



# **Quantifying Quality Costs and the Cost of Poor Quality in Translation**

***Quality Efforts and the Consequences of Poor Quality in the European Commission's Directorate-General for Translation***



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## 1. Introduction

What is quality in translation? While it is easy to identify an incorrect or inaccurate translation as a translation of poor quality, excellence is almost invisible. Quality is often taken for granted and the fact that it comes at a cost – or rather requires an investment – is often overlooked. Similarly, the full dimension of the costs and consequences of poor quality translations is not always visible for managers and political decision-makers.

Quality in translation has always been the subject of intense discussions within and outside public translation services<sup>1</sup>.

International organisations are increasingly affected by public deficits and indebtedness, leading to calls for more accountability, efficiency and transparency. Most of them are confronted with zero-growth or a reduction of resources.

The translation services of these organisations face the same challenges, but they have an additional 'handicap' since their role is not always clear or recognised within international organisations, which often makes them a primary target for budget cuts. It is therefore essential to make the best use of the resources available and to identify if and how existing practices can be improved.

This study will take the operations of the European Commission's Directorate-General for Translation (hereafter referred to as "DGT") as a basis to propose a methodology for a cost-based evaluation that may be of use for other public translation services. DGT's own experience, challenges and solutions might well prompt other organisations to use them and adapt them to their work environment.

Unlike a manufacturing company or a private sector services provider, DGT does not suffer from a decrease in sales or lower profit margins due to bad quality. But poor quality can damage its reputation as a centre of excellence in translation, both within and outside the Commission. Moreover, like other public sector organisations, DGT is under continuous scrutiny and pressure to enhance its efficiency, i.e. do more with fewer resources<sup>2</sup>.

The 2010 EU Budget Review calls for a "rigorous search for increased efficiency and performance in administrative resources" and explicitly mentions "the costs of working in 23 languages"<sup>3</sup>. Furthermore, it advocates more *intelligent spending* and more synergies between the EU Institutions in the area of translation. In this context, DGT must be able to show its added value for the Commission and the European project; providing high-quality translations is one of DGT's major selling points and therefore key in this effort.

Poor quality has a cost for DGT and the Commission, but even more outside the EU institutions; poor translations – and poor originals for that matter – can lead to damages suffered by citizens or companies, and to legal uncertainty and court cases. The costs this entails are difficult to quantify, but they are likely to be considerable.

Translation in the Commission costs some EUR 300 million<sup>4</sup>.

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<sup>1</sup> For the purposes of this study, "public translation services" means translation services of international organisations, such as the EU, the UN, OECD, etc.

<sup>2</sup> For an interesting comparison between DGT and private sector translation services see this article: <http://www.common sense advisory.com/Default.aspx?Contenttype=ArticleDetAD&tabID=63&Aid=610&moduleId=390> by Common Sense Advisory.

<sup>3</sup> See COM (2010) 700, p. 19.

<sup>4</sup> See [http://ec.europa.eu/dgs/translation/fag/index\\_en.htm](http://ec.europa.eu/dgs/translation/fag/index_en.htm).





In 2010, DGT produced  $\pm$  1.9 million pages, a large part of which legislation that is binding on the EU's citizens and businesses, and documents destined for the general public. This makes it imperative for DGT to provide high-quality translations; the EU's multilingual system is enshrined in the Treaties, but that in itself is not enough. The translations must be of high quality if the ideal of equal access to information in all official EU languages is to have a positive effect.

If a reduction in resources were to force DGT to diminish its quality efforts, this would at first sight save money, but the overall costs for the citizen and/or the EU budget could in the end actually be much higher, as there would most likely be an increased risk of more requests for corrigenda coming from Member States and of court cases due to translation errors. Apart from the financial consequences for DGT, the EU institutions and EU citizens and companies, there would be a huge, though not easily quantifiable, cost in terms of immaterial damage to the image of DGT, the Commission and the EU, which could in turn lead to a further increase of euro-scepticism.

Translation "oils the wheels" of European integration, and as is the case with cars, poor quality lubricants can cause major problems to the engine.

The present study makes the case that quality efforts in translation are indispensable and worth paying for, as these costs actually save money in the long run. It aims to provide a methodology for calculating:

1. The quality-related costs, *i.e.* quality investment, which in addition to quality control measures in the translation activity includes recruitment, training, IT and translation tools, terminology, etc.
2. The costs of poor quality, *i.e.* the costs of corrigenda, poorly written originals, IT problems, poor quality of external translations, as well as the costs, financial or otherwise, for the Commission, the EU and society in general.

The first part will put the concepts of "quality", "quality costs" and the "cost of poor quality" in a theoretical framework. After that, the study will provide an overview of DGT's activities that have an impact on the quality of its translations, and indicate how the costs and benefits of DGT's quality efforts and the costs of poor quality for DGT can be quantified (chapter 4). Chapter 5 will look into the consequences of poor quality outside DGT, *i.e.* for the Commission and EU companies and citizens, followed by the conclusions in chapter 6.

## 2. Methodology

There is extensive literature in the field of quality management on the concept "cost of poor quality (COPQ) or "poor-quality costs".

This allows us to place the study in the context of quality management, to provide a theoretical framework, based on concepts long established in the world of quality management in the private sector and finally to apply these concepts and principles to DGT's operations.

Taking DGT's operations as a basis, this study aims to give an indication of how to measure quality efforts in public translation services and the consequences of poor quality in monetary terms. The approach chosen is to describe DGT's quality-related activities and provide the elements to be used for making the cost calculation. In most cases the cost of an activity can be calculated by converting the time spent on it into a yearly amount of money. The elements required for such a calculation are:

- (Estimate of) the time spent on a certain activity





- The average yearly cost (salary, IT, office, space, etc.) per staff member. This cost can differ according to the category (e.g. between translators and support staff).
- The number of days worked per year (daily availability rate)<sup>5</sup> (average for the service, not individual staff)

For the purposes of this study the following hypothetical figures will be used to illustrate the calculation method:

Average yearly cost per staff member (translator-AD level)	100 000 EUR
Average yearly cost per staff member (support staff-AST level)	50 000 EUR
The number of days worked per year (daily translation availability rate)	200
Number of hours worked per day	8

For the consequences of poor quality outside DGT we have looked at the impact of cases brought before the Court of Justice of the European Union (hereafter "the Court") and examples of translation errors.

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<sup>5</sup> The number of days worked is the result of deducting all weekends, all public holidays, annual leave, training, absences because of illness or for other reasons, etc.





### 3. The concepts of "Quality", "Quality costs" and "the Cost of Poor Quality" (COPQ)

Calculating the cost of poor quality is only useful if also the costs of ensuring good quality are known, so that the two can be compared and conclusions can be drawn.

This chapter will provide the theoretical framework for the subsequent analysis of DGT's (poor-) quality costs. The literature provides different definitions of the concepts of "Quality costs" and "the Cost of Poor Quality" (COPQ), which are sometimes contradictory and even confusing, as some authors include in the COPQ also the cost of *preventing* poor quality, while others do not.

For the purposes of the present study, the distinction between the definitions of "quality costs" and the "cost of poor quality" is less important than arriving at a categorisation of DGT's overall quality-related costs, be they prevention cost or costs resulting from poor quality. Subsection 3.3 below provides such a categorisation, which in turn is the basis for the cost-analysis in chapter 4.

#### 3.1. What is quality?

"Quality - you know what it is, yet you don't know what it is". This phrase is taken from the book "Zen and the Art of Motorcycle Maintenance"<sup>6</sup>, in which the main character struggles with the question: What is quality? The question even drives the main character of the book temporarily insane, as he finds it impossible to define.

According to ISO Standard 8402, "quality" is defined as the "totality of characteristics of an entity that bear on its ability to satisfy stated or implied needs"<sup>7</sup>.

Most people have a feeling for what has quality and what has not: "You know it when you see it". In some cases it is quite straightforward to assess whether a product has quality or not, but it becomes more difficult if one goes more into detail. For example, when buying a television set, the first requirement is that it actually works. After that, there are criteria as to brightness, contrast, design, service life, etc. These criteria depend on the customer's expectations, which can differ from one buyer to the other. If customers' expectations are met, the product is of a good enough quality: quality is measured against customer satisfaction.

In his "Quality Handbook", Joseph M. Juran<sup>8</sup> provides two meanings that he considers of critical importance to managing quality:

- 1) Quality means those features of products which meet customer needs and thereby provide customer satisfaction. However, providing better quality usually requires an investment and hence usually involves increases in costs. Higher quality in this sense normally "costs more".
- 2) Quality means "freedom from deficiencies" – freedom of errors that require doing work over again or that result in field failures, customer dissatisfaction, customer claims, etc. In this sense the meaning of quality is oriented to costs and higher quality usually "costs less".

Whatever the definition, quality has two dimensions: quality of the process and quality of the output, which also includes timely delivery of a product or service. The better the

<sup>6</sup> Full title: "Zen and the Art of Motorcycle Maintenance - AN INQUIRY INTO VALUES" by Robert M. Pirsig.

<sup>7</sup> ISO 8402 standard, Quality Management and Quality Assurance.

<sup>8</sup> Joseph M. Juran & A. Blanton Godfrey, "Juran's Quality Handbook", 5th Edition, McGraw-Hill (1999), pages 2.1 and 2.2.





process, the better the quality of the output. By efficiently investing sufficient resources in quality there are major gains to be made further down the line: "It takes money to save money". This will be explained in the section below.

### **3.2. Quality Costs and the Cost of Poor Quality**

It is usually more expensive to correct errors than to "get it right the first time", but the latter requires an investment in quality, which, if done properly, is offset by cost savings because less errors occur further down the line. It is a matter of finding the right balance between investing in quality control and working in a cost-effective way.

Quality costing has been primarily used in the manufacturing industry, but nowadays there is a growing interest from commerce, the public sector and service organisations.

Calculating the cost of poor quality (in the sense of occurrence of deficiencies) allows an organisation to determine the extent to which its resources are used for activities that exist only as the result of deficiencies in its processes. Having such information allows an organisation to determine the potential savings to be gained by implementing process improvements.

Improving quality reduces the cost of poor quality; every time a mistake is made, or things are not done right the first time, it costs time and money to repair and rectify. Cutting costs by blanket budget reductions, percentage points or targets usually reduces quality and thus increases the cost of poor quality, if no analysis is made of which factors contribute to good quality and which are hindrances. Poor quality products or service result in unhappy customers and service users. By actually focusing on quality, organisations save money in the long run.

Research has shown that the cost of poor quality (COPQ) is substantial, and often much larger than is shown in accounting reports. For most companies the quality-related cost range from 25 to 40 % of operating expenses<sup>9</sup>. Some of these costs are visible, but a substantial part of these costs is hidden under the surface. This is the so-called "iceberg-effect" (see figure 3.1).

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<sup>9</sup> Juran, p. 8.2.





## The "iceberg effect":

### Costs of Poor Quality

(COPQ)

Internal Failure and External Failure costs.

The obvious and "visible" costs are a small portion of the overall COPQ. The bottom of the iceberg represents the majority of the COPQ and are not as easily identified and quantified.

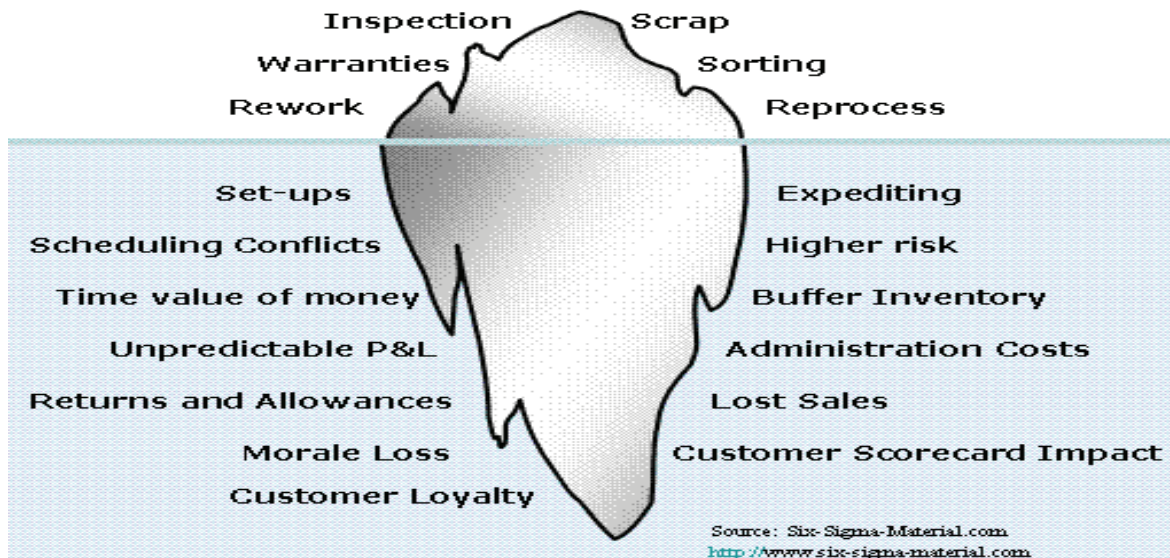


Figure 3.1 – Hidden and visible COPQ<sup>10</sup>

There are different definitions of the concepts of "quality costs" (also referred to as "the cost of quality" or quality-related costs") and the "cost of poor quality" (COPQ) (also referred to as "poor quality costs").

The concept of "quality costs" was first described by Armand V. Feigenbaum in a 1956 Harvard Business Review article<sup>11</sup> as a means to quantify the total of quality-related efforts and deficiencies. His categorisation of quality costs into prevention-appraisal-failure (PAF) has been almost universally accepted for quality costing. He defined the following quality cost areas<sup>12</sup>:

<sup>10</sup> Source: [Six Sigma website](#).

<sup>11</sup> Feigenbaum, Armand V. (November-December 1956) "Total Quality Control", Harvard Business Review 34 (6), quoted on Wikipedia: [http://en.wikipedia.org/wiki/Quality\\_costs](http://en.wikipedia.org/wiki/Quality_costs).

<sup>12</sup> Feigenbaum, Armand V. (1991), Total Quality Control (3 ed.), New York, New York: McGraw-Hill, p. 111.





Cost area		Description	Examples
Costs of control (costs of conformance)	Prevention costs	Arise from efforts to keep defects from occurring at all	<ul style="list-style-type: none"> <li>• Quality planning</li> <li>• Statistical process control</li> <li>• Investment in quality-related information systems</li> <li>• Quality training and workforce development</li> <li>• Product-design verification</li> <li>• Systems development and management</li> </ul>
	Appraisal costs	Arise from detecting defects via inspection, test, audit	<ul style="list-style-type: none"> <li>• Test and inspection of purchased materials</li> <li>• Acceptance testing</li> <li>• Inspection</li> <li>• Testing</li> <li>• Checking labour</li> <li>• Setup for test or inspection</li> <li>• Test and inspection equipment</li> <li>• Quality audits</li> </ul>
Costs of failure of control (Costs of non-conformance)	Internal failure costs	Arise from defects caught internally and dealt with by discarding or repairing the defective items	<ul style="list-style-type: none"> <li>• Scrap</li> <li>• Rework</li> <li>• Material procurement costs</li> </ul>
	External failure costs	Arise from defects that actually reach customers	<ul style="list-style-type: none"> <li>• Complaints in warranty</li> <li>• Complaints out of warranty</li> <li>• Product service</li> <li>• Product liability</li> <li>• Product recall</li> <li>• Loss of reputation</li> </ul>

Table 3.1 – Quality cost areas according to Feigenbaum<sup>13</sup>

The term "quality costs" has different meanings to different people. For some, "quality costs" are the same as "costs of poor quality" (mainly the costs of finding and correcting defective work); others equate the term with costs to attain quality; still others use the term to mean the costs of running the Quality department. In Juran's Quality Handbook, on the other hand, "quality costs" means the cost of poor quality<sup>14</sup>, i.e. in the sense of the costs incurred due to the poor quality of the product and not in the sense of the costs incurred to attain good quality.

