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The European Arrest Warrant: some pragmatic and translation aspects

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ABSTRACT

The European Arrest Warrant (EAW) is an important legal instrument of judicial cooperation and mutual assistance in criminal matters within the European Union. Translation quality and functionality is therefore a fundamental issue in this field, as we argue in the present article. After a brief introduction to the EAW, we have performed a genre-based analysis of Belgian Dutch and Italian EAWs, addressing terminological issues, morphosyntactic questions and discursive strategies. Subsequently we have taken into consideration the pragmatic dimension, focusing especially on the participants in the very particular discourse situation presented by EAWs. Finally we have discussed the translator's role and competence. The EAW is a normative text issued by a EU Member State with a view to arrest and surrender a requested person by another Member State. The translation of an EAW is considered a parallel legal text, because in the target judicial system it performs the function of the judicial decision in the source system. Against this background the quality of translation services, the translator's tasks and the issue of national registers for translators are essential elements, also in the light of increasingly important considerations such as the commitment to fundamental rights.

KEYWORDS

Belgian Dutch, Italian, legal translation, translation quality, translator's role, discursive strategies.

0. Introduction

The European Arrest Warrant (EAW) is an innovative instrument of judicial collaboration, "the first legal instrument based upon mutual recognition of decisions in criminal matters" (Council of Europe 2010: 2), adopted by all Member States of the European Union. It came into operation in 2004 and concerns the surrender of suspects to face trial or serve a prison sentence, therefore touching on fundamental rights, such as the right on a fair trial.

The EAW has been existing for thirteen years now, so it is old enough to give insights into translation problems related to this specific text genre. This is indeed the overall aim of our small-scale study: to shed light on specific translation and pragmatic aspects associated with the EAW, paying particular attention to two language situations, Belgian Dutch and Italian. In the background lies the assumption that effective communication is an essential requirement in this context.

1. Genesis and legal profile of the EAW

The European Arrest Warrant is based on the Framework Decision (FD) on the European Arrest Warrant and Surrender Procedures between Member

States of the European Union [2002/584/JHA], adopted by the Council of the European Union on 13 June 2002. It is a “judicial decision issued by a Member State with a view to arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order” (FD, art. 1).

The main aim of the Framework Decision on the EAW is to broaden judicial cooperation in criminal matters within the third Pillar of the EU by simplifying and accelerating the surrender of persons. In Belgium the EAW has been introduced with the law of 19 December 2003, in Italy with Law n. 69 of 22 April 2005.

The EAW’s most innovative aspect is that it takes the decision for surrendering out of the hands of politicians. It is a “purely judicial matter, whereby only the courts of the member states cooperate without the need to turn to the executive, which traditionally participated in the process of extradition” (Kurtovic and Langbroek 2010: 247). Other innovative aspects are the simplification and acceleration of the surrender procedure, the independence of the requested person’s surrender from his/her nationality and the partial abolition of the double criminality check with reference to the 32 offences listed (i.e. Bednarek 2009: 86).

As a general rule, the issuing authority transmits the EAW standard form directly to the executing judicial authority. In Italy, however, it is the Ministry of Justice that “centralises the administrative transmission and reception of EAWs and related correspondence, translations etc., mediating between the Italian court and the foreign judicial authority,” being “also responsible for the transfer arrangements” (Gomes, Fernandes and Borges Reis 2010: 49).

Pending a decision, the executing judicial authority, in accordance with national law, hears the person concerned and takes a final decision, within 60 days after the arrest, on execution of the warrant.

As stated by the JUSTICE report, after “a few years of teething problems concerning conflict with national constitutional laws, all member states [...] are using the instrument and it is thriving. In 2007 the European Commission declared the EAW as a success” (2012: 7)¹.

There are, however, still some shortcomings, particularly concerning the respect of fundamental rights for the defence, for instance because lawyers play a minor role in the hearing and surrender procedures (JUSTICE 2012: 8). An important point of concern is also the issuing of warrants for minor offences (see Janssens 2007: 5-6), while other criticisms are related to problems of diversity in the definitions of the 32 offences, differences in transposition of grounds for refusal and divergent interpretations of the double criminality principle.

Some Member States, for instance Spain and Portugal, have transposed the FD very quickly by making a verbatim translation of its formulation. As a consequence, their transposition laws are more an imitation of the FD's recommendations than a real transposition, showing also some questionable calques. On the contrary, the Italian and Dutch transposition laws are more focused on rights and guarantees and present a thorough specification of offences, procedures and articulation of all these with internal law (see the report edited by De Sousa Santos and Gomes, 2010, containing national case studies on the EAW in Spain, Portugal, Italy and the Netherlands).

In the next two paragraphs we will analyse the EAW standard form, individuating structural, linguistic and discourse indicators. The analysis is based on a very small corpus, three Belgian and two Italian EAWs collected for the Qualettra project².

