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The Art of Amendment: a Genre Analysis of Amendments Tabled by Members of the European Parliament in the Ordinary Legislative Procedure

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Rzemiosło czy sztuka? Analiza gatunkowa poprawek składanych przez posłów do Parlamentu Europejskiego w zwykłej procedurze ustawodawczej

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Oświadczenie osoby kierującej pracą

Oświadczam, że niniejsza praca została przygotowana pod moim kierunkiem, i stwierdzam, że spełnia ona warunki do przedstawienia jej w postępowaniu o nadanie tytułu zawodowego.

Data Podpis

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Świadoma odpowiedzialności prawnej oświadczam, że niniejsza praca dyplomowa została napisana przeze mnie samodzielnie i nie zawiera treści uzyskanych w sposób niezgodny z obowiązującymi przepisami.

Oświadczam również, że przedstawiona praca nie była wcześniej przedmiotem procedur związanych z uzyskaniem tytułu zawodowego w wyższej uczelni.

Oświadczam ponadto, że niniejsza wersja pracy jest identyczna z załączoną wersją elektroniczną.

Data Podpis

Streszczenie

Celem niniejszej pracy jest przeprowadzenie analizy gatunkowej poprawek, które pozwalają posłom do Parlamentu Europejskiego wywierać realny wpływ na kształt prawa unijnego w ramach zwykłej procedury ustawodawczej. Część teoretyczna omawia kwestie związane z przekładem tekstów prawnych UE oraz określa, jakie miejsce poprawki zajmują w toku zwykłej procedury ustawodawczej. Część empiryczna analizuje kontekst produkcji poprawek z wykorzystaniem metod jakościowych i ilościowych. Analiza uwzględnia tłumaczenie i redagowanie prawno-językowe jako nieodzowne elementy prac nad prawodawstwem w UE. Wyniki analizy wskazują, że kontekst, w jakim powstają poprawki ma bezpośredni wpływ na ich jakość, a tym samym na jakość rezolucji ustawodawczych przyjmowanych przez Parlament Europejski.

Słowa kluczowe

analiza gatunkowa, poprawki, Parlament Europejski, zwykła procedura ustawodawcza, przekład prawny

Dziedzina pracy

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Tytuł pracy w języku angielskim

The Art of Amendment: a Genre Analysis of Amendments Tabled by Members of the European Parliament in the Ordinary Legislative Procedure

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Abbreviations and acronyms

AM	abbreviation for documents containing amendments
APA	Accredited Parliamentary Assistant
AT4AM	Authoring Tool for Amendments
CDA	Critical Discourse Analysis
CGA	Critical Discourse Analysis
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
COD	until 2009*: co-decision procedure*, today: ordinary legislative procedure
CoR	Committee of Regions
COREPER	Committee of Permanent Representatives
DEPLR	Draft European Parliament Legislative Resolution
EPLR	European Parliament Legislative Resolution
DG ITEC	European Parliament's Directorate-General for Innovation and Technological Support
DG TRAD	European Parliament's Directorate-General for Translation
DGT	European Commission's Directorate-General for Translation
DLA	European Parliament's Directorate for Legislative Acts
DST	Drafting Support Tool
EAEC	European Atomic Energy Community
ECB	European Central Bank
ECSC	European Coal and Steel Community
EESC	European Economic and Social Committee
EMU	Economic and Monetary Union
EP	European Parliament
MEP	Member(s) of the European Parliament
EPRS	European Parliamentary Research Service
ESCB	European System of Central Banks
IA	impact assessment
JHA	Justice and Home Affairs
JPG	*Joint Practical Guide*
LSP	Language for Special Purposes

OJ	*Official Journal of the European Union* (C or L series)
OLP	ordinary legislative procedure
SLP	special legislative procedure
OMC	open method of coordination
QMV	qualified majority vote
SEA	Single European Act
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
ST	source text
TT	target text
L1	first language
L2	second language