Another definition of the "costs of poor quality" (COPQ) or "poor quality costs" is the costs that would disappear if processes and products were perfect, or, as H. James Harrington put it:

*"poor quality cost is defined as all the cost incurred to help the employee do the job right every time and the cost of determining if the output is acceptable, plus any cost incurred by the company and the customer because the output did not meet specifications and/or customer expectations"<sup>15</sup>.*

Harrington continues with the following definitions:

- Prevention of poor quality: all costs involved in helping the employee to do the job right every time (also called cost-avoidance investment).
- Appraisal of poor quality: all costs expended to determine if an activity was done right every time. Often appraisal activities are too late and too little.

<sup>13</sup> Source: [http://en.wikipedia.org/wiki/Quality\\_costs](http://en.wikipedia.org/wiki/Quality_costs).

<sup>14</sup> Juran, p. 8.2.

<sup>15</sup> Harrington, H. James (1987), Poor-Quality Cost, American Society for Quality Control, p. 13-15.





- Internal failure costs: the costs incurred by the company before a product is accepted by the customer because everyone did not do the job right every time.
- External failure costs: the costs incurred by the company because the appraisal system did not detect all errors before the product or service was delivered to the customer.
- Equipment poor quality costs: the investment in equipment used to measure, accept or control the product or service plus the cost of the space that equipment occupies. This includes the cost of the equipment used to print and report quality data (computers, printer...).

Building on Feigenbaum's work, Harrington split up the cost of poor quality into the following categories:

Cost	Description
<p><b>Direct poor-quality costs</b></p> <ul style="list-style-type: none"> <li>• Controllable poor-quality cost               <ul style="list-style-type: none"> <li>– Prevention cost</li> <li>– Appraisal cost</li> </ul> </li> <li>• Resultant poor-quality cost               <ul style="list-style-type: none"> <li>– Internal error cost</li> <li>– External error cost</li> </ul> </li> </ul> <p><b>Equipment poor-quality cost</b></p>	<p>Direct COPQ can be directly derived from entries in the company ledger.</p> <ul style="list-style-type: none"> <li>• Controllable COPQ are directly controllable costs to ensure that only acceptable products and services reach the customer.</li> <li>• Resultant COPQ are costs incurred because unacceptable products and services were delivered to the customer, resulting from earlier decisions about how much to invest in controllable COPQ, i.e. all the money an organisation spends because things were not done right the first time every time<sup>16</sup>.</li> <li>• Internal error costs are the costs made to repair poor quality of a product before it has reached the customer; external error costs are the costs incurred when the product has already reached the customer.</li> </ul> <p>Equipment COPQ is costs to invest in equipment to measure, accept, or control a product or service. It is treated separately from controllable costs to accommodate the effects of depreciation.</p>
<p><b>Indirect poor-quality costs</b></p> <ul style="list-style-type: none"> <li>• Customer-incurred cost</li> <li>• Customer-dissatisfaction cost</li> <li>• Loss-of-reputation cost</li> </ul>	<p>Indirect COPQ is difficult to measure because it is a delayed result of time, effort, and financial costs incurred by the customer. These customer costs add up to lost sales and therefore do not appear in the company's ledger.</p>

Table 3.2 – Cost of poor quality according to Harrington<sup>17</sup>

<sup>16</sup> Harrington, p. 23.

<sup>17</sup> Source: [http://en.wikipedia.org/wiki/Cost\\_of\\_poor\\_quality](http://en.wikipedia.org/wiki/Cost_of_poor_quality).





Based on this categorisation, Harrington gives some examples of poor quality costs.

Cost element		Examples
Direct poor-quality costs	Controllable poor-quality costs	Prevention costs <ul style="list-style-type: none"> <li>• Quality planning (for test, inspection, audits, process control)</li> <li>• Education and training</li> <li>• Performing capability analyses</li> <li>• Conducting design reviews</li> </ul>
		Appraisal costs <ul style="list-style-type: none"> <li>• Test and inspection</li> <li>• Supplier acceptance sampling</li> <li>• Auditing processes</li> </ul>
	Resultant poor-quality costs	Internal error costs <ul style="list-style-type: none"> <li>• In-process scrap and rework</li> <li>• Troubleshooting and repairing</li> <li>• Design changes</li> <li>• Additional inventory required to support poor process yields and rejected lots</li> <li>• Re-inspection and retest of reworked items</li> <li>• Downgrading</li> </ul>
		External error costs <ul style="list-style-type: none"> <li>• Sales returns and allowances</li> <li>• Service level agreement penalties</li> <li>• Complaint handling</li> <li>• Field service labour and parts costs incurred due to warranty obligations</li> </ul>
	Equipment poor-quality costs	
Indirect poor-quality costs	Customer-incurred costs <ul style="list-style-type: none"> <li>• Loss of productivity due to product or service downtime</li> <li>• Travel costs and time spent to return defective product</li> <li>• Repair costs after warranty period</li> <li>• Backup product or service to cover failure periods</li> </ul>	
	Customer dissatisfaction costs <ul style="list-style-type: none"> <li>• Dissatisfaction shared by word of mouth</li> </ul>	
	Loss-of-reputation costs <ul style="list-style-type: none"> <li>• Customer perception of firm</li> </ul>	

Table 3.3 – Examples of poor-quality costs<sup>18</sup>

Furthermore, Harrington identifies so-called "white-collar" costs of poor quality, which include outside education to improve performance, system failure, vendor reviews, customer surveys, personnel PQC (pre-screening of applications, appraisal reviews, absence rate)<sup>19</sup>.

Where Harrington includes prevention costs in the costs of poor quality, Juran's Quality Handbook explicitly excludes<sup>20</sup> these costs from his definition of poor quality costs, but does include them in his definition of "quality costs".

However, both systems, whether they are called "quality costs" or "poor-quality costs" (PQC), are designed to help reduce the costs associated with poor quality<sup>21</sup>.

To better understand poor-quality costs, it is useful to study the theoretical interaction between controllable costs (prevention and appraisal costs) on the one hand and resultant (internal and external error costs) on the other. Does the benefit of an organisation's quality effort outweigh the cost of poor quality? At which point is it no longer beneficial to invest in quality measures, because the investment is not outweighed by the gains achieved through less errors? Or can we even achieve higher quality and at

<sup>18</sup> Ibidem.

<sup>19</sup> Harrington, p. 103-113.

<sup>20</sup> See Juran, section 8.9: "[C]learly, prevention costs are not a cost of poor quality".

<sup>21</sup> Harrington, preface, p. xv.





the same time reduce costs? By weighing the economic efficiency on quality, a quality programme should consider the following:

Cost of Quality chart

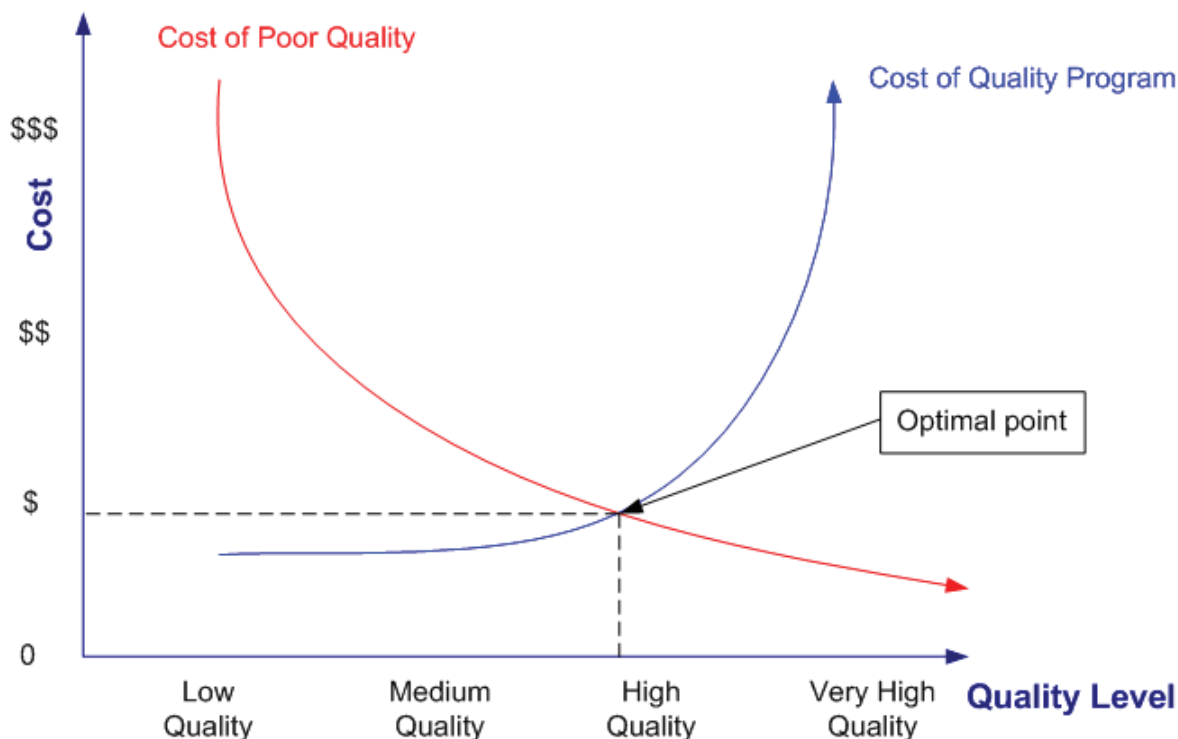


Figure 3.2 – Balancing cost of quality program and of poor quality. This is a theoretical justification for the appropriate use of resources in the minimization of the cost of poor quality<sup>22</sup>.

The analysis of DGT's quality costs and costs of poor quality as laid down in Chapter 4 aims to lay the foundations for further and more detailed analyses to assist decision-makers in public translation services in determining what the ideal mix is for their organisation.

### 3.3. Categorisation of DGT's Quality-related efforts

Like Total Quality Management (TQM), the definitions and descriptions of quality costs and poor quality costs were initially established for the manufacturing industry, in the 1950s, generating considerable cost savings. In the last decades, however, this approach has also been adopted for the services industry, and is now slowly entering the public sector as well.

In the same way as TQM is being applied to DGT's operations, it will be interesting and useful to map DGT's quality costs and poor quality costs. Even if translation is different from manufacturing and public translation services are not private sector organisations required to make a profit, the above model can still be applied to the operations of public translation services.

<sup>22</sup> Source: [FREP Quality Assurance Framework \(Forest and Range Practice Act Resource Evaluation Program\)](#).





Ensuring high-quality translation concerns various stages of the process: before, during and after the translation. This is also the reasoning behind DGT's Total Quality Management (TQM) exercise and its 22 Actions Programme<sup>23</sup>.

This reasoning is in line with Feigenbaum's and Harrington's definitions of poor-quality costs, which include activities such as training into the costs of poor quality.

Quality in translation in the stage before translation corresponds to prevention of poor quality and includes recruitment, training, terminology, style guides, etc.; during translation, quality is a matter of choosing the right translator for the job and deciding the level of quality control, bearing in mind DGT's aim to provide "fit-for-purpose" translations. Finally, quality in translation after translation concerns *ex-post* controls and evaluation, audits and feedback on translation errors, which corresponds to appraisal costs and failure costs.

Feigenbaum's and Harrington's definitions (see above) allow a comprehensive view of both DGT's quality efforts in general and the costs of poor quality in the stricter sense, i.e. the consequences of a bad translation, poor IT performance or badly written originals.

This study therefore takes this Feigenbaum/Harrington categorisation as the basis for the analysis of DGT's quality effort. So the cost of poor quality in translation will be all costs that are linked to:

- The prevention of poor quality
- The appraisal of poor quality
- The handling of the consequences of poor quality (internal and external failure).

As mentioned above, there are different definitions of the concept "poor-quality costs" and "quality costs". Since the aim of this study is to propose a way of rendering visible the costs of attaining the best quality possible on the one hand and the cost of failing to do so on the other, there is not much to be gained from a discussion on semantics, i.e. whether prevention costs are to be considered a part of poor-quality costs or not.

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<sup>23</sup> See [http://ec.europa.eu/dqs/translation/publications/studies/quality\\_management\\_translation\\_en.pdf](http://ec.europa.eu/dqs/translation/publications/studies/quality_management_translation_en.pdf).



Applying Harrington's model to DGT's operations yields the following (poor-) quality costs:

<b>Prevention costs</b>	<ul style="list-style-type: none"> <li>• Quality control of in-house translations (revision/cross-reading)</li> <li>• Specifications of calls for tender</li> <li>• Terminology</li> <li>• Documentary and language resources, style guides</li> <li>• Translation tools</li> <li>• Planning of translation (so as to ensure deadline compliance)</li> <li>• Dealing with unclear or poorly drafted originals<sup>24</sup></li> <li>• Pre-processing of translation</li> <li>• Recruitment – selection procedures</li> <li>• Training</li> </ul>
<b>Appraisal costs</b>	<ul style="list-style-type: none"> <li>• Evaluations of operations</li> <li>• Customer satisfaction surveys</li> <li>• Evaluations of external translations</li> <li>• Audits</li> </ul>
<b>Internal error/failure costs</b>	<ul style="list-style-type: none"> <li>• Quality control of external translations + corrections</li> <li>• Applications of penalties to external translators in case of late delivery or insufficient quality</li> <li>• Handling of unsolicited feedback before publication</li> <li>• IT problems, leading to a slow-down of the translation process</li> </ul>
<b>External error/failure costs</b>	<ul style="list-style-type: none"> <li>• Handling of corrigendum requests</li> <li>• Handling unsolicited feedback after publication</li> <li>• Extra work created for managers who have to take action in case of poor quality</li> <li>• Costs of publishing a corrigendum (adoption of corrective act by the Commission + the EU Publications Office).</li> <li>• Handling of Ombudsman complaints</li> <li>• Loss of reputation for DGT (because of translation errors or late delivery)</li> <li>• Image damage for the Commission and the EU, possible political consequences (absence of response to political initiatives, less adherence to the EU project...)</li> <li>• Legal uncertainty; costs incurred by economic operators because of court cases and/or corrigenda with retroactive legal effects</li> <li>• Possible lawsuits holding the EU/the Commission liable for a damages suffered</li> </ul>

Table 3.4 – Poor-quality costs in DGT

As can be seen from the above tables, a considerable part of DGT's activities is linked to quality, be it preventing poor quality, assessing the quality of DGT's services or dealing with the consequences of poor quality.

In chapter 4 we will provide some examples to describe how the cost of these activities can be calculated.

<sup>24</sup> From DGT's point of view this is a prevention cost; for the Commission it would rather be an internal failure cost.