2. The EAW standard form: structural indicators

Under Article 8 of the FD all Member States adopted an identical form and content of the European arrest warrant, to reduce the diversity relating to legal systems in the EU and allow greater harmonisation of the procedures to be followed. The lawmaker's intention was to implement a working tool that might easily be recognised and identified as such by the executing judicial authorities. The form may be printed and filled in, after being downloaded from, among others, the European Judicial Network website, but not changed, modified or cut in any of its tables, in order not to jeopardise the success of judicial cooperation (see Ministero della Giustizia n.y.: 2).

The template is divided into nine sections, listed from a to i, each introduced by one or more standard sentences. There is also an introductory paragraph consisting of one sentence. The document ends with a final section, not numbered, including one or two boxes with detailed information on the issuing authority. All the sections have to be compiled. If something does not apply, the judicial officer may delete it (but not in Italy), or write "not applicable".

There are basically two parts where free description, and thus drafting from scratch, is required: section d, Legal Guarantees (NL *juridische garanties*, IT *garanzie giuridiche*) — which is however characterised by a high degree of intertextuality — and section e, Offences (NL *strafbare feiten*, IT *reati*), which is particularly important because the executing Member State is not allowed to check the double criminality requirement (Eurojust 2011: 17).

3. Linguistic indicators of the EAW in Belgian Dutch and Italian

Our linguistic analysis is based on three Belgian EAWs (offences: rape, theft and fraud), and two Italian documents (drug trafficking and rape). We will first concentrate on some core terminology found in the templates as well as in the compiled texts, then we will analyse how the conservative character of legal language is implemented in vocabulary choices and syntactic patterns.

3.1 Judicial core terminology

Starting with the name of the warrant, the Belgian template uses the label *Europees aanhoudingsbevel*, sometimes in its shortened version *bevel*. This term is also used in the Dutch and Belgian transposition laws, whereas in the FD text it is sometimes substituted by a synonym, *Europees arrestatiebevel*, based on the fact that *aanhouding* and *arrestatie* are near-synonyms in the Dutch language, the first being of Germanic and the second of Romance origin. In legal literature the warrant is frequently referred to with its abbreviation, EAB, and sometimes another synonym pops up: *aanhoudingsmandaat*. Italian has adopted *mandato di arresto europeo*, abbreviated as MAE, or *mandato*.

Following the FD, the verb used in Dutch is not anymore *uitleveren* ('extradite') but *overleveren* ('surrender'). On the contrary, Italian has maintained the terms (*consegnare*, *consegna*) that already occurred in the articles of the Code of Criminal Procedure on extradition.

Next we will take a look to the names of the issuing authorities. Terms defining different types of legal professions and court structures are typically "legal system-bound words" usually giving rise to terminological problems in translation (Cao 2007: 60, 63).

In the Belgian EAW we find:

Parket van de procureur des konings: Office of the king's attorney
BC kamer bij de correctionele rechtbank: Chamber of the criminal court
Rechtbank van eerste aanleg: Court of first instance

Note that these names show significant discrepancies with the language variant of the Netherlands, obviously due to differences in the legal systems.

The terms related to the Italian authorities are:

Procura della Repubblica presso il Tribunale: Public Prosecution Service at the Court

(*Sostituto*) *Procuratore della Repubblica*: (Deputy) Public Prosecutor of the Republic
Gip: Preliminary investigation judge
Gup: Preliminary hearing judge

The last two exemplify a typical feature of the Italian EAWs, the use of abbreviations and initials. *Gip* stands for *giudice per le indagini preliminari* and *Gup* for *giudice per l'udienza preliminare*. Other abbreviations found in the Italian EAWs are for instance *Reg.Gen.* (*Registro Generale*, 'General Record') and *SIEP* (*Sistema Informatico di esecuzione penale*, 'Information System for Enforcement of Criminal Sanctions'), designating types of court records. The Belgian EAWs seem to be less inclined to use abbreviations.

For the 'suspected person'/'requested person', the Belgian and Italian EAWs include different terms. The templates use *de gezochte persoon / la persona ricercata* (literally, 'the person sought') besides generic terms as *de betrokkene / l'interessato* ('the involved person') and – in the introducing paragraph only – *de hieronder genoemde persoon / la persona menzionata* ('person mentioned below'). The warrants contain the terms *beklaagde/imputato* ('accused person') when referring to the proceedings, and *veroordeelde persoon / condannato* ('convicted person') when referring to the result of the proceedings.

The paramount importance of terminological precision in the translated versions is underlined in the Eurojust Annual Report 2010 (Eurojust 2011), which states "The choice between using the word "accused" or the word "suspect" could have far-reaching consequences for the execution of an EAW" (2011: 26).

For the concept of 'defence lawyer', the Belgian warrants use two synonyms, *raadsman* and *advocaat*, the Italian EAWs *difensore* and the abbreviation *avv.ti* (*avvocati*). To indicate a '(judicial) decision', again two terms are adopted. The Belgian EAW use *vonnis* and *rechterlijke beslissing*, as in Belgium the decision of lower courts is usually termed *vonnis*, whereas a decision issued by higher courts (Appeal, Cassation) is an *arrest*. The Italian EAWs use *decisione* (accompanied or not by the adjective *giudiziaria*), while *provvedimento* serves as a more general term.