European Parliament's standing committees

AFET	Foreign Affairs
DROI	Human Rights
SEDE	Security and Defence
DEVE	Development
INTA	International Trade
BUDG	Budgets
CONT	Budgetary Control
ECON	Economic and Monetary Affairs
EMPL	Employment and Social Affairs
ENVI	Environment, Public Health, and Food Safety
ITRE	Industry, Research, and Energy
IMCO	Internal Market and Consumer Protection
TRAN	Transport and Tourism
REGI	Regional Development
AGRI	Agriculture and Rural Development
PECH	Fisheries
CULT	Culture and Education
JURI	Legal Affairs

LIBE	Civil Liberties, Justice, and Home Affairs
AFCO	Constitutional Affairs
FEMM	Women's Rights and Gender Equality
PETI	Petitions

Language codes

BG	Bulgarian	**LT**	Lithuanian
EN	English	**LV**	Latvian
ES	Spanish	**HU**	Hungarian
CS	Czech	**MT**	Maltese
DA	Danish	**NL**	Dutch
DE	German	**PL**	Polish
ET	Estonian	**PT**	Portuguese
EL	Greek	**RO**	Romanian
FR	French	**SK**	Slovak
GA	Irish	**SL**	Slovenian
HR	Croatian	**FI**	Finnish
IT	Italian	**SV**	Swedish

Introduction

This dissertation sets out to conduct a genre analysis of amendments tabled by Members of the European Parliament (MEPs) within the ordinary legislative procedure (OLP). The methodological framework applied in this thesis is Bhatia's multidimensional model of applied genre analysis (1993, 2004).

The genre analysis was designed to achieve various aims and objectives. Firstly, it intends to place amendments within the institutional genre chain and define their role in the OLP. Secondly, it seeks to unveil the macrostructure of amendments and determine what organisational knowledge is necessary to draft them. Thirdly, the study undertakes to explore the discourse community in which amendments are drafted and illustrate what functions they serve in the institutional context. Finally, the analysis acknowledges the role of translation in safeguarding the multilingual nature of the EU's decision-making process. As legal texts, amendments are subject to stringent quality criteria in translation, but it is also assumed that there are additional genre-specific factors that affect the work of translators of amendments.

Exploratory and context-oriented, this dissertation investigates a genre largely neglected in previous research and accounts for both text-internal and text-external factors that affect the structure and content of amendments. Therefore, a range of research methods are applied to account for the various goals pursued in this study. The theoretical part of this dissertation includes an extensive literature review on EU translation and on the EU's decision-making process. The empirical part combines insights gained from reviewing available sources on general and genre-specific drafting requirements with ethnographic methods. The latter include participant observation and semi-structured interviews with experts from the discourse community. Therefore, the empirical part combines formal requirements with accounts of practitioners. In addition, a linguistic case study on amendments was conducted as part of this dissertation. It integrates a statistical analysis on the languages amendments are tabled in with a multistage comparative analysis on terminological shifts caused by the adoption of amendments to legislative proposals scrutinised by the European Parliament.

Chapter 1
Challenges of researching EU translation

1.1. Introduction

Our increasingly globalised world heavily relies on translation. The substantial volume of translations we encounter on a daily basis concerns issues that have a direct effect on our lives and ranges from user manuals to supranational law. The translating and interpreting profession is as diverse as the texts and the languages it works with. It is, therefore, no surprise that contemporary scholars attempt to classify and define different types of translations, which would account for the varied approaches adopted by translators, various skills and types of knowledge necessary for the translation process and growing professionalization within the field.

One such distinction is drawn between literary and specialised or Language for Special Purposes (LSP) translation. **Literary translation** has a rich history and most of the fundamental concepts of Translation Studies were developed by scholars who, focusing on the end-product of the translation process, compared original literary texts with their translations. On the other hand, **specialised translation** is a phenomenon which gained importance especially in the post-war world and followed a greater demand for "language mediation" (Wilss 1999: 73, 83, quoted in Rogers 2015: 21), the rapid growth of knowledge, and the expansion of vocabulary this knowledge triggered (Rogers 2015: 36-37). Asensio defines specialised communication as "that which occurs among experts in the field, communicating on specific matters and using specific jargon" and contrasts it with general communication, "which occurs among lay people, communicating on everyday facts and using the vocabulary shared by all speakers" (2007: 49).

