# THE METHODS USED IN SYNTACTIC AND LEXICAL LEVELS IN THE TRANSLATION OF DOCUMENTS OF THE EUROPEAN UNION

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# KABUL VE ONAY

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# ÖZET

KOCABIYIK, Bilgen. *Avrupa Birliği Metinlerinin Çevirisinde Tümcebilimsel ve Sözcüksel Düzeylerde Kullanılan Yöntemler,* Yüksek Lisans Tezi, Ankara, 2006.

"Avrupa Birliği Metinlerinin Çevirisinde Tümcebilimsel ve Sözcüksel Düzeylerde Kullanılan Yöntemler" (The Methods Used in Syntactic and Lexical Levels in the Translation of Documents of the European Union) başlıklı bu tez Avrupa Birliği metinlerinin Türkçe çevirilerinin betimsel bir çözümlemesine dayanmaktadır.

Art-alan bilgisi olarak, Avrupa Birliği'nin kısa bir tarihçesi, Birlik'in Türkiye ile ilişkileri, Birlik'te çok dillilik ilkesi, Avrupa Birliği hukuk metinlerinin tanımları ele alınmaktadır. Tümcebilimsel ve sözcüksel çözümleme bölümlerinden önce, resmi belgelerin özellikleri, hukuk metinlerinin işlevi, hukuk dilinin özellikleri ve eşdeğerlik sorununa değinilmektedir.

Çeşitli alanlardan ve birincil ve ikincil mevzuattan AB metinlerinin Türkçe çevirileri tümcebilimsel ve sözcüksel çözümlemelerin kaynakları olarak kullanılmaktadır. Tümcebilimsel çözümleme bölümünde çeviriler tek cümle kuralı, paragrafların kullanımı, olumsuzlukların kullanımı, bağlaçların kullanımı, noktalama, kişisiz eylemlerin kullanımı, "shall", "will", "must" ve "may"in kullanımına göre incelenmektedir. Karşılaştırmalı inceleme için seçilen ölçütler, hukuki ve resmi belgelerin çevirisi üzerine çalışmaları bulunan Sarcevic, Alcaraz Varo&Hughes, Mayoral Asensio, Weston ve Altay gibi çeviribilimcilerin çalışmalarına dayanmaktadır.

Sonuç bölümünde, tümcebilimsel inceleme konusunda her ölçüt, kaynağa yönelik veya ereğe yönelik eğilimler açısından ele alınmaktadır. Sözcüksel inceleme konusunda, karşılaştırma aşamasının sonuçları, AB metinlerinin Türkçe'ye çevirisinde kullanılan yöntemlerin yaygınlıkları açısından verilmektedir. Sonuç bölümünde ayrıca AB metinlerinin Türkçe'ye çevirisinin gelecekteki durumuna ilişkin öngörülerde bulunulmaktadır.

Anahtar Sözcükler: AB metinleri, resmi belgeler, hukuk çevirisi, tümcebilimsel çözümleme, sözcüksel çözümleme, çeviri yöntemleri, alıcının rolü, standartlaştırma

# ABSTRACT

KOCABIYIK, Bilgen. *The Methods Used in Syntactic and Lexical Levels in the Translation of Documents of the European Union,* Master's Thesis, Ankara, 2006.

This thesis under the title "The Methods Used in Syntactic and Lexical Levels in the Translation of Documents of the European Union" is based on a descriptive analysis of the translation of European Union (EU) documents into Turkish.

For background information, a brief history of the European Union, its relations with Turkey, the principle of multilingualism in the European Union and definitions of legal EU documents are introduced. Issues like the characteristics of official documents, the function of legal texts, features of legal language and the problem of equivalence are mentioned before the parts on syntactic analysis and lexical analysis.

The Turkish translations of EU documents from various fields and from primary and secondary legislation are used as sources of syntactic and lexical analyses. In the syntactic analysis part, the translations are examined according to the one sentence rule, use of paragraphing, use of negations, use of logical connectors, punctuation, use of the impersonal and use of "shall", "will", "must" and "may". In the lexical analysis part, the methods of finding literal equivalents, finding functional equivalents, paraphrasing, borrowing and neologisms are examined. The criteria selected for the comparative study on syntactic and lexical levels are based on the works of translation scholars like Sarcevic, Alcaraz Varo&Hughes, Mayoral Asensio, Weston and Altay concerning the translation of legal and official documents.

In conclusion, each criterion is dealt with as to the source oriented or target oriented tendencies in translation, with regard to the syntactic study. As for the lexical study, the results of the comparison phase are given with regard to the

prevalence of the methods used in the translation of EU documents into Turkish. Presumptions for the future of translations of EU documents into Turkish are also mentioned in the conclusion.

Key words: EU documents, official documents, legal translation, syntactic analysis, lexical analysis, translation methods, role of the receiver, standardization

# TABLE OF CONTENTS

Page Numbers

# INTRODUCTION

This thesis studies the methods used in the translation of EU documents into Turkish on syntactic and lexical levels. The aim is to analyse the methods used in the translation of EU documents into Turkish and to arrive at conclusions that can enlighten the translation processes in the further legislative alignment works in the pre-accession period.

In this study, answers to the following questions will be sought for, by basing on the comparison of the translations of EU documents into Turkish:

1. What methods of translation are used on the syntactic and lexical levels by the translators of EU documents into Turkish?
2. Which tendencies (e.g. source-oriented or target-oriented) prevail in the translation of EU documents into Turkish? What can be the rationale of the tendencies?
3. Are there any standard set of rules, strategies etc. regulating the translation of EU documents into Turkish? If not, are there any attempts towards the standardization of strategies of translation on syntactic and lexical levels?

Before the main part, consisting of syntactic and lexical analyses, some brief information about the foundation and development of the European Union is given. After this, the evolution of the relationships between Turkey and the European Union are mentioned. The principle of multilingualism in the EU is also referred to, by citing the state of affairs in different institutions of the Union with regard to translation. Following this part, the definitions of legal instruments of the European Union are given with the consideration that these are the very documents that this thesis is based on.

The part on the official documents deals with the definition of official documents, the parallel texts and the authenticity of translations. The function of legal texts is also mentioned in this part, as the function of, not only the source text, but also the target text is a factor influencing the methods of translation. The characteristics of legal language in general are dealt with by referring to the works of the translation scholars as Alcaraz Varo&Hughes and Altay. Following this, a basic issue in translation studies, the question of equivalence is mentioned.

The syntactic and lexical analyses in this thesis are carried out on a descriptive basis. The translation of EU documents from various fields is examined as to the syntactic and lexical criteria specified. Samples that could represent the majority of the translations of these texts have been put in this thesis.

The syntactic analysis is carried out under seven criteria; namely, the one sentence rule, use of paragraphing, use of negations, use of logical connectors, punctuation, use of the impersonal, use of "shall", "will", "must" and "may". These criteria are chosen by investigating the works of translation scholars like Sarcevic, Alcaraz Varo&Hughes, Mayoral Asensio, Weston and Altay about the legal texts and EU documents. The criteria had to be eliminated by choosing the most striking ones, as dealing with all the criteria could be the subject of a broader study. In this part, four examples are given for every criterion. The examples are chosen from a wide range of EU legislation, both primary and secondary. The examples are not chosen at random; the ones that can be representative of the majority of examples are used.

The lexical analysis has been carried out under five methods of translation; namely, finding literal equivalents, finding functional equivalents, paraphrasing, borrowings, neologisms. The methods dealt with are based on the works of Sarcevic and Altay on the methods of translation of words or phrases in the legal texts. As this study is based on a descriptive method, one method suggested by

Sarcevic, i.e. neutral terms has not been taken into account. This method is very rarely used in the translation of EU documents into Turkish, therefore it had relevant insignificance in comparison to the more frequently used methods. For each method, three examples are given in this part. The examples are chosen deliberately, as in the syntactic analysis part, in order to serve as representatives of the majority of usages.

In conclusion, the methods used in the translation of EU documents in syntactic and lexical levels are evaluated, by mentioning the prevalence of their usages, in accordance with the aim of the thesis. Some presumptions about how the future of translations of EU documents into Turkish should be are also mentioned in the conclusion.

# 1. BACKGROUND INFORMATION ABOUT THE EUROPEAN UNION AND EUROPEAN UNION LEGISLATION

## A. The Foundation and Development of the European Union

The idea of an integrated Europe became more and more important after the Second World War, among the peoples of Europe. With the aim of setting up a common market in steel and coal, six countries (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands) established a community called "the European Coal and Steel Community" in 1951 through the Treaty of Paris.

When the first attempt proved to be successful, the six member states established the European Economic Community and the European Atomic Energy Community in 1957 through the Treaties of Rome.

Upon the success of the first initiatives, Denmark, Ireland and the United Kingdom decided to join the six. This first enlargement phase took place in 1973, also extending the scope of cooperation to social, regional and environmental policies.

Greece joined the nine member states in 1981, followed by Spain and Portugal in 1986.

In 1993, the Heads of the Member States convened in Maastricht in 1991, to draft the Treaty on the European Union, to be put into effect in 1993. With this treaty, the European Economic Community was re-named as the European Community. The basis of the European Union was formed in this treaty.

Austria, Finland and Sweden joined the Union in 1995.

The Union's currency "euro" came into circulation in 2002 in the twelve countries of the Union, which are included in the "euro area".

In the mid 1990s, membership applications from twelve countries (Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, Estonia, Latvia, Lithuania, Slovenia, Cyprus and Malta) have been received.

In 2002, an important meeting was held in Copenhagen deciding to welcome ten more countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) to the Union. In this meeting three major criteria to be fulfilled by the candidate countries have been set out:

- First, a political criterion: candidate countries must have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

- Second, an economic criterion: candidate countries must have a functioning market economy and be able to cope with competitive pressure and market forces within the Union.

- Third, the criterion of being able to take on the obligations of EU membership, including adherence to the aims of political, economic and monetary union: This means candidate countries must adopt the entire body of EU law – known as the *acquis communautaire.*

http://www.deltur.cec.eu.int/english/eu-turkey.html

## B. The Relations between the European Union and Turkey

Relations between the European Union and Turkey dates back to Ankara Agreement signed in 1963. The objective of this agreement was to establish a customs union between the Union and Turkey in three stages.

In 1987, Turkey officially applied for membership to the European Union. Due to economic and political reasons, the dispute between Greece and Turkey and the situation in Cyprus, the Commission did not respond positively to the application.

In 1995, the final stage of the customs union was completed and the financial cooperation started.

In the Luxembourg Council Meeting in 1997, Turkey's eligibility for accession to the European Union has been confirmed. In the European Council meeting in Helsinki (1999) it was decided that Turkey, like other candidate countries, would benefit from a pre-accession strategy to stimulate and support its reforms.

In 2001, the Accession Partnership was formally adopted, thus forming a roadmap for Turkey towards meeting all the criteria for accession to the EU. On the basis of the Accession Partnership, National Programme for the Adoption of the Acquis has been adopted by Turkey.

In 2001, a regulation on pre-accession financial assistance to Turkey was adopted by the Commission.

The decision to start formal negotiations with Turkey has been taken on 3 October 2005.
http://www.deltur.cec.eu.int/english/eu-turkey.html

## C. The Principle of Multilingualism in the European Union

According to the language policy of the European Union, all official documents of the EU are translated into all the official EU languages and are valid in a member state only when they are in the officially recognized language of that member state (van Els 2001:320). Van Els further states that all citizens of the EU can address

themselves to the EU in their own language and are entitled to receiving a response from Brussels in that language (2001:320).

This shows us that the language policy of EU is non-restrictive, i.e. there is no restriction in the sense that each member state may use its own national language (van Els 2001:325).

Van Els further argues that, according to the language model of the EU, several languages are used, which, in principle, are all treated equally as official and working languages of the organisation. The EU model is based on the idea that everyone should be enabled to speak their own language and that translations should be provided from and into all languages, but it is also very possible to single out one language as target language for translation (2001:325).

Van Els mentions the internal communication within the individual EU institutions as,

> As for internal communication within the individual EU institutions, the 11 languages do not all equally qualify as working language. The Council of Ministers and the European Parliament are the bodies that come closest to the 'ideal' situation in the sense that they use all the 'official' languages as 'working languages' on certain occasions.
> The fact that often only certain languages, English and French in particular, are used as working languages in actual practice, and that certain other languages are only used as such when this use has a symbolic meaning, has not yet led to a formal distinction between the languages as working languages (Labrie, 1996: 6, quoted in van Els 2001:320).

This is a sign that the 'lingua franca' of the future will be English. It is envisaged that, in the long term, English will be the sole official language for all international communication in Europe. 'Lingua franca' has generally meant any language that is used as an exchange language for communication between people with different native language backgrounds (van Els 2001:332).

Wagner, Bech&Martinez suggest that the word "Union" denotes a much deeper level of integration taking place in organisations like the UN. According to them, the ambition of the European Union is to be a "Union of Citizens". Its institutions produce legislation that is directly applicable to all the citizens in all the Member States and must therefore be available in their official languages (2002:2). They further state that it is a legal obligation and a democratic necessity to present Community legislation to European citizens in their own languages in order to guarantee equality before the law (2002:3).

Wagner, Bech&Martinez (2002:3) state the areas where translation is needed when preparing the Community legislation as;

- Preparing the working papers, which often include a substantial amount of technical documentation
- Examining the draft versions, which require extensive consultation
- Putting together the final text, which represents commitment by the Commission and is likely to reach a broad spectrum of readers
- Preparing the written information that the Commission is required to circulate at all levels once its proposal has been adopted
- Discussing and amending the proposal in the European Parliament and Council prior to finalization.

They further state that,

> As translators we know only too well that perfect equivalence of different language versions is impossible. For the lawyers, multiple authenticity and drafting in 11 languages present no problems: if equal meaning is not possible, there should at least be equal effect; and if that does not arise, one can try to solve the problem by invoking equal intent. For politicians, of course, equal respect for all official languages (i.e. countries) is a *sine qua non* of the European Union (2002:7)

The common belief that multilingualism absorbs a huge proportion of the EU budget is denied by Wagner, Bech&Martinez as,

> Translation and interpreting form part of the administration budget, but administration absorbs only 5.25% of the total budget. The rest is spent on agriculture, external aid, jointly-funded research projects etc. The cost of translation and interpreting in 1999 was less than one sixth (15%) of the total administration budget and less than 1% of the total budget (2002:9).

## D. Definitions of Instruments of the European Union Law

The European Union is established with the main objective of unification in Europe on the basis of rule of law. This set of laws is named as *acquis communautaire*. This is defined in the official web-site of the European Union as;

> The European Communities' core objective of achieving European unification is based exclusively on the rule of law. Community law is an independent legal system which takes precedence over national legal provisions. A number of key players are involved in the process of implementing, monitoring and further developing this legal system for which a variety of procedures apply.
>
> http://europa.eu.int/eur-lex/en/about/pap/process_and_players2.html

The EU Law is stratified in three levels, i.e. types of legislation:

1. Primary Legislation
2. Secondary Legislation
3. Case Law

On the official web-site of the Union, primary legislation is defined as;

> Primary legislation includes in particular the Treaties and other agreements having similar status. Primary legislation is agreed by direct negotiation between Member State governments. These agreements are laid down in the form of Treaties which are then subject to ratification by the national parliaments. The same procedure applies for any subsequent amendments to the Treaties.

The Treaties establishing the European Communities have been revised several times through:

- the Single European Act (1987),
- the Treaty on European Union - 'Maastricht Treaty' (1992),
- the Treaty of Amsterdam (1997), which entered into force on 1 May 1999.

The Treaties also define the role and responsibilities of EU institutions and bodies involved in decision-making processes and the legislative, executive and juridical procedures which characterise Community law and its implementation.

http://europa.eu.int/eur-lex/en/about/pap/process_and_players2.html

Similarly, the secondary legislation is explained as;

Secondary legislation is based on the Treaties and implies a variety of procedures defined in different articles thereof. In the framework of the Treaties establishing the European Communities, Community law may take the following forms:

- *Regulations* which are directly applicable and binding in all EU Member States without the need for any national implementing legislation.
- *Directives* which bind Member States as to the objectives to be achieved within a certain time-limit while leaving the national authorities the choice of form and means to be used. Directives have to be implemented in national legislation in accordance with the procedures of the individual Member States.
- *Decisions* which are binding in all their aspects for those to whom they are addressed. Thus, decisions do not require national implementing legislation. A decision may be addressed to any or all Member States, to enterprises or to individuals.
- *Recommendations* and *opinions* which are not binding.

http://europa.eu.int/eur-lex/en/about/pap/process_and_players2.html

As for the case-law, it is stated that judgments of the European Court of Justice and of the European Court of First Instance, for example, in response to referrals

from the Commission, national courts of the Member States or individuals are included in the case law.

http://europa.eu.int/eur-lex/en/about/pap/process_and_players2.html

## 2. OFFICIAL DOCUMENTS

When we talk about the translation of EU Documents, which are the very subject of this thesis, we refer to the translations that meet the requirements to serve as legally valid instruments in a target country (Mayoral Asensio 2003:1).