Since legal terminology "is the most visible and striking linguistic feature of legal language as a technical language, and it is also one of the major sources of difficulty in translating legal documents" (Cao 2007: 53), the translator's attention should be dedicated first of all to the core terminology indicating the participants and the main instruments used in judicial procedures.

3.2 Lexical features: conservatism and redundancy

Compliance with tradition is strong in legal discourse (Gotti 2012: 53), essentially as a consequence of the close links with the past (Serianni 2003: 113). The legal profession is known for its conservative mentality and lawyers “stick to traditional expressions even long after these have disappeared from ordinary language” (Mattila 2013: 124-125). According to Gotti, this high degree of conservatism is related to the important pragmatic principle of avoidance of ambiguity and precision of interpretation. Another consequence of this principle is the high level of redundancy in legal texts, which is generally due to the pleonastic use of lexical items (Gotti 2012: 52). This explains the typical lexical features of many legal languages, Dutch and Italian included: the use of archaisms, Latinate vocabulary and French loanwords or calques, synonymy and repetitions.

3.2.1 Archaisms, latinisms and the French heritage

The legal function of archaic words and terms is essentially twofold. First and foremost, they express a continuation with the past: “laws, notably civil laws, often remain in force for decades, sometimes centuries. It is natural that the terms of these laws remain in use, in spite of being old-fashioned” (Mattila 2013: 72). Moreover, they make the text “more dignified and serious” thus ensuring more respect (Mattila 2013: 124, 123).

In our corpus we have found a few instances of archaic words and sayings, such as the Dutch forms *in voorkomend geval* (‘where appropriate’, ‘in this case’); *een tegensprekelijk debat* (‘adversarial debate’); *diefstal door middel van braak, inklimming [of valse sleutels]* (‘theft by housebreaking, illegally entering [or with false keys]’); *stuiting van de verjaring* (‘interruption of the period of limitation’), and the Italian expression *in specie* (‘notably, in particular’).

Other interesting occurrences of archaisms are found among function words, like the Dutch conjunction *indien* (‘if’) and the prepositions *betreffende* and *aangaande* (‘concerning’), which are all typical of legal and administrative language, as well as the relative pronoun *dewelke*, which has fallen into disuse in the standard language. Typical examples in the Italian templates are the locative adverb *ivi* (‘therein’) and the conjunctive *ove* (‘where’, ‘when’, ‘if’), which has a hypothetical, restrictive value. In the free text, there are some instances of the archaic *stante* (‘owing to’), present participle of the verb *stare* (‘to stay, to be’), used as causal preposition.

Besides archaisms, the legal language of today includes a fair amount of elements of former languages. This is especially evident in terminology and stock phrases. The clearest example of these linguistic traces is Latin,

which has had a pervasive influence on most legal languages (Tiersma 2008: 12, Mattila 2013: 73).

Latin still possesses high status in the Western world and it is being widely used as a stylistic tool with a display function. Using Latinate vocabulary is partly a matter of rhetoric, often intended to impress the reader and show professional competence (Mattila 2013: 174, 181). Of course, it is also useful for international understandability (Mattila 2013: 183, 187), but it must be remembered that each language possesses its own Latin (Gémar, quoted in Mattila 2013: 191).

In our Belgian EAWs, there is only one Latinism, in the free text: *modus operandi*. The Italian sample includes, in the template, the expression *in absentia*, which becomes *in assenza* in the free text of one of the two EAWs. Legal English also uses this Latinism, whereas the Dutch language adopts a Germanic root: *bij verstek*, as reported in one of the EAWs.

One would normally expect to find more examples in the Italian corpus. Indeed, it is easily understandable that the Romance languages should have taken on board more words of Latin origin (Mattila 2013: 158), but the paucity of Latinisms in the Italian EAWs might be due to the small corpus size.

The French language has also had great prestige in legal language, and the French Civil Code had a tremendous impact throughout continental Europe (Tiersma 2012: 18). In modern times, it is the European Community which has greatly fostered the use of the French language, since this was “the leading language of the European Communities till the middle of the 1990s” (Mattila 2012: 29).

For historical reasons Belgium has witnessed a particularly strong influence from the French language and culture, and this is clearly manifested in the legal language too (Hendrickx 1999: 320-321). Generally speaking, this might be the main difference in legal style between the two Dutch sublanguages. Dutch legal language in Belgium is very young: it only fully developed after the Second World War, and comprehensibly legal circles were among the last to give up the use of the French language. By contrast, in the Netherlands legal language developed in an autonomous way after Napoleon’s occupation — although the French heritage remained quite substantial. As a consequence, Belgian Dutch operates with quite a few loan translations from French, such as *aanhoudingsmandaat* instead of *arrestatiebevel* (literally, ‘seizure warrant’ – ‘arrest order’), though not in the official EAW proceedings (Hendrickx 1999: 320-321).