## 4. Quality Costs and Poor Quality Costs in DGT

This chapter will apply the PAF (prevention - appraisal - failure) model to DGT's operations, and the costs it incurs if the quality of its translations is suboptimal. Since a lot of DGT's activities are related to the prevention of poor quality, this analysis will cover the bulk of DGT's operations.

### 4.1. Quality in translation

It is sometimes said that translation per definition implies a deterioration of the original, since there is always a certain loss in style or precision. Others say that the quality of a translation can be no better than the original (the so-called "garbage in, garbage out" principle). On the other hand, many translators will claim that it is quite possible that a translation is actually better than the original. It all depends on a combination of factors: the source text, any reference material, the tools at the translator's disposal, the knowledge and talent of the translator and the time available for delivering the translation and, last but not least, the carrying out of a proper revision.

Moreover, the drafters in the Commission services are not always in a position to use their mother tongue. In addition to this, originals are the result of compromises and changes introduced by a variety of players, both at the administrative and the political level.

Although, like quality in general, quality in translation is a somewhat elusive concept, poor quality translations are in some – though not all – cases rather easy to detect. At best, a poor or less fortunate translation makes the reader shake his head and smile at a poorly translated sentence, but errors in translation can also have serious legal, financial or political consequences. Quality does not come for free, nor without hard work and an adequate investment in quality assurance.

Today, the EU covers a lot more policy areas than when the Treaty of Rome was signed. Moreover, authorities, citizens and other stakeholders have a) become more critical and assertive when it comes to judging EU policies and b) have far easier access to information about these policies, in particular through the Internet. A large part of DGT's production is the translation of legislation that is binding on the EU's citizens and businesses. This means that the quality of DGT's work has to be of the highest standard, so as to avoid legal uncertainty. But also non-legislative texts, especially those destined for the general public (brochures, websites...) must be of impeccable quality.

In the service level agreements (SLAs) it concludes with other Commission services, DGT defines good quality as follows:

*"For the translations that it provides, DGT will ensure correct usage of the target language, correct use of subject-specific and Community terminology, consistency with the original and between the different language versions, and compliance with the specific conventions for different types of texts (legal, political, letters, speeches, Web, etc.)."*

*Where the quality cannot be guaranteed, DGT will notify the requester to explore the possibility of agreeing on a suitable level of quality."*

This definition goes beyond straightforward translation errors but focuses instead on the intrinsic quality of the translation: the translation delivered must be precise.

Another aspect of quality in translation, highly valued by DGT's clients, is deadline compliance, even if this sometimes poses a risk for the intrinsic quality. Finally, efficiency





of the translation process (workflow, tools, working methods...) is indispensable for quality in translation.

The translation of legal texts poses specific challenges, as has been described in considerable detail in a study on "Lawmaking in the EU Multilingual Environment" commissioned by DGT and published in 2011:

*"If we want a legal act to be interpreted and applied uniformly by everyone, it has to be communicated in such a way that the same legal effect be reached in all circumstances. In a multilingual system such as that of the EU, it means that language, as a means of communication, has a much more important and complicated role than in national legal systems with a single language only. The legislator's messages have to be conveyed with exactly the same meaning in 23 languages, free from any semantic or cultural connotations or traditions a given linguistic sign might have in that language."<sup>25</sup>*

That study further identifies terminology as an important aspect of the quality of a translation; in particular with regard to regulations, Member States often insist on using their national terms in EU acts in order to avoid linguistic interference of those acts with the national legislation or the established practice of sectors using a specific terminology. This holds in particular true for regulations, which enter the national legal system in their own right, i.e. without the intervention of the national legislator.

But correct terminology is also essential in EU directives; even if Member States can remedy (perceived) incorrect terminology in the phase of transposition, incorrect or inaccurate terminology can lead to misunderstandings and incorrect transposition. Moreover, discrepancies between national and EU terminology may occur where sectors that were previously regulated by directives are later regulated by regulations: if the national legislator deviated from the terminology of the directive when transposing it into national law but the regulation follows the wording of the directive, those concerned by the sectoral rules may have difficulties in conforming to the new terminology.<sup>26</sup>

Regulations either cohabit with the existing national legislation or, at least, with the legal and technical terminology used in previously existing national law. This is especially true for technical areas, i.e. agriculture, food law, customs legislation or the technical standards for goods. Here, the use of incorrect (technical) terms might have serious economic or financial consequences<sup>27</sup>. High-quality terminology work is therefore essential (See also section 4.2.4 "Quality in terminology, IT and translation tools").

The consequences of translation errors leading to discrepancies between language versions will be dealt with in more detail in chapter 5. However, as mentioned above, there is more to translation quality than absence of errors; a translated text must be easy to read, even if the original is not very clear.

DGT aims to provide "fit-for-purpose"<sup>28</sup> quality, which requires high-quality input before, during and after translation. The subsections below give a breakdown of DGT's quality-related costs, such as revision, terminology, recruitment, training, evaluation, etc.

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<sup>25</sup> Study on Lawmaking in the EU Multilingual Environment, published on DGT's Europa website: [http://ec.europa.eu/dgs/translation/publications/studies/multilingual\\_lawmaking\\_en.pdf](http://ec.europa.eu/dgs/translation/publications/studies/multilingual_lawmaking_en.pdf), p.1-2.

<sup>26</sup> Ibidem, p. 77.

<sup>27</sup> Ibidem, p. 76.

<sup>28</sup> For some, the concept of "fit-for-purpose" may have the connotation of "not very good, but that's ok since the document is not important any way", while in fact it means – or should mean – "good enough quality" and never "below standard quality".





## 4.2. DGT's quality efforts – prevention of poor quality

This section gives an overview of DGT's efforts to ensure good quality (or prevent poor quality) and describes how the costs of these efforts can be calculated.

### 4.2.1. Quality control – revision and cross-checking

If carried out appropriately – i.e. with enough time and by qualified and conscientious revisers –, quality control (QC) is essential for ensuring a high-quality end product. Translation and revision are human activities and therefore subject to error: 100% absence of errors, though a worthy goal, may be impossible, but translators and revisers should be given the time and tools to come as close as possible to achieving it.

In DGT, QC consists of revision<sup>29</sup> and review<sup>30</sup> or a combination of the two, as decided by the Head of Unit on the basis of a translation assignment analysis and a risk assessment.

DGT applies one single rate for converting quality control (revision or review) into translated pages: quality control of 3 pages is the equivalent of 1 page translated.

To calculate the cost of the QC efforts the following elements must be taken into account:

- The number of pages that underwent QC
- The work rate (number of pages translated per translator per day, including QC)
- The number of days worked (daily translation availability rate)
- The average yearly cost per translator (salary, IT, office space, etc.)

The calculation of the QC costs can be illustrated by a hypothetical example: with 120 000 pages having undergone QC and against a work rate (including QC) of 5 pages per day per translator and 200 days worked per year the QC cost are the following:

Cost area	Cost calculation	Estimated total (per year)
Quality control of <b>internal</b> translations (revision + cross-reading)	<ul style="list-style-type: none"> <li>– 120 000 pages QC = 40 000 pages translated (ratio 3:1)</li> <li>– Work rate (including QC) = 5 pages per translator per day = 8 000 translator days.</li> <li>– 8 000 translator days / 200 days worked = 40 translator years (FTE).</li> <li>– The assumed average yearly cost per translator is 100 000 EUR. So the total expenditure on QC of internal translations is 40 FTE x 100 000 EUR = 4 000 000 EUR/year.</li> </ul>	<b>4 000 000 EUR</b>

The above calculation is based on the ratio 3:1, but we can never be sure of how much time is really invested in quality control. Often there is no proof that a revision has actually been done or that it has covered the entire document.

Despite all quality measures taken, it can happen that even texts that were revised contain serious errors, such as missing words, a negative translated into a double negative, etc.

<sup>29</sup> Revision = the examination of the translation for its suitability for purpose. This includes a comparison of the source and target texts for terminology, consistency, register and style. It also includes taking steps to ensure that any necessary corrective measures are implemented. (EN-15038 (2006)).

<sup>30</sup> Review = monolingual review to assess the suitability of the translation for the agreed purpose and recommend corrective measures, if necessary. (EN-15038 (2006)).





In case of complaints about translation errors there should be a means of checking whether the error was made by the translator and not spotted by the reviser or whether the error was introduced by the reviser. This can be done by keeping a record of the translation before and after revision. This is also a useful tool for assessing the quality of a translation provider's quality assurance.

#### **4.2.2. Quality in external translation**

External translation must be considered as a real resource, to be used not only as a "buffer" in case of scarce internal capacity, but also in a systematic way for certain types of documents and certain areas requiring specific technical knowledge, and in particular multilingual projects, often requiring very specific experience and/or qualification.

Generally, DGT must provide translations of the highest quality, also when it outsources part of its production. This means that DGT has to find and select the best contractors possible, according to strict quality criteria.

The quality-related costs for external translation can be categorised as follows<sup>31</sup>:

- Calls for tender (ensuring good quality – prevention of poor quality)
- Evaluation of external translation (appraisal costs)
- The cost of poor quality external translations (revision and penalties – this will be dealt with in section 4.4.2 "Poor quality of external translations")

##### *4.2.2.1. Calls for tender*

High-quality translations require high-quality translators. For in-house translations this means adequate selection and recruitment procedures and for external translations it means calls for tender with well-conceived specifications, so as to be able to assess the contractor's technical and professional capacity. Therefore, the thorough preparation of calls for tender is a pre-requisite for good quality of external translations.

DGT's calls for tender also cover services other than translation proper, including computer-assisted translation, amendment, revision, editing and post-editing of output from the Commission's machine translation system. DGT has laid down procedures for the organisation of freelance translation, so as to ensure the highest quality possible.

However, the strict rules of the Financial Regulation which govern DGT's interaction with freelance contractors have made it more difficult than in the past to select and retain high-quality contractors; framework contracts must be renewed every four years, which means that at the beginning of each period DGT has to invest time and effort in bringing new contractors up to speed with DGT's working methods and requirements.

DGT works closely together with the translation services of the other EU institutions, so as to save money and resources and exchange best practices.

The cost for organising a call for tender includes writing the tender specifications; evaluating the files submitted and concluding the framework contract.

Once it is known how much time is spent on these activities, the costs are easy to quantify. To illustrate this, we will assume that one administrator (AD) and one assistant (AST) each spend 40 working days per year on the preparation of calls for tender. Using the figures given in Chapter 2, this gives the following calculation:

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<sup>31</sup> These costs do not include the administrative costs/overhead for the normal management of DGT's external translations (assigning translation jobs, issuing orders, delivery follow-up and invoice checks, etc).





Cost area	Cost calculation	Estimated total (per year)
Preparing and organising a call for tender	<ul style="list-style-type: none"> <li>– 1 AD + 1 AST at 40 days = 0.2 FTE (AD) + 0.2 FTE (AST)</li> <li>– 0.2 FTE (AD) x 100 000 = 20 000 EUR</li> <li>– 0.2 FTE (AST) x 50 000 = 10 000 EUR</li> <li>TOTAL: 30 000 EUR</li> </ul>	<b>30 000 EUR</b>

#### 4.2.2.2. Evaluation of external translations

DGT's standard framework contract for external translations states that the work delivered must have been thoroughly revised and reviewed by the contractor, so as to be usable as it stands, without further amendment by the Commission.

To verify if the contractor has fulfilled this obligation, all external translations must be evaluated; this is a matter of compliance with the Commission's financial rules. This evaluation is carried out by the translation unit that requested the external translation. It is not meant as a form of quality assurance<sup>32</sup>.

The contractual deadline for evaluation is very important since contract obligations with the contractors have to be met. Under the current tender contracts, DGT undertakes to pay the sums due for performance of the contract within a maximum of 45 calendar days. Once that deadline has expired, the creditor can claim interest for late payment. Consequently, translating units must complete their evaluations within 10 working days of the translation's initial return to the unit, extended to 20 days in the case of poor quality (penalties, referral to DGT's internal committee for the evaluation of external translations). If additional quality checks are needed DGT may suspend the payment deadline and will inform the contractor by mail (which in itself already presents an additional cost).

In 2010, DGT outsourced almost 28 % of its production, which amounts to more than 480 000 pages.

According DGT's internal guidelines the number of pages to be evaluated is 10 % of the document, with a minimum of 2 pages and a maximum of 10 pages. In 2010, in practice over 14 % (almost 70 000 pages) of the pages outsourced were evaluated. Each external translation is given a mark:

Unacceptable (0 points)	Requires extensive revision + involvement of DGT's internal committee for the evaluation of external translations.
Below standard (4 points)	Warning to the contractor + 10 % penalty.
Acceptable (6 points)	Mediocre quality, just about sufficient, but contractor moves down in the dynamic ranking <sup>33</sup> .
Good (8 points)	Meets the quality criteria required in the tender specifications and is usable "as is" (" <i>en état</i> ") <sup>34</sup> .
Very good (10 points)	Requires no modifications by DGT.

<sup>32</sup> Opinions within differ on this issue; some consider evaluation as a form of quality assurance, while others prefer to keep a strict distinction between evaluation and quality control (QC). In practice, there is likely to be an overlap between QC and evaluation, since for any translation below "very good" a revision effort is required to be able to provide an evaluation. For the purposes of this study, we will keep a distinction between the cost of evaluation of external translations and the cost of quality control.

<sup>33</sup> The dynamic ranking is a reclassification system of the contractors' ranking based on the quality points given by the evaluators to the translations made by the contractors in a given month. It is performed automatically the last night of every month by implementing a mathematical formula that calculates the new quality/price ratio for every contractor.

<sup>34</sup> Even "good" translations often have a negative impact on the dynamic ranking (information from S.2, 24 June 2011).





In 2010, the evaluations by the language departments yielded the following results:

Mark given	% of external translations
Very good	59.3 %
Good	30.3 %
Acceptable	8.0 %
Below standard	1.9 %

A number of conclusions can be drawn from the above figures:

- More pages are evaluated than the minimum required (14 % instead of 10 %).
- Despite the fact that 59 % of the external translations is considered to be "very good" and should therefore, in principle, not require any further quality control, the QC rate of 61.8 % indicates that also some of these "very good" translations undergo quality control.
- Even if – at least on paper – almost 90 % of the external translations is considered to be "very good" or "good", there is still at least 10 % that requires further revision or correction work, even when the translation is "acceptable"<sup>35</sup>.

The responsibility for submitting a translation to quality control lies with the head of unit, who makes an assessment of what level of quality is necessary to achieve a fit-for-purpose translation.

As mentioned above, even when a translation is considered to be "acceptable" this means that an effort from DGT staff is required to make the product good enough for the client. Evaluation does not necessarily ensure good quality.

Contractors are supposed to deliver translations that do not require any further work, but obviously DGT has to invest resources in checking that indeed the contractor delivered the quality required. These aspects will be dealt with in section 4.2.2 – "Poor-quality of external translations" below.

When a freelance translation is not good enough, it is possible, in theory, to have the contractor do it again, but this often means that the deadline is not respected, so that a new deadline has to be negotiated with the requester. Moreover, it means doing a second evaluation, thereby further increasing the cost.