In our situation, the target country is Turkey, and the legal context in which the translations will serve as legally valid instruments is the Turkish legislative field. The documents to be referred to in this thesis include, *inter alia*, the Regulations, which are binding in their entirety and directly applicable in all the Member States; the Decisions which are binding on those to whom they are addressed; and Directives which are binding, as to the result to be achieved, upon each Member State to which they are addressed (Wagner, Bech & Martinez 2002:3). As a candidate country, Turkey has committed itself to the alignment of the legislation, including the alignment of the above said instruments, through signing the Negotiating Framework Document which states that;

> Accession implies the acceptance of the rights and obligations attached to the Union system and its institutional framework, known as the "acquis" of the Union. Turkey will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies timely and effective implementation of the acquis. The acquis is constantly evolving and includes:
>
> - The content, principles and political objectives of the Treaties on which the Union is founded;
> - Legislation and decisions adopted pursuant to the Treaties, and the case law of the Court of Justice;
> - Other acts, legally binding or not, adopted within the Union framework, such as inter-institutional agreements, resolutions, statements, recommendations, guidelines;
> - Joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy;
> - Joint actions, joint positions, conventions signed, resolutions, statements and other acts agreed within the framework of justice and home affairs;

> □□ International agreements concluded by the Communities, the Communities jointly with their Member States, the Union, and those concluded by the Member States among themselves with regard to Union activities.
>
> Turkey will need to produce translations of the acquis into Turkish in good time before accession, and will need to train a sufficient number of translators and interpreters required for the proper functioning of the EU institutions upon its accession.

The term "legally valid" has a significant impact on the translations made for the alignment of the acquis, in the sense that they are regarded and treated as "authentic" legal texts and not as mere translations or versions of the original text. The method of drafting legislation puts the issue of authenticity to one step further, namely to the concept of multiple authenticity:

> Article 4 of the Council Regulation No 1 refers to the feat of "drafting in 11 languages", an expression coined to avoid mentioning "translations". None of the legislation refers to translation. This is not a conspiracy to reduce translator's visibility; it is simply the logical consequence of the principle according to which all official languages have equal status.
>
> (Wagner, Bech & Martinez 2002:7)

Wagner, Bech & Martinez further state that the concept of multiple authenticity safeguards the equal rights of all languages and therefore the national identity of all Member States. Sarcevic suggests the term "parallel texts" for the equally authentic texts of the same instrument existing in two or more languages (Sarcevic 1994:301). She refers to the concept of institutional texts for naming the texts of supranational institutions like the European Union.

Sarcevic discusses that the legally binding instruments, including authoritative translations, are also referred to as authentic texts. However, the number of authentic texts of a single instrument is limited. Therefore, in addition to authentic texts, there are also official texts, translations which are signed but not adopted by the member countries, and official translations, translations prepared by a government or international organization on its own responsibility (1997:20).

Turkey's stance toward the legal instruments of the European Union is more or less the same as Sarcevic discusses. A huge amount of the acquis has already been translated into Turkish, and the rest is to be translated during the accession process. However one cannot mention the authenticity of the existing translations of EU legislation, as they are, before being transferred to Turkish national legislation. As the Turkish language is not one of the official languages of the European Union; we cannot regard Turkish translations of the EU legislation as "legally valid" or "authentic" texts; for these texts to be regarded as the national law, the parts in compliance with the existing Turkish situation are re-formulated and put in the national legislation. Only after this legal alignment process, they can be treated as legal instruments. Thus, the existing translations are regarded as either "official texts", "official translations" or "versions" as Tabory (1980:171) states;

> In order to avoid confusion, the International Law Commission (ILC) has proposed that the term *text* be used to denote those language versions designated as authentic by the contracting parties or rules of procedure, whereas the term *version* be used to refer to all other language versions. As a result international lawyers now differentiate between authentic texts and other versions. Today the term *version* covers 'mere translations into other languages possessing at most a certain "official" character. (quoted in Sarcevic 1997:20).

Sarcevic (1997:20) further suggests that from the legal point of view, once a translation has been authenticated, it is vested with the force of law and is just as inviolate as the original text, and in accordance with the theory of original texts, lawyers regard all authentic texts as originals. A similar application of what Sarcevic states is also observed in the Turkish legislative alignment works during the accession process, in the sense that during the re-formulation of the EU legal texts, in the Turkish drafting conditions, the wording of the EU legal instruments are strictly adhered to. Thus, the authentication of the EU legislation is made through translations when they become the wording of the Turkish legislation, making the

translations functionally equivalent texts with the originals. This method allows for keeping track of the level of the legislative alignment, also providing room for following up the changes and amendments in the EU legislative instruments.

## A. Function of Legal Texts

While identifying the function of legal texts, Sarcevic quotes that a legal text, like other texts, is a 'communicative occurrence' produced at a given time and place and intended to serve a specific function (de Beaugrande and Dressler 1981:3; quoted from Baden 1977:183; also Hegenbarth 1982:54-85). According to the text typology Reiss proposes based on the tripartite model of language functions of Bühler, the texts with an informative function have their focus on objects and/or facts by 'describing' a state of affairs in the 'real' world, whereas the expressive function is characterized by sender-oriented texts intended to 'enrich' the world. On the other hand, the conative function is addressee-oriented and is used in texts aimed at 'changing' the world by provoking the addressee to action or by imposing a certain behaviour on the addressee (Reiss 1976:9). Sarcevic goes on discussing that the conative texts include not only persuasive but also regulatory texts, according to the classification of Reiss (Sarcevic 1997:10).

From the point of translation, one should take into account not only the function of the source text, but also the function of the target text as well, since the reasons for commissioning or otherwise initiating a translation are independent of the reasons for the creation of any particular source text. At this point, the Skopos Theory of Reiss and Vermeer is to be taken into account.

> The function of the translated text, including the institutional factors surrounding the initiation of the translation, is a crucial determinant of translators' decisions. In this functional view of translation, any notion of equivalence between a source text and a target text is subordinate to the *skopos*, or purpose which the target text is intended to fulfil.

> Adequacy with regard to skopos then replaces equivalence as the standard for judging translations.
>
> (Ian Mason, Encyclopaedia of Translation Studies 1998: 33)

For the target texts intended to serve as legally binding documents in the target language and as for the translation of EU legal texts during the accession process of Turkey to the European Union, the *skopos* of the target text determines the translation strategy to an utmost extent. This issue has been touched upon by Mason, as;

> Given the task of producing a target text which is to have the status of a legally binding document in the target language community, the translator of an EU legal text might relate text to context by:
>
> a) Selecting from the lexical and syntactic potential of the target language whatever items are thought to relay the propositional meaning of the text most closely, making any obligatory changes to such things as word order.
> b) Taking into consideration the status of the text as a directive, with binding force on its users, and using this as a criterion for rendering
> c) Attempting to reflect the authoritative status of the document (powerful discourse) by adopting the conventions of the appropriate legal genre in English to produce an instance of the text type 'instruction-without-opinion'
> d) Given the communicative setting, the genre and the discourse as specified in b and c, seeking above all, from a strategic point of view, to resolve any potential ambiguity, ensure communication is explicit and admits of no legal loopholes.
>
> Each of these sets of skills and knowledge is deployed by the translator in order to reflect the intentions of the source text producer. In terms of this text, a functional view would distinguish at least two possible purposes for the translation. The text may be translated for information, in order to give an accurate representation of the provisions of the particular text in question; or it may be translated in order to stand as a legally binding text in a target-language community. The latter purpose is, of course, more heavily constraining than the former. Such real world purposes are paramount and complete the translator's chain of communication. Thus, the communicative /functional perspective can be seen as an approach which relates the circumstances of the production of the source text as a communicative event to the social circumstances of the act of translating and the goals which it aims to achieve.
>
> (Ian Mason, Encyclopaedia of Translation Studies 1998: 31-33)

Sarcevic quotes from Bocquet (1994:2) that the legal texts can be divided into the following three groups according to their function: 1) primarily prescriptive, which are regulatory instruments containing rules of conduct or norms and which are normative texts prescribing a specific course of action that an individual ought to conform to, or will be subject to sanction, including constitutions, codes, statutes, treaties, international conventions etc.; 2) primarily descriptive but also prescriptive texts, which carry hybrid characteristics, including judicial decisions and instruments used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions etc. ; 3) purely descriptive texts, which are written by legal scholars such as legal opinions, law textbooks, articles etc (1997:11). In this master's thesis, I deal with the first type mentioned above, the primarily prescriptive legal texts which have been translated to serve as (the bases of) legally binding documents in the Turkish legal setting.

## B. Characteristics of Legal Language

The official EU texts are no doubt legal instruments, depicting the characteristics of legal language in general, and being applicable to and prescriptive for all the Member States of the European Union;

> According to a widely accepted view, the language of legal sources is a normative language in the first sense of normative; i.e., a directive language, since statutory provisions just express directives, rules or norms. 'Directive' as well as 'prescriptive' and 'imperative' are not ambiguous terms, since in common usage such words only apply to the language which expresses rules, such as the language of law and/or morals, and not to the language which deals with existing rules. By directive language it is meant the language whose function is not expressing and conveying knowledge and information but directing, influencing, and modifying people's behaviour. (*Encyclopaedia of Language and Linguistics* 1994:2075 Vol: 4).

At this point, one should raise questions like what role the language plays in making a text a legal document and what the characteristics of the language used are. Sarcevic (1997:133-135) discusses that the language of the law is concerned primarily with 'parole' (how language affects behaviour) as opposed to 'langue' (the language system). She quotes from Weinberger (1988:52) that today it is generally agreed that the primary role of language in normative legal texts is to prescribe legal actions, the performance of which is intended to achieve a specific goal.
Here one should reckon the ways of formulating the rules which make the legal instrument a binding document for those who are subject to it;

> Obviously, there are many linguistic ways to express rules, such as sentences in the imperative mood (Don't kill), deontic sentences (You ought not to kill), performative utterances (I command you not to kill), as well as indicative sentences (You shall not kill). For the present purposes, however, deontic sentences can be taken as the standard, although contingent, formulation of rules. Any sentence which is actually formulated, or could be reformulated, in terms of 'ought' is a deontic sentence (*Encyclopaedia of Language and Linguistics* 1994:2075 Vol: 4).

Austin (1962) states that the speech act theory provides for a clear explanation for the role of language in legal documents. According to this theory, language is viewed as a system of actual or potential speech acts. In speech act theory, performative utterances are those by which the state of affairs expressed by the words comes into being, or those that commit the speaker to carrying out or performing the actions expressed by the words (quoted in Sarcevic 2002:10). As Searle (1969:22) puts it: 'Speaking a language is engaging in a rule-governed form of behaviour. To put it more briskly, talking is performing acts according to rules' (quoted in Sarcevic 1997:133-135). J.L. Austin (1962: 14-16) distinguishes between 'constative utterances' which describe or report things and events, and 'performative utterances', which perform actions merely by virtue of being made. While constative utterances may be true or false (e.g. It is raining), performance utterances may not (e.g. I pronounce you man and wife). Depending on the

success or actual performance of the act (felicity), performative utterances are either felicitous or infelicitous (quoted in Sarcevic 1997:134)

Sarcevic (1997:134) also quotes that Austin (1962:99) distinguishes between locutionary acts, the 'performance of an act of saying something' and illocutionary acts, 'the performance of an act in saying something':

> Illocutionary acts (performatives) are particularly important in legal discourse (Weinberger 1988:53; Bocquet 1994:3) because something is not merely said but is actually done. Generally speaking, illocutionary acts which produce legal effects are referred to as legal speech acts. Thus it is appropriate when Cornu calls legal speech acts the 'generator of law'. As Cornu correctly remarks, the verb is 'la parole' of legal discourse (1990:44) (Sarcevic 1997:134).

Austin (1962:99) also distinguishes between explicit or implicit performatives;

> According to Austin, illocutionary acts are expressed by performative verbs which are either explicit or implicit (1962:99). Austin divided explicit performatives into five classes of speech acts, of which commissives, verdictives, and exercitive express various forms of legal actions. While commissives (promise, pledge, offer, agree) commit the party in varying degrees to some future course of action, verdictives (find guilty / not guilty) are used by jurors in the delivery of their finding on a matter submitted to their judgment (1962:42,153). Most important are exercitive verbs (e.g. order, command, demand, permit, allow) which express 'that something is to be' as a result of some decision, the consequence being that 'others are compelled, allowed or not allowed to do certain acts' (1962:154) (quoted in Sarcevic 1997:134).

As stated above, through the use of language to make sure that the rules stated are prescriptive, obligatory and binding, we arrive at some certain characteristics of the language of legal instruments in general. In order to draw the frame of this thesis, it will be beneficial to focus on the characteristics of the language pair in question, i.e. English and Turkish.

According to Alcaraz Varo&Hughes (2002: 4-14), some of the main features of legal English can be listed as;

- Latinisms, such as *bona fide, res judicata, onus probandi etc.*
- Terms of French or Norman origin, such as *salvage, beaconage, demurrage etc.*
- Formal register and archaic diction, such as *forthwith, with your Lordship's permission, or if it please the court etc.*
- Archaic adverbs and prepositional phrases, such as *hereinafter, thereunder, without prejudice to etc.*
- Redundancy (doublets and triplets), such as *'full, true and correct', 'mind and memory', 'request and require' etc.*
- Frequency of performative verbs, such as *agree, undertake, certify etc.*
- Changing registers: Euphemisms such as *'Act of God, meaning natural disaster; 'detention' instead of 'imprisonment' etc.,* and contemporary colloquialism, such as *hacking, money laundering etc.*

Altay also examines the characteristics of legal language in general, especially referring to the language pair to be dealt with in this thesis (2002);

- Long sentences: The prominent feature of legal style is very long sentences. This predilection for lengthy sentences both in Turkish and in English is due to the need to place all information on a particular topic in one complete unit in order to reduce the ambiguity that may arise if the conditions of a provision are placed in separate sentences. Another typical feature is joining together the words or phrases with the conjunctions "and, or" in English and "ve, veya" (meaning "and," "or") in Turkish. Tiersma (1999: 61) suggests that these conjunctions are used five times as often in legal writing as in other prose styles (Altay 2002).
- Unusual sentence structures: There is abundant use of unusual sentence structures in both languages. The law is always phrased in an impersonal manner so as to address several audiences at once (quoted in Altay 2002).
- Flexible or vague language: Another feature is the flexible or vague language. Lawyers both try to be as precise as possible and use general,

vague and flexible language. Flexible and abstract language is typical of constitutions which are ideally written to endure over time (Tiersma 1999: 80, quoted in Altay 2002)

- Technical vocabulary and archaic terminology: The features of "legalese" that create most problems are its technical vocabulary and archaic terminology. Both Turkish and English legal languages have retained words that have died out in ordinary speech, the reasons of which have been explained above. Historical factors and stylistic tradition explain the character of present-day English and Turkish legal languages. Many old phrases and words can be traced back to Anglo-Saxon, old French, and Medieval Latin, while in Turkish they can be traced back to the Persian used in the Ottoman Empire (Altay 2002) Similarly, Alcaraz Varo&Hughes suggest that the English legal language is no exception to the universal tendency toward stiffness and formality that marks this form of discourse, a tendency heightened by the unusual density of old-fashioned syntax and antiquated vocabulary (2002:7).
- Conservative: Legal language is conservative because reusing tried and proven phraseology is the safest course of action for lawyers. Archaic language is also authoritative, even sounds majestic both in Turkish and English. As Tiersma (1999:97) suggests "using antiquated terminology bestows a sense of timelessness on the legal system as something ... deserving of great respect" (Altay 2002). Alcaraz Varo&Hughes state that the lawyers are reluctant to depart from the terms of art that were coined many centuries ago, precisely because having fallen out of ordinary use – if, indeed, they ever really belonged to it – they are less prone to semantic change and so have the advantage of clarity and certainty to those who understand them (2002:7).
- Words with meanings different from their ordinary meanings: In both legal languages there are many words that have a legal meaning very different from their ordinary meanings. Tiersma calls the legal vocabulary that looks

like ordinary language but which has a different meaning peculiar to law as "legal homonyms" (1999:112). This is one of the problematic features in translation (Altay 2002).

- Synonyms: There are also synonyms in legal languages of both Turkish and English, i.e., different words with the same meaning. One of the features of legal language which makes it difficult to understand and translate (for an ordinary translator/reader) of course is its unusual and technical vocabulary (Altay 2002).
- Different use of tense modalities: Another feature of the English legal language is the modal verb "shall." In ordinary English, "shall" typically expresses the future tense, while in English legal language "shall" does not indicate futurity, but it is employed to express a command or obligation (Tiersma 1999:105). However, in Turkish legal documents, the way of expressing legal obligation is using simple present tense (Altay 2002).

According to Alcaraz Varo&Hughes (2002:18-22) also elaborate some leading features of the morphology and syntax of legal English as;

- Unusually long sentences: It is typical of the syntax of British statutes in the complexity of its layout, with multiple subordination and postponement of the main verb until very late in the sentence.
- The anfractuosity of English legal syntax: Bhatia (1993:116) states that for the morphology of legal English, the abundance of restrictive connectors is an outstanding feature. The density of subordination and parenthetic restriction is particularly frequent in the texts of laws and of contracts, and gives them their characteristic air of complexity (Alcaraz Varo&Hughes 2002:19). The one sentence rule, which will be dealt with under the syntactic analysis part, exhibits the indivisible structure of the sentences of the legal texts.