3.2.2 Repetitions and synonyms

Another feature of legal language, closely related to the use of lexical loanwords, is the preference for repetitive expressions. Here too, legal English seems to occupy an outstanding position, as it is richly endowed with binary formulae, triplets and other words strings. This is clearly linked to the complicated legal and linguistic history of the English language (Martínez Motos and Gómez González-Jover 2009: 72-73, Tiersma 2008: 8-11, Mattila 2012: 31). The frequent use of word pairs is due to the double root, Anglo-Saxon and Latin/Romance, of the English language. The word pairs were originally used to facilitate comprehension: “The naming of concepts through both languages ensured comprehension by all sectors of the population” (Gotti 2012: 52-53). However, there are also deeper roots for this phenomenon: repetitions can be considered as a manifestation of the “ritual character of the language” with the rhythmic nature of the phrase contributing to the solemnity value (Mattila 2013: 321).

Other Germanic languages, such as German (Mattila 2013: 59) and Dutch, exhibit similar repetitions or joined phrases, thanks to the combined influence of Latin and French, although they probably cannot come close to the plethora shown by English.

What is the function of these word pairs and strings? They can be found in all kinds of legal documents. In many cases they have become idiomatic expressions, a way of ensuring the solemnity and dignity of legal language. But the practice of adding synonyms or quasi-synonyms of a term is also due to over-cautiousness of law practitioners, since it is a way of guaranteeing that the text covers all intended cases or eventualities (Martínez Motos and Gómez González-Jover 2009: 75, Mattila 2013: 321; see also Tiersma 2008: 15 and Cao 2007: 89).

This redundant format may present a challenge when translating from a language with a penchant for repetitions to a language that does not use strings of corresponding words with similar meanings and has less sources of synonymy. A good option might be to translate only part of the string, but it has to be kept in mind that the original form might be more emphatic or have other interpretations. This is the case with the doublet *moord en doodslag* (‘murder and manslaughter’), found in the Belgian EAW templates. The Italian EAWs use *omicidio volontario* (literally, ‘wilful murder’), the English version *murder*, while the Dutch expression distinguishes between killing ‘with intention’ and ‘by accident’. Another example is the binary phrase *vrijheidsstraf of tot vrijheidsbeneming strekkende maatregel* (‘literally: imprisonment or measure involving deprivation of liberty’), in Italian *pena o misura di sicurezza privative della libertà*.

In conclusion, although our corpus size is rather limited, the classical lexical features of legal language are there: archaisms, Latinate vocabulary, repetitive formulas as well as specific collocations (not discussed here). Moreover, the Belgian warrants exhibit several French loan translations.

3.3. Basic syntactic parameters

The conservative character of legal language is also manifested in its syntactic structures. Lawyers are often criticised for their archaic drafting style (Cao 2007: 88, González-Ruiz 2014: 71) and syntax plays an important role in this respect.

3.3.1 Long and complex sentence constructions

Among “the most obvious syntactic features of legal language is the use of extremely long sentences” (Tiersma 2008: 15). Sentences are not only lengthy, but also with a complex clausal structure, in particular embedded clauses and a high level of hypotaxis. This all contributes to a difficult, rigid style (Hiltunen 2012: 43). According to Gotti (2012: 53), the considerable sentence length of legal texts is due to the high number of items required to minimise ambiguity and misunderstandings. Nevertheless, the “layman citizen who wants to explore his rights in judicial documents” is often confronted with an unreadable text, as discourse specialist Renkema observes (2004: 258).

In the Belgian and Italian warrants there are significant examples of long sentences with a low readability index, as the internal arrangement of the following Dutch period shows:

Het verzet is een rechtsmiddel waardoor aan een partij, ten aanzien van dewelke door een vonnisgerecht in eerste aanleg of in graad van hoger beroep uitspraak werd gedaan bij verstek, de mogelijkheid geboden wordt om de zaak opnieuw aanhangig te maken bij het vonnisgerecht dat uitspraak deed, teneinde de beslissing te horen intrekken en de zaak andermaal, na een tegensprekelijk debat, te doen beoordelen.

(‘Opposition is the remedy whereby the party against whom a judgment was rendered by either a first-instance court or an appeal court is granted the opportunity to refer the matter again to the court that passed the sentence, in order to seek withdrawal of the decision and have the case reheard, in adversarial proceeding.’)

This sentence puts an extra strain on the processing capacity of the reader, not only for its length but also because it includes two embedded sentences in sentence-medial position, the former stretching the distance between the direct object (*de zaak*, ‘the case’) and its verb (*te doen*

beoordelen, 'have reheard'), the latter interrupting the link between the indirect object (*aan een partij*, 'to a party') and its subject-verb relation (*de mogelijkheid geboden wordt*, 'is granted the opportunity').

The Italian corpus shows a still more challenging syntax. Here below we only quote some parts of an Italian over-long sentence, including several infinitive subordinates, a complicated relative clause and embedded parts. This period is made even more hard to understand by another typical problem of legal Italian, namely the questionable use of punctuation (cf. Mortara Garavelli 2001: 77-86, 102).

