed by *trebati* while the situation

is reverse in the post-accession period. The Croatian modal verb *trebati*, as Knežević (2011: 140) points out, is not used to express a high degree of obligation in Croatian because, as Erić-Bukarica puts it: "the use of trebati implies the possibility of discretion" (2015: 89). On the other hand, the present indicative can be used to express both strong and weaker obligation (Šarčević 2001: 139). In line with that, an increase in the use of *trebati* accompanied with a decrease in the use of the present indicative as translation solutions for the modal expression *be to* could be interpreted as an attempt by translators to make provisions that impose a weaker obligation more prominent and unambiguous by using an expression that is exclusively used for weaker obligations, as opposed to the present indicative which can express both weaker and stronger obligations. This would be in line with the move towards more uniform and consistent legal texts, which seems to be a dominant trend in both drafting and translating EU legislation.

5. Qualitative analysis of the English exponents of deontic necessity and their translations into Croatian

This chapter deals with the findings of qualitative analysis of the translations of English exponents of deontic necessity into Croatian. The purpose of this analysis is to describe more thoroughly the semantic and syntactic environment in which a certain exponent of deontic necessity appears in order to find out to what extent, if any, this environment impacts the translation solutions used to render that exponent in Croatian. For all exponents of deontic necessity analyzed in Chapter 4 all occurrences were included in the qualitative analysis except for the modal verb *shall* translated using the Croatian present indicative, which numbers far too many occurrences to analyze in this work. For that reason, 500 occurrences of the modal verb *shall* translated with the present indicative were selected using the *random sample* option in *SketchEngine* in both the pre and post-accession corpora in order to be analyzed.

5.1. Qualitative analysis of *shall* and its Croatian translations

As we have already mentioned, due to its large number of occurrences in both of the analyzed corpora the modal verb *shall* translated with the Croatian present indicative was analyzed in 500 randomly selected provisions, whereas it was analyzed with all its occurrences when translated with other Croatian exponents of deontic necessity. In the provisions in which *shall* is translated with the Croatian present indicative the most common meanings the provisions express are those of obligation and constitutive provisions (77% in the pre-accession corpus and

82% in the post-accession corpus), which is not surprising since the genres analyzed in this study, regulations and directives, serve to impose obligations and institute new legal relations. Interestingly, while in the pre-accession corpus the constitutive provisions number more occurrences than those imposing obligations, the situation is the reverse in the post-accession corpus. A typical provision imposing an obligation can be seen in example 4:

Example 4

(EN) Member States **shall** collectively **ensure** that the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 is at least 32 %.

(HR) Države članice zajednički **osiguravaju** da udio energije iz obnovljivih izvora u ukupnoj konačnoj bruto potrošnji energije u Uniji 2030. bude najmanje 32 %

On the other hand, a typical constitutive provision is presented in example 5.

Example 5:

(EN) Where, under this Regulation or under the Implementing Regulation, the authorities or institutions of a Member State communicate personal data to the authorities or institutions of another Member State, such communication **shall be subject** to the data protection legislation of the Member State transmitting them.

(HR) Ako na temelju ove Uredbe ili na temelju provedbene uredbe tijela ili ustanove države članice šalju osobne podatke tijelima ili ustanovama druge države članice, na takvo dostavljanje podataka **primjenjuje se** zakonodavstvo o zaštiti podataka države članice koja ih šalje.

A difference can also be seen between the two corpora in the occurrences of performative provisions which constitute 10% of the analyzed provisions in the pre-accession corpus and only 6% in the post-accession corpus. Taking into account a decline in the number of constitutive provisions mentioned above, we may conclude that legal drafters in the EU are moving towards more uniform and simplified legislation by abandoning the nuances between obligatory, constitutive, and performative provisions and opting to express only the meaning of obligation, which non-experts, including translators, are more likely to interpret correctly. A typical performative provision can be found in example 6:

Example 6

(EN) Council Regulation (EEC) No 1408/71 **shall be repealed** from the date of application of this Regulation.

(HR) Uredba Vijeća (EEZ) br. 1408/71 **stavlja se** izvan snage na dan primjene ove Uredbe.