- Abundant use of the passive voice: One common effect of the passive mood is to suppress the identity of the agent responsible for the performance of the act, this is often exactly the point of the construction, e.g. when the import of the statement is universal or when the implied subject is too obvious to need stating. Within target language norms, it is usually easy to preserve the equivalent effect in translation, thus keeping the stress on the action, rule or decision rather than on the personality of the doer (Alcaraz Varo&Hughes 2002:19-20)
- Conditionals and hypothetical formulations: In texts like statutes, contracts, handbooks containing procedural rules, many possible situations, factual scenarios and exceptions must be provided for. The result is that the language in which they are written, and legal language generally, is unusually rich in syntactic indicators of condition and hypotheses (Alcaraz Varo&Hughes 2002:20)
- The simple syntax of plain judicial narrative: Although the legal style favours the extremely dense and complex syntactical structures, the opposite is also to be found in the judicial summary of the particular facts of a case. Here the chosen style is commonly plain to the point of baldness and the dominant structure is paratactic, with the aim of laying out simply and clearly the issues on which the judgment depends (Alcaraz Varo&Hughes 2002:21).
- Active and passive parties in legal relationships: the suffixes –er (-or) and –ee: A feature of legal relationships created at the will of the parties involved is the use of the suffixes '-er' (or '-or') and '-ee' added to the appropriate verb to form the names, respectively, of the active and the passive parties (Alcaraz Varo&Hughes 2002:22).

All the examples of the characteristics of legal language, stated by different scholars can be found in the legal instruments of the European Union. This issue

will further be investigated in the following chapters, together with the examples from the legal documents.

## C. The Question of Equivalence

Sarcevic distinguishes three degrees of equivalence, namely;

A. Near Equivalence
B. Partial Equivalence
C. Non-equivalence

- Near Equivalence: occurs when concepts A and B share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion) (Sarcevic 1997:238).

- Partial equivalence: occurs when concepts A and B share most of their essential and some of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept A (inclusion) (Sarcevic 1997:238).

- Non-equivalence: occurs if only a few or none of the essential features of concepts A and B coincide (intersection) or if concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A (inclusion), then the functional equivalent can no longer be considered acceptable. Furthermore, non-equivalence also occurs in cases where there is no functional equivalent in the target legal system for a particular source concept. (Sarcevic 1997:239)

Koller distinguishes between five types of equivalence;

> • Referential or denotative equivalence which is based on the Source Language (SL) and Target Language (TL) words supposedly referring to the same thing in the real world,
> • Connotative equivalence where the SL and TL words trigger the same or similar associations in the minds of native speakers of the two languages,
> • Text-normative equivalence where the SL and TL words are used in the same or similar contexts in their respective languages,
> • Pragmatic (as Koller, 1989:102 calls it) or dynamic (as Nida, 1964 calls it) equivalence where the SL and TL words have the same effect on their respective readers,
> • Formal equivalence where the SL and TL words have similar orthographic or phonological features.
>
> (quoted in *Encyclopaedia of Translation Studies* 1998:77)

As for the question of equivalence in Translation Studies, Alcaraz Varo&Hughes (2002:23) suggest that,

> 1. a thorough understanding of the ideas of the sources text and the means by which these ideas have been achieved and expressed;
> 2. the attempt to express these ideas in linguistically equivalent terms in the target language;
> 3. the proviso that, other things being equal, the criterion of 'naturalness' of target language expression is to preside over any other in attaining the equivalence referred to in stage (2), 'naturalness' being understood to mean the avoidance of strain or the forcing of sense or syntax.

They suggest that the translator should be seeking dynamic rather than literal equivalence. Thus, target versions that provide connotative as well as denotative parity with the original by dint of selecting the natural equivalent of source-language expressions,

> After all, the aim, in legal as in other forms of translation, is to provide target versions that are at least as readable and natural as their source

> predecessors; providing for an acceptable translation taking into account of local cultural factors, e.g. the expectations of readers of reports in general and law reports in particular (Alcaraz Varo&Hughes 2002:178-179).

They further state that the major international organisations such as the EU or UN depend for their very existence on the ability of translators to adapt texts in this way and to provide versions that are accurate, natural and acceptable (2002:179-180). Thus the question of equivalence is intermingled with the function, or *skopos* of the translation; the type of equivalence is determined according to the needs and demands of the target readers, or the end-users of the target text.

# 3. ANALYSIS ON SYNTACTIC LEVEL

In this part of the thesis, syntactic analysis of the translations of the EU documents into Turkish will be carried out. The criteria according to which the analysis will be made can be listed as follows:

A. One sentence rule

B. Use of paragraphing

C. Use of negations

D. Use of logical connectors

E. Punctuation

F. Use of the impersonal

G. Use of shall, will, must and may

## A. One Sentence Rule

Use of long and complex sentences is a significant feature of legal texts that pose a burden on the shoulders of the legal translator. The EU legal documents have very long and complex sentences as well. The problem in the translation of this kind of sentences lies in the decision whether to split up the sentence or maintain the original structure. Alcaraz Varo&Hughes suggest that translators of these texts must therefore choose between retaining the format (at the risk of incomprehensibility or added ambiguity) and undertaking vigorous breakdown of inconveniently long sentences into their component parts prior to translation. Whichever course is taken, target audience expectations should clearly be paramount for the translator (2002:19).

Bhatia (1993:166) further claims that the density of subordination and parenthetic restriction is particularly frequent in the texts of laws and of contracts and gives them their characteristic air of complexity (quoted in Alcaraz Varo&Hughes 2002:19). This is a fact that the legal translation is perceived as a task most difficult to achieve.

For the translation of the sentences with an ambiguous meaning, Alcaraz Varo&Hughes suggest leaving the arduous task of clarifying the ambiguity to the parties involved; by stating that since the ambiguity is inherent in the syntactic structure of the sentence, any translation that reproduces this is bound to be correct, in the sense that it will be equally ambiguous, and for the same reason (2002:45). The translator can only reproduce the literal sense of the source text and leave any question of interpretation to the parties involved or, if they cannot agree, to the courts (Alcaraz Varo&Hughes 2002:45-46).

Example 1: In order to scrutinize this criterion, we will have a look at the following example from the Treaty Establishing the European Economic Community:

> HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE
> QUEEN OF THE NETHERLANDS,
> DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,
> RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,
> AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,
ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,
DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,
INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,
RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,
HAVE DECIDED to create a EUROPEAN ECONOMIC COMMUNITY and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF BELGIANS:

Mr. Paul-Henri SPAAK, Minister of Foreign Affairs,
Baron J.Ch. SNOY ET D'OPPUERS, Secretary General of the Ministry of Economic Affairs, Head of the Belgian Delegation to the Intergovernmental Conference;
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:
Dr. Konrad ADENAUER, Federal Chancellor,
Professor Dr. Walter HALLSTEIN, State Secretary of Federal Foreign Office;
THE PRESIDENT OF THE FRENCH REPUBLIC:
Mr. Christian PINEAU, Minister of Foreign Affairs,
Mr. Maurice FAURE, Under-secretary of State for Foreign Affairs;
THE PRESIDENT OF THE ITALIAN REPUBLIC:
Mr. Antonio SEGNI, the President of the Council of Ministers,
Professor Gaetano MARTINO, Minister for Foreign Affairs;
HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG:
Mr. Joseph BECH, President of the Government, Minister for Foreign Affairs,
Mr. Lambert SCHAUS, Ambassador, Head of the Luxembourg delegation to the Intergovernmental Conference;
HER MAJESTY THE QUEEN OF THE NETHERLANDS:
Mr. Joseph LUNS, Minister for Foreign Affairs,
Mr. J. LINTHORST HOMAN, Head of the Netherlands Delegation to the Intergovernmental Conference

The translation into Turkish is as follows:

MAJESTELERİ BELÇİKA KRALI, FEDERAL ALMANYA CUMHURBAŞKANI, FRANSA CUMHURBAŞKANI, İTALYA CUMHURBAŞKANI, ALTES RUAYAL LÜKSEMBURG BÜYÜK DÜŞESİ, MAJESTELERİ HOLLANDA KRALİÇESİ,

Avrupa halkları arasında gittikçe daha sıkı bir birliğin temellerini atmaya KARARLI OLARAK,

Avrupa'yı bölen engelleri ortadan kaldırarak ortak bir girişim ile ülkelerinin ekonomik ve sosyal gelişmesini sağlamaya KARARLI OLARAK,

Halklarının yaşam ve çalışma koşullarını sürekli iyileştirmenin, çabalarının temel amacı olduğunu TEYİT EDEREK,

Büyümede istikrarı, ticarette dengeyi ve rekabette dürüstlüğü sağlamak amacıyla mevcut engellerin ortadan kaldırılması için elbirliği ile harekete geçmenin gerektiğini KABUL EDEREK,

Değişik bölgeler arasındaki gelişme farklılıklarını azaltarak ve daha az gelişmiş bölgelerin kalkınmalarındaki gecikmeyi gidererek, ekonomilerinin birliğini güçlendirmeye ve uyumlu bir şekilde gelişmesini sağlamaya İSTEKLİ OLARAK,

Ortak bir ticaret politikası vasıtasıyla uluslararası ticaretteki kısıtlamaların aşamalı olarak kaldırılmasına katkıda bulunmak ARZUSUYLA,

Avrupa ile denizaşırı ülkelerin dayanışmasını vurgulamak ve Birleşmiş Milletler Antlaşmasının ilkeleri doğrultusunda bu ülkelerin refah düzeylerinin yükselmesini sağlamak NİYETİYLE,

Böylece kaynaklarını biraraya getirerek barış ve özgürlüğün korunup güçlendirilmesine kararlı olarak ve aynı ideali paylaşan diğer Avrupa halklarını çabalarına katılmaya ÇAĞIRARAK,

Bir Avrupa Ekonomik Topluluğu kurmaya karar vermişler ve bu amaçla,

MAJESTELERİ BELÇİKA KRALI:

Dışişleri Bakanı Bay Paul-Henri SPAAK'ı,

Ekonomik İşler Bakanlığı Genel Sekreteri ve Hükümetlerarası Konferans nezdinde Belçika Heyeti Başkanı Baron J.Ch.SNOY ET D'OPPUERS'i,

FEDERAL ALMANYA CUMHURBAŞKANI:

Federal Şansölye Dr. Konrad ADENAUER'ı,

Dışişleri Bakanlığı Müsteşarı Prof.Dr.Walter HALLSTEIN'ı,

FRANSA CUMHURBAŞKANI:

Dışişleri Bakanı Bay Christian PINEAU'yu,

Dışişleri Bakanlığı Müsteşarı Bay Maurice FAURE'u,

İTALYA CUMHURBAŞKANI:

Bakanlar Kurulu Başkanı Bay Antonio SEGNİ'yi,

Dışişleri Bakanı Prof.Gaetano MARTINO'yu,

ALTES RUAYAL LÜKSEMBURG BÜYÜK DÜŞESİ:

Hükümet Başkanı ve Dışişleri Bakanı Bay Joseph BECH'i,

Hükümetlerarası Konferans nezdinde Lüksemburg Heyeti Başkanı Büyükelçi Bay Lambert SCHAUS'u,
MAJESTELERİ HOLLANDA KRALİÇESİ:
Dışişleri Bakanı Bay Joseph LUNS'u,
Hükümetlerarası Konferans nezdinde Hollanda Heyeti Başkanı Bay J.LINTHORST HOMAN'ı,
tam yetkili temsilcileri olarak atamışlardır.

In this example, it is observed that one sentence rule has been adhered to in the translation. The first sentence has been translated by strictly complying with the structure of the source sentence, and producing an identical version of the source sentence in the target text, by respecting the syntactic rules of Turkish.

Example 2: The following example from the Council Regulation No 104/2000 shows an instance where the one sentence rule has been ignored.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 36 and 37 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Having regard to the opinion of the Committee of the Regions (4),

Whereas:

(1) the basic provisions concerning the organisation of the market in fishery products must be revised to take account of market developments, changes in recent years in fishing activities and the shortcomings detected in the implementation of the rules currently in force; by reason of the number and complexity of the amendments to be made, these provisions will lack the clarity required of any set of rules unless they are completely redrafted; Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products(5) should therefore be replaced by a new Regulation;

(2) in the interests of simplifying the rules and facilitating their use by those for whom they are intended, the new Regulation should also

include the basic provisions, duly updated and supplemented, of Council Regulation (EEC) No 105/76 of 19 January 1976 on the recognition of producers' organisations in the fishing industry (6) and Council Regulation (EEC) No 1772/82 of 29 June 1982 laying down general rules concerning the extension of certain rules adopted by producers' organisations in the fisheries sector (7); these Regulations should therefore be repealed;

...

(43) the measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (11);

(44) the common organisation of the market in fishery products should take appropriate account, at the same time, of the objectives set out in Articles 33 and 131 of the Treaty,

HAS ADOPTED THIS REGULATION:

The translation is as follows:

AVRUPA BİRLİĞİ KONSEYİ,
Avrupa Topluluğu kuruluş Anlaşması ve özellikle bu Anlaşmanın Madde 26, 36 ve 37 dikkate alınarak,
Komisyon'dan gelen öneri dikkate alınarak (1),
Avrupa Parlamentosu görüşü dikkate alınarak (2),
Ekonomik ve Sosyal Komite görüşü dikkate alınarak (3),
Bölgeler Komitesi görüşü dikkate alınarak (4),
Aşağıdaki nedenlerle,

(1) balıkçılık ürünleri piyasa örgütlenmesine ilişkin temel hükümler piyasa gelişmelerini, avlanma etkinliklerinde son yıllarda oluşan değişiklikleri ve şu anda yürürlükte olan kuralların uygulamasında saptanan eksiklikleri dikkate alacak bir biçimde değiştirilmelidir; yapılacak değişikliklerin sayısı ve karmaşıklığı nedeniyle, bu hükümler tümden yeniden taslak halinde düzenlenmedikçe, herhangi bir kurallar dizisinden beklenmesi gereken açıklıktan yoksun olacaklardır; bu nedenle, balıkçılık ve su kültürü ürünlerinde piyasaların ortak örgütlenmesi üzerine 17 Aralık 1992 tarihli, (AET) 3759/92 sayılı Konsey Yönetmeliği (5) yeni bir Yönetmelik ile değiştirilmelidir;

(2) kuralların hedeflediklerinin çıkarları göz önüne alınarak basitleştirilmesi ve kullanımlarının kolaylaştırılması açısından, yeni Yönetmelik avlanma endüstrisindeki üretici örgütlerinin tanınması konulu, 19 Ocak 1976 tarihli, 105/76 sayılı (AET) Konsey Yönetmeliğinin

(6) ve avlanma endüstrisindeki üretici örgütleri tarafından benimsenmiş bazı kuralların genişletilmesine ilişkin genel kuralları belirleyen, 29 Haziran 1982 tarihli, 1772/82 sayılı (AET) Konsey Yönetmeliğinin (7) gereğince güncelleştirilmiş ve tamamlanmış temel hükümlerini de içermelidir; dolayısıyla, bu Yönetmelikler iptal edilmelidir;

...

(43) işbu Yönetmeliğin uygulanması için gerekli önlemler, 28 Haziran 1999 tarihli, 1999/468/AT sayılı, Komisyona verilen uygulama yetkesinin gerçekleştirilmesi işlemlerini belirleyen Konsey Kararına (11) uygun olarak benimsenmelidir;

(44) balıkçılık ürünleri piyasasının ortak düzenlenmesi aynı zamanda Anlaşma Madde 33 ve 131'de belirtilen amaçları da gereğince dikkate almalıdır,
İŞBU YÖNETMELİĞİ BENİMSEMİŞTİR:

In this extract, the first sentence of the Regulation has been split in the target text, though in the source text the general rule of using one sentence has been adhered to. "Whereas" has been translated as "the reasons given below" in Turkish and a list of the items has been provided in separate sentences.

Example 3: The following example from the Council Regulation 2792/1999 also shows an instance where the one sentence rule has not been adhered to in the translation.

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,
Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee (3),
Whereas:
(1) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (4) defines the general

objectives and tasks of the Structural Funds and the Financial Instrument for Fisheries Guidance ("FIFG"), their organisation, the assistance methods, the programming and general organisation of the aid provided by the Funds and the general financial arrangements;

(2) Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture(5) lays down the objectives and general rules of the common fisheries policy; the development of the Community fishing fleet must in particular be regulated according to the decisions that the Council is called upon to take by virtue of Article 11; it is for the Commission to translate these decisions into precise measures at the level of each Member State; furthermore, Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy(6) is to be complied with;

...

(16) Council Regulation (EC) No 2468/98 of 3 November 1998 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (10) as well as other provisions should be repealed; at the same time, for the proper execution of the aid, actions and projects approved up until 31 December 1999 the repealed provisions should remain applicable to that end,

HAS ADOPTED THIS REGULATION:

The translation is as follows:

AVRUPA BİRLİĞİ KONSEYİ,

Avrupa Topluluğunu kuran Antlaşmayı göz önünde tutarak ve özellikle Madde 36 ve 37' den dolayı,
Komisyondan gelen tasarıyı/ öneriyi göz önünde tutarak ([1]),
Avrupa Parlamentosunun görüşünü göz önünde tutarak ([2]),
Ekonomik ve Sosyal Komitenin görüşünü göz önünde tutarak ([3]),
Aşağıdaki nedenlerden dolayı:

(1) Yapısal Fonlara ilişkin genel hükümlerin yer aldığı 21 Haziran 1999 tarihli ve 1260/1999 (EC) sayılı Konsey Tüzüğü([4]), Yapısal Fonların ve Balıkçılık Kılavuzu için Finansal Enstrümanların (the Financial Instruments for Fisheries Guidance-'FIFG') genel hedeflerini ve görevlerini, organizasyonlarını, yardım metotlarını, Fonlar tarafından sağlanan yardımın programlanmasını ve genel organizasyonunu ve genel finansal düzenlemeleri tanımlar;

(2) balıkçılık ve akuakültür için bir Topluluk sistemi kuran 20 Aralık 1992 tarihli ve 3760/92 (EEC) sayılı Konsey Tüzüğü([5]), ortak balıkçılık politikasının hedeflerini ve genel kurallarını tanımlar; Topluluğun balık avlama filosundaki gelişmeler, Madde 11' e istinaden Konseyin almaya davet edildiği kararlara uygun olarak özellikle düzenlenmelidir; Komisyonun bu kararları her Üye Devlet düzeyinde kesin önlemlere çevirmesi gereklidir; ek olarak ortak balıkçılık politikalarına uygulanabilen bir kontrol sistemini kuran 12 Ekim 1993 tarihli ve 2847/93 (EC) sayılı Konsey Tüzüğüne ([6]) uyulmalıdır;

...