[...] veniva condannata in Italia alla pena di anni 6 di reclusione, oltre la pena accessoria perché ritenuta responsabile della violazione degli artt. [...], per aver, in concorso con altri soggetti di nazionalità italiana, fatto parte di un'associazione finalizzata al traffico illecito di sostanze stupefacenti [...], l'organizzazione della quale la condannata faceva parte gestiva il mercato della droga in Milano, la droga veniva poi confezionata negli Stati Uniti d'America e smerciata in Italia, in specie [...] era diretta fiduciaria del correo [...].

('[...] she was sentenced in Italy to 6 years' imprisonment, together with an accessory penalty, because she was found guilty of violating Articles [...] by taking part, together with other Italian citizens, in an organisation aimed at drug trafficking [...]; the organisation to which the convicted belonged ran the drug trade in Milan, the drugs were then packaged in the US and sold in Italy, in particular [...] was the direct representative of the co-accused [...].')

Generally speaking, sentences where the linear flow of information is repeatedly interrupted are more difficult to process than those where such interruptions are removed thanks to alternative syntactic arrangements (Hiltunen 2012: 42, 45). Legal professionals will have been trained to "read" the text according to principles that lay readers may not be aware of at all, but the defendant is definitely in a difficult position with this communication model

3.3.2 Clause-internal features

In the Belgian corpus, an important clause-internal parameter is the frequent use of non-finite rather than finite verbs. Very remarkable is the use of present participles in a gerund function, which results in a verbose and old-fashioned style. While modern standard Dutch employs present participles almost exclusively as adjectives, legal language is keen to exploit the obsolete verbal function of these forms — to the detriment of the lay reader. Compare the following example with simple and complex present participles:

Verkrachting zijnde elke daad van seksuele penetratie van welke aard ook en met welk middel ook, op een persoon die daar niet in

toestemt, de daad met name opgedrongen zijnde door middel van geweld, dwang [...]

(‘Rape being any act of sexual penetration of any type and by any means of a person who does not consent to it, the act being in particular imposed by violence, coercion [...].’)

In Italian on the contrary, participle syntax is quite common and usually gerunds and past participles are excellent candidates as linking devices between propositions and clauses. However, an excessive use of these verb forms in lengthy sentences may impair the readability, as already seen in the example quoted above.

As for the present participle, in standard Italian it is an archaic verb form with very few operational patterns, but in legal Italian it turns out to be a useful instrument, as demonstrated by the following clause which uses *operante* (‘operating’):

[...] organizzazione armata composta da più di dieci persone operante in Milano dalla fine del 1970 al 1993

(‘armed organisation composed of more than 10 persons and operating in Milan from the end of 1970 until 1993’)

In addition to obsolete participle constructions, the Belgian warrants include several infinitive constructions, producing patterns that are very uncommon in the standard language, such as the following, where normally an explicit clause would have been adopted:

De misdaad van verkrachting gepleegd te hebben
(having committed the crime of rape)

Other common features are the use of the passive voice and nominal style, typical of all special languages. Our Belgian and Italian texts show several examples (partly illustrated in the excerpts above).

Both passive and nominal constructions promote an impersonal style. Judges and legislators tend to speak in the third person, mainly because impersonal constructions create the impression that law is objective, but this also promotes abstractness, “which is essential for the expression of general and broad legal principles” (Tiersma 2008: 21). Note however that the introductory paragraph of the EAW template marks a striking contrast with the overall impersonal style, as it uses the first pronoun *I*:

Ik verzoek om aanhouding en overlevering van de hieronder genoemde persoon met het oog op strafvervolgung of tenuitvoerlegging van een vrijheidsstraf..

(‘I request the arrest and surrender of the person mentioned below for the purposes of criminal prosecution or execution of an imprisonment sentence’)

Chiedo che la persona menzionata appresso sia arrestata e consegnata ai fini dell'espiazione della pena privativa della libertà
(‘I request that the person mentioned below be arrested and surrendered for the purposes of serving the sentence involving a deprivation of liberty’)

3.4 Discourse indicators and discursive strategies

An important aspect of discourse is textual cohesion. Legal languages use different strategies and reference devices to guarantee proper cohesion. German languages — standard language as well as the legal varieties — often show a preference for lexical repetitions instead of anaphoric reference, whereas Romance languages prefer the use of anaphoric pronouns. These patterns are obviously related to typological differences between the Germanic and the Romance language family, with the latter being endowed with a more sophisticated morphological and pronominal system.

In general, the strategy of avoiding anaphoric pronouns in favour of the repetition of lexical items stems from the need for maximum clarity and avoidance of ambiguity, a typical trait of legal discourse (Gotti 2012: 54-55, Hiltunen 2012: 47). In Italian legal writing, however, it is recommended to avoid repetition of full nouns (Garzone 2002: 61).

The predilection for anaphorical reference in Italian is also discernible in our corpus. Whereas for pronominal reference the Belgian EAWs use the standard demonstrative *dit* (‘this’, as in *dit bevel*, ‘this order’), the Italian texts show three more unusual forms: *il presente (mandato)* (‘the present warrant’), *tale (tali garanzie)*, ‘these guarantees’), and the legal demonstrative *siffatto (siffatta pena)*, ‘such penalty’ (see Garzone 2002: 63 on English-Italian contrast).