For "very good" translations, providing feedback to the contractor is optional. For all other evaluations, the feedback file must indicate why the translation was not deemed "very good" and contain corrections, relevant for the mark, with explanatory comments. Preparing these feedback forms takes time, which could lead to some translators giving a "very good" to translations that are only "good", so as to avoid the extra work. Since ± 40% of the external translations is considered below "very good", this means that at least for some 10 000 evaluations time is spent on the preparation of the feedback file.

It is reasonable to argue that the cost of preparing a feedback file is a cost of internal failure, rather than an appraisal cost, since if all external translations were "very good", this cost would disappear.

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<sup>35</sup> In fact, the word "acceptable" is not the most fortunate choice of words, since too many "acceptable" evaluations will lead to lower position in the dynamic ranking and might even lead to a contract being terminated. This means that in reality "acceptable" translations are acceptable for DGT but may still imply negative consequences for the contractor.





### 4.2.3. Quality of originals

In an attempt to respond to growing criticism of the EU's "democratic deficit", the Danish 'No' to the Maastricht Treaty in 1992 and the results of the 2005 referenda in France and the Netherlands on the EU Constitution, the EU has taken a number of actions to address the "lack of legitimacy" and to "bridge the gap" between the EU and its citizens. These actions include the "Better Lawmaking" and "Better Regulation" initiatives, as well as the most recent Communication on Smart Regulation in the European Union<sup>36</sup> and the concrete measures to improve the drafting quality of legislation such as the interinstitutional agreement on legislative drafting quality<sup>37</sup> and a Joint Practical Guide for the drafting of legal acts<sup>38</sup>.

There is general agreement among translation experts that well-written and clear originals greatly contribute to a high-quality translation and limit the number of discrepancies between language versions<sup>39</sup> and this has been explicitly recognised in the Joint Practical Guide for the drafting of legal acts:

*"[...] the original text must be particularly simple, clear and direct, since any over-complexity or ambiguity, however slight, could result in inaccuracies, approximations or real mistranslations in one or more of the other Community languages"<sup>40</sup>.*

However, despite these initiatives, the quality of originals often still leaves much to be desired. This is why DGT launched its Clear Writing Campaign in 2010, which aims to encourage drafters to write more clearly. It consists of very concrete actions, such as information sessions organised in the various policy DGs. It is hoped that this will raise more awareness among drafters of EU legislative and other texts and that new momentum can be generated for implementing the guidelines that have not yet been complied with.

Poor drafting leads to lack of clarity, misunderstandings by translators and in some cases also to legal uncertainty and can therefore have hidden costs, not just for the EU institutions, but also in society. These aspects will be dealt with in chapter 5.

The quality of the original is important not only because it leads to texts that are easier to understand or because it makes the translator's job easier, but also because it saves money.

#### 4.2.3.1. Time spent on clarifying originals

Unclear texts can slow down the translation process, even when it does not concern a highly technical or complicated document. Furthermore, the translation of a large share of Commission documents is outsourced to external translators, who, although carefully selected, have on average a less developed knowledge of Commission policies.

Given the number of languages in which these texts are translated, any lack of clarity in an original is potentially multiplied by 22 languages. Consequently, the loss in terms of money is considerable.

It is difficult to estimate the time it takes to obtain a satisfactory answer to a question about an original. Generally, when a translator has a doubt about the text, he or she will:

<sup>36</sup> COM(2010) 543 final, adopted on 8 October 2010.

<sup>37</sup> See link to [Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of Community legislation](#), OJ C 73, 17.3.1999, p.1.

<sup>38</sup> See link to [Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions](#), 2003.

<sup>39</sup> As pointed out by several speakers at a conference on the "Role of Legal Translation in Legal Harmonisation", held in Amsterdam on 21 January 2011.

<sup>40</sup> Joint Practical Guide, point 5.2.





- Read the text again and perhaps consult a fellow translator;
- If the doubt persists, contact the requester, usually by e-mail;
- Update the translator's *Note*<sup>41</sup> with the information obtained from the requester.

This is the most straightforward scenario; it is not uncommon that a particular lack of clarity in an original leads to a voluminous correspondence between translator and author, sometimes even involving the immediate superiors. In these cases, the time spent must be expressed in hours rather than minutes.

For this study information was obtained from the DGT's Editing unit and from its Language Departments. From the information gathered it became clear that poorly written, ambiguous or incorrect originals abound and often lead to extensive correspondence between the translator and the author. Estimates on the time lost varied from 15 to 60 minutes per translator per day; others expressed the time loss in percentages, varying from 5 to 40 % of the translator's time<sup>42</sup>. Some translators even claimed that "nearly every document requires questions/clarifications to be sent to the requester".

The more information is added to the translator's *Note*, the more time translators of other Language Departments have to spend on reading and digesting this information. For some originals the *Note* can contain dozens of pages. The higher the number of language versions requested, the higher the number of possible queries if the original is not clear. It is this multiplier effect that makes the quality of originals so essential for an efficient operation.

To illustrate the dimension of the problem, we will assume that a translator spends, on average, at least 5 minutes per day on clarifying unclear or incorrect texts, which usually involves consulting with a colleague, phone calls and e-mail exchanges with the author, updating the translator's *Note* and, in some cases, involvement of middle management.

A simple calculation shows that if each translator spends on average even only 5 minutes per day on clarifying ambiguous, incorrect or poorly drafted originals, the costs are already considerable.

Taking as an example a translation service with 300 translators who work 200 days per year, 8 hours per day, the cost of unclear originals would be the following:

Cost area	Cost calculation	Estimated total (per year)
Clarification of originals	<ul style="list-style-type: none"> <li>– 300 translators x 5 minutes = 25 translator hours lost per day.</li> <li>– Taking 200 days worked per year, this gives a figure of 5 000 translator hours lost per year.</li> <li>– This is 625 translator days lost per year (5 000 divided by 8 hours).</li> <li>– 625 translator days = 3.125 FTE (625 divided by 200 days worked).</li> <li>– At an average yearly cost per translator of 100 000 EUR. the total "expenditure" on originals = 3.125 FTE x 100 000 EUR = 312 500 EUR</li> </ul>	<b>312 500 EUR</b>

<sup>41</sup> The translator's *Note* is a tool developed by DGT to enable translators from different language departments that are working on the same original to exchange information on issues regarding the original.

<sup>42</sup> Obviously it is not possible to make an exact calculation; this exercise is meant to give an *indication* of the dimension of the problem.





Experience in DGT has shown that 5 minutes lost per translator per day is a conservative estimate; many translators have indicated that they spend more time on this type of activity. Numerous examples obtained from language departments of long texts with *Notes* support this claim. Even if it is not possible to provide exact figures, the above calculation gives a clear indication of the dimension of the problem and the scope for efficiency gains.

DGT's translators often point out inconsistencies or spelling, formatting or reference errors, which they register in the translator's *Note* to notify to other translators that the authoring service has been informed of these errors. This type of error does not necessarily slow down the translation *per se*, as in these cases the translator has no problem in understanding the text. But of course pointing out mistakes and registering it in the *Note* takes time and therefore represents a cost.

This is an added value that DGT provides: with its translators as experts in cultural diversity, DGT contributes to the overall quality of the Commission's communication. So the time spent on improving originals is not money wasted; part of the costs involved in this activity could be seen as an investment. But it would of course be even better if drafters provided high-quality originals in the first place.

It must be borne in mind, however, that translators do not necessarily always and consistently update the translator's *Note* for each and every question they asked the requester. So in reality translators spend more time on originals than may become apparent at first sight.

Finally, it must be pointed out that not all questions are due to the poor quality of the originals; sometimes translators ask the requester to define a concept, without there being anything wrong with the original.

#### 4.2.3.2. *Subsequent versions*

Another aspect of the Commission drafting process which has an impact on DGT is a requesting service sending subsequent versions of their text when the translation of the first version is already ongoing. New versions – it quite often happens that several subsequent versions are sent – entail an additional workload for DGT.

Obviously, many subsequent versions are due to the political decision-making process in the Commission and are something DGT has to accept. However, it is perceived by the translation departments that a considerable percentage of the  $\pm 11\ 000$  subsequent versions that DGT receives per year is due to the fact that the requesting service rewrites (parts of) a text already sent for translation or submits texts that contain wrong references, mistakes, inconsistencies, incorrect terminology, etc. In these cases there are efficiency gains to be made.

When translators discover a mistake or inconsistency in a text they should contact the requester. For certain types of documents, such as documents to be submitted to the Commission for adoption, a mistake discovered in a text can only be corrected after DGT has received a new version. If a new version of the original is needed, the Planning unit has to be informed as well. Reducing the number of subsequent versions thus not only reduces the workload for the translation departments but also for the Planning unit.

Each new version means an administrative cost, in addition to the effort made by the translator, who has to check the new version. a conservative estimate is that processing a new version takes the *gestionnaires* in the Planning unit about 5 minutes per case.

While new versions may be justified and unavoidable if they are due to political decisions, even then it must be borne in mind that if the original deadline for a translation is not





changed, the translating units are in fact left with less time to provide their translation and this can pose a risk for the quality.

In case of new versions, when it calculates the number of pages of new text, DGT's Planning unit adds 50% to the number of pages to compensate for the extra effort in the translation units. A further analysis could be carried out in the context of another study/evaluation or audit to calculate the real cost and impact of subsequent versions.

Sometimes translators point out details that do not have an impact on translation (such as minor spelling mistakes and punctuation), but which improve the quality of the original. This is a cumbersome way of editing, though; more upstream quality control for originals saves time and money.

#### 4.2.3.3. *Editing*

In addition to translators clarifying originals with the author, DGT also aims to improve their quality more upstream, through its Editing unit (DGT D.4). The unit's aim is to help Commission departments draft quality documents.

The Editing team edits some 37 000 pages per year, 93 % of them in English and 7 % in French.

Ideally, editing:

- Makes the original clearer and easier to read for the general public, which is essential for legal certainty and for the Commission's public image. Moreover, editors spot mistakes before a document is sent for translation, which also adds to the quality of the original and can contribute to a reduction of the number of subsequent versions for the text to be translated.
- Makes the translators' job more efficient in that clearer texts may be easier to translate. Moreover, clearer texts reduce the risk of translation errors.
- Leads, in most cases, to a shortening of 3-4% of the original, which benefits both the reader and DGT, as the reduction has an impact on all the languages in which the document has to be translated.

Furthermore, in the context of a pilot project that has been launched with the Information and Communication units in seven of the Commission's Directorates-General, DGT's Editing unit and its Web Translation unit offer training on how to draft press releases.

DGT's translators frequently come across poor drafting in their day-to-day translation work. They often feel frustrated since they face tight deadlines, but have to work with substandard originals. Although staff (de-) motivation is a "soft" factor and impossible to quantify, its effect must not be underestimated.

While editing is useful, there are limits as to what it can achieve as far as translation is concerned:

- Editors cannot really improve the structure of a document, because when they receive the document it is usually too late for that.
- Correcting grammar, spelling and style makes the original better, but does not necessarily make translation much easier.
- The best English version for the English reader is not always the same as the best original for the translator, since less commonly used expressions may slow down translation (although they may make the translator's job more interesting).

- Often texts are modified after editing, for example at Cabinet level, which means that it is possible that unclear language (for political reasons or otherwise) ends up in the final version.

### **Avenues for action:**

- ⇒ *More attention should be paid to the structure, consistency and "translatability" of an original before it is sent for translation. This could be done by integrating translation more upstream in the Commission workflow through editing in the author Directorates-General or by DGT or by involving experienced DGT translators with good writing skills in the drafting stage.*
- ⇒ *Encourage language departments and translators to report cases of bad originals to the Editing unit and to keep track of the time spent on clarifying originals, so as to render the dimension of the problem more visible.*
- ⇒ *DGT could push for compulsory training for all new Commission officials on the principles of clear writing and the guidelines in the Joint Practical Guide.*
- ⇒ *Promote a more widespread standardisation of texts (e.g. templates for reports coming from Member States).*
- ⇒ *Provide for proper training in legal drafting and terminological working methods for drafters (and translators).*
- ⇒ *Make editing compulsory for legislation, either by DGT or in the author DG.*

#### **4.2.4. Quality of terminology, IT and translation tools**

Apart from DGT's translators, terminology and IT tools are two essential pillars for DGT's core business. Correct terminology is of great importance in legislation, as even the most subtle difference between two terms can have major consequences for EU companies and citizens that have to follow EU rules.

DGT's informatics system and translation tools such as TWB help translators to ensure consistency in their texts.

##### *4.2.4.1. Terminology*

The importance of correct terminology cannot be underestimated; often Member States request a corrigendum due to what they consider to be incorrect terminology. Moreover, in those court cases where there were discrepancies between language versions the discrepancy often concerned terminology.

Using the correct terminology is particularly important when drafting and translating basic acts, which will be used as reference for future legislation. The Joint Practical Guide quoted above recognises this as well:

*"The terminology used in a given act shall be consistent both internally and with acts already in force, especially in the same field.*

*Identical concepts shall be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language."<sup>43</sup>*

If a less correct term is used in a basic legal act, the translator of future legal acts is obliged to use that term even if it is not the best possible choice. Even if the use of the term in question does not necessarily have legal consequences, Member States often

<sup>43</sup> Joint Practical Guide, Guideline 6. See also point 6.2: "Consistency of terminology means that the same terms are to be used to express the same concepts and that identical terms must not be used to express different concepts."



request a corrigendum, insisting on using the more correct term. In these cases, the translator did not make a mistake – he/she had no choice but to use the term concerned – but it still leads to an extra cost, consisting of the handling of the corrigendum request (see below under point 4.4.1 "Corrigendum requests"). Moreover, a less appropriate term can cause irritation or alienation among Member States and other stakeholders, which is obviously not beneficial for the Commission's image or that of the EU as a whole.

However, sometimes it is necessary to create new EU terminology, for example when the EU concept is too different from existing national terms and concepts<sup>44</sup>. This was also confirmed in the Cilfit case (C-283/81), where the Court acknowledged that the EU "[...] uses terminology that is peculiar to it" and that "it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States"<sup>45</sup>

For EU terminology to be clear and understood by addressees and stakeholders from all EU Member States, the conceptual content of a term must be clear and there must be clear definitions. Establishing such new EU terminology requires closer cooperation between translators, lawyer-linguists and terminologists, as well as good cooperation with national experts, to explain to them the reasons for certain terminological choices.

Experience has shown that lack of coordination and revision of the translation of the *acquis communautaire* for acceding countries can lead to inconsistencies in terminology that are perpetuated by subsequent translations by the Commission and the Council. In those cases it is difficult and time-consuming to find a consensus between the Commission, the Council and the national authorities on the correct terminology. This is a process which can take years.

It is therefore more cost-efficient in the long run to invest more time in establishing the correct terminology in as early a stage as possible, in cooperation with the Member States and other stakeholders (such as experts in the subject field concerned), so as to limit corrigenda requests because of incorrect terminology to a minimum. Where possible, terminology cooperation with acceding/candidate countries translating the *acquis communautaire* should be put in place or reinforced. Such cooperation contributes to the primary purpose of terminology, which is to facilitate expert communication.

DGT's terminology efforts take place in the Language Departments and are coordinated by a central Terminology sector. DGT's Language Departments have one main terminologist, who is also responsible for interinstitutional and external contacts, and a varying number of staff working on terminology per LD. Overall, more than a hundred of staff in the language departments are involved in terminology work. This includes also tasks beyond the directly IATE<sup>46</sup>-related terminology work, such as the coordination of terminology projects, Euramis<sup>47</sup> sentence management, internal advice and training related to terminology tools, participation in weekly unit/department meetings, tasks related to quality management, information tasks etc.