Legal provisions expressing a requirement are about equally represented in both of the corpora and have a relatively low frequency making up only 10% of the analyzed provisions containing *shall* translated with the present indicative. Example 7 illustrates such a provision.

Example 7

(EN) In order to facilitate the monitoring by the national regulatory or other competent authorities of compliance with the requirements of this paragraph, BEREC **shall establish** a database on the numbering resources with a right of extraterritorial use within the Union.

(HR) Kako bi se nacionalnim regulatornim ili drugim nadležnim tijelima olakšalo praćenje usklađenosti sa zahtjevima iz ovog stavka, BEREC **uspostavlja** bazu podataka o brojevnim resursima s pravom izvanteritorijalnoga korištenja unutar Unije.

The provisions expressing entitlements and authorizations are also infrequent in this context. One of the few examples is provided in example 8:

Example 8

(EN) The judicial authorities **shall**, in respect of the measures referred to in paragraphs 1 and 2, **have the authority** to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

(HR) U pogledu mjera iz stavaka 1. i 2., sudska tijela **ovlaštena su** zahtijevati od podnositelja zahtjeva predočenje razumno dostupnih dokaza kako bi se s dovoljnom sigurnošću mogla uvjeriti da je podnositelj zahtjeva nositelj prava i da je pravo podnositelja zahtjeva povrijeđeno ili da je takva povreda neminovna.

The situation is the same with provisions in which a statutory definition is expressed, which is to be expected since it is not the norm for definitions to be expressed in the normative sections of EU legislation, making up the corpora analyzed in this study. However, an example of such a provision can be seen in example 9.:

Example 9

(EN) Closed distribution systems **shall be considered** to be distribution systems for the purposes of this Directive.

(HR) Zatvoreni distribucijski sustavi **smatraju se** distribucijskim sustavima za potrebe ove Direktive.

The analyzed provisions show a large degree of similarity between the two corpora in most of the other categories employed in the qualitative analysis. Thus, most of the provisions are unconditional and the main verb is in the active voice in both the source and target provision, the main verb is a dynamic one, the modal meaning is expressed in the main clause and the provision itself is administrative and mandatory in nature, as in example 10:

(EN) On the basis of those reports, the Commission **shall draw up** a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society.

(HR) Na temelju tih izvješća, Komisija **sastavlja** izvješće o provedbi ove Direktive, uključujući i procjenu učinkovitosti poduzetih mjera, kao i procjenu njezina utjecaja na inovacije i razvoj informacijskog društva.

In the provisions in which the modal verb *shall* is translated as the Croatian modal verb *morati* the dominant meaning expressed by the provisions is that of requirement (70% of the provisions in the pre-accession corpus and 80% of the provisions in the post-accession corpus). The closely related meaning of obligation is the second most frequently expressed meaning in these provisions with a frequency of 30% in the pre-accession and 15% in the post-accession corpus. An example of a provision expressing the meaning of requirement in which *shall* was translated as *morati* is provided below.:

Example 11

(EN) In pursuing its activities, the Institute **shall**, in order to avoid duplication and to ensure the best possible use of resources, **take account** of existing information from whatever source and in particular of activities already carried out by the Community institutions and by other institutions, bodies and competent national and international organisations and work closely with the competent Commission services, including Eurostat

(HR) U obavljanju svojih aktivnosti Institut **mora** , kako bi se izbjeglo udvostručivanje i osigurala najbolja moguća uporaba sredstava, **uzeti u obzir** postojeće informacije iz svih izvora, a posebno aktivnosti koje su već provele institucije Zajednice i druge institucije, te usko surađivati s nadležnim službama Komisije, uključujući Eurostat.

An example of a provision expressing the meaning of obligation in which *shall* is translated as *morati* is the following:

Example 12

(EN) The Institute **shall ensure** that the information disseminated is comprehensible to the final users.

(HR) Institut **mora osigurati** da su diseminirane informacije razumljive krajnjim korisnicima.