Other elements ensuring textual cohesion and mapping are the so-called legal adverbs, which are extensively illustrated in the literature on English, such as *hereinafter*, *thereby*, *herein* (Alcaraz Varó 2008: 100, Cao 2007: 88). They are obsolete in the standard language, thus ideal for legal discourse. Some of them accompany past participles which otherwise might be interpreted erroneously (Gotti 2012: 56), as exemplified by the Italian phrasing *la persona menzionata appresso* (‘the person mentioned below’). By contrast, in Dutch these forms are definitely not the dominion of legal language, since they are very much alive in the standard language.

Our corpus also shows interesting differences in discursive practices, even within the same language. As we have already noted, legal language is claimed to be “archaic, highly formal, redundant, precise” (Tiersma 2008: 23), but it can also adopt a casual style. Some remarkable examples are

found in the free texts of the Belgian warrants. Particularly where circumstances of the offence are described, the style comes very close to standard and even substandard language. See for instance the following short sentences, which in addition to a colloquial style include several Belgicisms (*living*, 'living room', *nonkel*, 'uncle'):

Op [...] december bleef het 15-jarig slachtoffer samen met haar moeder overnachten bij hun tante. XXX was daar eveneens aanwezig en wordt beschouwd als 'nonkel'. Iedereen sliep in de living.

('On [...] December the 15 year old victim together with her mother spent the night at their [sic] aunt's. XXX was also present and is considered an 'uncle'. Everybody slept in the living room')

This kind of contrast is not present in the Italian description, which, on the contrary, exhibits the typical style of Italian judgments, with, among other things, a heavy use of the imperfect tense (the so-called narrative imperfect) in the reconstruction of facts:

In data 17.03.09 veniva emesso l'ordine di esecuzione ...
('On 17.03.09 the order of enforcement was issued ...')

Summing up, both languages show specimens of complex syntax that are far from reader-friendly and would necessitate some plain language intervention. Indeed, in recent times, under the pressure of social change, there has been increasing recognition of the need to simplify legal language "in the interests of social and criminal justice and participatory democracy" (Hall *et al.* 2011: 282). Good legal drafting now seeks to avoid lawyerisms, unnecessary legal jargon, wordy phrases and superfluous archaic words (Triebel 2009: 160), while from a syntactic point of view there is a clear trend towards shorter sentences with a lower number of subordinate clauses inserted in sentence-medial position (Tiersma 2008: 15, Hiltunen 2012: 41, 50).

But despite the growing popularity of plain language movements and efforts of language specialists in various countries to promote clarity, much has still to be done, as some authors note (Mattila 2012: 33, Tiersma 2008: 24). This is also our conclusion after having analysed the Belgian and Italian EAWs, where especially the syntactic format could benefit from some simplification action. Note however a nice attempt, in a Belgian EAW — section 'guarantees' — to clarify a technical term: the term *verstek* ('absence') is added between brackets to the standard expression *in zijn afwezigheid* ('in his absence').

As the authors of EAWs know that their texts are to be translated in another language with another legal system, different from their own system, it would be more than advisable "to use straightforward language

that will enable translators to more readily understand the text” (EULITA/Katschinka 2013: 2).

4. Pragmatic parameters of the EAW

Having performed a linguistic analysis it is now useful to examine the EAW as a text type. For this purpose we will describe the main parameters of EAWs, in particular the participants involved in this particular communicative situation, the communication purposes they serve, and the professional relationship existing between the people taking part in such activities or events (see Gotti 2012: 61-62). Another important parameter, the settings or contexts in which EAWs are employed, has already been illustrated in §1.

4.1 Participants and professional relationships

The EAW is a standard form produced in the multilingual setting of the EU. It is sent directly by a judicial authority of a Member State to the judicial authority of another Member State. There are actually five participants in the EAW communication situation:

- (a) First of all, the producer of the source text, i.e. the judge or prosecutor who fills out the EAW form related to a person who has committed an offence. The text producer is defined as a “competent judicial authority” but is also referred to as “the issuing Member State,” identified at the end of the document where the official name and the name of its representative are provided.
- (b) As defined by the FD and the relevant transposition laws, the warrant must be accompanied by a translation. Therefore, the translator can be considered as the second agent in the EAW communication situation, acting at the same time as the receiver of the source text and producer of the target text.
- (c) The warrant and translation are then sent to the competent judicial authority of the executing Member State, which is the third agent in the communication process, the target text receiver, defined in the document as “the executing Member State.”
- (d) The fourth agent is the person wanted for prosecution, whose rights have to be safeguarded.
- (e) The fifth participant is the lawyer called on to assist the requested person.