The direct term base-related work is reflected in the so-called "IATE movements": In 2010, the language departments created over 90 000 new entries in IATE, updated over 100 000 entries and deleted almost 14 000 of them. In total, all language departments together performed over 200 000 IATE movements.

<sup>44</sup> This idea was worked out in some more detail by Prof. Susan Šarčević at the conference on the "Role of Legal Translation in Legal Harmonisation", held in Amsterdam on 21 January 2011.

<sup>45</sup> [Judgment of 6 October 1982 – Case 283/81](#).

<sup>46</sup> IATE = InterActive Terminology for Europe.

<sup>47</sup> EURAMIS stands for European Advanced Multilingual Information System. It is The EU's Translation services' central translation memory.





Good practice is to ensure that both the term base IATE and the Euramis translation memories are updated and corrected in case of a change of terminology. All language departments have sentence managers who are in charge of updating the translation memories. Cooperation between them and the terminologists in charge of updating IATE is essential. Another good practice in DGT's translation units/departments is that they have contacts with experts in the Member States, whom they can consult on terminology issues, but this happens mostly on an *ad-hoc* basis.

#### 4.2.4.2. *IT, translation and workflow tools*

Translators use a wide range of IT tools in their daily work; in addition to the normal tools such as MS Word, etc., they use a number of specific tools which aim to provide the translation units and translators with the necessary support (language applications): Quest<sup>48</sup>, Euramis and IATE. In addition, DGT has at its disposal a number of other IT systems to support the organisation and distribution of work (workflow applications).

Some applications, such as MS Office, are purchased off the shelf, while others are developed in-house by the Development Team of DGT's IT Unit, or by an outside firm.

A number of language applications are run jointly with the translation services of the other EU institutions and are managed by the Interinstitutional Committee on Translation and Interpretation (ICTI).

Furthermore, DGT aims to achieve greater interoperability between information systems. To this end it has set up interfaces between its translation request applications and certain client applications and continues to develop web services for applications it shares with other ICTI members. Finally, DGT has developed the European Commission on Machine Translation (MT@EC) as a flagship project, the ultimate aim of which is to facilitate electronic cross-border interaction between European public administrations.

The cost of this effort must be seen in combination with the terminology effort: for 2010, budget line 31.070102 of the EU budget contained 1 625 000 EUR in appropriations for "terminology and linguistic databases, translation tools and documentary and library expenditure"<sup>49</sup>.

To this amount must be added the interinstitutional activities, the development of information and management systems and the human resources that DGT dedicates to IT activities, at least of the people in units DGT R.3 who have these activities as their main task.

All these efforts are indispensable for delivering high-quality translations and are therefore of considerable added value for DGT's operations, and also for the Commission as a whole; investments in DGT's IT resources and workflow may yield net savings for other Commission services.

Moreover, these investments are necessary if DGT is to 1) maintain its position as a centre of excellence in translation and 2) ensure a well-functioning IT environment, since the cost of failing IT systems can be considerable.

#### 4.2.4.3. *The cost of failing IT systems*

As mentioned above, DGT is highly dependent on IT systems, which means that if one or more systems fail or underperform, this has an enormous impact on DGT's operations.

<sup>48</sup> Quest is a metasearch engine, connected to a number of databases, including Euramis and IATE, Eur-lex, the databases of the European Parliament and the Council, and various terminology bases.

<sup>49</sup> [EU Budget 2010](#), p. 1339.





Given the size of DGT, with almost 1 600 translators, it is worth to look into the cost for DGT of underperforming IT systems. We are not talking about the usual start-up time of the PC at the beginning of the day, but translators being forced to start up their computer after it crashed is a clear example of time lost due to IT problems.

The cost of time lost due to IT-related problems can be calculated in the same way as the cost of clarifying ambiguous, incorrect or poorly drafted originals (see above). To make the point, we will use 5 minutes per translator lost per day<sup>50</sup>. For the rest, as in the above example of the cost of quality control, we will take the example of 200 days worked (8 hours per day) and a cost of 100 000 EUR per translator per year.

Cost area	Cost calculation	Estimated total (per year)
Time lost due to IT-related problems	<ul style="list-style-type: none"> <li>– 1 580 translators x 5 minutes = 131 translator hours lost per day.</li> <li>– Taking 200 days worked per year, this gives a figure of 26 200 translator hours lost per year, which is 3 275 translator days lost per year</li> <li>– 3 275 translator days = ± 16 FTE</li> <li>– 16 FTE x 100 000 EUR = 1.6 Mio EUR</li> </ul>	<b>1 600 000 EUR</b>

This is a considerable cost, which would justify – and this goes for any public translation service – an analysis of how to invest in a better IT performance and actually save money.

#### 4.2.5. Quality of workflow management and working methods

DGT's workflow is managed by its Planning unit, which performs a range of tasks which contribute to a better quality of DGT's translations:

1. Contacts with the requesting services: monitoring of translation demand, suggesting ways in which DGs could control demand, prioritising, anticipating time-table constraints.
2. Contacts with DGT's translation units (TUs): informing TUs of the translation forecasts, helping to organise the operational aspects of complex files or files accompanied by specific instructions (General Report, budget amended proposals, codifications/recasts, etc.).
3. Applying the Commission's Translation Strategy SEC(2006) 1486 (length, languages, type of document) and assessing the feasibility of the deadline indicated by the requester. Where necessary the Planning unit renegotiates the deadline with the requester.
4. Quality checks of the originals of documents submitted for adoption by the Commission (legiswrite<sup>51</sup>, format, etc., not the content), availability of reference documents + categorising the documents as belonging to one type of text, which automatically allocates a quality control level to the document. If a TU detects errors or omissions, the Planning unit corrects these.
5. Random quality checks of the format of translations after the translation unit has closed them (Legiswrite, pictures and tables, number of footnotes....).

<sup>50</sup> Estimates received from translators through the survey carried out for this study were higher, but we prefer to use a more conservative estimate, which still conveys the dimension of the problem.

<sup>51</sup> Legiswrite is an add-on to Microsoft Word, developed by the European Commission, for creating standardized and structured legislative documents.





### *Action 2 documents*

The quality of the so-called "Action 2" documents deserves special attention. Action 2 is the name of the workflow — in force since 1 May 2008 — for the translation of all documents submitted to the Commission for adoption. DGT has full responsibility for the linguistic and formal quality of the translations it delivers directly to the registry (DGT's Planning unit is responsible for this), as well as for the linguistic concordance between languages. For these documents quality assurance and quality control are therefore very important.

There is an Action 2 quality control team in the Planning unit, which checks around 10 % of all documents (a random selection) that have to be delivered on a given day. They have to ensure that all language versions and documents from all DGs are verified<sup>52</sup>.

These Action 2 quality checks are a good example to illustrate the usefulness and effectiveness of quality control. In the beginning, the Action 2 quality control team checked all documents and found a large number of legiswrite errors and other errors of formatting (footnotes, tables, figures, etc.), of which they informed the translation unit concerned. Over time, the number of errors decreased and now the Planning unit only checks 10% of the Action 2 documents and the number of errors is still diminishing<sup>53</sup>.

So the initial investment in quality control led to a higher quality. As a result, the quality control effort could be reduced again, thus freeing up resources, which could be used for other purposes.

The tasks performed by DGT's Planning unit have a direct impact on the quality of DGT's translations, as they aim to prevent poor quality. These activities must therefore be included in DGT's prevention costs.

If these tasks were not performed centrally, they would have to be done by the translation units, which would mean a multiplication of efforts, which would no doubt be more expensive and lead to varying practices among language departments.

DGT's planning activities may also entail a hidden cost for DGT and the Commission when a renegotiated deadline leads to a language version (e.g. of an important press release) being delivered late. This cost is not quantifiable, but can be very real in terms of image damage<sup>54</sup>.

## **4.2.6. Quality of human resources – recruitment and training**

### *4.2.6.1. Human resources*

Good quality starts with good people. Recruiting good translators is likely to lead to good translations, provided that they are given the right tools and training to do the job.

A number of factors, some of them outside DGT's sphere of influence, have an impact on the number and the quality of potential new recruits and make it difficult for DGT to hire

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<sup>52</sup> The following parameters are used: discrepancy in the number of footnotes; discrepancy in the number of paragraphs; errors in the table of contents; figure(s) missing/incorrect; highlighting/colour (different from original); incorrect language code; incorrect numbering; LW quality/structure error linked styles; picture/table error (not translated, floating, not visible in normal view); TWB codes.

<sup>53</sup> In 2010, DGT delivered almost 83 809 Action 2 documents to e-Grefe, of which the Action 2 quality control team checked 9 601 (11.5%) and discovered 468 errors (4.9%). In 2009, the figures were 130 839 Action 2 documents delivered, 34 309 documents checked (26.2%) and 1 904 errors discovered (5.2%).

<sup>54</sup> There is a concrete example of such a case, when all language versions of an important press release were available, except for one and the Field Office concerned had to do a quick emergency translation, which was not conducive to obtaining a high quality. In the end it turned out that the deadline had been renegotiated for the language version concerned.





sufficient numbers of translators with a technical background (lawyers, economists, engineers, scientists.....):

- In some of the smaller Member States the pool of potential translators is limited.
- Until now, DGT is not allowed to recruit from AD7 level "specialist" reserve lists, but from reserve list for the entry level for administrators (AD5).

This may be illustrated by the fact that for the latest competition for Danish translators, the number of applicants was only 171 for an expected reserve list of 41 successful candidates, 20 of them earmarked for DGT.

However, there are many other factors that have a more direct impact on the quality of translations; an analysis of the relation between recruitment and high quality falls outside the scope of this study and will therefore not be discussed in detail here, also because the selection and recruitment process is handled centrally by the European Personnel Selection Office (EPSO) and DGT's influence is limited. Still, the internal activities performed by DGT's Human Resources unit and the language departments can be quantified:

- Planning: contributing to an optimal alignment of human resources with DGT's activities by ensuring that priority is given to the languages that most need new translators.
- Participation of DGT in juries for EPSO competitions
- Contacts with DG HR and EPSO and with the other institutions about recruitment lists, etc.

Even if their direct impact is difficult to measure, these activities can be considered as part of prevention of poor quality and the time spent on them is therefore a quality cost.

#### *4.2.6.2. Training*

Specific training for translators can clearly contribute to better quality. DGT has recognised this and its Training department organises translation-specific training, for example on subject-matter.

Training needs are identified by a DGT-wide network of training correspondents. It falls outside the scope of this study to quantify the usefulness of the training activities organised in DGT in terms of quality. But a straightforward way of calculating the training costs is to look at the number of staff in the training unit. To obtain a more complete picture, also the time that translation staff spend on training must be taken into account.

#### **4.2.7. Library and documentation**

DGT's Library, Terminology and Translation Support unit aims to facilitate the work of DGT's translators. In addition to coordinating DGT's terminology work (see section 4.2.4 above) its mission is to provide a range of services in support of the translation departments. These services include: managing the multilingual reference library; acquiring books, periodicals and online or electronic resources for use by DGT staff; referencing documents prior to their (computer-assisted) translation; managing DGT's system of translation memories; and aligning and storing all language versions of the Commission's legislative proposals.

The unit's pre-processing team looks for useful reference documents in DGT-Vista, SG/Vista, Eurlex, etc. and creates alignments, which it then sends to the translating units for verification and use. This work leads to a higher degree of uniformity of DGT's translations. In addition, the unit is responsible for updating the interinstitutional translation memory (Legis-Process)





and the translation memory for legal texts (Legis-Juris). Sentence management by the language departments, whereby manifest errors are corrected in the translation memory, is important for preventing errors in future translations.

The costs for the above operations can be calculated by adding up the staffing costs in the units responsible.

### **4.3. Appraisal of DGT's operations**

As described in chapter 3, appraisal is part of an organisation's quality cost. DGT's appraisal activities must therefore be included in this study. Appraisal of DGT's operations takes place at several levels:

- In DGT's Evaluation & Analysis unit
- In DGT's Audit unit
- In the translation units, for example *ex-post* evaluations of translations already sent out.

This study will not go into the appraisal of DGT's staff.

The Evaluation Analysis unit aims to support DGT's strategic decision-making by providing expert analysis and advice, using the combined strengths of the unit's functions of quality management, business analysis, statistics and evaluation. Its activities include:

- Monitoring and follow-up of cross-cutting quality-related activities,
- Analysing and documenting DGT's business processes
- Providing sound statistics
- Conducting customer satisfaction surveys

DGT's Audit unit is DGT's internal auditor. Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

Some language departments also evaluate their work, by carrying out *ex-post* evaluations of translations.

The cost of the audit and evaluation units are quite easy to quantify, by adding up the staffing cost of those units, while an estimate of the cost of *ex-post* evaluations by the translation departments can be obtained by doing a survey among those departments, asking them how much time they spend on this.

### **4.4. The cost of poor-quality translations for DGT**

This section will describe how the costs incurred due to poor-quality translations can be calculated. This analysis is not limited to just the financial impact but will also take into account the cost in terms of image damage and reputation loss.

#### **4.4.1. Corrigenda requests**

At first sight, one obvious consequence of poor quality translations is a request from outside DGT to correct a translation error (hereafter "corrigenda requests"). The reality is somewhat more complex, as will be explained below.

DGT is lead service for correcting errors in any of the translations of acts adopted by the Commission. For errors in the original version the author DG is lead service.





On 2 September 2008, the Commissioner in charge of multilingualism received an empowerment from the College to correct minor errors in our translations of documents adopted by the Commission<sup>55</sup>. In the same decision, a procedure is defined for the correction of substantial translation errors under the responsibility of DGT. On 5 May 2010, the Commissioner in charge of multilingualism subdelegated to the Director-General of DGT the power to correct errors, including minor omissions, in translated acts adopted by the Commission.<sup>56</sup>

Corrigenda requests usually come from national authorities, legal persons or from the Commission services. They concern autonomous acts of the Commission, COM/SEC documents (such as preparatory acts, communications, reports), but also non-binding adopted and published documents such as recommendations, framework documents, etc.

The Corrigenda Team in DGT is responsible for processing corrigenda requests, transmitting them to the language department concerned, which carries out a linguistic analysis. If the language department confirms that there is indeed ground for a corrigendum, the Corrigenda Team launches the specific procedure for correcting the error.

Another important activity of the Corrigenda Team is to maintain contacts with the Commission's Secretariat-General and the Legal Service to enhance the efficiency of the procedure.

Errors or omissions are corrected through the empowerment granted by Empowerment Decision SEC(2008)2397 when three cumulative conditions are found :

- 1) the error appears in a translation;
- 2) the error is evident in itself or when comparing the translation with the original;
- 3) the error does not affect to the substance of text in its integrity.

DGT consults the Legal Service and the author DG to obtain their approval for correcting the act, following which DGT, through the approval of the Director-General, can adopt the corrigendum.

If the three conditions mentioned do not concur, errors/omissions are corrected via a procedure similar to that followed for the adoption of the original act. In this case, after the Legal Service and the author DG have been consulted, it is the Commission that adopts the rectification, which can be in the form of a Corrigendum or of a rectifying act.