(16) diğer hükümlerin yanı sıra, balıkçılık ve akuakültür sektöründe ve bunların ürünlerinin proses edilmesi ve pazarlanmasında Topluluk yapısal yardımı konusunda kriterlerin ve düzenlemelerin yer aldığı 3.Kasım 1999 tarih ve 2468/98 (EC) sayılı Konsey Tüzüğü ([3]) fesh edilmelidir; aynı zamanda yardımın düzgün bir şekilde yapılması için fesh edilen hükümler 31 Atarlık 1999' a kadar onaylanmış faaliyetler ve projelere yönelik olarak bu tarihe kadar uygulanabilir kalmalıdır,

BU TÜZÜĞÜ KABUL ETMİŞTİR.

In this example, as in the former one, the one sentence rule has not been adhered to; the first sentence of the Regulation has been split in the translation. The conjunction "whereas" has a subordinating function; it connects the subordinate clauses with the main clause, thus forming one sentence in the end. However in the translation, the subordinate clauses introduced by "whereas" have been translated in separate sentences.

Example 4: The following example from the 2004 Regular Report shows that one sentence rule has been adhered to in the translation.

The Report:
– describes the relations between Turkey and the Union, in particular in the framework of the Association Agreement;
– analyses the situation in respect of the political criteria set by the 1993 Copenhagen European Council (democracy, rule of law, human rights, protection of minorities);
– assesses Turkey's situation and prospects in respect of the economic criteria defined by the Copenhagen European Council (a functioning

market economy and the capacity to cope with competitive pressures and market forces within the Union);
– addresses the question of Turkey's capacity to assume the obligations of membership, that is, the *acquis* as expressed in the Treaties, the secondary legislation, and the policies of the Union. In this part, special attention is paid to nuclear safety standards, which were emphasised by the Cologne and Helsinki European Councils. This part includes not only the alignment of legislation, but also the development of the judicial and administrative capacity necessary to implement and enforce the *acquis.* The European Council stressed the importance of this latter aspect at its meeting in Madrid in 1995 and on a number of subsequent occasions, most recently in Brussels in June 2004. At Madrid, the European Council stressed that the candidate countries must adjust their administrative structures, so as to create the conditions for the harmonious integration of these States. The Brussels European Council emphasised the importance for Turkey of ensuring decisive progress in the full and timely implementation of reforms at all levels of the administration.

The translation is as follows:

İşbu rapor:
• Türkiye ve Birlik arasındaki ilişkileri, özellikle, Ortaklık Anlaşması çerçevesinde ele alır;
• 1993 Kopenhag Zirvesinde belirlenmiş olan siyasi kriterler (demokrasi, hukukun üstünlüğü, insan hakları, azınlıkların korunması) açısından mevcut durumu inceler;
• Kopenhag Zirvesinde tanımlanmış olan ekonomik kriterleri (işleyen bir piyasa ekonomisinin varlığı ve Birlik içindeki rekabet baskısı ve piyasa güçleri ile baş edebilme kapasitesi) açısından Türkiye'nin mevcut durumunu ve kaydettiği ilerlemeyi değerlendirir;
• Türkiye'nin, Antlaşmalar, ikincil mevzuat ve Birlik politikalarında ortaya konulan müktesebatı üstlenebilme kapasitesini inceler, diğer bir ifadeyle, üyelik yükümlülüklerini değerlendirir. Bu bölümde, Köln ve Helsinki Zirvelerinde vurgulanan nükleer güvenlik standartlarına özellikle dikkat çekilmektedir. Bu bölüm, sadece mevzuatın uyumlaştırılmasını değil, müktesebatın etkili biçimde uygulanması için gerekli hukuki ve idari kapasitenin geliştirilmesini de içermektedir. Avrupa Devlet ve Hükümet Başkanları Konseyi, bu ikinci hususun önemini 1995 Madrid Zirvesinde ve müteakip vesilelerle ve son olarak da Haziran 2004 tarihinde yapılan Brüksel Zirvesinde vurgulamıştır. Madrid Zirvesinde, Avrupa Konseyi tarafından, aday ülkelerin, uyumlu bir bütünleşme için gerekli koşulların oluşturulabilmesi bakımından, idari yapılarında gerekli düzenlemeleri yapmalarının gereği vurgulanmıştır. Brüksel Avrupa Konseyi, Türkiye'de, reformların tüm idari kademelerde tam olarak ve zamanında

uygulanmasında kararlı bir ilerlemenin sağlanmasının önemini vurgulamıştır.

It is observed from this extract that one sentence rule has been adhered to. This might be due to the ease of having the subject in common parenthesis for the subordinate sentences and the presence of a predicate in each bullet sentence. There is no need to repeat the subject in all the subordinate sentences; the subordinate sentences, attached to one subject at the beginning, are listed in the translation as it is in the source text.

It is to be observed from the given examples that there is no consistency in the translation of long and complex sentences. In some instances we see that the sentences are translated in accordance with the source structures, in others not. We can only mention the tendencies towards the source oriented translation or target oriented translation. As no strategy for the translation of long and complex sentences into Turkish in the legal documents exist, we cannot state which tendency is superior to the other, in view of the generally accepted rules or habits. It is clear that the one sentence rule is applied in a haphazard manner in the translation of EU documents into Turkish.

## B. Use of paragraphing

In order to provide for a clearer understanding, the legal documents are also presented in chunks, i.e. in paragraphs. Sarcevic quotes from Driedger (1982a:78) that indenting certain lines of a sentence provides a visual aid to comprehension by breaking up solid blocks of type, thus enabling the reader to distinguish between the main and dependent clauses (1997:187).

Mayoral Asensio suggests that the use of consecutive order consists in regrouping information into clusters that become separate paragraphs in the translation. The

clusters are put in a consecutive order, which may be open to personal interpretations. The order ideally follows the natural order for reading in the source language (for Western languages, from left to right and top-down) and if appropriate, chronological order as well. An exception is usually made for the name of the document (for instance, certified copy of an entry of birth), which we try to locate at the very beginning for the sake of clarity (2003:67).

Example 1: In the following excerpt from the 2004 Regular Report the paragraphing structure has not been adhered to in the target text.

> The Helsinki European Council meeting in December 1999 concluded that:
> "Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European Strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms."

The translation is as follows:

> Aralık 1999 tarihli Helsinki Zirvesinde, "Türkiye, diğer aday ülkelere uygulanan kriterler esas alınarak, Birliğe katılma amacı taşıyan bir aday ülke" olarak değerlendirilmektedir. Mevcut Avrupa stratejisine göre, Türkiye de diğer aday ülkeler gibi, reformlarını hızlandıran ve destekleyen bir katılım öncesi stratejisinden yararlanacaktır" kararı alınmıştır.

In this example, the reason for not maintaining the paragraphing structure in the target text might be the result of the differences in the syntactic structures between Turkish and English, as the English version could separate the main clause and the subordinate clause with a "that clause", however in the Turkish version, the predicate need to be at the end of the sentence.

Example 2: The following example from the Regulation No 1488/1996 the structure of paragraphing has not been adhered to.

ANNEX II

OBJECTIVES AND RULES FOR THE IMPLEMENTATION OF ARTICLE 2

I. (a) Support for economic transition and the establishment of a Euro-Mediterranean free-trade area shall include in particular:

- job creation and private sector development, including improvement of the business environment and support for SMEs,

- promotion of investment, industrial cooperation and trade between the European Community and the Mediterranean partners, as well as among the Mediterranean partners themselves,

- upgrading of economic infrastructure, possibly to include the financial and taxation systems.

(b) Operations in support of structural adjustment programmes, implemented on the basis of the following principles:

- the support programmes shall be designed to restore the major financial balances and create an economic environment favourable to accelerated growth, while at the same time improving the well-being of the population,

- the support programmes shall be adapted to the particular situation of each country and take account of economic and social conditions,

- the support programmes shall lay down measures intended, in particular, to alleviate the negative effects which the process of structural adjustment may have on social conditions and employment, especially for underprivileged sections of the population;

- the support programmes shall be orientated towards the creation of a free-trade area with the European Community,

- rapid disbursement shall be one of the main features of the support programmes.

The following eligibility criteria must be satisfied:

- the country concerned must undertake a reform programme approved by the Bretton Woods institutions or implement programmes recognized as analogous, in coordination with those institutions, but not necessarily financially supported by them, in accordance with the macroeconomic extent and effectiveness of the reforms,

- account must be taken of the economic situation of the country, and particularly its level of indebtedness and its debt-servicing burden, the state of its balance of payments and the availability of currency, the budget situation, the monetary situation, the level of per capital GNP and the unemployment level.

The translation is as follows:

> EK II
> 2. MADDE'NİN UYGULANMASINA İLİŞKİN HEDEFLER VE KURALLAR
>
> I. (a) Ekonomik geçişe destek ve bir Avrupa-Akdeniz serbest ticaret bölgesinin oluşturulması özellikle şunları içerecektir: KOBİ'ler için iş ortamının geliştirilmesi ve desteklenmesi dahil, istihdam yaratılması ve özel sektörün geliştirilmesi; Gerek Avrupa Topluluğu ile Akdenizli ortaklar arasında gerek Akdenizli ortakların kendi aralarında yatırımların, sınai işbirliğinin ve ticaretin teşviki; Muhtemelen finansman ve vergi sistemleri de dahil edilmek üzere ekonomik altyapının niteliğinin yükseltilmesi.
> (b) Aşağıdaki esaslar temelinde uygulanan yapısal uyum programlarını desteklemeye yönelik faaliyetler: Destek programları, başlıca mali dengelerin düzeltilmesine yönelik olacak ve bir yandan hızlandırılmış büyümeye elverişli bir ortam yaratırken de bir yandan da nüfusun refah düzeyini yükseltecektir; Destek programları her ülkenin özel durumuna uyarlanacak ve bu programlarda ekonomik ve sosyal koşullar dikkate alınacaktır; Destek programlarında yapısal uyum sürecinin özellikle sosyal koşullar ve istihdam üzerinde, esas olarak da nüfusun dezavantajlı kesimleri açısından yaratabileceği olumsuz etkilerin hafifletilmesine yönelik önlemlere yer verilecektir; Destek programları, Avrupa Topluluğu ile bir serbest ticaret bölgesinin kurulmasına yönelik olacaktır; Hızlı ödeme destek programlarının başlıca özelliklerinden biri olacaktır. Aşağıdaki seçilebilirlik ölçütlerinin yerine getirilmesi şarttır: İlgili ülke, Bretton Woods kurumları tarafından onaylanmış bir reform programını veya buna benzer sayılan programları, söz konusu kurumlarla koordinasyon içinde, ancak bu kurumlardan mali destek alma şartı aranmaksızın, reformların makro-ekonomik kapsamı ve etkilliğine uygun olarak uyguluyor olmalıdır; Ülkenin ekonomik durumu, özellikle de borçlanma düzeyi ve borç geri ödeme yükü, ödemeler dengesinin durumu ve döviz varlığı, bütçe durumu, parasal durumu, kişi başına GSMH düzeyi ve işsizlik düzeyi dikkate alınmalıdır.

In this example, the paragraphs in the source text have been combined, thus leading to a different paragraphing structure than the original. The bullets in the original do not find their counterparts in the target text, which results in a text more difficult to distinguish between the subordinate clauses and thus more difficult to understand.

Example 3: In the following example from the Negotiating Framework (Article 12), the use of paragraphing has not been changed in the target text.

> Where necessary, specific adaptations to the *acquis* will be agreed on the basis of the principles, criteria and parameters inherent in that *acquis* as applied by the Member States when adopting that *acquis*, and taking into consideration the specificities of Turkey.
>
> The Union may agree to requests from Turkey for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis.* For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. In this connection, account must be taken of the interests of the Union and of Turkey.

The translation is as follows:

> Gerekli hallerde, müktesebata yapılacak belirli uyarlamalar, müktesebatın içeriğinde varolan ve müktesebatın kabulü sırasında, üye devletlerin uyguladıkları ilkeler, kriterler ve parametreler temelinde ve Türkiye'nin özellikleri göz önünde bulundurularak bir mutabakata varılır.
>
> Birlik, zaman ve kapsam açısından sınırlı olması ve müktesebatın uygulanması için açıkça belirlenmiş aşamalar içeren bir planın da mevcudiyeti koşuluyla Türkiye'nin geçiş tedbirlerine ilişkin taleplerini kabul edebilir. İç pazarın genişletilmesiyle bağlantılı bölümlere ilişkin olarak düzenleyici önlemler hızlı bir şekilde uygulanmalı ve geçiş dönemleri kısa ve az olmalı; geniş mali harcamalar dâhil, kapsamlı çaba gerektiren önemli uyarlamaların gerekli olması halinde, devam eden, ayrıntılı ve bütçelendirilmiş bir uyum planının parçası olarak uygun geçiş tedbirleri öngörülebilir. Her hal ve karda, geçici düzenlemeler Birliğin kural ve politikalarında değişiklik içermemeli, bunların düzgün işlemesine engel oluşturmamalı ve rekabete ciddi mani teşkil etmemelidir. Bu bağlamda, Birlik ve Türkiye'nin çıkarları göz önünde tutulmalıdır.

The paragraphing structure in the source text has been kept in the target text, resulting in the same visual effect and the effect of same sequence of flow of information on the target reader.

Example 4: The following example from the EC-Turkey Association Council Decision No 1/1995, Article 3, shows an instance where structure of paragraphing is maintained in the target text as in the source text.

> The customs territory of the Customs Union shall comprise:
>
> - the customs territory of the Community as defined in Article 3 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,
> - the customs territory of Turkey.

The translation is as follows:

> Gümrük birliğinin gümrük alanı;
>
> - Topluluk Gümrük Kodu'nu oluşturan (EEC) 2913/92 işaretli ve 12 Ekim 1992 tarihli Konsey Yönetmeliğinin 3. Maddesinde tanımlanan Topluluk gümrük alanını ve
> - Türkiye gümrük alanını kapsayacaktır.

Use of paragraphing in this example is the same as in the original text, creating the same effect of segmentation of information on the target reader; however, due to the difference in the syntactic structures of English and Turkish, the verb is placed at the end of the last sub-paragraph.

The use of paragraphing is a criterion which is most of the time maintained in the target text as it is in the source text. This might be due to the reason that segmenting the information leads to a clearer understanding of the text. It also has a better visual effect, facilitating the comprehension by the reader. Therefore, for this feature, we can state that there is a tendency towards maintaining the source structure.

## C. Use of negations

Thornton (1987:32) argues that drafting rules generally discourage the use of negative provisions in normative texts. This is because affirmative statements are more direct and straightforward and thus easier to understand (quoted in Sarcevic 1997:170). Nonetheless there are numerous exceptions where negative provisions are either more effective or necessary to achieve the desired legal effects. In contrast to translators of ordinary language, legal translators are warned against translating negative phrases positively and vice versa (Sarcevic 1997:170).

Negating the subject extends the scope of negation backwards, placing the emphasis on the subject. Therefore it is common practice in universal prohibitions to negate the subject in all languages, thus stressing that the prohibition applies to all persons without exception (Sarcevic 1997:171).

Example 1: In the following example from the 2004 Regular Report, all the negated structures in the source text have been translated also in a negative form in the target text.

> Certain improvements in the functioning of the Customs Union have taken place, and cooperation between the Commission and Turkey has further progressed, in particular concerning technical regulation of products. However, the level of litigation remains significant, due to Turkey's failure to implement several commitments taken under Decision 1/95. As a consequence, an action plan for the widening and the deepening of the Customs Union could not be agreed. The negotiations in view of reaching an agreement on services and public procurement have continued in 2003 and 2004 albeit at a slower pace. Turkey's failure to align its government procurement legislation constitutes a significant hurdle for these negotiations. The Association Council Decision concerning the implementation of competition rules could not be signed because the Turkish State Aids Monitoring Authority is not established.