On this basis we can establish another parameter, i.e. the professional relationships between the people taking part in this communication activity. The judges and lawyers are the professional players, the

translator is the linguistic broker, the suspected person is the lay individual and object of the judicial process. The social relationship, rather than being roughly equal, is one of power asymmetry in which the legal practitioners have control of the process – which also explains the formal tone of the EAW. The translator may contribute to safeguarding human and democratic rights, as evidenced in recent Translation Studies and reports (SIGTIPS 2011, Brownlie 2010), which emphasise among others the role of interpreting and translation in ensuring access to public services. As SIGTIPS put it: “Translation and interpreting are crucial for people to be able to exercise their rights in a fully democratic Europe. Providing them is not a choice but a necessity” (2011: 7).

4.2 Communicative purposes

The EAW is a judicial text produced in the judicial process by judicial officers and other legal authorities and as such it belongs to the text group of primarily descriptive but also prescriptive texts, according to the classification proposed by Šarčević (2012: 189). The EAW does other things besides transmitting information and knowledge: it directs people’s behaviour, as it solicits or imposes surrender of a requested person – see, for instance, the cover text of the Italian and English templates, formulating a request but at the same time a peremptory order, as expressed by the subjunctive mood of the verb.

As the translator’s role is to produce a text with the same legal effects, translation of the EAW must in practice lead to execution of the surrender order by the competent judicial authorities of the executing EU Member State (Bednarek 2009: 97). It may not be referred to as a translation but must be considered as a parallel legal text (Bednarek 2009: 94, 97).

5. Translation of the EAW: best practices and quality assurance

For the fairness of the EAW proceedings providing appropriate interpretation and translation is a key instrument, and this is actually one of the five areas in need of improvement (JUSTICE 2012: 11, 17). For instance, the Final Report of the Council of the European Union (2009: 10) states that:

The scarcity of translation capacity in some Member States, associated costs, difficulties in translation into some of the less common languages in short periods of time or the bad quality of translations are recurrent arguments [...].

Likewise, the report edited by De Sousa Santos and Gomes, including the results of online surveys and semi-structured interviews with judges and prosecutors in four Member States, shows that translation quality is often mentioned as a critical issue, especially translation in the most common languages such as English or French (Gomes, Fernandes and Borges Reis

2010: 110-111; Velicogna 2010: 230 on the situation in Italy).

Poor translation quality may be due to different factors, for instance the warrant's strict time limits or exotic language combinations, but the major problem lies in the organisation or consolidation of reliable high-quality translation services at a national level and the availability of a reliable Europe-wide source of translated and original legal texts on these matters (Gomes, Fernandes and Borges Reis 2010: 101-102). Another important issue is the communication between legal practitioners and translators.

5.1 Best practices for effective communication

According to the JUSTICE report, there is clearly a need for best practices in the field of "effective communication between judges, prosecutors, lawyers, judicial staff and legal interpreters and translators" (2012: 17; see also Katschinka 2014a: 111). Both legal translators and legal practitioners appreciate feedback and interaction, as this contributes towards further improving translation quality and establishes a constructive working relationship.

Lawyers often prefer to have an English translation added, as they have no clue about the reliability of the translator and might want to have some possibility to check what is being said in the translated text. This trend might actually increase in the future, because proficiency in English is speeding up among all professional categories, legal practitioners included (Mattila 2013: 347).

The requirement of efficient and effective communication fits well with the latest developments in translation practice and theory. Until recently, translation tended to be approached "in a strongly reductionist way [...] as a 'tool', as a service" (Lambert 2009: 76). But there is now increasing attention for the translator as agent in the communication process (Way et al. 2013: 3), fostered also by new trends towards a more collaborative translation model. We are gradually moving towards a process of empowerment, where the translator takes actively (and visibly) part in the legal discourse producing a new text that satisfies the cultural and legal expectations of the target audience. A bolder approach to legal translation could also imply endorsement of the "application of plain, legal-language principles to improve target language readability and render more elegant and useful translations" (Wolff 2011: 237). Of course, lawyers are more qualified decision makers in this area, but the trend towards translators as knowledge managers and information brokers justifies taking also a plain language perspective.

Interesting in this respect is an experiment conducted by González-Ruiz "to gauge the perception of plain language translations by practising lawyers" (2014: 77). Subjects (30 Spanish lawyers) were asked to evaluate two different target texts, one following the style of the English

source text as closely as possible and the other created by applying a set of plain language techniques. The lawyers generally asserted to be in favour of a literal translation approach but for the rest they “clearly decided on the plain language translation as being more effective from the point of view of linguistic performance and legal knowledge, as well as more acceptable from a professional perspective” (González-Ruiz 2014: 85). González-Ruiz concludes that for legal translators, “plain language arguments and techniques are valuable tools for their professional routine,” but it would even be better “if all involved in communicating the law embraced the principles of clear language from the very inception of the source text” (2014: 86).

To sum up, it is in the interest of both legal practitioners and translators to foster communication and close contacts with each other, and this fits well with the need for translators to build up more formal networks around their professional contacts and relationships. The most important issue that can guarantee the delivery of reliable translation services is, however, the introduction of national registers of legal translators, with adequate admission procedures and register management. This will be our next and last point.