In 2010, DGT received 357 corrigenda requests. One corrigendum request can concern several languages; counted per language, there were 592 requests, 516 of which led to a correction under the Empowerment Decision or by administrative correction. Since DGT became responsible for correcting translation errors in 2008, it has received 9 requests concerning substantial or non-obvious errors.

To obtain a more accurate picture of the meaning of the number of 592 corrigenda requests this number must be compared with the number of documents that DGT translates for the categories for which DGT has received corrigenda requests<sup>57</sup>.

In 2009, DGT received about 6900 requests for translation (first versions), amounting to ± 86 000 treatments (treatments correspond *grosso modo* to language versions). In

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<sup>55</sup> Empowerment to correct errors, including minor errors, in translations of acts adopted by the Commission, SEC(2008) 2397.

<sup>56</sup> C(2010) 3031, 5 May 2010.

<sup>57</sup> Legislative text, communication from the Commission, White Paper, Green Paper, Commission Working Paper, Technical annex (CSWP), Commission Decision, Notice for publication in the OJ, Report required by legal act.



2010 the number of requests was about 6 400, amounting to ± 79 000 language versions.

About 170 out of the 592 corrigenda requests that DGT received in 2010 concerned documents translated in 2009 and about 160 concerned documents translated in 2010. The rest related to documents translated before 2009. Set off against the total production for the categories concerned, this means that for about 0,2% of these documents a corrigendum request was received.

	Number of language versions translated	Number of corrigenda requests related to translations done in a specific year	% of translations for which a corrigendum was requested
<b>2009</b>	86 000 (±687 000 pages)	170	0,2 %
<b>2010</b>	79 000 (±765 000 pages)	160	0,2 %

Table 4.1 – Proportion of translations for which a corrigendum was requested

Perhaps partly due to a growing awareness of the corrigenda procedure since the Empowerment Decision, DGT's Corrigenda Team has been receiving an increasing number of corrigendum requests in recently adopted legal acts. The errors concern terminology issues, missing or non-translated text, wrong figures, missing footnotes or annexes, etc. This type of error should, as much as possible, be detected by DGT's quality control.

On the other hand, there are also cases in which DGT's translators spot errors in the original, but the author DG refuses to send a new version correcting the original, but then request a correction of the translated versions after adoption by the Commission.

Finally, not all requests for corrigenda are due to mistakes by DGT staff; part of the requests for corrigenda concern stylistic changes rather than errors. The question is how useful it is to "correct" texts for stylistic reasons only, in particular in cases where the change is not necessarily an improvement, but nevertheless accepted to accommodate the wishes of the requester.

The replies from the language departments to the question of how much time they spend on average on corrigenda requests varied greatly, from half an hour for a very simple request to several working days for highly complex cases. To obtain a more precise figure, language departments would have to keep track of the time spent on corrigenda requests for a period of 6 months to a year. Such an exercise could be part of a more detailed analysis of the workload of language departments.

For the present study, to give at least an indication of the costs of corrigenda requests for translation services dealing with legislative texts, we will take 4 hours per request, and the 100 000 euro per translator per year and the 200 working days per year used in the above examples. Furthermore, we will take two administrators (AD) and 4 assistants (AST) for handling corrigenda requests.

The yearly costs for handling the corrigendum requests would include the following:

Cost area	Cost calculation	Totals (per year)
Corrigenda-related effort in the language departments	<ul style="list-style-type: none"> <li>– 4 hours on average per request =&gt; 590 requests x 4 hours = 2 360 hours</li> <li>– 2 360 hours equals 295 translator days = 1.475 FTE</li> <li>– 1.475 x 100 000 EUR = 147 500 EUR</li> </ul>	<b>147 500 EUR</b>
Team for handling corrigenda requests	<ul style="list-style-type: none"> <li>– 2 AD x 100 000 EUR = 200 000 EUR</li> <li>– 4 AST x 50 000 EUR = 200 000 EUR</li> </ul>	<b>400 000 EUR</b>
	<b>Total</b>	<b>547 500 EUR</b>



This is less than 1 000 EUR per corrigendum request. For the European Commission, the efforts made in the Legal Service and the author DGs, consultation of the relevant Comitology committee (where necessary) and the costs for republication in the Official Journal (printing, etc.) should be added to the above amount.

The price per correction request compared with the cost of quality control raises an interesting question: how much effort should DGT invest to prevent correction requests? As mentioned above, correction requests occur for 0.2 % of the translations falling into the category for which DGT receives correction requests.

From a purely financial perspective, spending (even) more time on checking for the above-mentioned errors may not be the most efficient use of resources. Even if revisers were to spend only an extra 5 minutes on each of the 79 000 language versions translated, this would amount to 822 translator days or roughly 4 translator years (FTE), corresponding to 400 000 EUR. And this would not ensure a reduction to zero of the number of corrections, so correction requests would always remain a cost area. In other words, financially there would be no net gain to be made.

However, corrigenda have other, potentially more far-reaching, consequences, in terms of legal certainty. This aspect will be addressed in chapter 5.

Omissions of footnotes, etc. are errors that happen because translators are often working under tight deadlines. If it were possible to reduce that pressure, probably less revision effort would be required, because translators would have more time to get things right the first time.

#### **Avenues for action:**

⇒ *It would be useful to have an overview, easily accessible, of all the errors, omissions or inaccuracies encountered in the translations produced. The aim should be to create one database, a kind of "translation error log" as is being used by large private translation providers<sup>58</sup>.*

#### **4.4.2. Poor quality of external translations**

In section 4.2.2 "Quality in external translation" we looked at the quality-related costs linked to calls for tender and the evaluation of external translations. This section will look into the costs of poor-quality external translations.

DGT's external translators are supposed to deliver translations that have been revised and are ready to be used. In theory, this should mean that no further revision/correction should be necessary.

In reality, however, in addition to the mandatory evaluation, which is *not* meant as a quality assurance measure, language departments also revise or cross-check external translations. In fact, over 60 % of the DGT's external translations undergoes some kind of quality control (revision or cross-checking).

If a company orders products from a supplier with a view to selling them – as they are, without any further processing – on to the final customer, those products should be of the quality required. If these products require further work because the quality is not up to the standards required by the purchaser and the end-customer, this means an extra cost for the former.

<sup>58</sup> For an example of such an error log, see a presentation on Measuring Quality in Translation, given at a conference organised by the American Translators Association (ATA): <http://www.translationquality.com/files/QualityMeas2003.pdf>.





Similarly, if DGT considers that the quality of the translations it receives from its contractors is not good enough and therefore has to be improved, the costs related to this improvement must be considered to be poor-quality costs and must be included in DGT's internal failure costs.

We are not arguing that this quality effort should not be made. On the contrary, DGT's main "selling point" is quality and its customers or the EU citizens do not make a distinction between in-house and external translations. They expect and are entitled to the highest quality and if that requires a revision of external translations, then the costs this entails are the price to pay for good quality. And it is a price worth paying; the "return on investment" is then the preservation of the Commission's image in general and DGT's image as the centre of excellence for translation in particular.

To obtain a fair picture of DGT's quality cost in external translation and in particular of the costs of poor-quality external translations, it is more important to know how much time has been spent on revision carried out, so as to be able to better calculate the financial penalties. For example, if in order to revise a 10-page document, the internal translator has to work 3 days, it is legitimate to apply a 100% financial penalty to the contractor. In fact, the contractor should deliver a revised and reviewed translation ready to be used and DGT should not have to spend three days to "repair" a faulty freelance translation.

As mentioned in subsection 4.2.2.2 "Evaluation of external translations", in 10 % of the cases, the quality of external translations was considered to be below "good". These translations require an extra revision effort and a more in-depth evaluation. Moreover, the translations considered to be unacceptable also imply additional administrative work (informing contractors about penalties applied, dealing with contestations of evaluations...).

#### *The quality of feedback given to external translators*

To obtain high-quality external translations, it is also important to provide high-quality feedback. In concrete, this means the following:

- Feedback must be realistic: if a translation is not good, DGT must say so, even if it takes more time to prepare a well-founded feedback file for translations below "good". Only by giving fair and realistic evaluations will the dynamic ranking work as it should, which is essential for a good quality.
- Translators should therefore be given enough time to do a proper evaluation. Sometimes tight deadlines are invoked for not spending enough time on this. However, an evaluation and the preparation of the feedback file can also be done *after* the (revised) external translation has been sent to the requester.
- Feedback must be clear, so that the external translator can draw lessons for the next time.

Not allowing translators sufficient time to do a proper evaluation allows mediocre or below standard translations to be published, causing potential damage to DGT's image as a centre of excellence for translation and therefore poses a risk for DGT.

Well-founded (= high-quality) feedback avoids contestations by the contractor. If a contractor receives a mark "acceptable" or lower, this means a drop in the dynamic ranking and consequently less work in the future. If after contesting DGT's feedback and the mark given it is decided to give a higher mark, the contractor will still have lost out on work and could ask DGT for a compensation for this loss. If this happens, compensation is normally given by putting the contractor in question on a higher position in the dynamic ranking.





In a worst-case scenario, however, if the contractor does not consider this compensation sufficient, the contractor could complain to the European Ombudsman or go to court. Such a scenario can be avoided by providing high-quality, realistic feedback, which is difficult to refute.

DGT's contractors are often not clear as to the implications of DGT's evaluations on their position in the dynamic ranking, as indicated by contractors during DGT's conference on external translation, held on 11 March 2011. Feedback and communication are key to a good quality end product.

If a contractor contests an evaluation, this generates further costs, since staff in DGT S.2 have to manage these contestations (phone calls, e-mails, liaising with the language departments, which also have to spend time on this...). Good communication between language departments and contractors can reduce these costs.

For DGT's reputation and image as a centre of excellence in translation and translation-related matters it is important to also invest in the quality of the feedback it sends to its contractors.

#### **4.4.3. Reputation loss**

While it is not possible to calculate the cost of reputation loss, this consequence of poor quality should not be underestimated. DGT's "unique selling point" is its quality. If the perception of the budget authority or of Commission services is that DGT delivers poor quality and is therefore a liability rather than an added value, this would not bode well for DGT's future. There would be cuts in DGT's resources and probably more and more translation work would be outsourced. Even if the overwhelming majority of DGT's translations does not lead to any problem, it is the few cases that do cause problems that do the damage.

What would happen if the pressure to reduce resources for DGT were to be taken to extremes or if DGT were forced to increase its production from 1.9 million pages to about 2.3 million without a commensurate increase in the budget?

In an extreme scenario DGT would be reduced to a small number of officials handling translation requests to be translated through machine translation, or it would have to dedicate all its resources to translating and discard the usual quality control measures (revision, cross reading), which currently account for  $\pm 26\%$  of DGT's translation effort.

This would no doubt "save" many posts, but the costs further down the line would actually be much higher.

Moreover, already now if DGT cannot provide the translation, DGs and other services resort to direct outsourcing or "grey" translations, which poses a risk as far as quality is concerned. This problem would be exacerbated by reducing the number of translation posts.

The Commission would most likely be faced with an increase of requests for corrigenda that would come from the Member States. Currently, with all the quality actions it has in place, DGT receives almost 600 corrigenda requests per year, of which 90% is justified. This number would in all likelihood increase if there were no quality measures at all. While the financial consequences for DGT would not be enormous (cf. Section 4.4.1 – "Corrigenda requests"), it would be detrimental to DGT's image as a centre of excellence in translation and would reduce DGT's credibility as a contributor to the EU's multilingualism policy. If DGT is perceived as unable to deliver high-quality translations, it is more difficult for it to be taken seriously on policy-making matters.





And the damage is obviously not limited to DGT; badly written and poorly translated texts are bad for the image of the Commission and indeed the EU. It is no exception for translation errors to be (ab)used as an excuse to block political decisions, for example when opponents in Poland of the then EU Constitution evoked translation errors that in their view made it impossible to implement the treaty<sup>59</sup>.

The next chapter will deal with the consequences of poor quality outside DGT.

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<sup>59</sup> See article in the EU Observer, 20 January 2005: <http://euobserver.com/9/18184>





## 5. The impact of poor quality translations outside DGT

The previous chapter focused on DGT's quality-related efforts and how these can be quantified. However, the consequences and the costs of poor-quality translation are even more significant outside DGT, although more difficult to quantify in monetary terms.

The quality of translations cannot be measured by the number of translation errors alone. Even if a translation does not contain any blatant errors, it can still be of poor quality if it is difficult to understand or poorly formulated. The bad quality of originals cannot always be used as an excuse here; it is the translator's job to produce high quality translations.

However, this can only be done if the translator is given sufficient time to produce such a high-quality translation. Good quality requires a substantial investment to enable translators to do their job in the best conditions possible.

This chapter will look at the consequences of poor quality translations for society, by looking at, *inter alia*, the consequences of translation errors and corrigenda, the importance of translation errors in rulings by the Court of Justice of the EU and the cost in terms of image damage and possible consequences for the European project.

### 5.1. Translation errors – some examples from real life

That mistakes are easily made may be illustrated by the example of a correction of Commission Regulation (EU) No 61/2011 of 24 January 2011 amending Regulation (EEC) No 2568/91 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis.<sup>60</sup> The problem concerned the quality of extra virgin olive oil and the level of alkyl esters admitted (they are added to low quality oil to eliminate bad smells). The regulation is alleged to give the green light to "deodorised" oil because it authorises the sale of extra-virgin oil with up to 150 mg/kg of alkyl esters. The corrigendum<sup>61</sup> brings the limit of admitted alkyl esters down to 75 mg/kg. Technically the mistake was due to the inversion of the quotient in the ratio FAEE/FAME for the range from 75 to 150 mg/kg. This error gave rise to articles in the press<sup>62</sup> and protests from olive oil producers, who were against allowing a higher amount of chemicals in olive oil.

The corrigendum was formulated as follows:

"Instead of: « $\Sigma$  MEAG + EEAG  $\leq$  75 mg/kg o 75 mg/kg < $\Sigma$  MEAG + EEAG  $\leq$  150 mg/kg e  
(MEAG/EEAG)  $\leq$  1,5»,

read: « $\Sigma$  MEAG + EEAG  $\leq$  75 mg/kg o 75 mg/kg < $\Sigma$  MEAG + EEAG  $\leq$  150 mg/kg e  
(EEAG/MEAG)  $\leq$  1,5»;"

This shows the consequences of even a small mistake, and the repercussions such a mistake can have in the press. It is the type of error which, if it goes undetected, leads to a different application of EU law in the Member States, with possible impact on consumer safety and business.

In the end, the error was swiftly corrected and most likely the damage was limited, but it did not help boosting the image of the European Commission. It also shows how

<sup>60</sup> OJ L 23, 27.1.2011, p. 1-14.

<sup>61</sup> OJ L 78, 24.3.2011.

<sup>62</sup> See :

([http://www.repubblica.it/salute/alimentazione/2011/02/24/news/l\\_olio\\_taroccato\\_diventa\\_legale\\_l\\_ue\\_autorizza\\_i\\_deodorati-12695578/](http://www.repubblica.it/salute/alimentazione/2011/02/24/news/l_olio_taroccato_diventa_legale_l_ue_autorizza_i_deodorati-12695578/)).





important it is to allow sufficient time for translation and revision, as this is a mistake that typically happens when working in a hurry.