The translation is as follows:

> Gümrük birliğinin işleyişinde bazı iyileştirmeler yapılmış ve Komisyon ve Türkiye arasında özellikle, ürünlerin teknik düzenlemelerine ilişkin işbirliği daha da ilerlemiştir. Bununla birlikte, Türkiye'nin 1/95 sayılı Karar gereğince, çeşitli taahhütleri uygulamadaki başarısızlığı nedeniyle, ortaya çıkan dava düzeyi endişe konusudur. Sonuç olarak, Gümrük Birliğinin genişletilmesi ve derinleştirilmesine ilişkin eylem planı üzerinde anlaşmaya varılamamıştır. Hizmetler ve kamu ihaleleri konusunda uzlaşma amacıyla yapılan görüşmeler yavaş da olsa 2003 ve 2004'de de devam etmiştir. Türkiye'nin kamu ihalelerini uyumlaştırmadaki başarısızlığı bu görüşmeler için önemli bir engel oluşturmaktadır. Rekabet kurallarının uygulanmasına ilişkin Ortaklık Konseyi Kararı Türkiye Devlet Yardımları İzleme Kurulu oluşturulmadığı için imzalanamamıştır.

In this example, the use of negations in the source text has been kept in the target text, resulting in the same kind of effect on the target reader as on the source reader. We can state some of these negations as follows:
"... could not be agreed" has been translated as "anlaşmaya varılamamıştır", "Turkey's failure to align its government procurement legislation" has been translated as "Türkiye'nin kamu ihalelerini uyumlaştırmadaki başarısızlığı", "because the Turkish State Aids Monitoring Authority is not established", as "Türkiye Devlet Yardımları İzleme Kurulu oluşturulmadığı için".

Example 2: In the following example from the EC-Turkey Association Council Decision No 1/1995, the use of negations has been maintained in the translation.

> Products from third countries shall be considered to be in free circulation in the Community or in Turkey if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in the Community or in Turkey, and if they have not benefited from a total or partial reimbursement of such duties or charges.
>
> Türkiye veya Topluluk'ta ithal işlemleri tamamlanmış, gerekli gümrük vergisi veya eş etkili vergi veya resimleri tahsil edilmiş ve bu vergi veya resimleri tam veya kısmi bir iadeden yararlanmamış olan üçüncü ülkeler

> çıkışlı mallar, Türkiye'de veya Toplulukta serbest dolaşım durumunda sayılır.

In this example, the negations in the source text have been identically translated in the target text, thus the same negative and affirmative statements find their counterparts in the target text. In this example, "if they have not benefited from a total or partial reimbursement of such duties or charges" has been translated as "tam veya kısmi bir iadeden yararlanmamış olan".

Example 3: The following example from the EC-Turkey Association Council Decision No 1/1995, Article 32, we see an instance where the negation in the target text is different from the source text.

> The following shall be prohibited as incompatible with the proper functioning of the Customs Union, in so far as they may affect trade between the Community and Turkey:
>
> Toplulukla Türkiye arasındaki ticareti etkiledikleri ölçüde, Gümrük Birliğinin düzgün işleyişi ile uyumlu olmayan :

In this example, the word "incompatible" which has been negated with the prefix – "in-" has been translated as "uyumlu olmayan" instead of "uyumsuz"; though the meaning does not change significantly. As Sarcevic states, in legal translation the primary consideration of the translator is the effect. Hence, translators should select a formulation that guarantees that the particular provision will produce the desired effects in practice. Effects relating to the law of evidence should also be taken into account. In particular, translators should refrain from translating negative provisions as positive and vice versa whenever such transformations could interfere with the burden of proof and the facts to be established as evidence (1997:171).

Example 4: The following example from the Treaty establishing the European Economic Community, Article 102, Paragraph 2, shows an instance where the negations in the source text are maintained in the target text.

> If a state desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, in pursuance of Article 101, to amend their own provisions in order to eliminate such distortion.

The translation is as follows:

> Eğer iç hükümlerini belirlemek veya bu hükümlerde değişiklik yapmak isteyen bir Devlet Komisyonun kendisine yaptığı tavsiyeye uymazsa, diğer Üye Devletlerden 101. Maddeye göre, böyle bir sapmanın giderilmesi amacıyla kendi düzenlemelerinde değişiklik yapmaları istenemez.

In this example, the same effect has been created on the target reader through maintaining, in the target text, the same kind of negations in the source text.

In the translation of negations in the EU Documents into Turkish, we can say that there is a tendency towards keeping the original structures. This might be the result of the endeavours to create the same kind of effect on the target reader. The translators opt for guaranteeing the effect by maintaining the same structure. They do not run the risk of changing positive statements into negative statements, and vice versa.

## D. Use of logical connectors

Logical connectors are words and phrases which are used as sequencers such as firstly, secondly, then, after that; contrasters such as however, on the one hand, on the other hand; generalizers such as generally speaking, on the whole, in most cases; and topic introducers such as with regard to, regarding, concerning

(http://www.grammarstation.com/servlet/GGuide?type=LCLI). This type of use is frequently to be seen in legal texts, including the EU texts.

Alcaraz Varo&Hughes suggest that in legal texts, as in other text types, there are two main forms of syntactic construction: simple, or paratactic, clauses and their complex, or hypotactic, counterparts. The "facts as found" are rendered as paratactic, with facts and events being presented as a series of 'stills' through juxtaposition and coordinate clauses. On the contrary, the style found in statute law, legal text books, regulations and judicial rulings tends to be much more complex or hypotactic, with pride of place going to subordination and restrictive clauses of many different kinds (2002:188-189). According to the *Webster's Third New International Dictionary* (1993), hypotaxis is a syntactic subordination, as by a conjunction; as opposed to parataxis, i.e. coordinate ranging of clauses, phrases, or words one after another without coordinating connectives; or the placing of a subordinate clause beside a main clause without a subordinating connective.

Alcaraz Varo&Hughes further claim that it is neither the duty nor the right of the translator to minimize such complexity whenever it is clear that the writer of the original has deliberately opted for complex wording. Moreover there are strong grounds for arguing that even apparently avoidable complexity should be retained in translation when, for instance, it is a consequence of a particular judge's view of matters, or the means deliberately chosen by some arbiter or committee to communicate official findings. Hypotaxis would, in such a case, be the most reasonable approach to any translation of complex sentences (2002:189). Therefore, simplifying the sentence structure by splitting up the subordinate clauses is a method that should be resorted only as a last chance, when the meaning is at stake.

Example 1: In the following example from the Negotiating Framework for Turkey, we see an instance where the source sentence has been made even more complex in the target text.

> The Union side, for its part, will decide in due course whether the conditions for the conclusion of negotiations have been met; this will be done on the basis of a report from the Commission confirming the fulfilment by Turkey of the requirements listed in point 6.

The translation is as follows:

> Birlik, kendi açısından müzakerelerin sonuçlanmasına ilişkin şartların yerine getirilip getirilmediğini en kısa zamanda kararlaştıracak olup; bu (karar) Komisyon'dan alınan ve Türkiye'nin 6. maddede belirtilen şartları yerine getirdiğini teyit eden raporun temelinde yapılacaktır.

In this example, the source sentence has been made more complex by using an extra logical connector; whereas there are two sentences separated by a semicolon in the source text, these two sentences have been combined with the multi-functional adverbial clause with connective function "-Ip" in Turkish, thus making the target sentence even more complex by choosing to use hypotaxis instead of the source paratactic method.

Example 2: In the example below, taken from the EC-Turkey Association Council Decision No 1/1995, Article 10 subparagraph 2 and Article 15, the same logical connectors "by way of derogation" are translated in two different ways, exhibiting no consistency in the translation of the connectors within the same document.

> By way of derogation from paragraph 1, if Turkey finds that a product, the conformity of which with the Community Directives has been attested to in accordance with paragraph 1, and which is used in accordance with its intended purpose, fails to satisfy one of the requirements referred to in Article 7, it may take all appropriate measures, in accordance with the conditions and procedures provided for in paragraph 3, to withdraw the product in question from the market,

> or to prohibit or restrict its being placed on the market or taken into service.

The translation is as follows:

> Paragraf 1 hükümleri saklı kalmak koşuluyla, Türkiye, ilgili Topluluk Yönetmeliklerine uygunluğu 1. paragraf hükümleri doğrultusunda belgelenmiş ve amacına uygun olarak kullanılan bir ürünün, Madde 7'de belirlenen koşullardan herhangi birine uymadığını tesbit etmesi halinde, sözkonusu ürünü pazardan çekmek; pazara veya hizmete girmesini engellemek veya kısıtlamak amacıyla 3. paragrafta belirlenen gerekli tüm tedbirleri alabilecektir.

The same connector in the source text is used in a different articles:

> By way of derogation from Article 13 and in accordance with Article 19 of the Additional Protocol, Turkey may retain until 1 January 2001 customs duties higher than the Common Customs Tariff in respect of third countries for products agreed by the Association Council.

The translation of the same connector in another article of the same document is as follows:

> Madde 13 hükümlerinden sapma teşkil edecek biçimde ve Katma Protokol'ün 19. Maddesi uyarınca, Türkiye, Ortaklık Konseyi'nce kararlaştırılacak ürünler için üçüncü ülkelere uyguladığı ve Ortak Gümrük Tarifesi hadlerinden daha yüksek gümrük tarifelerini 1 Ocak 2001 tarihine kadar muhafaza edebilir.

This example is an indicator of the inconsistency in the translation of the same logical connector in different articles of the same document. Although the functions and the intended meanings of the connector are the same, we observe two different counterparts for this connector in the target version.

Example 3: The following example from the Regulation No 1488/1996, we see the translation of "whereas" and "having regard to" in the Turkish text.

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Whereas the European Council at its meetings in Lisbon, Corfu and Essen stressed that the Mediterranean constitutes a priority area for the European Union and adopted the aim of establishing a Euro-Mediterranean partnership;

Whereas the Cannes European Council meeting on 26 and 27 June 1995 reaffirmed the strategic importance it attached to adding a new dimension to the European Union's relations with its Mediterranean partners by building on the Council report of 12 June 1995 prepared on the basis, in particular, of the Commission communications of 19 October 1994 and 8 March 1995 on strengthening the Mediterranean policy of the European Union;

Whereas it is necessary to pursue efforts to ensure that the Mediterranean becomes an area of political stability and security and whereas the Community's Mediterranean policy must play a part in achieving the general objective of respect of human rights and fundamental freedoms and of the promotion of good-neighbourly relations, while respecting international law and the territorial integrity and external frontiers of the Member States and Mediterranean non-member countries;

The translation is as follows:

Avrupa Topluluğu'nu kuran Antlaşma'yı, özellikle de Antlaşma'nın 235. maddesini göz önünde bulundurarak;
Komisyon'un önerisini (1) göz önünde bulundurarak;
Avrupa Parlamentosu'nun görüşünü (2) göz önünde bulundurarak;
Avrupa Doruğu'nun Lizbon, Korfu ve Essen'de yaptığı toplantılarda Akdeniz'in Avrupa Birliği açısından öncelikli bir alan oluşturduğunu vurguladığını ve bir Avrupa-Akdeniz ortaklığı kurma amacını kabul ettiğini dikkate alarak;
26 ve 27 Haziran 1995 tarihlerinde Cannes'da toplanan Avrupa Doruğu'nun, özellikle Komisyon'un Avrupa Birliği'nin Akdeniz politikasının güçlendirilmesi konusundaki 19 Ekim 1994 ve 8 Mart 1995 tarihli tebliğleri temelinde hazırlanmış olan 12 Haziran 1995 tarihli Konsey raporundan yola çıkarak Avrupa Birliği'nin Akdenizli ortaklarıyla ilişkilerine yeni bir boyut katılmasına atfettiği stratejik önemi yeniden teyid ettiğini dikkate alarak;

> Akdeniz'in bir siyasi istikrar ve güvenlik alanı olmasını sağlamaya yönelik çabaların sürdürülmesi gereğini ve Topluluğun Akdeniz politikasının, uluslararası hukuka ve Üye Devletler ile üye olmayan Akdeniz ülkelerinin toprak bütünlüğüne ve sınırlarına saygı temelinde, insan haklarına ve temel özgürlüklere saygı ve iyi komşuluk ilişkilerinin teşviki şeklindeki genel amaca erişilmesine katkıda bulunması zorunluluğunu dikkate alarak;

In this example, contraster "whereas" and topic introducer "having regard to" have been translated according to the translation norms in the translation of EU documents to Turkish. A difference has been made while translating these two connectors; "having regard to" has been translated as "göz önünde bulundurarak" and "whereas" has been translated as "dikkate alarak". These two logical connectors are dealt with also by Altay as; problems arising due to the use of common terms with uncommon meanings: As Brenda Danet (1985-279) suggests, "legal language has a penchant for using familiar words (but) with uncommon meanings" (Altay 2002). The same applies to the words "whereas" and "having regard to" among many others. In legal documents such as contracts, the above-mentioned words function as "considering" or "taking into consideration," and must be so translated into Turkish (Altay 2002).

Example 4: The following example from the Treaty establishing the European Economic Community, Article 40, "in order to" has been translated as "için".

> In order to attain the objectives set out in Article 39 a common organisation of agricultural markets shall be established.

The translation is as follows:

> 39. Madde'de öngörülen hedefleri gerçekleştirebilmek için, bir tarım pazarları ortak organizasyonu oluşturulur.

In this example, the causal connector "in order to" has been translated again as a causal connector "için", creating the same causal effect in the source text, on the target reader.

In the translation of logical connectors in the EU documents into Turkish, we can say that there is a balance in the tendencies towards source oriented and target oriented translations. When the source oriented translation works, the sentences are translated in compliance with the source sentence structure; when not, a target oriented approach is adopted. For the logical connectors being used in a different way form their ordinary usages, like "whereas" and "having regard to", the lack of a strategy for how to translate them causes many inconsistent texts where we see random translations of the connectors.

## E. Punctuation

Punctuation is defined as the act, practice, or system of inserting various standardized marks or signs in written or printed matter in order to clarify the meaning and separate structural units in the *Webster's Third New International Dictionary* (1993). According to this definition, the aim of punctuation is to clarify the meaning and separate structural units; however, in legal documents such as trust deeds and wills, we observe a deliberate lack of punctuation, as Mayoral Asensio points out, in order to suppress unwanted ambiguities (2003:102). He further suggests that inadequate punctuation is often a weak point in the drafting of legal documents. The translators of poorly written texts (written by foreign speakers, non-professional drafters etc.) must continuously interpret the original in order to restore its 'intended meaning'. They thus translate a virtual, non-existent 'correct text'. Meaning must be restored in order to provide an accurate translation. But anomalous punctuation can also be the result of legal drafting itself: what is strange for the layperson may be right, most accurate solution for the legal professional (2003:102).

Mayoral Asensio also states that where punctuation has been left out intentionally, the translator should have the option to follow target-language norms (2003:104). In the same manner, Sarcevic also discusses that in legal translation and multi-lingual drafting, it is generally agreed that the rules of punctuation of one language should not be imposed on another (1991:179).

Sarcevic further suggests that;

> Back in the days of strict literal translation, the view that the syntax of the source text was sacrosanct included punctuation as well. As a result, the source text was faithfully reproduced word for word and comma for comma. When literal translation became the rule of the day, the translator was permitted to follow the rules of syntax of the source text as closely as possible, allowing for exceptions only when deemed absolutely necessary. This often resulted in an unnatural word order that made the translation difficult to understand (1997:180).

However it should also be noted that any punctuation which is an integral part of the standard format cannot be changed, as Sarcevic discusses (1997:180).

Example 1: In the following example from the Regulation No 1488/1996, the punctuation in the source text has not been adhered to in the target text.

> Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,
>
> Having regard to the proposal from the Commission (1),
>
> Having regard to the opinion of the European Parliament (2),
>
> Whereas the European Council at its meetings in Lisbon, Corfu and Essen stressed that the Mediterranean constitutes a priority area for the European Union and adopted the aim of establishing a Euro-Mediterranean partnership;
>
> Whereas the Cannes European Council meeting on 26 and 27 June 1995 reaffirmed the strategic importance it attached to adding a new dimension to the European Union's relations with its Mediterranean

partners by building on the Council report of 12 June 1995 prepared on the basis, in particular, of the Commission communications of 19 October 1994 and 8 March 1995 on strengthening the Mediterranean policy of the European Union;

Whereas it is necessary to pursue efforts to ensure that the Mediterranean becomes an area of political stability and security and whereas the Community's Mediterranean policy must play a part in achieving the general objective of respect of human rights and fundamental freedoms and of the promotion of good-neighbourly relations, while respecting international law and the territorial integrity and external frontiers of the Member States and Mediterranean non-member countries;

The translation is as follows:

Avrupa Topluluğu'nu kuran Antlaşma'yı, özellikle de Antlaşma'nın 235. maddesini göz önünde bulundurarak;

Komisyon'un önerisini(1) göz önünde bulundurarak;

Avrupa Parlamentosu'nun görüşünü (2) göz önünde bulundurarak;

Avrupa Doruğu'nun Lizbon, Korfu ve Essen'de yaptığı toplantılarda Akdeniz'in Avrupa Birliği açısından öncelikli bir alan oluşturduğunu vurguladığını ve bir Avrupa-Akdeniz ortaklığı kurma amacını kabul ettiğini dikkate alarak;

26 ve 27 Haziran 1995 tarihlerinde Cannes'da toplanan Avrupa Doruğu'nun, özellikle Komisyon'un Avrupa Birliği'nin Akdeniz politikasının güçlendirilmesi konusundaki 19 Ekim 1994 ve 8 Mart 1995 tarihli tebliğleri temelinde hazırlanmış olan 12 Haziran 1995 tarihli Konsey raporundan yola çıkarak Avrupa Birliği'nin Akdenizli ortaklarıyla ilişkilerine yeni bir boyut katılmasına atfettiği stratejik önemi yeniden teyid ettiğini dikkate alarak;

Akdeniz'in bir siyasi istikrar ve güvenlik alanı olmasını sağlamaya yönelik çabaların sürdürülmesi gereğini ve Topluluğun Akdeniz politikasının, uluslararası hukuka ve Üye Devletler ile üye olmayan Akdeniz ülkelerinin toprak bütünlüğüne ve sınırlarına saygı temelinde, insan haklarına ve temel özgürlüklere saygı ve iyi komşuluk ilişkilerinin teşviki şeklindeki genel amaca erişilmesine katkıda bulunması zorunluluğunu dikkate alarak;

In this example, the punctuation of the source text has not been adhered to, although this type of punctuation is an inherent feature of the EU regulations

where after "having regard to" a semi-colon is used and after "whereas" a comma is used. In the example, there is a difference between the subordinate clause starting with "whereas" and "having regard to". After the subordinate clause starting with "whereas" a comma is used to separate it from the next subordinate clause and a separate paragraph is made. However after the subordinate clauses starting with "having regard to" a semi-colon is used. This difference in punctuation marks has been ignored in the translation of the source text.