Although Asensio provides a general definition of specialised translation, he further claims that any attempt to draw the line between general and specialised communication is "doomed to failure". In his view, labelling a translation as specialised, general, or as belonging to a particular field of knowledge is subjective and "ill-defined" since fields of knowledge frequently overlap. Furthermore, he argues that such categorisations, including the designation of genres, are subjective (2007: 49-51). Instead, he proposes describing translations along three axes: the horizontal axis for the subject matter, the vertical axis representing a continuum of the growing level of specialisation, and an additional axis representing genre (2007: 48-53).

However valid Asensio's argumentation may seem, his article does not account for the increasing professionalization in the translating profession. This is particularly true given the

significance of contemporary expert-to-lay communication, which functions in between the two extremes of general and specialised communication, and new genres which have emerged with the development of Web 2.0. In fact, Margaret Rogers uses the example of increasing professionalization in the field of specialised translation to question the inferior status attached to specialised translation in academic circles (2015: 20-22). Having correctly identified a knowledge gap in Translation Studies, Rogers shifted the attention of scholars towards specialised translation. In her work, she argued that translators of specialised texts need both expert knowledge and constant retraining. They work with a constantly expanding repertoire of highly technical and precise terms, which they need to render in the target text without making it obscure (2015: 26-27). Furthermore, in the case of localisation, translators need to be aware of the effect cultural references may have on a target audience and eliminate them in the internationalisation process, thus allowing texts to be easily localised for their intended locale (2015: 29-30, see further Mazur 2007). The various fields of expertise involve considerable knowledge and skills, which has made the boundaries between the types of specialised translation more clear-cut. As specialised translation constitutes the vast majority of translated output (Rogers 2015: 20), most research in Translation Studies is now conducted in the numerous fields of specialised translation.

1.2. Institutional translation

One type of specialised translation is of particular interest to researchers due to its effects on political discourse and the vast amounts of translated text it generates. Koskinen's (2008: 22) definition of institutional translation seems to be most commonly quoted by researchers. **Institutional translation** occurs "when an official body (a government agency, multinational organisation, or a private company, etc.; or an individual person acting in an official status) uses translation as a means of *speaking* to a particular audience." As a result, the audience hears the voice of the institution translating itself or, to use Koskinen's words, engaging in "auto-translation" (2008: 22-24). In a more recent article, Koskinen points to the fact that institutions "govern by translation" (2014: 481). As translation allows the institution to implement its laws and promote a positive self-image, institutions may impose certain translation strategies, which lead to a growing **institutionalisation** of their discourse (2014: 488). The institution speaks, or governs, through the translator, whose work is merely an "instrument of multilingualism" and stems from a collective translation process, the trace of which needs to be erased by the institution (2008: 22-25).

All these factors make institutional translation qualitatively different from other types of specialised translation. Institutional translation can be found at the **national level** both in countries with a single legal system, e.g., Finland, and in countries with several legal systems, e.g., Canada. Institutional translation also functions at the **supranational level** as an integral part of international institutions. As Strandvik notes, institutional translation in the European Union is a remarkable example of multilingual law-making due to the unrivalled number of target languages and the fact that non-native drafters are responsible for a majority of legislative work (2012: 29). As a result, research into EU translation is particularly interesting for translation scholars.

1.3. Translation for the European Union: the multilingualism policy

The institutions of the European Union currently employ the most translators and interpreters worldwide. The number of in-house translators (almost 1.500) in the European Commission's Directorate-General for Translation (DGT) has remained the same over the last 20 years despite measures to reduce former staff and the need of hiring translators of new official EU languages after successive enlargements (Albl-Mikasa *et al*. 2017: 373, Strandvik 2017: 124). The European Parliament and the Council also employ hundreds of translators and support staff (Baaij 2012: 13). Given that the EU comprises 28 countries with 24 different official languages, translators working for the European institutions cover a total of 552 translation combinations (Albl-Mikasa *et al.* 2017: 373, Biel 2017: 40).