Even if in the above example the damage was limited, there are other cases where a sub-optimal translation (could have) caused more serious damage, be it in legal terms or in terms of image damage. And even if there are no major legal consequences and the image damage seems to be limited, there are still the costs for all parties concerned in a court case, both at national level and at EU level, as can be illustrated by the *Lubella* case<sup>63</sup>.

The case concerned the interpretation of "sour cherries" in regulation (EEC) No 1932/93 of 16 July 1993 establishing protective measures as regards the import of sour cherries<sup>64</sup>. All the language versions of the contested regulation referred to sour cherries, except the German version, which, although referring to the CN<sup>65</sup> codes corresponding to sour cherries, used the term '*Süßkirschen*' ('sweet cherries') in its title, its preamble and the wording of Article 1(1) to describe the products covered by the protective measures. That term was replaced four days later by the term '*Sauerkirschen*' ('sour cherries') by a corrigendum published in the German version of the Official Journal of 20 July 1993 (OJ 1993 L 176, p. 29).

Lubella maintained that the contested regulation was invalid, arguing that its content was not settled in its initial version, since it was not clear whether the regulation was concerned with sweet cherries or with sour cherries and moreover that applying the amended version of the regulation to imports effected on 19 and 20 July 1993 meant applying it with retroactive effect, which is contrary to the principle of the protection of legitimate expectations.

The Court stated this was a case of a "material error", in that it used the term '*Süßkirschen*' rather than '*Sauerkirschen*' — an error which was subsequently rectified. It further considered that, since the German regulation mentioned the CN codes applicable to sour cherries, the ambiguity could perfectly well have been resolved by reference to the other language versions of the regulation. Moreover, the competent German authorities were informed of that error and were therefore in a position to apply the regulation correctly from the outset. "In those circumstances, the content of the contested regulation could not be regarded as uncertain"<sup>66</sup>.

As for the retroactivity of the corrected version of Regulation 1932/93, the Court held that "the scope of the contested regulation was not altered by the amendment published in the German version of the Official Journal on 20 July 1993. In those circumstances, the regulation was capable of being applied as from its date of entry into force"<sup>67</sup>.

The above example shows that a translation error in a legal text can lead to a court case at the national level between two companies or between a company and national authorities. Most probably the Commission and DGT will never hear about it directly, but the costs (lawyers, cost of the court proceedings at national level and at the European Court of Justice<sup>68</sup>, the cost incurred by the European Commission for submitting its observations to the Court, company time spent on the dispute...) for the parties concerned are very real. Lawyer fees and court costs vary per Member State and from

<sup>63</sup> [C-64/95, Konservenfabrik Lubella v Hauptzollamt Cottbus \[1996\]](#).

<sup>64</sup> OJ 1993 L 174, p. 35.

<sup>65</sup> Combined Nomenclature.

<sup>66</sup> Case 64/95, par. 18.

<sup>67</sup> Case 64/95, par. 20.

<sup>68</sup> In its preliminary rulings the Court explicitly mentions the costs incurred by the European Commission and the national parties: "*The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court*".





case to case, but an average hourly rate for lawyers ranging from 100 to 400 Euros is not uncommon. Court costs can range from EUR 10 to EUR 10 000, depending on the value of the case.<sup>69</sup>

The error in regulation 1932/93 was not due to the complexity of the text, but probably to time pressure. It was a small mistake, easily and swiftly corrected, but nevertheless with considerable consequences. Even if the cost for handling corrigenda requests is not excessive when compared to the quality control costs, correcting legal texts that have already been published in the Official Journal raises some legal issues, in particular as regards legal certainty.

In the Lubella case, the Court was clear in its assessment that that the ambiguity could have been solved by looking at other language versions and that the principle of the protection of legitimate expectations had not been violated. However, for those who see the EU's language regime and the equal authenticity of all official EU languages as a problem, this type of error has given ammunition for their calls to abolish this system, which would be a serious blow to the EU's multilingual nature.

The section below will look at some more examples of court cases where translation errors played a role.

## **5.2. Poor-quality translation and legal certainty**

It is conceivable that citizens or companies have to go to court because of different interpretations of a legal text caused by a poor or incorrect translation, leading to misunderstanding of their rights and obligations. Poor-quality translations can pose a risk to legal certainty, even if translation errors are corrected after publication.

This section will look into the (possible) legal consequences of translation errors for companies and/or citizens. First, it will address the issue of corrigenda and their potential impact on legal certainty. Secondly, it will provide some examples of translation errors referred to in cases of the European Court of Justice.

### **5.2.1. Corrigenda and legal certainty**

The correction of legislation already published in the Official Journal (see also section 4.4.1 "Corrigenda Requests") raises the question of legal certainty, since some corrections alter the meaning of the text previously published and applied sometimes weeks, months or even years after the legal text was first published.

Michal Bobek, researcher at the Department of Law of the European University Institute in Florence, argues that some meaning-changing corrigenda and should therefore no longer be considered mere rectifications, but rather as amendments in a material sense, which should not apply retroactively<sup>70</sup>. Meaning-changing corrigenda can include a narrowing or broadening of notions in a legal text, *contre-sense* (turning positive sentences into negative ones or vice-versa) or even a complete rewriting of substantial parts of a piece of legislation.

<sup>69</sup> See Hodges, Christopher, Vogenauer, Stefan and Tulibacka, Magdalena, Costs and Funding of Civil Litigation: A Comparative Study (December 02, 2009). COSTS AND FUNDING OF CIVIL LITIGATION, C. Hodges, S. Vogenauer and M. Tulibacka, eds., Forthcoming; Oxford Legal Studies Research Paper No. 55-2009. Available at SSRN: <http://ssrn.com/abstract=1511714>.

<sup>70</sup> Bobek, Michal, "Corrigenda in the *Official Journal of the European Union*: Community Law as Quicksand" (November 1, 2009). *European Law Review*, Vol. 34, pp. 950-962, 2009. Available at SSRN: <http://ssrn.com/abstract=1498063>.





Bobek considers that the use of corrigenda of a legislative document in today's Community practice is an "ex-post catching up on translation work which would have been done at the drafting stage" (i.e. before publication)<sup>71</sup>.

He gives the example of Article 54 of Regulation 865/2006, which contains conditions under which a specimen of an animal species shall be considered to be born and bred in captivity. The said Article contains four conditions. The introductory part of the Article reads in English:

*"[...] specimen of an animal species shall be considered to be born and bred in captivity only if a competent management authority, in consultation with a competent scientific authority of the Member State concerned, is **satisfied that the following criteria are met:**".*

The Czech version of the same provision, however, read for more than a year that

*"[...] specimen of an animal species shall be considered to be born and bred in captivity only if a competent management authority, in consultation with a competent scientific authority of the Member State concerned, is **satisfied that at least one of the following criteria are met:**".<sup>72</sup>*

Bobek makes the following analysis:

Based on the Czech version, more permits to import or sell these animal species would be granted than based on the English version. Even this mistake was eventually corrected to reflect the legislator's intention (all conditions have to be fulfilled), the question arises what should happen with the administrative decisions whereby the Czech authorities granted permits before the corrigendum was published.

On the one hand, one can argue that the Czech authorities could have discerned the correct content by comparing other language versions. Following this reasoning, all administrative decisions based on the basis of a wrong Czech translation are void. In this case, the temporal application of a corrigendum would be fully retrospective. This would undermine the legal certainty and legitimate expectations of the actors who, in good faith, obtained a permit and would now see it revoked.

Another approach would be to say that a corrigendum should be considered an amendment to a regulation and therefore only apply prospectively, i.e. past decisions should not be revised.

Such an approach, while respecting the principle of legal certainty, would go against the multilingual nature of EU law and the principle that all language versions are equally authentic, since in this case the national authorities would not have to take account of the other language versions. This would mean that the EU is subdivided into 22 language units for the purpose of temporal effects of new EU legislation.

Both of the above approaches have their draw-backs. The best way is to find a balance between, on the one hand, the Community interest in safeguarding the uniform interpretation and application of EU law and equal authenticity of all language versions and, on the other hand, respect for legal certainty and the protection of legitimate expectations. The key element in all considerations is the temporal aspect: at which stage does the protection of legal certainty, legitimate expectations and the protection of acquired rights and already created legal relationships take precedence over the obligation to compare language versions?

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<sup>71</sup> Ibidem.

<sup>72</sup> Emphasis added by Bobek.





In the above example of the permits for importing/selling animal species considered to be born and bred in captivity, the corrigendum could have serious consequences if traders did not receive a one-off permit, but, for example, a licence to import and sell endangered species for a period of five years. The regulation had been in force for one year when a corrigendum to the regulation was published, from which it is obvious that the holder of the licence has to satisfy all four conditions, not just one of the four. If one follows the above described prohibition of true retroactivity, then the commercial transactions carried out by the importer in the past year would not be questioned. What about the remaining four years of the licence?

Depending on the specific circumstances of the case, several approaches are possible. One approach would be to argue that he has a vested right to import for five years. The decision issued is a past decision based on past factual circumstances. The withdrawal of the licence would thus amount to true retroactivity. Alternatively, one could argue that the importer has, in any case, a strong legitimate expectation based on a past administrative decision that his licence will last for five years. Here, the legitimate expectation argument would serve as a barrier for the immediate application of the corrigendum.

Bobek's example and analysis illustrate the (potential) impact of translation errors and their corrections, which is more important than the financial cost for the EU of correcting a piece of legislation.

### 5.2.2. Case-law on discrepancies between language versions

The topic of discrepancies between language versions of EU law and how the court deals with these discrepancies has been – and still is – widely researched. The examples mentioned in this section are taken from the works of some of the researchers working in this field.

An analysis carried out by Mr C.J.W. Baaij from the University of Amsterdam<sup>73</sup> reveals that all court cases between 1960 and 2010 where the Court used a comparison between different language versions to come to a ruling has yielded 246 so-called "language cases", which is about 3% of all court cases in that period. In 170 of these cases, the Court found discrepancies between language versions, while in 76 cases a comparison between language versions did not yield any discrepancies.

Discrepancies between language versions of EU law can hinder harmonisation and different interpretations reduce legal certainty. Mr Baaij's research goes into the question of what type of discrepancies exist and how the Court deals with these discrepancies. According to his analysis, in 109 cases out of the 246 "language cases" discrepancies led to interpretation problems, mostly related to terminology.

According to the Court's prevailing canon, the uniform interpretation of EU law requires a comparison between language versions; all language versions are equally authentic and thus have an equal weight in the interpretation<sup>74</sup>. Moreover, in several cases the Court has indicated that comparing language versions is necessary for a uniform application and interpretation of EU law and that relying on one language version only is unacceptable<sup>75</sup>.

The equal authenticity of all languages was reinforced by the Court's ruling in the Skoma-Lux case, where the Court established that secondary legislation which is not published in

<sup>73</sup> Mr Baaij gave a presentation on the "Consequences of Discrepancies between Language Versions in Cases of the European Court of Justice" at the DGT on 8 June 2010 and at the Council on 24 February 2011.

<sup>74</sup> See CILFIT 283/81 (par. 18) and EMU-Tabac 296/95 (par 18).

<sup>75</sup> For example cases 29/69 (Stauder), 9/79 (Koschniske), C-223/95 (Moksel).





the language of a Member State is unenforceable against individuals in that State, "even though those persons could have learned of that legislation by other means"<sup>76</sup>.

In practice, often the Court does not compare all language versions, using a teleological method instead<sup>77</sup>. In some cases the Court examines most language versions, in other cases only some. In principle, this goes against the canon of equal authenticity and equal weight for all language versions. This also means that discrepancies are likely to remain undetected. The fact that until now this has not posed a problem for the EU institutions does not mean that problems cannot arise in the future, in particular in a context of ever-increasing pressure to translate more. Higher time pressure can lead to more errors or at least more discrepancies between language versions.

In his article entitled "*Derecho de la UE y Multilingüismo; el Problema de las divergencias entre Versiones Lingüísticas*", Pablo Dengler, from the University of Salamanca, claims that there are only very few cases where language versions are diametrically opposed. Most discrepancies concern partial differences<sup>78</sup>.

In the case of *Molkerei Borgmann vs the Hauptzollamt Dortmund* (Case C-1/02 of 2004) the *Finanzgericht Düsseldorf* (Germany) asked the Court for a preliminary ruling on the validity of the second subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products<sup>79</sup>.

Pursuant to this Regulation, Molkerei Borgmann had to forward, before 15 May each year, information to the competent national authorities or be liable to a penalty. In the event, Molkerei Borgmann sent the information on 11 May 2000, but the authorities received it on 16 May, one day after the deadline. The question was therefore whether to take into account the date on which the information was sent or on which it was received. The wording of the various language versions of the first subparagraph of Article 3(2) of Regulation No 536/93 does not provide any clear indication in favour of one or other interpretation of the time-limit: The majority of language versions used words with the meaning of "transmit" or "communicate", but some versions were phrased in such a way that the information had to be received by the deadline. Clearly, this discrepancy led to different legal consequences, depending on the language version consulted.

The Court considered that

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

*" 31. That principle requires in particular that rules such as those before the Court, which may lead to the imposition of charges on the economic operators concerned,*

<sup>76</sup> Skoma-Lux, Case C-161/06, Official Journal of the European Union, C 51/13.

<sup>77</sup> Mr Baaij's presentation (see footnote 74). See also a Master's Thesis by W. Berends: "The Interpretation of Multilingual EU Legislation - The Practice of the European Court of Justice and its Consequences for Legal Certainty", p. 37 and Theodor Schilling, *Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of a Community Law* (footnote 79 of that article), *European Law Journal*, Vol. 16, No. 1, January 2010, pp. 47-66. © 2010 Blackwell Publishing Ltd, 9600 Garsington Road, Oxford, OX4 2DQ, UK and 350 Main Street, Malden, MA 02148, USA, found on <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0386.2009.00496.x/pdf>.

<sup>78</sup> See article published in "Iciar Alonso Araguás, Jesús Baigorri Jalón y Helen J. Campbell (eds.): *Translating Justice. Traducir la Justicia*. Editorial Comares, colección interlingua nº 84: 2010 (1ª ed.) (122 páginas).", February 2009.

<sup>79</sup> OJ 1993 L 57, p. 12, as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998 (OJ 1998 L 142, p. 22).





*must be clear and precise, so that they can know unequivocally what their rights and obligations are and take steps accordingly."*

The Court followed a teleological approach, looking at the aim of the Regulation and argued that receiving the information a bit later than the deadline did not compromise the objective of the Regulation. Consequently, it ruled that

*"Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products, as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998, must be interpreted as meaning that milk purchasers comply with the time limit laid down in that provision where they send the requisite information to the competent authority before 15 May of the relevant year."* (emphasis added).

Whether this is a translation error or rather a lack of concordance between language versions is open for debate. But in any case it is an example of poor quality, which in this case led to a court case, with all the costs this implies for the parties involved.

It may not be feasible to check the concordance between all language versions for each and every piece of legislation, but a maximum effort should be made, both within DGT and by the legal revisers.

There are a number of cases where the Court explicitly refers to a translation error. We will give an example of one such case, to illustrate the (possible) ramifications of poor quality. This is not to say that DGT's translators are doing a poor job, it is an argument for allowing sufficient time and providing proper training and tools so as to enable the translators to provide the high quality that is required.