Example 2: In the following example from the Negotiating Framework for Turkey, the punctuation in the target text is different from the punctuation in the source text.

> With regard to the area of freedom, justice and security, membership of the European Union implies that Turkey accepts in full on accession the entire *acquis* in this area, including the Schengen *acquis*. However, part of this *acquis* will only apply in Turkey following a Council decision to lift controls on persons at internal borders taken on the basis of the applicable Schengen evaluation of Turkey's readiness.

The translation is as follows:

> Özgürlük, adalet ve güvenlik alanları bakımından, Avrupa Birliğine üyelik, Türkiye'nin katılımla birlikte, Schengen müktesebatı da dahil olmak üzere bu alandaki müktesebatı tam olarak üstleneceği anlamına gelmektedir. Bununla birlikte, sözkonusu müktesebatın bir bölümü, Konsey'in, Türkiye'nin hazır olup olmadığına ilişkin olarak uygulanmakta olan Schengen değerlendirmesi temelinde iç sınırlarda kişiler üzerindeki kontrolleri kaldırma konusunda karar almasının ardından sadece Türkiye'de uygulanacaktır.

In the example, the punctuation is structures in a different way than in the source text, in order to provide a clearer understanding in the target language. In the Turkish version a comma has been used after the subject in order to stress the role of subject of the word group after "bakımından".

Example 3: In the example below from the EC-Turkey Association Council Decision No 1/1995, no punctuation marks have been used except for the comma placed after the subject in the target version.

> This Chapter shall apply to products other than agricultural products as defined in Article 11 of the Association Agreement.

The translation is as follows:

> Bu Kısmın hükümleri, Ortaklık Anlaşması'nın 11. Maddesinde tanımlanan tarım ürünleri dışındaki ürünlere uygulanacaktır.

This example exhibits a situation where the lack of punctuation in the target text caused obscurity in the meaning. The same obscuracy exists in the source text as well. It is not clear from both texts whether the chapter shall apply to the agricultural products that are defined in Article 11 of the Association Agreement or to the products that are defined in Article 11 of the Association Agreement, excluding the agricultural products.

Example 4: In the following example from the Treaty Establishing the European Economic Community, Article 133, paragraph 3, the punctuation marks in the source text have not been copied in the target text.

> The duties referred to in the preceding subparagraph shall nevertheless be progressively reduced to the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

The translation is as follows:

> Yukarıdaki bentte sözü edilen vergiler, yine de, her bir ülke ve toprağın özel ilişkiler içinde olduğu Üye Devletten ithal edilen ürünler üzerine konulan vergilerin düzeyine aşamalı olarak getirilir.

In this example, two commas, which do not exist in the source text, have been used in the target text before and after the connector, in order to

separate the connector from the rest of the sentence. This is an application in compliance with the target language norms.

Punctuation is one of the least frequently adhered features of EU documents during translation. As the punctuation of two languages should not be imposed on each other, the punctuation marks used for translation might differ to a great extent in the translation. However, if the punctuation is an intrinsic feature of the text, then it should be followed in the target text as well.

## F. Use of the impersonal

Sarcevic quotes from Cornu (1990:281) that the legal texts, characterized by the impersonal, are written in the third person singular (1997:175). The third person form implies a neutral transmitter and it is the form in which to present a statement as authoritative (quoted from Bowers 1989:30 in Sarcevic 1997:175). Since laws prescribe rules for the regulation of human affairs, they are directed to legal personalities. The persons whose rights and duties are affected by a particular law are legal subjects (Sarcevic 1997:175). It should also be noted that passive constructions make the language more impersonal, thus reducing the directness of attribution to the agent. In legal language this is significant, because it also reduces blame attribution
(http://artsweb.bham.ac.uk/MToolan/Gibbons.doc).

Sarcevic also points to the use of passive forms as one of the most common methods of emphasizing the impersonal in all languages (1997:177).

Sarcevic further discusses that legal translators were formerly advised not to transform active into passive provisions and vice versa, as this would be overstepping their authority. Generally speaking, such transformations are now deemed acceptable if the substance remains unchanged. Moreover, translators

are sometimes encouraged to use such transformations as a means of improving clarity or shifting emphasis (1997:177). Thus as in all the methods, on the condition that the selection of strategy does not change the effect of the target text on the target reader, it is acceptable to passivize the target sentence in the translation.

Example 1: In the following example from the Regulation No 1488/1996, Article 6.1, the source active sentence has been made passive in the target text.

> Community financing shall notably be in the form of grants or risk capital. Concerning cooperation measures in the field of the environment it may also take the form of interest rate subsidies for loans granted by the Bank from its own resources.

The translation is as follows:

> Topluluk finansmanı esas olarak hibe veya risk sermayesi biçimindedir. Çevre konusundaki işbirliği önlemleri ile ilgili olarak Banka'nın kendi kaynaklarından sağladığı krediler için faiz sübvansiyonu biçiminde de finansman sağlanabilir.

In this example, the second sentence is an active sentence in the source text, whereas in the subject of the target sentence "it" is omitted, as in the translation the sentence is made passive. In the Turkish translation it literally says "Financing can be provided in the form of interest rate subsidies granted by the Bank from its own resources".

Example 2: In the example below from the Regulation No 1488/1996, Article 8.5, the active source sentence has been passivized.

> Financing proposals shall include indications of the contracts to be expected, including the estimated values, the procedure for awarding them and the planned dates for the invitations to tender.

The translation is as follows:

> Finansman tekliflerinde, tahmini bedelleri, ihale usulleri ve öngörülen ihaleye çıkış tarihleri dahil, yapılması beklenen sözleşmelere ilişkin hususlar belirtilir.

In this example, the literal translation of the source sentence reads: "In the financing proposals, issues related to the contracts ... are determined", thus making the source sentence passive in the target text.

Example 3: In the following excerpt from the 2004 Regular Report, the active source sentence has been passivized in the target sentence.

> The Helsinki European Council meeting in December 1999 concluded that:
> "Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States. Building on the existing European Strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms."

The translation is as follows:

> Aralık 1999 tarihli Helsinki Zirvesinde, "Türkiye, diğer aday ülkelere uygulanan kriterler esas alınarak, Birliğe katılma amacı taşıyan bir aday ülke olarak değerlendirilmektedir. Mevcut Avrupa stratejisine göre, Türkiye de diğer aday ülkeler gibi, reformlarını hızlandıran ve destekleyen bir katılım öncesi stratejisinden yararlanacaktır" kararı alınmıştır.

In this example, the third person is translated as passive in the target text, emphasizing the impersonal, thus reducing the directness of attribution to the agent.

Example 4: In the following example from the Treaty establishing the European Economic Community, Article 141, the active source sentence has been passivized in the target text.

The rules of procedure shall determine the quorum.

The translation is as follows:

Toplanma yeter sayısı iç tüzükle belirlenir.

It is to be understood from the above examples that in the Turkish translations of the EU documents there is a tendency to passivize the active source sentences. This might be due to the reason that Turkish legal documents favour passive constructions more than active constructions.

## G. Use of shall, will, must and may

The words "shall", "will", "must" and "may" are used very frequently in the legal texts, sometimes with meanings different from the ordinary usages. The use of shall has been pointed out by Altay (2002) quoting from Tiersma (1999:105) as; another feature of the English legal language is the modal verb "shall." In ordinary English, "shall" typically expresses the future tense, while in English legal language "shall" does not indicate futurity, but it is employed to express a command or obligation (Tiersma 1999:105). However, in Turkish legal documents, the way of expressing legal obligation is using simple present tense. Similarly, in http://www.forum-legal.com/news7_int.PDF, the use of these words has been explained as;

> In contracts written in English, it is usual to find the words *shall*, *will*, *must* and *may* used over and over again. The words are used in different contexts. In the third person *will* refers to the future ('he will go' means he intends to go) whereas *shall* indicates an imperative ('he shall go' means that he is obliged to go). Therefore, in legal documents drafted in the third person, obligations are often expressed using *shall*. Shall is frequently overused to indicate the future. This should be

avoided. *Must* is a good replacement for shall when expressing the imperative. May is used in the following situations:

- to express a possibility that something may be done
- to indicate that one has a discretion to do that thing
- to indicate a wish

The following words are generally used in the contexts suggested:

- 'is entitled to' indicates a party's right
- 'is not entitled to' indicates that a party does not have a right
- 'may' indicates a party's discretion to do something
- 'may not' indicates that a party does not have discretion to do something
- 'must' or 'shall' indicates an obligation to do something
- 'must' can also be used to indicate a condition precedent
- 'is not required to' indicates that there is not duty to do something

Example 1: In the following example from the Negotiating Framework for Turkey, Article 21, "will" and "may" have both been translated in future tense.

> Where relevant, benchmarks will also include the fulfillment of commitments under the Association Agreement, in particular those pertaining to the EU-Turkey customs union and those that mirror requirements under the *acquis*. Where negotiations cover a considerable period of time, or where a chapter is revisited at a later date to incorporate new elements such as new *acquis*, the existing benchmarks may be updated.

The translation is as follows:

> İlgili durumlarda, performans kriterleri aynı zamanda Ortaklık Anlaşması ve bilhassa AB-Türkiye Gümrük Birliği'ne ilişkin taahhütlerin ve müktesebat çerçevesindeki benzer gereklerin uygulanmasını da içerecektir. Müzakereler uzun bir zaman dilimine yayılmışsa, ya da örneğin geçici olarak kapatılmış bir fasla müktesebatta yenilik dolayısıyla geri dönülmüş ise mevcut performans kriterleri güncellenecektir.

In this example, no difference has been made in the translation of "will" and "may"; both have been translated in the future tense. The translation of "will" has been duly made in the Turkish. Although "may" indicates a possibility in the source text,

this meaning has not been rendered in the target text, causing a loss in the meaning of the sentence.

Example 2: In the following excerpt from Council Regulation 104/2000, Article 6, "shall" has been translated as to indicate futurity.

> A Member State shall grant recognition to a producer organisation which has its official headquarters on its territory but some of whose members are nationals of one or more other Member States, provided the conditions laid down in Article 5 are complied with.

The translation is as follows:

> Bir Üye Devlet, Madde 5'te verilen koşullara uyulması koşuluyla, merkezi kendi bölgesinde olup, üyelerinin bazılarının diğer Üye Devletlerden birinin ya da daha fazlasının vatandaşı olduğu bir üretici örgütü tanıyacaktır.

This instance is an example of common use of "shall" to indicate futurity in the translation of EU documents into Turkish. Nearly half of the translations I have scrutinized, "shall" was translated in the future tense.

Example 3: In the following example from the Council Regulation No 2792/1999, Article 3, "shall" has been translated as "olmalıdır".

> Programming, defined in Article 9(a) of Regulation (EC) No 1260/1999, shall be in accordance with the objectives of the common fisheries policy and with the provisions of the multiannual guidance programmes for the fishing fleets referred to in Article 4 of this Regulation. To this end, it may be revised as necessary and in particular at the end of each period of application of the multiannual guidance programmes.

The translation is as follows:

> 1260/1999 (EC) sayılı Tüzükte, Madde 9(a)'da tanımlanan programlama, ortak balıkçılık politikası hedeflerine ve bu Tüzüğün 4. Maddesinde söz edilen balıkçılık filolarının çok yıllık kılavuz programlarındaki hükümlere uygun olmalıdır. Bu bağlamda, gerektiğinde

> özelikle de çok-yıllık kılavuz programlarının her uygulama periyodu sonunda revize edilebilir.

In this example we see a rare instance of the use of "shall"; here it has been translated in the meaning of "must". Although the intended meaning in the source language is "must", "shall" should be translated in simple present tense in Turkish.

Example 4: In the example below from the EC-Turkey Association Council Decision 1/1995, Article 8, "shall" has been translated as to indicate futurity, and the simple present tense has been translated as simple present again.

> This provision shall not preclude the application by Turkey, with effect from the date of entry into force of this Decision, of Community instruments deemed to be of particular importance.
>
> The Parties stress the importance of effective cooperation between them in the fields of standardization, metrology and calibration, quality, accreditation, testing and certification.

The translation is as follows:

> Bu hüküm, bu Kararın yürürlüğe giriş tarihinden itibaren, özel önem atfedilen Topluluk araçlarının Türkiye tarafından uygulanmasına engel teşkil etmeyecektir.
>
> Taraflar standardizasyon, metroloji ve kalibrasyon, kalite, akreditasyon, ölçümleme ve belgelendirme konularında aralarında etkin bir işbirliğinin tesisinin önemini vurgularlar.

In this example, "shall" has been translated in the future tense, and the simple present as simple present again in the target text. Here rises the question of decision how to depict, in the target language, the difference that exists between "shall" and simple present tense in the source text.

In view of the above examples of the translations of "shall", "will" and "may", we can say that there is no consistency with regard to the strategies for their

translation into Turkish. Especially for the translation of "shall", a big proportion of the translations are made in the future tense.

Although this thesis is about the methods used in syntactic and lexical levels in the translation of EU documents into Turkish, the syntactic analysis reveals that we cannot define methods of translation for the syntactic features of the legal EU documents. We cannot speak of methods, but of tendencies on the syntactic level: the tendencies towards source oriented translations and target oriented translations. The examples given in this part are chosen from a wide range of EU documents and their translations into Turkish. In most of the criteria, the examples from both tendencies, i.e. source oriented and target oriented, have been given on purpose. The reason for this is to depict the inconsistency in the translation of syntactic features into Turkish. As translation strategies for the translation of syntactic features of EU documents into Turkish do not exist, the translations are made according to various demands of receivers from various fields, or haphazardly, upon the personal choices of the translator. The lack of a list of methods for the translation of the syntactic features, accepted by the translation scholars and the translators of the field, results in many inconsistent translations of the same type of document. This fact leads to the result that the reliability of the translations is questioned by many. Therefore setting up some guidelines for the translation of EU documents would help the translators working in this field to defend their choices when faced with unacceptable demands of the receivers. This kind of a document would be of benefit to the students of the Legal Translation Courses in the Departments of Translation and Interpreting; in the long run, the strategies developed will effect the translations of the EU documents into Turkish, through these students; thus leading to a standardized format of the EU documents in Turkish and strategies of translation thereof.

# 4. ANALYSIS ON LEXICAL LEVEL

In this part of the thesis, lexical analysis of the translations of the EU documents into Turkish will be carried out. The aim is to analyze the methods used in the translation of EU documents into Turkish. The study will be carried out on a descriptive basis. Due to the inherent characteristics of the EU documents, the lexical units to be dealt with in this chapter do not consist of legal terms solely. The legal EU texts, which are regulatory documents in all the areas falling under the scope of the jurisdiction of the European Union, include many technical terms in addition to the legal terms. Therefore, we should also reckon that the terms we are dealing with are not purely legal terms, but have become legal terms through legal documents elaborating the technical issues as well.

The following methods will be taken as a basis for the analysis of the translation of single words and phrases of the EU documents:

A. Literal Equivalents
B. Finding the functional equivalence
C. Paraphrasing (lexical expansion)
D. Borrowings
E. Neologisms

## A. Literal Equivalents

Altay states that in the literal translation method the source term is translated as lexical word for lexical word, and making adjustments of prepositions, endings, and other grammatical features if necessary (2002).

Newmark (1977:60-62) suggests that literal translation is first method to be resorted in legal translation (quoted in Altay 2002:163). Weston (1983:209) defines this method as the basic method in the translation of legal documents (quoted in Altay 2002:164). This method is to be found in an intertwined manner with the method of neologisms. As the new term is being coined, word-for-word translation of the source term is resorted to.

Example 1: In the following example from the Negotiating Framework for Turkey, Article 2, the phrase "open-ended process" has been translated literally, i.e. word-for-word as "açık uçlu süreç".

> As agreed at the European Council in December 2004, these negotiations are based on Article 49 of the Treaty on European Union. The shared objective of the negotiations is accession. These negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.

The translation is as follows:

> Aralık 2004 AB Zirvesi'nde üzerinde mutabık kalındığı üzere bu müzakereler, Avrupa Birliği Antlaşmasının 49. maddesini temel almaktadır. Müzakerelerin ortak hedefi katılımdır. Bu müzakereler, sonucu önceden garanti edilemeyen açık uçlu bir süreçtir. Birliğin hazmetme kapasitesi de dâhil olmak üzere, Kopenhag kriterlerinin tamamı dikkate alınarak, üyelik yükümlülüklerinin tümünü tam olarak üstlenmek durumunda olamadığı takdirde, Türkiye'nin mümkün olan en güçlü bağlarla Avrupa yapılarına tam olarak demirlenmesi sağlanmalıdır.