The only remarkable difference between the two corpora is that in the post-accession corpus there appear eight constitutive provisions containing the modal verb *shall* that were translated with Croatian *morati*. In some of these provisions the modal verb *shall* is used twice in coordinated clauses, once translated with the present indicative and then with the modal verb *morati*, possibly because the translator wanted to avoid repeating the same solution, as can be seen in:

Example 13

(EN) The training offered by the Agency **shall be** of high quality and **shall identify** key principles and best practices with a view to ensuring greater convergence of administrative methods, decisions and legal practices, while fully respecting the independence of national courts and tribunals.

(HR) Osposobljavanje koje nudi Agencija **mora biti** visoke kvalitete te **se** njime **utvrđuju** ključna načela i najbolje prakse radi osiguravanja veće usklađenosti administrativnih metoda, odluka i pravnih praksi, uz potpuno poštovanje neovisnosti nacionalnih sudova.

As was the case with *shall* translated as present indicative here too the provisions and their translations show a great deal of similarity in the two corpora in terms of the other categories used in the analysis.. Thus, most of the provisions are unconditional, the main verb is used in the active voice, the modal expression appears in the main clause, and the provisions are usually administrative and mandatory in nature, as example 14 shows:

Example 14

(EN) Measures that the Member States may take pursuant to this Directive in order to ensure a level playing field **shall be** compatible with the TFEU, in particular Article 36 thereof, and with Union law.

(HR) Mjere koje države članice mogu poduzeti na temelju ove Direktive radi osiguravanja ravnopravnih uvjeta **moraju biti** usklađene s UFEU-om, posebno njegovim člankom 36., i s pravom Unije.

The provisions in which the modal verb *shall* was translated with the Croatian future tense were only found in the pre-accession corpus so a comparison between the two corpora could not be conducted. As we have already mentioned in Chapter 4, the possible reason for the virtual disappearance of the future tense as a translation solution for the modal verb *shall* could be the effect of various style guides issued by the EU institutions to be used by their translators which caution against translating *shall* with the future tense or the desire of translators to make their translations more uniform and standardized. The meanings most frequently expressed by these provisions are those of obligation (56% of the provisions) and requirement (17% of the provisions). It is possible that in the pre-accession period the translators were under the influence of domestic Croatian legislation in which obligation is commonly expressed using the Croatian future tense. Interestingly, 13% of these provisions in which *shall* was translated with the future tense were of constitutive character, which is unusual since usually in constitutive provisions no adverbials of time are used, unlike in many of the provisions expressing obligation and requirement translated into Croatian with the future tense in which such adverbials are frequently found. A typical example of a provision expressing obligation and containing an adverbial of time is the following:

Example 15

(EN) Member States **shall bring** into force the laws, regulations and administrative provisions necessary to comply with Article 2(3), Article 44, Article 59(1), Article 399 and Annex III, point (18) with effect from 1 January 2008.

(HR) Države članice **će donijeti** potrebne zakone i druge propise kako bi se uskladili s člankom 2. stavkom 3., člankom 44., člankom 59. stavkom 1., člankom 399. i Prilogom III. točkom 18., koji stupaju na snagu 1. siječnja 2008.

As far as the other categories used in the qualitative analysis are concerned, most of the provisions are substantive and mandatory in nature, they are expressed in unconditional main

clauses with an active and dynamic main verb and are also translated with an active verb as in the following example:

Example 16

(EN) The Commission **shall**, at the earliest opportunity, **present** to the Council a report, accompanied if necessary by appropriate proposals, on the place of taxation of the supply of goods for consumption on board and the supply of services, including restaurant services, for passengers on board ships, aircraft or trains.

(HR) Komisija **će** što je prije moguće **dostaviti** Vijeću izvješće, uz koje će ako je potrebno priložiti primjerene prijedloge, o mjestu oporezivanja isporuke robe za potrošnju na brodovima, u zrakoplovima i vlakovima i isporuke usluga, uključujući restoranske usluge, za putnike na brodovima, u zrakoplovima ili vlakovima.

In line with the results gained by the quantitative analysis, the data obtained by qualitative analysis are very similar for both *shall* translated as the Croatian future tense and *shall* translated as the modal expression *biti dužan*. It too was found as a translation solution for *shall* only in the pre-accession corpus. As with the future tense, the meanings most commonly expressed in the provisions in which *shall* is translated as *biti dužan* are those of obligation (60% of the provisions) and requirement (22% of the provisions). The major difference is that unlike in the provisions translated with the future tense these do not contain any adverbials of time. A typical example of such a provision can be seen in example 17:

(EN) The Member State within the territory of which the goods are located at the time when their dispatch or transport begins **shall grant** those taxable persons who carry out supplies of goods eligible under paragraph 1 the right to opt for the place of supply to be determined in accordance with Article 33.