The example concerns the joined cases C-261/08 and 348/08, *García and Cabrera*. The cases concerned two Bolivian nationals who were unlawfully in Spain. The competent authorities ordered their expulsion, either on the ground that they had not obtained an extension of his permission to stay or residence permit, or on the ground that the validity of those documents had expired more than three months previously and they had not sought to have them renewed. That penalty was accompanied with a prohibition on entry to the Schengen area for a period of five years.

Ms García and Mr Cabrera challenged this decision, arguing that the administration had not applied the principle of proportionality when assessing the circumstances of the case, and did not give reasons for replacing a fine (a sanction that was also possible under EU law) with expulsion.

The national court then referred the following question to the Court for a preliminary ruling:

*"Should Article 62(1) and (2)(a) of the Treaty establishing the European Community and Articles 5, 11 and 13 of Regulation (EC) No 562/2006 ... be interpreted as precluding national legislation, and the case-law which interprets it, which permits the substitution of the expulsion of any "third-country national" who does not have documentation authorising him to enter and remain in the territory of the European Union by imposition of a fine?"*

The Spanish authorities based their decision on Regulation (EC) No 2006/562, which provides in Article 11(3) that

*"Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be expelled by the competent authorities from the territory of the Member States concerned."*





However in the Spanish version that provision imposes an obligation, inasmuch as it provides that the competent authorities of the Member State 'shall expel' (*será expulsado*), from the territory of that Member State, a third-country national if the presumption is not rebutted. By contrast, in all the other language versions, expulsion appears as an option for those authorities.

The Court considered that it follows from settled case-law that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement of the uniform application of Community law:

*"As the Spanish-language version of Article 11(3) of Regulation No 562/2006 is the only one which diverges from the wording of the other language versions, it must be concluded that the real intention of the legislature<sup>80</sup> was not to impose an obligation on the Member States concerned to expel, from their territory, third-country nationals in the event that they have not succeeded in rebutting the presumption referred to in Article 11(1), but to grant those Member States the option of so doing."*

It followed from Court's ruling that Spain was not obliged to expel Ms García and Mr Cabrera, but due to a translation error the Spanish authorities adopted a rigorous stance, claiming they had no choice but to expel them.

The translation error was not the only reason for Spain to order the expulsion. Still, if the Spanish version of Regulation (EC) No 562/2006 had been correct, perhaps the competent authorities had been more willing to limit the penalty to a fine, or at least they might have found it more difficult to expel García and Cabrera instead of fining them.

With the Court as "guardian" of the uniform application and interpretation of EU law, at the end of the day citizens' legal certainty does not seem to be at great risk. The relatively low number of court cases in which discrepancies between language versions played a role underlines this. Still, the above examples show the problems that discrepancies can cause to individuals or companies.

On the basis of its interpretation methods, the Court tends to play down the impact of differences between language versions and generally avoids giving preference to one language version or the other. Instead, as Dengler puts it, it interprets the law in abstract terms. Still, by giving its interpretation the Court can implicitly "de-authorise" one or more language versions, which implies a risk for the legal certainty of those who relied on those versions<sup>81</sup>.

Dengler concludes that even if the risk of divergences between language versions can never be avoided entirely, this is not enough reason to put into question the EU's linguistic regime, as the number of discrepancies that come to the Court's attention is very low and could in many cases have been avoided if the original had been of better quality. He furthermore argues that the solution of the problems caused by the EU's multilingualism should not be solved by less multilingualism (reducing the number of authentic languages), but by more multilingualism (i.e. promoting and facilitating the multilingual interpretation of EU law and language learning)<sup>82</sup>.

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<sup>80</sup> This quote is in itself an example of how easily mistakes are made; obviously, what is meant is "legislator", not "legislature", as can be inferred both from the context and from the other language versions of the judgement.

<sup>81</sup> See Dengler, op. cit.

<sup>82</sup> Ibidem.





This view is not shared by Theodor Schilling, professor at the Faculty of Law at Humboldt University. He argues that even if the Court, through its uniform interpretation approach, has been able to achieve equitable results in its rulings, respecting the non-discrimination principle and equal authenticity of all language versions, this is not adequate for the simplest type of case, i.e. that a citizen has every reason to trust his/her own language version of a law<sup>83</sup>. Like Bobek, he refers to the requirement that citizens must be able to foresee the effects of laws that apply to them. These rights have been developed by the European Court of Human rights (ECHR).

If the Court finds that a language version is not consistent with any of the other language versions and that it must therefore be interpreted in the light of those other versions, this could "interfere with the principle of predictability of legal consequences, inasmuch as the citizen is entitled to rely on her own language version of the law interpreted"<sup>84</sup>.

Schilling gives a telling example of how discrepancies between language versions can lead to confusion and different legal consequences in different Member States.

In her opinion on case C-35/05 *Reemtsma Cigarettenfabriken GmbH v Ministero delle Finanze*, Advocate-General Sharpston quotes<sup>85</sup> three different meanings among the language versions of a provision of the Sixth Council Directive on the harmonisation of the laws of the Member States relating to turnover taxes—Common system of value added tax: uniform basis of assessment<sup>86</sup>. She quotes the following provision, introduced by Council Directive 91/680:

*"Article 17(2) 6 provides, in so far as is relevant:*

*'In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:*

*(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person within the territory of the country;' "*  
(emphasis added)

This version and the French (as well as the Italian and Spanish versions) version appears to refer to the liability of the supplier:

FR: *a) la taxe sur la valeur ajoutée due ou acquittée pour les biens qui lui sont ou lui seront livrés et pour les services qui lui sont ou lui seront rendus par un autre assujetti redevable de la taxe à l'intérieur du pays;* (emphasis added)

In the German version, however, the reference is to the place where the tax was due or paid:

DE: *a) die im Inland geschuldete oder entrichtete Mehrwertsteuer für Gegenstände und Dienstleistungen, die ihm von einem anderen Steuerpflichtigen geliefert wurden oder geliefert werden bzw. erbracht wurden oder erbracht werden;*  
(emphasis added)

<sup>83</sup> Theodor Schilling, *Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of a Community Law*, European Law Journal, Vol. 16, No. 1, January 2010, pp. 47-66. © 2010 Blackwell Publishing Ltd, 9600 Garsington Road, Oxford, OX4 2DQ, UK and 350 Main Street, Malden, MA 02148, USA, found on <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0386.2009.00496.x/pdf>.

<sup>84</sup> Ibidem. See also Skoma-Lux (C-161/06), par. 38: "The Court has held that the principle of legal certainty requires that Community legislation must allow those concerned to acquaint themselves with the precise extent of the obligations it imposes upon them, which may be guaranteed only by the proper publication of that legislation in the official language of those to whom it applies (see also, to that effect, Case C-370/96 Covita [1998] ECR I-7711, paragraph 27, Case C-228/99 Silos [2001] ECR I-8401, paragraph 15, and Consorzio del Prosciutto di Parma and Salumificio S. Rita, paragraph 95)".

<sup>85</sup> Case C-35/05, *Opinion* of Advocate-General Sharpston delivered on 8 June 2006.

<sup>86</sup> Council Directive 77/388/EEC of 17 May 1977, OJ L 145 of 16 June 1977, p. 1, as amended.





And in the Dutch the words referred to the place where the supply was made:

NL: *a) de belasting over de toegevoegde waarde welke verschuldigd of voldaan is voor de hem door een andere belastingplichtige in het binnenland geleverde of te leveren goederen en voor de te zijnen behoeve door een andere tot voldoening van belasting gehouden belastingplichtige in het binnenland verrichte of te verrichten diensten; (emphasis added)*

This discrepancy was solved by Directive 95/7/EC amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them<sup>87</sup>, which unified all language versions in line with the German version. The English version of Article 17(2)(a) now reads:

*"(a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person' (emphasis added).*

Schilling attributes this to inadequate translation, but the fact that the original<sup>88</sup> was not clear plays at least as important a role. Obviously, the lack of concordance should have been spotted by the translators, but this case equally shows the importance of clear drafting. Divergences between language versions cannot always be entirely blamed on poor translation.

That said, if in the course of their work translators discover a discrepancy between language versions (translators often consult other language versions of the text they are translating), they should either inform the colleagues of the languages concerned or report this, so that appropriate action (a concordance meeting, informing the language departments concerned.....) can be taken. This is not meant as a "naming and shaming" of colleagues, but as a straightforward way to reduce the number of discrepancies between language versions.

The above examples show that translation errors, lack of concordance or other ambiguities can lead to confusion and potentially to diverging legal consequences, depending on which language version is being considered. This is not only the case for high-profile political texts or important packages of legislation, but also for "routine" legal texts. This means that the highest quality effort must be made for all types of legal texts that are to be published.

Schilling is critical of translation, referring to "those – all too frequent – cases in which the different language versions have different meanings"<sup>89</sup>. In his article he describes the balance that has to be struck between, on the one hand, the principle of non-discrimination between languages and the principle of protecting citizens' legitimate expectations (legal certainty) on the other. He is of the opinion that the latter should have precedence.

He argues for a solution which would maintain translation into all official EU languages, but where only one language would be recognised as authentic language. It falls outside the scope of this study to go into the merits of this proposal, but the fact that such a radical approach is proposed using inadequate translation (because of discrepancies between language versions) as an argument<sup>90</sup>, is all the more reason to invest sufficient time and resources in high-quality translations. Otherwise there is the risk that the role

<sup>87</sup> Council Directive 95/7 of 10 April 1995, OJ 1995 L 102 of 5 May 1995, p. 18.

<sup>88</sup> The original was almost certainly drafted in English, since the French version does not leave room for three different interpretations. This type of ambiguity is not uncommon, as can be illustrated by the number and type of questions that can be found in the *Note* function.

<sup>89</sup> Schilling, *op cit.*

<sup>90</sup> Schilling is not the only one who sees the current language regime as a problem.





of DGT will be reduced from a key player in the EU's multilingual lawmaking to a mere production centre for unofficial translations.

The cases (mostly preliminary rulings) where there were discrepancies show that discrepancies can lead to confusion and consequently to procedures with the Court, with all the costs such procedures entail. These costs are difficult to quantify, but could become considerable and even run into millions of Euros.

The fact that there has not yet been a court case against the Commission (or another EU institution) asking for compensation for damages suffered because of a translation error does not mean that this will not happen in the future. Even if the burden of proof on the plaintiff to prove any damage is considerable<sup>91</sup>, this risk exists, not to speak about the bad publicity such a case would entail.

To these quantifiable financial costs should be added the unquantifiable but perhaps even more damaging costs of loss of image for the EU at a time where it is already difficult to convince its citizens of the added value of the EU.

### **5.3. Poor-quality translation and the European project**

In translation it has to be assumed that "no news is good news". At the end of the day, it is the citizen that has to be satisfied and if he/she is not confronted with ambiguous legal texts or unclear translations of other texts, DGT will have done a good job, but we will never know. If on the other hand we receive complaints about the quality or – even worse – if there is a court case because of a bad translation, we most surely will be aware of it. Obviously, we need to avoid this kind of situation.

Translation errors are one clear indicator of poor-quality translations, but it is not enough to judge the quality of translations only by the number of mistakes they contain. Style, readability, register, clarity are all factors that should be taken into account as well. Even if a translation does not contain any material mistakes, if the style lacks elegance or clarity, it cannot be considered to be a high-quality translation.

A poorly drafted text reflects badly on the organisation that published it and this is no different for the EU. At the time where the EU is facing a decline in popularity and the gap between the EU institutions and its citizens is widening, clear and flawless text are essential for the EU's communication. The general public does not make a distinction between the original and the translation.

The cost of a badly drafted or badly translated text (e.g. a piece of EU legislation, a web page, press release, brochure, impact assessment, etc.) in terms of image cannot be quantified but must be taken very seriously: unclear, ambiguous texts take more time to understand and risk being misinterpreted. This implies a cost, in the best case in terms of extra time needed to understand a text; in the worst case because an unclear legal text leads to a dispute between two parties, ending in a court case (see above). This possible "chain reaction" of events gives an indication of the importance of clear texts and therefore of high quality translations.

Unclear texts can lead to lack of response from stakeholders to public consultations, calls for expression of interest or other political initiatives launched by the EU and to

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<sup>91</sup> According to the prevailing case-law of the Court of First Instance, the EU can only incur liability if three cumulative conditions are satisfied, namely that the alleged damage was actually suffered, there is a causal link between the damage and the act by the Community institutions, and the damage alleged was unusual and special. See Article "[EC Liability for Lawful Acts](#)" published by the Dutch T.M.C. Asser Instituut.





diminishing participation in and adherence to the European project<sup>92</sup>. For example, poor quality translation of brochures or other information material aimed at making citizens participate in the EU project is likely to have the opposite effect of what was envisaged.

If mainstream citizens turn their backs on Europe, this could lead to an even lower participation rate in the European elections, possibly allowing more radical and eurosceptical parties to gain a disproportionate influence in EU affairs.

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<sup>92</sup> See Mr I. Strandvik's presentation at a conference on the "Role of Legal Translation in Legal Harmonisation", held in Amsterdam on 21 January 2011.







## 6. Conclusions

The previous chapters have provided elements for assessing a public translation service's main quality costs, based on the categorisation into prevention, appraisal and failure (PAF) of quality costs described in chapter 3.

The quantification of a public translation service's quality costs can provide its management with a fresh way of looking at its operations, with a view to attaining the highest quality possible by making the best use of the resources available.

As far as DGT is concerned, in particular the following areas would merit further reflection and analysis or action:

- Quality control (because of the amount of resources and money invested);
- External translation (because of the fact that DGT spends resources and money on improving the quality of translations that according to DGT's guidelines are supposed to give DGT no further work);
- The quality of originals (because of the importance of clear texts, not just for the efficiency of DGT's operations, but in the interest of the EU, stakeholders and the general public).
- Greater focus on concordance in general, not only for high-profile texts.

DGT's external failure costs of poor-quality translations are actually quite modest compared with the investment in the prevention of poor quality. For example, in financial terms the cost for DGT of handling requests for corrigenda is not high enough to justify a massive additional effort to bring down the number of these requests, but it may be possible to use existing resources differently to address this issue.

Even when looking at court cases where translation and translation errors played a role, translation errors were never decisive for the outcome of a case, but were rather used as supporting arguments, prompting the Court to interpret erroneous versions bearing in mind the general objective of the legal text or in light of the other language versions.

Investment in quality is indispensable for reducing the risk of providing poor quality; without this investment there would most likely be more corrigenda requests, a higher risk of legal uncertainty and image damage, both for a public translation service and the organisation to which it belongs. The potential damage is substantial.

In the EU context, reducing this quality investment in an effort to save money would be a risky operation, which would entail serious risks for DGT, the Commission and the EU as a whole, since poor quality could lead to court cases in which translation is the main cause of a dispute and, what is worse, to more conflicts between citizens and their governments or between Member States, (and even greater) lack of understanding about the European project among the general public. It is not possible to quantify in detail the costs this would entail, but it is safe to say that the non-financial cost would be considerable.

The analysis provided in this study is based on quality management as practiced in the private since the 1950s. While there are certainly valuable lessons to be learned from the private sector in terms of efficiency gains, it must be borne in mind that by providing multilingual information to the citizens and all other interested parties, translation plays its part in boosting transparency, democracy and legitimacy and equal access to information for all stakeholders. Linguistic diversity is a value in itself, and its preservation a sign of respect for the cultural identities of the EU's citizens. It is also a democratic right and as such priceless.





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