The EU's unprecedented **multilingualism policy** can be traced to the very beginnings of the Union—to the establishment of the European Coal and Steel Community (ECSC) in 1951 and the creation of the European Economic Community (EEC) and the European Atomic Energy Community (EAEC) in 1957. Issued for the EEC, Council Regulation 1/1958 determined the working and official languages of the EU and obliged the EU to communicate with citizens and enact legislation in all its official languages (Baaij 2012: 8). Encompassing only four official languages on its date of issue (French, German, Italian, and Dutch), the Regulation has been amended each time a new language was added to the list after successive enlargements of the EU (Koskinen 2000: 50-51, 2008: 62-63, Felici 2010: 95-96, Guggeis and Robinson 2012: 53, Biel 2017: 40, Robinson 2017: 242).

The multilingualism policy has profound implications for the process of drafting and adopting EU legislation. The Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which constitute the core of all EU legislation, are declared authentic in all official languages (Articles 55 TEU and 358 TFEU). All remaining EU

legislation is also considered **equally authentic**, **valid**, and **authoritative** in all official languages upon publication in the *Official Journal of the European Union*. As a result, there are no originals and no translations. EU legal acts are published in 24 ***language versions***, which are deemed to carry the ***same meaning*** and have the ***same quality*** (Felici 2010: 96-97, Baaij 2012: 10, Strandvik 2012: 29-31, 2017: 131, Biel 2014: 60, Stefaniak 2017: 117). This stance was also confirmed by the Court of Justice of the European Union (CJEU), which has long recognised the need for a uniform interpretation and application of EU legislation in all EU languages. The CJEU has referred to language versions of EU legislation in a number of cases[1]. According to the CJEU's case law, all language versions are not only equally authentic, but they also have the **same weight**, regardless of the size of population of the Member States using a particular language (Baaij 2012: 10-11, Guggeis and Robinson 2012: 54, Biel 2014: 60, Robinson 2017: 242). In case of any discrepancies between published language versions, it is the CJEU that resolves conflicting interpretations (Robinson 2017: 249-250). The fact that the CJEU is responsible for resolving inconsistencies between language versions leads, in turn, to legal uncertainty among citizens who rely on a particular language version (Baaij 2012: 14-15, Robinson 2017: 253-254). Considering all of the above, translation is a fundamental ingredient for EU's legal harmonisation, without which the completion of an internal market and the protection of linguistic diversity would not be possible (Baaij 2012: 23-24).

Institutional multilingualism in the EU is exceptional not only due to the unparalleled number of official languages but also due to its importance in the institutional puzzle. Felici observes that multilingualism is central to maintaining democracy and equality of all EU citizens before the law, as well as preventing a superior *lingua franca* from having negative effects on economic decisions and relations between EU states (2010: 95-96). Baaij asserts that all major EU institutions have repeatedly stressed the significance of maintaining institutional multilingualism (2012: 8-10) because it allows the EU to fulfil objectives set out in the Treaties—specifically Articles 1 and 3(3) TEU, which require the EU institutions to make decisions as close to the citizen as possible and to respect the cultural and linguistic diversity among Member States (Baaij 2012: 10, Robinson 2017: 241). Both Koskinen (2000: 51) and Strandvik (2012: 32) stress that EU citizens have a right to address the EU institutions in any of the official languages—a right which has also been acknowledged in Article 24 TFEU.

However, many researchers have identified the EU's multilingual policy as **problematic**. Considering the vast number of documents drafted, revised, and published by the

[1] See cases: 19/67 *Van der Vecht*, 29/69 *Stauder*, 283/81 *CLIFIT*, C-296/95 *The Queen v. Commissioners of Customs and Excise, ex parte EMU Tabac SARL and Others* and C-152/01 *Kyocera Electronics Europe.*

institutions each day, a more pragmatic approach to translation had to be developed in order to fulfil the obligations imposed on the EU institutions by Council Regulation 1/1958/EEC and, at the same time, to account for further enlargements, budget constraints, and limited human resources. This resulted in "**controlled full multilingualism**" after the 2004 enlargement and finally in "**cost-efficient multilingualism**", following the financial crisis of 2008 (Albl-Mikasa *et al*. 2017: 373). The selective policy implemented by the European institutions means that documents are prioritised and may be translated only into the languages needed or into procedural languages: English, French, and German (Biel 2017: 41).