In this example, the translator opted for translating the phrase word-for-word, by abstaining from any kind of interpretation of the meaning.

Example 2: The following example from the Negotiating Framework for Turkey, Article 4, exhibits that the phrase "zero-tolerance policy" has been literally translated in the target text as "sıfır-hoşgörü politikası".

> The Union expects Turkey to sustain the process of reform and to work towards further improvement in the respect of the principles of liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, including relevant European case law; to consolidate and broaden legislation and implementation measures specifically in relation to the zero-tolerance policy in the fight against torture and ill-treatment and the implementation of provisions relating to freedom of expression, freedom of religion, women's rights, ILO standards including trade union rights, and minority rights.

The translation is as follows:

> Birlik, Türkiye'nin, reform sürecini devam ettirmesini ve ilgili Avrupa içtihatı da dâhil olmak üzere, özgürlük, demokrasi, hukukun üstünlüğü ve insan haklarına saygı ve temel özgürlükler ve hukuk devleti olmak yönünde daha da ilerlemek için çalışmasını; özellikle işkence ve kötü muameleyle mücadelede sıfır-hoşgörü politikası ile ilgili mevzuatı ve uygulama tedbirlerini pekiştirmesini ve genişletmesini; ve ifade özgürlüğü, ibadet özgürlüğü, kadın hakları, sendikal haklar da dâhil olmak üzere Uluslararası Çalışma Örgütü (ILO) standartları ile azınlık haklarına ilişkin düzenlemeleri uygulamasını beklemektedir.

In this example, the source term has been translated word-for-word; even the punctuation in the source phrase has been adhered to.

Example 3: In the following example from the Treaty establishing the European Economic Community, Article 46, the phrase "countervailing charge" has been translated literally.

> Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of

> this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The translation is as follows:

> Bir Üye Devletteki herhangi bir ürünün, diğer bir Üye Devletteki benzer bir ürünle rekabet durumunu etkileyen bir ulusal Pazar organizasyonuna ya da eş değerde sonuç doğuracak herhangi bir iç mevzuata tabi olması durumunda, Üye Devletler tarafından bu tür organizasyon ya da mevzuatın bulunduğu Üye Devletten ithal edilen bu ürüne o Devletçe ihracat sırasında telafi edici bir vergi uygulanmamış ise, o malın girişi sırasında telafi edici bir vergi uygulanır.

The phrase "countervailing charge" has been defined as a duty imposed to offset the advantage to foreign producers derived from a subsidy that their government offers for the production or export of the article taxed" in the *Webster's Third New International Dictionary* (1993:520). The term has been translated as "telafi edici vergi" in the Turkish text, by using the method of literal translation. The term has been rendered in the target text in such a way as to leave no scope for interpretation or explanation to the translator.

The method of finding literal equivalents is the most frequently used method in the translation of EU documents into Turkish.

## B. Finding the Functional Equivalence

Sarcevic discusses that the term functional equivalence is a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system (1997:236). She quotes from Weston (1991:23) that the technique of using a functional equivalent may be regarded as the ideal method of translation (1997:236). Alcaraz Varo&Hughes state that any translation should attempt to be as accurate as possible and should never take refuge in sheer literalism; according to them, the aim, after all, in legal as in other

forms of translation is to provide target versions that are at least as readable and natural as their source predecessors (2002:178-179).

According to Alcaraz Varo&Hughes,

> If we must have a name for the type of legal translation we are proposing, we could do worse than call it 'indirect' translation. The essence of the method is to produce on the target reader an equivalent effect to that produced by the source text. Both terms suggest avoidance of calques and cognates and other forms of automatic reproduction of source syntax and terminology, while at the same time implying that, by operating certain linguistic transformations, the translator should, by indirections find directions out (2002:180).

Altay discusses that the method of finding the functional equivalence is using a TL expression that is the nearest equivalent concept. Of course it is much more difficult to find the functional equivalent of a legal SL term where the legal institutions of two cultures do not have much in common (2002).

Example 1: In the translation of the source word "screening" in the Negotiating Framework for Turkey, Article 19, the target version reads as "tarama".

> The commission will undertake a formal process of examination of the acquis, called screening, in order to explain it to the Turkish authorities, to assess the state of preparation of Turkey for opening negotiations in specific areas and to obtain preliminary indications of the issues that will most likely come up in the negotiations.

The translation is as follows:

> Komisyon, müktesebatı Türk makamlarına anlatmak, belirli alanlarda müzakereleri açmak için Türkiye'nin hazırlık durumunu değerlendirmek ve müzakerelerde gündeme gelmesi kuvvetle muhtemel konulara dair ilk verileri toplamak için tarama olarak adlandırılan, müktesebatın incelenmesine dair resmi süreci yürütecektir.

The word "screening" is a common word without any legal references, which is also used in daily conversation, and in the EU context, it has been attributed a meaning

different from its common usage to denote for a process of "examining methodologically in order to make a separation into different groups" (*Webster's Third New International Dictionary* 1993:2040). In the translation of this word, the method of finding the functional equivalence has been used, so that the term is meant to convey the process of "evaluating the compatibility of each applicant country's legislation with Community rules".
http://europa.eu.int/scadplus/glossary/screening_en.htm

Example 2: In the following paragraph from the Treaty establishing the European Economic Community, Article 197, the word phrase "rules of procedure" has been translated as "iç tüzük" in the target version.

> The rules of procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.

The translation is as follows:

> İhtisas grupları ile alt-komitelerin oluşum şekli ve görev alanı iç tüzükte belirlenir.

In the *Glossary for the European Union Terms* (2005), the Turkish version of the term "rules of procedure" is "usul kuralları". In this glossary, the method of literal translation has been adopted. However in the target text, the method of finding the functional equivalence has been used. In the *Ekonomi ve Hukuk Terimleri Sözlüğü* (Tuğlacı 2002:438), the Turkish translation of "rules of procedure" is given as "yargılama usulleri". In the *Ansiklopedik Hukuk Sözlüğü* (Şafak 1996:200), the description of İç Tüzük reads as "dahili nizamname, dernek, ortaklık ve meclislerin dahili işleyişini düzenlemek üzere çıkarılan tüzük". In *Merriam Webster's Third New International Dictionary* (1993:1807), the term "rules of procedure" has been defined as "an established way of conducting business (as of a deliberative body) : as the accepted usage of parliamentary bodies; established manner of conducting

judicial, business and litigation including pleading, evidence and practice". Here the rules of procedure for the Economic and Social Committee are in question, thus the internal operation thereof is being regulated. Therefore, the counterpart of the term in Turkish, referring to the "trial procedures" does not fit in this context.

Example 3: In the following examples, the term "regulation" which was explained earlier in detail, has been translated as "düzenleme" in the first target text. The same term has been translated as "tüzük" in the translation of another regulation, and again translated as "yönetmelik" in the translation of another regulation.

> "Council Regulation (EC) No 1263/1999 of 21 June 1999 on the Financial Instrument for Fisheries Guidance"

The translation is as follows:

> "Balıkçılık Yardımı için Mali Enstrüman hakkında 21 Haziran 1999 tarihli Konsey Düzenlemesi (EC) No: 1263/1999"

> "Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds"

The translation is as follows:

> "Yapısal Fonlara ilişkin genel hükümleri içeren 21 Haziran 1999 tarih ve EC 1260/1999 sayılı Konsey Tüzüğü"

> "Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector"

The translation is as follows:

> "Su ürünleri sektöründe Topluluk yapısal yardımı hakkındaki ayrıntılı kuralları ve düzenlemeleri belirleyen 2792/1999 sayılı Yönetmeliği (EC) değiştiren 20 Aralık 2002 tarihli ve 2369/2002 sayılı Konsey Yönetmeliği (EC)"

The same terms in the same type of legal EU documents have been translated in three different versions. In the first example, the method of literal translation was used. In the second and third examples, the method of finding the functional equivalence was used. The definition of "düzenleme" in *Ansiklopedik Hukuk Sözlüğü* (Şafak 1996:115) states "tanzim etme, bir senet veya sözleşmeyi yapma, imzaya hazır hale getirme, yürürlükteki kurallara gore resmi bir işlemi hazırlayıp imzalama". The definition of "tüzük" in the same dictionary (Şafak 1996:640) states "nizamname, kaunların uygulanma biçimini ve temel ilkelerini açıklamak amacıyla, Danıştayın da görüşü alınmak üzere Bakanlar Kurulunca çıkartılan Cumhurbaşkanının onayından sonra Resmi Gazetede yayımlanan yazılı hukuk metni". The definition of yönetmelik" in the same source (Şafak 1996:677) is given as "talimatname, bir idarenin iç yapısını ve çalışma tarzını gösteren, kanun ve tüzüklere dayalı olarak çıkartılan yazılı metin". As I have dealt with in earlier chapters, the definition of "regulation" in the EU legislation states that "*Regulations are laws adopted by the Council from Commission proposals which are directly applicable and binding in all EU Member States without the need for any national implementing legislation*"
http://europa.eu.int/eur-lex/en/about/pap/process_and_players2.html

As we see, the definitions of "düzenleme", "tüzük" and "yönetmelik" do not perfectly match with that of "regulation" which is a system-bound source term; this is due to the fact that we cannot arrive at a one-to-one correspondence between the instruments of two legal systems. Therefore in the search for the functional

equivalents, the choices of the translators can be based on personal interpretation, or some extra-linguistic factors, such as the demands of the receiver.

## C. Paraphrasing (Lexical Expansion)

A functional equivalence is inadequate when one or more of its essential characteristics differ from those of the source term in all or some contexts. In such cases, translators can sometimes compensate for the incongruency by using methods of lexical expansion to delimit or expand the sense of the functional equivalent (Sarcevic 1997:250).

Altay explains the method as "this method is explaining the SL concept if it is unfamiliar to the target reader, when there is no equivalent institution or concept in the target culture and when a literal translation will make no sense." (2002).

Example 1: In the following example from the Negotiating Framework for Turkey, Article 21, the term "benchmark" has been translated as "performans kriterleri (benchmarks)" in the target version.

> Building on the Commission's Regular Reports on Turkey's progress towards accession and in particular on information obtained by the Commission during screening, the Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter.

The translation is as follows:

> Konsey, Komisyon'un İlerleme Raporlarını ve bilhassa tarama sürecinde edindiği bilgileri dikkate alarak, Komisyon'un tavsiyesi üzerine ve oybirliğiyle müzakere fasıllarının geçici olarak kapatılması ve gerekli hallerde her bir faslın açılması için performans kriterleri (benchmarks) belirleyecektir.

Here two methods, namely paraphrasing and neologism have been used. The word "benchmark" has been defined as "a point of reference from which

measurements of any sort may be made" in the *Merriam Webster's Third New International Dictionary* (1993:203). In the *Glossary for the European Union Terms* (2005), the Turkish version of the term "benchmark" is given as "sabit marka". The source term has been translated by lexical expansion, thus by explaining the term in the target text.

Example 2: In the Council Regulation No 1260/1999, the term "leverage effect" has been rendered as "düzenleyici ve eşitleyici manivela etkisi" in the target text.

> Whereas, in order to strengthen the leverage effect of Community resources by favouring as far as possible recourse to private sources of financing and to take better account of the profitability of the projects, the forms of assistance available from the Structural Funds should be diversified and the rates of assistance differentiated with a view to promoting the Community interest, encouraging the use of a wide range of financial resources and limiting the contribution of the Funds by encouraging the use of appropriate forms of assistance; whereas, to that end, reduced rates of intervention should be established in the case of investments in forms and infra-structure projects which generate substantial revenue; whereas for the purpose of this Regulation, substantial net revenue should be tentatively defined as revenue higher than 25 % of the total cost of the investment concerned;

The translation is as follows:

> Topluluk kaynaklarının düzenleyici ve eşitleyici manivela etkisini güçlendirmek ve bunun için de mümkün olduğu ölçüde özel finansman kaynaklarına yönelmek, bu arada projelerin karlılığını daha iyi gözetmek amacıyla, Yapısal Fonlardan yapılacak yardım biçimlerinin çeşitlendirilmesi ve yardım oranlarının Topluluğun çıkarları gözetilerek, finansman için değişik kaynaklara başvurarak ve uygun yardım biçimlerine yönelerek Fon katkılarını sınırlandıracak biçimde ayrıştırılması gerektiğinden; bu doğrultuda, önemli gelir sağlayacak yatırımlarda ve altyapı projelerinde müdahale oranlarının azaltılması gerektiğinden; bu Yönetmeliğin amaçları açısından önemli miktarda net gelir kavramı, ilgili yatırımın toplam maliyetinin en az % 25'inden fazla gelir olarak tanımlanacağından;

The meaning of the term "leverage effect" has been expanded with two additional qualifiers "düzenleyici" and "eşitleyici" to stress the results of the effect in question, thus clarifying the source term in the target text.

Example 3: In the following example, the term "aquaculture" has been rendered as "su ürünleri yetiştiriciliği".

> Council Regulation (EC) No 788/96 of 22 April 1996 on the submission by Member States of statistics on aquaculture production

The translation is as follows:

> Üye Devletler tarafından su ürünleri yetiştiriciliği üretimiyle ilgili istatistiklerin sunulmasına ilişkin 22 Nisan 1996 tarihli ve 788/96 sayılı Konsey Yönetmeliği (EC)

Although the term "yetiştiricilik" on its own is used to denote the "aquaculture" in Turkish among the specialists of the field, the target version in the text has been rendered as "su ürünleri yetiştiriciliği" by explaining and clarifying the meaning of the term in Turkish, mainly due to the fear that the term "yetiştiricilik" can be mixed with, for example, stock-breeding. Naturally, no one would expect the translator to render the term with an obscure meaning; however, in the Turkish fisheries terminology, the word is used as "yetiştiricilik" only.

## D. Borrowings

Sarcevic discusses that in cases where a technical term of a given legal system is to be applied in all the parallel texts of a single instrument, the translator(s) may decide to use the foreign term as a borrowing in the other text(s) (1997:256).

She further states that borrowings are effective in the parallel texts of international instruments adopted for the purpose of establishing uniform laws (1997:257).

Example 1: In the following example from the Treaty establishing the European Economic Community, Article 32, the source term "quota" has been translated as "kota" in the target text, by borrowing the term from the source language.

> In their trade with one another Member States shall refrain from making more restrictive the quotas and measures having equivalent effect existing at the date of entry into force of this Treaty.

The translation is as follows:

> Üye Devletler karşılıklı ticari ilişkilerinde, işbu Antlaşmanın yürürlüğe girdiği tarihte mevcut olan kotalar ile eş etkili tedbirleri daha kısıtlayıcı hale getirmekten kaçınırlar.

The word "quota" has been naturalized in the target language, as the term has been adopted by respecting the target phonologic usages. Sarcevic defines naturalizations as borrowings that have been modified phonologically or graphologically, thus making them more similar to the native words of the target language (1997:258).

Example 2: In the example below, taken from the 1999 Regular Report for Turkey, the term "troika" has been translated as "troyka" in the Turkish version.

> Following the Luxembourg European Council of December 1997, Turkey has refused to engage in any political dialogue with the European Union on the sensitive issues of the territorial dispute in the Aegean, Cyprus and the democratisation process. It has also continued to decline the invitation issued by the Luxembourg European Council to participate in the European Conference. However, in September 1999, FM Cem participated in the GAC luncheon and in early October, a Political Directors Troika meeting (provided for in the Association Council resolution of 30 October 1995 on EU-Turkey political dialogue) has taken place for the first time since October 1997.

The translation is as follows:

> Aralık 1997'deki Lüksemburg Avrupa Konseyi sonrasında, Türkiye, Ege'deki sınır anlaşmazlığı, Kıbrıs ve demokratikleşme süreci gibi hassas konularda Avrupa Birliği ile siyasî diyalog içine girmeyi reddetmiştir. Ayrıca, Avrupa Konferansı'na katılması için Lüksemburg Avrupa Konseyi tarafından yapılan daveti geri çevirmeye devam etmiştir. Ancak, Eylül 1999'da, Dışişleri Bakanı Cem, Genel İşler Konseyi'nin öğle yemeğine katılmış ve Ekim ayı başlarında Ekim 1997'den beri ilk defa (AB-Türkiye siyasî diyalogu üzerine 30 Ekim 1995 tarihli Ortaklık Konseyi kararında öngörülen) bir Siyasî Direktörler Troyka toplantısı gerçekleşmiştir.

The term "troika", which literally means "a Russian vehicle drawn by three horses abreast" (*Webster's Third New International Dictionary* 1993:2451), has been naturalized as "troyka" in the target text. There are also translations where this term is translated as "Üçlü Başkanlık" as stated in the *Glossary for the European Union Terms* (2005), by using the method of finding the functional equivalence. In the EU context, the term is defined as:

> The "Troika" represents the European Union in external relations coming under the common foreign and security policy (CFSP). Since the Treaty of Amsterdam, the Troika has brought together the country holding the Presidency of the Council assisted, on the one hand, by the Secretary-General of the Council in his capacity as High Representative for the common foreign and security policy and, on the other, by the Commission. The Presidency can also be assisted, where necessary, by the representatives of the future Presidency (Article 18 of the Treaty on European Union).
>
> http://europa.eu.int/scadplus/glossary/troika_en.htm

Example 3: In the following paragraph from the Council Regulation No 1260/1999, the term "nomenclature" has been translated as "nomenklatura".