(HR) Država članica, na čijem je teritoriju roba smještena u vrijeme kad počinje njezina otprema ili njezin prijevoz, **dužna je dati** onim poreznim obveznicima koji izvršavaju isporuke robe koje zadovoljavaju uvjete iz stavka 1. pravo da odaberu da se mjesto isporuke utvrđuje u skladu s člankom 33.

These provisions also show a great deal of similarity with those in which *shall* is translated as the Croatian future tense in terms of the other categories, as well. The only real difference is that these provisions seem to be more uniform than those containing the future tense because among

them there are no provisions which can be categorized as directory, and all the main verbs are used in the active voice in both the source and target provisions and in main clauses. This could be a potential explanation for why no scholars of legal translation saw the modal expression *biti dužan* as controversial and undesirable as opposed to the future tense against which many raised their voices. An example of one such provision is the following:

Example 17

(EN) The Member State of identification **shall allocate** to the non-established taxable person an individual VAT identification number and shall notify him of that number by electronic means.

(HR) Država članica identifikacije **dužna je dodijeliti** poreznom obvezniku koji nema poslovni nastan individualni identifikacijski broj za PDV, te ga mora obavijestiti o tom broju u elektroničkom obliku.

5.2 Qualitative analysis of *must* and its Croatian translations

As the previous two Croatian exponents of deontic necessity, the English modal verb *must* was also only found in the pre-accession corpus, which means that no comparison is possible between the two corpora. In the overwhelming majority of its occurrences the modal verb *must* is translated into Croatian with the modal verb *morati* and the meaning most frequently expressed in these provisions is that of requirement (63% of the provisions) and obligation (33% of the provisions). The situation with *must* is very similar to that of *shall* when translated as *morati* in that in both cases the meaning of requirement is dominant, followed by the meaning of obligation. There are, however, some major differences between *shall* and *must* in terms of the other categories used in the qualitative analysis. Whereas *shall* is predominantly used in substantive legal provisions, *must* is used in substantive and administrative ones roughly equally. Also, while *shall* translated as *morati* is almost never found in subordinate clauses, the modal verb *must* has a comparatively remarkable number of occurrences in subordinate clauses, as in the example below:

Example 18

(EN) The information which the non-established taxable person **must provide** to the Member State of identification when he commences a taxable activity shall contain the following details:

(HR) Informacije koje porezni obveznik koji nema poslovni nastan **mora dostaviti** državi članici identifikacije kada počinje oporezivu djelatnost obuhvaćaju:

There are also some provisions in which the modal verb *must* was translated with the present indicative and the modal expression *biti potrebno*, but they occur very rarely and in the analyzed corpus they number only two, that is, four occurrences respectively:

Example 19

(EN) The statement drawn up in accordance with paragraph 1 shall serve as the invoice which the principal, where he is a taxable person, **must issue** to the organiser of the sale by public auction in accordance with Article 220.

(HR) Obračun sastavljen u skladu sa stavkom 1. služi kao račun koji izdaje komitent, ako je on porezni obveznik, organizatoru **prodaje** na javnoj dražbi, u skladu s člankom 220.

(EN) The statement issued by the organiser of the sale by public auction **must specify** separately the amount of the transaction, that is to say, the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.

(HR) U obračunu koji izdaje organizator prodaje na javnoj dražbi **potrebno je** zasebno specificirati iznos transakcije odnosno cijenu robe postignutu na dražbi, umanjenu za iznos provizije koja je dobivena ili koja će biti dobivena od komitenta.

In most of the provisions containing the modal verb *must* it appears in an unconditional clause in which the main verb is used in the active voice in both the source and target provision, the main verb appears in the main clause and is usually dynamic in nature, while the provision itself is a mandatory one as in the example below:

Example 20

(EN) The organiser of the sale by public auction to whom the goods have been transmitted pursuant to a contract under which commission is payable on a public auction sale **must issue** a statement to his principal.