Researchers have also described the EU's multilingual policy as an "**illusion of multilingualism**" (Koskinen 2000: 52), "**hegemonic multilingualism**" (Krzyżanowski and Wodak 2010), or "**unilingualism**" (Mattila 2013: 33). They present the following arguments to support their claims. Firstly, only national languages are considered official EU languages and each country may add only one language to the amended list in Council Regulation 1/1958/EEC. This means that over 60 regional and minority languages, languages spoken within migrant communities (Special Eurobarometer 2012), and communication for constituencies with special needs (e.g., sign or simplified languages) do not enjoy the same rights as national languages (Koskinen 2000: 52, 2014: 486, Felici 2010: 96). Secondly, the very existence of procedural languages creates a language hierarchy, in which English, French, and German are granted a privileged status, while lesser-used languages fulfil a merely symbolic role. With French still used as the procedural language in the CJEU and internal documents translated only into the procedural languages or the languages needed, no knowledge of French, or any other procedural language, may pose an obstacle for anyone willing to work for the EU institutions (Koskinen 2014: 486). The ambitions of maintaining linguistic equality are also thwarted by the very fact that translation into lesser-used languages is delayed and that drafted documents are translated into such languages only in their final stages for effectiveness and financial reasons (Koskinen 2000: 51-52, 2008: 120). Thirdly, English has unofficially become the language of informal communication within the EU's institutions (Biel 2014: 63) and of social media content posted by the EU's institutions and politicians (Koskinen 2013). All in all, despite measures to safeguard the equality of all 24 official languages, limited proficiency in procedural languages—particularly in English and French—may hinder all interested parties from staying up-to-date with developments within the EU institutions.

1.4. The challenges of researching EU translation

Translation for the European Union is exceptionally interesting for researchers because key concepts developed within Translation Studies such as the source text (ST), target text (TT), and equivalence, cannot be used to describe phenomena within the field (Felici 2010: 103, Biel 2014: 59, 2017: 31). The institutional setting, especially the complicated and lengthy drafting process, the multilingual policy, and the numerous genres covered by EU translators make the EU's translation process truly unique.

1.4.1. Source text

One of the concepts challenged by EU translation is the ST. EU legislation is published in 24 language versions, which once adopted and published in the *Official Journal of the European Union* are all equally valid and authentic (see section 1.3.). EU institutions maintain that these **language versions** are drafted simultaneously in an attempt to "efface" the translators' input (Koskinen 2000: 54, 60, 2008: 25), although translators are *de facto* co-drafters of legislation. From the legal point of view, any translated legal document authenticated by law-making bodies is considered an equally binding original text. Therefore, using the term *source text* is inaccurate when referring to plurilingual legislation (Šarčević 1997: 20, 64). However, as Felici observes, we may speak of STs and TTs *before* the texts are adopted and published (2010: 104).

Still, in the EU context, the concept of ST is further challenged by the numerous stages of drafting. Dollerup refers to these stages as "**recycling**" and uses the term "**vanishing original**" instead of the ST (2004: 198). He emphasises that the ST itself has gone through numerous changes and is extremely flexible throughout the entire drafting process. Dollerup bases his argumentation on the process of drafting and adopting a new directive. Out of the 10 stages he mentions, 6 involve either translating or interpreting (Dollerup 2004: 195-198). Revisions by legal experts, amendments tabled in the national languages of Members of the European Parliament (MEPs), the approval process, during which drafts are accepted by the European Commission, the European Parliament, and the Council of the European Union, and the constant circulation of drafts between these institutions all result in an **unstable and collectively written text**. This complex decision-making process has profound effects on translation (Koskinen 2000: 59, Felici 2010: 102). Translations appear "even more institutionalised than the English [version]" because they are processed more times than the original by translators "physically and mentally removed from the drafting process" (Koskinen 2008: 141-142). Furthermore, in order to achieve consistency, the most fundamental quality criterion within EU legal translation (Stefaniak 2017: 116-117), translators will rely on

translation memories and term bases, which further recycle available sources. The above-mentioned factors make it difficult for researchers to speak of STs and TTs, which are considered fundamental categories in Translation Studies and are used in research on, e.g., literary translation, where the boundary between authorship and translation is usually clear.