> Whereas the criteria for designating eligible regions and areas should be specified; whereas, to this end, it is appropriate that the identification of the priority regions and areas at Community level should be based on the common system of classification of the regions, referred to as the "Nomenclature of Territorial Statistical Units (NUTS)" established by the

> Statistical Office of the European Communities in cooperation with the national institutes for statistics;

The translation is as follows:

> Söz konusu yardımlardan yararlanacak bölgelerin ve yörelerin belirlenmesinde kullanılacak ölçütler açıklanacağından; bu amaca yönelik olarak, Topluluk düzeyindeki öncelikli bölgelerin ve alanların belirlenmesinin "Bölgesel İstatistik Birimleri Nomenklaturası" (NUTS) adı verilen ve ulusal istatistik enstitüleri ile birlikte Avrupa Toplulukları İstatistik Ofisi tarafından geliştirilen ortak sınıflandırma sistemini temel alması yerinde olacağından;

The term which is defined as "the collective names given to or borne by places in a particular area or region" (*Webster's Third New International Dictionary* 1993:1534) has been naturalized in the target text as "nomenklatura".

## E. Neologisms

In this method, which is to be found most of the time as intermingled with finding literal equivalents, the target terms which occur at the end of the translation process become collocations in the target language. The method does not necessarily entail coining brand-new words; as Sarcevic discusses there are basically three possibilities for creating a new legal lexicon in a bilingual or multilingual jurisdiction: existing terms of ordinary language or another area of specialization can be assigned a legal meaning, existing terms of a third legal system can be used, or new terms can be created. All the above can be regarded as neologisms (quoted from *Encyclopaedia of Language and Linguistics* 1994-III: 1568 in 1997:259).

Example 1: In the following example from the Negotiating Framework for Turkey, Article 3, the word group "capacity to absorb" has been translated as "hazmetme kapasitesi" in the target text. Here the method of neologisms has been used, thus

creating a new EU term in the target language by assigning a legal meaning to a medical term.

> Enlargement should strengthen the process of continuous creation and integration in which the Union and its Member States are engaged. Every effort should be made to protect the cohesion and effectiveness of the Union. In accordance with the conclusions of the Copenhagen European Council in 1993, the Union's capacity to absorb Turkey, while maintaining the momentum of European integration is an important consideration in the general interest of both the Union and Turkey. The Commission shall monitor this capacity during the negotiations, encompassing the whole range of issues set out in its October 2004 paper on issues arising from Turkey's membership perspective, in order to inform an assessment by the Council as to whether this condition of membership has been met.

The translation is as follows:

> Genişleme, Birlik ve Üye Devletlerin içinde bulundukları devamlı oluşum ve bütünleşme sürecini güçlendirmelidir. Birliğin uyum ve etkinliğini korumak için gerekli her türlü çaba gösterilmelidir. 1993 Kopenhag Zirvesi Sonuçları doğrultusunda, Avrupa entegrasyonu ivmesi muhafaza edilirken, Birliğin Türkiye'yi hazmetme kapasitesi gerek Türkiye gerek Birliğin çıkarları açısından göz önünde bulundurulması gereken önemli bir husustur. Komisyon, bu üyelik koşulunun karşılanıp karşılanmadığına ilişkin olarak Konsey tarafından yapılacak değerlendirmeye ışık tutmak amacıyla, Türkiye'nin üyelik perspektifinden kaynaklanan sorunlara ilişkin Ekim 2004 tarihli kağıdında yer alan tüm hususlar açısından değerlendirmek suretiyle, müzakereler sırasında bu kapasiteyi izleyecektir.

Example 2: As for the translation of acronyms, the method of neologisms is also frequently used. In the example below, taken form the Commission Regulation No 1639/2001, Chapter 3E, the acronym TAC, standing for "Total Allowable Catches" has been translated as TAC again, with no reference to what the acronym stands for. In most cases, the procedure for translating acronyms is that the terms standing for the acronym is given in parenthesis in the first instance, and then the acronym as it stands in the source text is used in the rest of the document. It is

also possible to see the examples where another acronym consisting of the initials of the translated words is coined in the target text. In the following two examples, both acronyms have been domesticated in Turkish as their originals.

> The assessment of commercial landings must be made on the basis of the exhaustive data gathered under Council Regulation (EEC) No 2847/93 (2) and on the basis of Council Regulation (EC) No 104/2000 (3) and for the data not covered by these Regulations by sampling and statistical procedures, in such a way that the estimates achieve a precision of level 3 for stocks subject to TAC and quota regulations, level 2 for stocks not subject to TACs and quotas listed within Appendix XII, and level 1 for the other cases,

The translation is as follows:

> Ticari boşaltmaların değerlendirmesi, (EEC) 2847/93 sayılı Konsey Tüzüğü kapsamında bir araya getirilen etraflı veriler bazında ve (EC) 104/2000 bazında yapılmalıdır; ve bu Tüzüklerce kapsanmayan veriler için, tahminler TAC ve kota düzenlemelerine tabi doğruluk düzeyi 3'e, Ek XII'de sıralanmış TAClere ve kotalara tabi olmayan stoklar için düzey 2'e, ve diğer durumlar için düzey 1'e ulaşacak biçimde, örnekleme ve istatiksel prosedürlerle yapılmalıdır

Example 3: The following example from the Council Regulation No 2792/1999 exhibits a usage of the method of neologism, other than the one mentioned in the former example.

> Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds(4) defines the general objectives and tasks of the Structural Funds and the Financial Instrument for Fisheries Guidance ("FIFG"), their organisation, the assistance methods, the programming and general organisation of the aid provided by the Funds and the general financial arrangements;

The translation is as follows:

> Yapısal Fonlara ilişkin genel hükümlerin yer aldığı 21 Haziran 1999 tarihli ve 1260/1999 (EC) sayılı Konsey Tüzüğü([4]), Yapısal Fonların ve Balıkçılık Kılavuzu için Finansal Enstrümanların (the Financial Instrument for Fisheries Guidance-'FIFG') genel hedeflerini ve

> görevlerini, organizasyonlarını, yardım metotlarını, Fonlar tarafından sağlanan yardımın programlanmasını ve genel organizasyonunu ve genel finansal düzenlemeleri tanımlar;
>
> Programming of measures part-financed by the FIFG outside Objective 1 regions shall be in accordance with Article 2(2), second subparagraph of Regulation (EC) No 1263/1999. Articles 14, 15(2), 15(3), first subparagraph, 15(5), 15(6), 15(7), 19(3) and 19(4) of Regulation (EC) No 1260/1999 shall apply.

The translation is as follows:

> Hedef 1 bölgeleri dışındaki FIFG tarafından kısmen finanse edilen önlemlerin programlanması 1263/1999 (EC) sayılı Tüzük, Madde 2(2)' de ikinci alt paragrafa uygun olmalıdır. 1260/1999 (EC) sayılı Tüzükteki Madde 14, 15(2), 15(3), birinci alt paragraf, 15(5), 15(6), 15(7), 19(3) ve19(4) uygulanmalıdır.

In this example, the acronym has been translated in parenthesis in the first instance, and then in the rest of the document, the source acronym is used.

# CONCLUSION

The European Union is founded on the principle of 'unity in diversity': diversity of cultures, nations, customs, - and of languages. Having the principle of plurilingualism as the language policy, where several languages are all treated equally as official and working languages of the organisation, respect for linguistic diversity is a core value for the European Union. It is this diversity that makes the European Union what it is: not a 'melting pot' in which differences are rendered down, but a place where diversity can be celebrated as a source of wealth.

(http://europa.eu/languages/en/chapter/5)

With 20 official languages, European Union is unique among the international organisations, as all the other multilingual international organisations opt for a restrictive model, i.e. by selecting only one or (few) languages as working languages.

This study is based on the courses on legal translation both in the fourth year and in the master's classes of the Translation and Interpreting Department at the Hacettepe University. I have also benefited to a great extent from my experience in the works on the alignment of Turkish fisheries legislation in the Twinning Project for the Fisheries Sector – Legal and Institutional Alignment to the EU Acquis, funded by the European Union.

The official EU documents in all twenty official languages of the Union are parallel texts, are regarded and treated as authentic legal texts in each and every official language in the Union, because all the versions are drafted simultaneously, are equally valid and authentic and no version is superior to the other. The translations of the official EU documents are not considered as legally binding documents in Turkey, as long as they are not put into Turkish legislation and become the wording of the national legislation. Once Turkey becomes a member of the Union,

Turkish will be an official language as well, leaving no necessity to align the national legislation with the EU legislation.

In the syntactic analysis part, the syntactic structures of the source texts have been examined under 7 criteria; namely, the one sentence rule, use of paragraphing, use of negations, use of logical connectors, punctuation, use of the impersonal and use of "shall", "will", "must" and "may".

As for the one sentence rule, it can be said that the sentences are often translated as one sentence again. Especially in the first part of the EU Regulations, the subordinate sentences are often translated as subordinate sentences in the Turkish texts. However it is also possible to see the instances where one sentence rule has not been adhered to in the translations. This might of course be the result of the demands and expectations of the receiver, or personal choice of the translator. Here we should differ between the translations which will serve as unofficial translations in the target system and translations which will serve as a basis for the drafting of national legislation within the alignment process. According to my experience, for the latter circumstance, the receiver opts for maintaining the source structures as much as possible, no matter how complex the sentences are.

The same situation in the one sentence rule applies to the use of paragraphing in the translation of official EU documents into Turkish. Generally the segmentation of the source text is maintained in the translations in the same manner. Paragraphing is a method that relieves the translator; as the structures are split, they become easier for understanding, and therefore it is easier to follow the source norms in the translation. However, the demands of the receiver are again paramount in this criterion as well.

In the translation of the negations in the official EU documents, source norms prevail. However, as stated earlier, as long as the effect is maintained in the translation, the positive statements can be negated, and vice versa.

As for the use of logical connectors, which are words and phrases used as sequencers, contrasters, generalizers and topic introducers, the translations are usually based on literal translation of the connectors, as the same effect is intended to be produced in the target text; therefore sequencers are translated as sequencers, contrasters are translated as contrasters etc. Here we should mention two logical connectors, "whereas" and "having regard to". These two are to be found in the first parts of the EU Regulations and Treaties. There is no unity in the translation of these two connectors; it can be observed that these two connectors are translated in different manners in different texts of the same type. Generally accepted rule is that "whereas" is to be translated as "dikkate alarak" and "having regard to" as "göz önünde bulundurarak", as Altay states (2002).

Punctuation is a criterion that is least frequently adhered to in the translation of official EU documents into Turkish. As the translation scholars like Sarcevic (1997:179) and Mayoral Asensio (2003:104) suggest, abiding by the usage of punctuation is no priority in the translation, because the target punctuation norms should prevail. However, in some cases the lack of punctuation in the source text is maintained in the translation, causing obscurity in the sense of the target sentence. In such a case, if the obscurity also exists in the source text, the target text should also be translated as reflecting the obscurity; if not, the sense should be clarified by the translator through consulting the experts of the field.

The use of impersonal is a characteristic of legal documents in general. As general rules and provisions are stated in the legal texts, the impersonal is used in order to reduce blame attribution. The use of passive is a common method for emphasizing the impersonal in all languages as Sarcevic states (1997:177). In the

translation of EU documents into Turkish, the source norms do not prevail to a great extent. It is also to be observed that active source sentences are sometimes transformed into passive structures.

The use of "shall" in the legal texts can be quite confusing for the laymen, as the indication is different from its ordinary usage. In legal texts, "shall" is used to denote obligation and not futurity. "Shall" should be translated as simple present tense in Turkish, as Altay states (2002). Mistranslation of "shall" is frequently to be observed in the Turkish translations of the EU documents. Here one should question how the translation of simple present tense in the source text should be, and how the difference between "shall" and the simple present tense is to be depicted.

Although the aim of this thesis is to arrive at the methods used in the translation of EU documents into Turkish in syntactic and lexical levels, it is observed from the syntactic analysis that only tendencies towards acceptable and adequate translations can be mentioned. We cannot form a list of methods for ways of translating, e.g. the one sentence rule, punctuation, use of logical connectors etc.

In the lexical analysis part of the thesis, the translation of single words or phrases of the EU documents has been investigated according to the following methods: finding literal equivalents, finding the functional equivalence, paraphrasing, borrowing, and neologisms are to be found.

The method of finding the literal equivalents requires word-for-word translation of the source term. This is a method most frequently used in the translation of EU documents into Turkish. This might be due to the fact that this is a method which works best to check the correctness of the translation through back translation. Therefore, upon the demands of the receiver, the choices are made by the translator in favour of literal equivalents. It is also an easier method to use in the

translation of EU documents, because the translator takes refuge in literalism without the necessity of any interpretation and without risking any mistranslations.

Finding the functional equivalence of the terms without target counterparts is a method favoured by many translation scholars as Weston, Sarcevic, Alcaraz Varo&Hughes etc. According to many theorists, the ideal method in legal translation is finding the functional equivalent. The aim in finding the functional equivalence is to create an equivalent effect in the target text as in the source text. Here lies the question of different legal systems, as this difference poses a big obstacle to the translator. We should of course mention not only the legal terminology; similar problems apply to the terminologies of other fields as well, as the EU documents consist of legal documents regulating the issues from various fields. In this method, the translator must be fully capable of comparing the meanings and references of both source and target terms; it would be advisable to consult the experts of the field while determining the functional equivalent in the target language. This is a method frequently used by the translators of EU documents into Turkish. However, as the demands of the receiver are paramount, this method, as well as the others, is replaced by literal translation.

Paraphrasing is a method where lexical expansion is employed and the terms are explained in order to compensate for the terms that have no target equivalents. According to the translation scholars, this method should be used when no functional equivalent of the source term exists in the target language, or when literal equivalents will not make sense. This method is also used very frequently in the translation of EU documents into Turkish not only in the translation of legal terms, but also of technical terms, the equivalents of which do not exist in Turkish.

Borrowing is a method where source terms are used in the target language by naturalizing, i.e. by adopting the source term in the target language through respecting the target phonological or graphological usages in the target language.

As Sarcevic suggests, borrowings are effective in the parallel texts of international instruments adopted for the purpose of establishing uniform laws (1997:257). The use of this method is to be observed very often in the translation of EU documents into Turkish, as the aim of legal alignment is to establish national laws fully in compliance with the EU legislation.

Neologisms are the source terms which are transferred to the target language as they stand in the source language, either by copying the source term as it is or by creating a new term in the target language. This method is often to be found as intermingled with literal translation, because as the new terms are coined, they are often created by word-for-word translation of the source term. In the translation of acronyms, this method is frequently used; the source acronym is taken into the target language as it is written in the source language. This method is also frequently used just like the methods of borrowing and finding literal equivalents, in the translation of EU documents into Turkish, especially when the receiver's concerns for the creation of a text that is as close as possible to the original are outstanding.

It is obvious that the demands of the receiver are the main factor dominating the choices of the translator. Here one should question the identity of "the receiver". The translation of EU documents into Turkish is required by the state authorities and to some extent by the non-governmental organisations in the pre-accession period. Thus the state institutions like the ministries, the Office of the Prime Ministry, the Office of the Presidency, the Grand National Assembly of Turkey, State Planning Organisation and non-governmental organisations can be listed as the receivers of the translation of EU documents. The translations needed by the state institutions are obtained through the translations which the Secretariat General for EU Affairs has had made, through the translation companies hired by state authorities, through the in-house translators of the state institutions or through the translations made by the Delegation of the EU Commission to Turkey.

When we have a look at the receivers on the personal level, the experts in various fields are the true receivers of the translated texts. In most cases, they do not interfere in the decision-making of the hired translators, however with the in-house translators the decisions are made jointly with the expert officials who can speak English, or at least who has a good knowledge of the terminology. Therefore in such cases, the choices of the translator are determined by the end-users of the text. As these officials are no experts in translation, the translators are most of the time obliged to translate word-for-word as a result of the concerns of the end-users of the text for producing the same wording of the original, and not the equivalent effect. Therefore literal translation is the most favoured method in the translation of EU documents. If this method does not suffice, then the functional equivalent is tried to be found. Only after the search for equivalents through these two methods that the methods of paraphrasing, borrowings, neologisms are employed. The method of finding neutral terms is not a favoured one, because this method is regarded as a failure, as the full and exact meaning of the term cannot be covered. Generally speaking, the tendency in the translation of EU documents into Turkish is source-oriented.

As mentioned earlier, the official versions of EU legal documents are not considered as translations, as no official language has superiority on the other. Therefore the primary and secondary legislation of the EU are co-drafted in all twenty languages. This is a relieving factor for the translator in that most of the translation problems can be solved at the same time the text is being produced.

We cannot of course mention such a situation for the Turkish versions of the EU documents, because in the pre-accession period, the Directorate General for Translation of the EU Commission has no direct involvement in the translation of the EU legislation in the candidate countries.

Attempts like the formation of a glossary for EU terms by the Secretariat General for EU Affairs should be appreciated, as this is to be regarded as a step towards the standardization of the EU terminology covering various fields. The draft of this glossary is being investigated at the time being by the scholars of the related fields including translation scholars from the Translation and Interpreting Departments of the universities. However the scope of this kind of works should be extended as to include not only the lexical field, but also the syntactic field.

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