(HR) Organizator prodaje na javnoj dražbi kojemu se roba prenosi prema ugovoru, na temelju kojega se plaća provizija na prodaju na javnoj dražbi, **mora** svom komitentu **izdati** obračun.

5.3 . Qualitative analysis of *be to* and its Croatian translations

The final English exponent of deontic necessity that is analyzed in this thesis, the modal expression *be to,* was found in both of the analyzed corpora with roughly the same frequency (360 pmt in the pre-accession corpus and 404 pmt in the post-accession corpus), which means that it is possible to compare the data extracted from the two corpora. In both of the analyzed corpora the most frequent meaning expressed in the provisions containing this modal expression is that of obligation (47% in the pre and 54% in the post-accession corpus). In the pre-accession corpus the second most frequently expressed meaning is that of constitutive provisions (36% of the provisions) while in the post-accession corpus this position belongs to both constitutive provisions as well as those expressing a requirement (both have a frequency of 20%). The most significant difference between the modal expression *be to* and the other English exponents of deontic necessity is that in the analyzed corpora it appears exclusively in subordinate clauses and no examples were found of this expression being used in a main clause. Another important difference is that the main verb in these clauses is usually expressed in the passive voice, as opposed to the other exponents of deontic necessity, which were usually accompanied by a verb in the active voice. These characteristics of the modal expression *be to* can be seen in the following example:

Example 21

(EN) The Commission shall adopt implementing measures relating to paragraph 2 specifying the key aspects on which aggregate statistical data are to be disclosed, and the format, structure, contents list and publication date of the disclosures.

(HR) Komisija donosi provedbene mjere koje se odnose na stavak 2., a kojima se određuju ključni aspekti prema kojima se objavljuju skupni statistički podaci, te oblik, struktura, sadržaj i datum objave.

When the two corpora were compared exclusively in terms of this exponent a significant difference was found in the translations of the modal expression *be to*. The most frequent translation in the pre-accession corpus was the present indicative (55% of the provisions) followed by the modal verb *trebati* (22% of the provisions) while the situation is the reverse in the post-accession corpus. The other translation options include the future tense, the modal verb *morati* or a lack of a direct translation of the modal expression *be to*. However all of these solutions occur very rarely.

6. Conclusion

Legal languages are specialized sub-genres of the general language used to express the different rules and norms to which members of a particular culture are subject and are, as such, deeply rooted in the traditions and practices of the cultures that employ them. This makes it difficult to compare one legal language to another, as is the case with other culture-specific elements, yet in the contemporary world not only are comparisons drawn between different legal systems, but translators are often expected to accurately and faithfully render legislation stemming from vastly different legal systems into vastly different languages, as is the case when translating UK or USA legislation into Croatian. However, the emergence of supranational entities such as the EU, which have their own unique legal systems made up of elements from other legal systems has introduced a new dynamic into legal translation. The accession of a country and its language to the EU inevitably leads to the emergence of its *Eurolect*, a special legal language that is shaped by the practices of EU legislative drafting and differs from the domestic legal language. Since *Eurolects* represent the expression of the same rules and norms in different languages, one of the largest obstacles encountered in legal translation, the incompatibility of legal systems with one another, is removed, which means that the central issue of legal translation in the EU context is language itself. This fact makes EU legislation drafted in different languages an ideal environment for investigating the different phenomena that make legal language separate from ordinary, general language, such as modality, the category investigated in this thesis.

Although many different approaches to modality as a linguistic category have been developed throughout the years, the one F. R. Palmer set out in his 1986 book *Mood and Modality* remains one of the most influential and comprehensive, and most importantly, since Palmer did not limit himself to only one language but analyzed this category in many different languages, it offers a relevant framework for comparing different languages in terms of expressing this category. His division of modality into the epistemic, deontic, and dynamic type and his analysis of the different grammatical means of expressing modality have enabled researchers to accurately point out the features of legal language that set it apart from all other linguistic genres. As a linguistic genre that is firmly rooted in the world of rules and norms legal