5.2 Legal translators in Belgium and Italy

The translation of the EAW must ideally be done by a sworn translator, who is bound by a code of ethics, which clearly defines the principles of an authenticated translation. In that case any alterations to the texts are strictly forbidden (Bednarek 2009: 91). Unfortunately, however, there are major differences in the way in which unofficial or certified translators are organised in each EU Member State: some require translators to become authorised/certified before entrusting legal translation assignments to them, others don't (Katschinka 2014b: 1, EULITA/Katschinka 2013: 1). EU Member States have still “a long way to go to establish fairly comparable and equitable regimes for language services in judicial settings” (Katschinka 2014a: 109-110). But the requirement for registers, as defined in Article 5(2) of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings “may gradually create more awareness on the part of public authorities for defining more coherent and generally applicable admission criteria as well as standards for managing such registers” (Katschinka 2014b: 1).

In Belgium, there is currently no centralised official database of interpreters and translators (E-justice portal) but there are “lists” of legal interpreters and translators, which are drawn up by different courts on different levels: national, regional or local (Hertog and Vanden Bosch 2001: 10-11). So far, as the Aequitas report states, the law in Belgium sets no quality requirements. Therefore:

for the candidates, it usually boils down to an investigation into their ‘morality’ (i.e.

good behaviour and having no criminal record). They also have to submit degrees or certificates testifying to their language(s) proficiency but most courts do not systematically examine or test the language proficiency [...] of the candidates. Knowledge of the legal system is not required (Hertog and Vanden Bosch 2001: 11).

But there is good news: in 2014 the Belgian Parliament approved a proposal for the creation of a national register.

The position of legal translators in Italy is even less encouraging: there is no national register, and no national law regulating access to the profession. The E-Justice website states bluntly: "Italy has no national database of translators or interpreters. This is to give the Italian judiciary the freedom to choose translators and interpreters as they see fit". This "freedom" has long been criticised, as it leads to very different quality levels in the services provided (cf. Gialuz 2013). The situation has not substantially changed in the wake of Directive 2010/64/EU. In fact, the Italian law implementing it (*Decreto Legislativo 4 marzo 2014, n. 32*) has adopted a "shortcut" solution: instead of creating a national register, it has only established the requirement that experts in translation and interpreting must be enrolled in the register of experts (*Albo dei periti*) maintained by each Court. The law does not seem to bring about any substantial improvement, as the prerequisites to enroll in these registers vary — and will continue to vary — from place to place (Gialuz 2014: 86).

This rather gloomy situation, however, might not directly affect the matter at hand, i.e. the European Arrest Warrant. The translation of this document — unlike the essential documents mentioned in the Directive, which are translated by court translators — is arranged for by the Ministry of Justice, which usually does not outsource the task, but rather assigns it to internal translators (sometimes translators of the Ministry of Interior), at least as far as the following languages are concerned: English, French, German and Spanish. This was also the case with one of the analysed Italian EAWs, whose English translation was signed by a "language assistant" of the Ministry.

Internal language experts are, in many aspects, in a more privileged position than external translators, for instance in terms of daily contact with legal matters, ease of access to expert advice, etc. However, specific translation competences are not always guaranteed. Language experts at the Ministry of Justice can belong to two staff categories: 'language assistant' and 'language officer.' Language assistants in particular may not have been trained in all competences required for professional translators. A quick look at a passage (a quotation from the Italian Code of Criminal Procedure, art. 175) from the English translation of the Italian EAW, for instance, has revealed some aspects that could be improved, especially where translation of core terminology is concerned. Indeed, as Prieto Ramos reminds, "legal terminology is undoubtedly a hallmark of legal

discourses and a key component of quality control and competence evaluation in legal translation” (2014: 121).

A possible way to improve the quality of future translations of EAWs could be to integrate more systematically the corresponding specific competences (terminological and phraseological research, use of corpora etc.) in the CPD programmes for the language experts.

6. Concluding remarks

Directive 2010/64/EU prescribes that the interpretation and/or translation “provided to a suspected or accused person is of quality sufficient to safeguard the fairness of the proceedings” (Katschinka 2014a: 106). This is the first time that quality of linguistic assistance is mentioned (Gialuz 2014: 84), indicating great concern for the potential of translators as a critical link in legal settings. It is obvious that legal translation plays a significant role in the age of globalisation, “where the mobility of persons, goods, services, and capital across borders has changed the dynamics of law, forcing legal professionals to communicate in a wide variety of multilingual and multicultural settings” (Šarčević 2012: 187).

In our small-scale study we have examined linguistic and translation issues with reference to Belgian Dutch and Italian EAWs emphasising some basic requirements for the legal translator, such as high terminological awareness, knowledge of the discourse situation and genre conventions, legal drafting competences and sensibility for quality objectives: all elements that can contribute to safeguard fairness of proceedings.

Author contribution

Dolores Ross has conceived and written the article; Marella Magris has contributed with the part regarding the Italian EAW and the translation situation in Italy; both authors have reviewed the manuscript.

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Notes

¹ For a second evaluation performed by the Commission on the impact of the EAW see http://ec.europa.eu/justice/criminal/files/eaw_implementation_report_2011_en.pdf.

² <http://www.eulita.eu/fr/qualetta>.