language falls in the category of deontic modality which expresses situations and states of affairs that are potential and based on some kind of authority, in the case of legal language that authority being the law itself. Each type of modality Palmer defines in his book is associated with certain grammatical methods of expressing that type of modality, including modal verbs, modal expressions, grammatical moods, modal adjectives, etc. However, the same grammatical method can often be used to express two, or even all three types of modality, as is the case with modal verbs, whose main feature is polyfunctionality (the ability to express more than one type of modality). This means that in order to decipher the nature of a legal provision and render it accurately from one language into another one cannot rely exclusively on the syntactic context in which it appears, but also semantic and pragmatic considerations need to be taken into account since these provisions are constructed in a very specific environment and under specific circumstances which impacts both their form and their content. These syntactic, semantic and pragmatic considerations are the main topic of this thesis.

The Republic of Croatia joined this legal environment on July 1, 2013 after nearly eight years of preparation. One of the requirements it needed to fulfill before becoming a member of the EU, as did all other member states before it, was to translate the *acquis communautaire* (the entirety of EU law) and then adopt it into its legal system. The process of translating the *acquis* represents the pre-accession period of legal translation for the EU in Croatia, a period which is characterized by a lack of both financial and institutional support from EU institutions for the task of translation as well as a lack of access to the many different translation tools and aids which were available to translators in the later period. In this later period, which lasts from the accession of Croatia to the EU to today, the task of translating EU legislation into Croatian is conducted in-house, by a dedicated team for the Croatian language working as a part of the *DGT* (Directorate General for Translation) with access to many different institutional and translational resources. It is possible that these differences in the translation process between the two periods may have impacted the way the issue of rendering deontic modality from English into Croatian is approached, which is one of the question this thesis aimed to tackle.

On the basis of a quantitative and qualitative analysis of English source legal provisions and Croatian translations of those legal provisions found in 5 directives and 5 regulations from both the pre-accession and post-accession period this study aimed to accomplish three tasks: to

determine which exponents of deontic necessity are most often used in the English source texts, to find out which Croatian exponents of deontic necessity are used to render those English exponents in the Croatian target text and under what syntactic, semantic and pragmatic circumstances, and to compare the usage of these Croatian exponents between the two translation periods. In line with many other studies conducted on this topic, our data has shown that the most common English exponent of deontic necessity is the modal verb *shall*, which is a staple of legal texts in English and a point of contention among drafters of legal texts, legal scholars and linguists due to it being used to express many different meanings outside the realm of deontic necessity. However, data obtained from the qualitative analysis of the occurrences of this modal verb have shown that it is also used to express different meanings within the realm of deontic necessity, such as obligation, constitutive provision, performative provisions, entitlements and authorization, and statutory definitions. This categorization of the meanings expressed within the realm of modal necessity presents a new contribution to the study of legal translation and has been applied to other exponents of deontic necessity analyzed in this thesis. The analysis has shown that there exists a relationship between certain syntactic, semantic and pragmatic patterns found in the source provisions and the translation solution chosen in the target text. For example, it has been shown that the modal verb *shall* is more likely to be translated as the Croatian verb *morati* when it is used in a provision expressing a requirement, as opposed to provisions expressing obligations in which it is more likely to be translated with the present indicative. Another example would be provisions in which *shall* is translated with the Croatian future tense, in the majority of which an adverbial of time was present. Finally, the comparison between the pre-accession and post-accession corpora has found that some translation solutions have virtually disappeared from usage (such as translating the modal verb *shall* with the Croatian future tense), some have become more prominent at the expense of other translation solutions (such as *trebati* when translating a provision expressing weaker obligation), some did not appear in the post-accession corpus because the English modal verb associated with them was not used frequently (e.g. the verb *must* in the post-accession corpus) and some were used in coordination with one another even when no difference in meaning was intended (for example *morati* and *present indicative* used to translate two instances of *shall* in the same provision). It is possible that these differences were caused by the institutional circumstances in which these translations were produced, as those are the largest difference between the two translation periods. Other potential

explanations for these differences could be a desire of the translator to avoid repetitions or a potential trend towards more uniform legislative drafting in EU institutions. However, such considerations are outside the realm of this thesis and could present a worthwhile topic of investigation in another study.

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