Within Translation Studies the ST is most typically assumed to have been composed by a native speaker of a given language, whereas most texts produced by the EU institutions are written by **non-native speakers of English**. English was present in the ECSC from 1953 as the language of British and American trade partners in heavy industry (European Commission 2010: 12). Despite acquiring the status of an official language with the accession of the UK to the European Communities in 1973, English took the place of French as the ***lingua franca*** in the EU institutions only after the 1995 and 2004 enlargements. Nowadays, over 80% of EU documents are drafted in English (Prieto Ramos 2014: 5). Negotiations between the three institutions responsible for adopting legislation, i.e. the Commission, the Council, and the European Parliament, focus on the English versions of the Commission's proposal (Guggeis and Robinson 2012: 65, Biel 2017: 40, Robinson 2017: 243). Finally, everyday operations in EU institutions are also conducted in English (Baaij 2012: 12). The dominance of English results from adopting a pragmatic approach to multilingualism and the fact that English is the most widely spoken L2 (38%) among Europeans (Special Eurobarometer 2012).

EU English differs considerably from Standard British English (Felici 2010: 105). All **legal concepts are context-bound** and reflect the evolution of a particular legal system. Not only can legal concepts acquire different meanings in various historical periods, but the same concepts may have different meanings depending on the context or area of law. Thus, legal concepts may prove untranslatable between different legal systems (Pozzo 2012: 186-187, Strandvik 2012: 26). Furthermore, apart from conceptual differences between legal concepts, legal systems are also characterised by various **drafting conventions**. Continental Europe relies on a ***fuzzy*** drafting style, i.e., legal provisions contain general principles and leave room for judicial interpretation. By contrast, the English common law tradition prefers a ***fussy*** drafting convention with very detailed and lengthy provisions (Strandvik 2012: 26, Robinson 2017: 247). Although English is Europe's most widely spoken language, it is also the **least suitable to translate civil law concepts** (Pozzo 2012: 184). English has been adjusted to suit the needs of EU institutions, which choose to avoid common law terms, substitute them with neologisms (Pozzo 2012: 200), and thus facilitate translation (Šarčević 1997: 261, Biel 2014: 64-66). The result of this "**legal engineering**" (Prieto Ramos 2014: 6) are legal terms with multiple meanings or "conceptual osmosis" (Biel 2014: 66), which may trigger a hostile

reaction to EU English. The **difficulties of translating EU English include** (Guggeis and Robinson 2012: 75-76, Albl Mikasa *et al*. 2017: 384):

- compressed forms,
- the use of the pronoun *it* or demonstrative adjectives *this* and *that*,
- the omission of relative pronouns,
- the vast repertoire of English vocabulary items,
- the openness of English to borrowings,
- new formations and constructions,
- the lack of an authority supervising English,
- the drafting of EU texts by non-native speakers of English with various linguistic and cultural backgrounds,
- the collective drafting process,
- numerous amendments added to the texts, and
- intertextuality.

English is the mother tongue of 13% of EU citizens (Special Eurobarometer 2012). This would mean that a substantial majority of EU texts are written by and translated by non-native speakers (Pozzo 2012: 200, Strandvik 2012: 29, Prieto Ramos 2014: 6, Stefaniak 2017: 119). EU civil servants and translators come from all EU countries due to provisions on ensuring a fair geographical balance of staff. Furthermore, they live and work in countries where French is commonly used (Guggeis and Robinson 2012: 73). Koskinen observes that the cultural and linguistic background of translators is often varied (2001: 294). She argues that translators working for the EU face conflicting loyalties and place themselves "on the fringe" of the institution (2008: 117). The term "**cultural isolation**" has also been used in reference to translators losing contact with their own culture (Tosi 2002: 184, quoted in Biel 2014: 67). It is also widely acknowledged that translators may experience difficulties in their native language when working in multilingual environments (Wagner *et al*. 2002: 76, quoted in Biel 2014: 67).

1.4.2. Equivalence

Another central concept to Translation Studies challenged by researchers of EU translation is equivalence. "Existential equivalence" (Koskinen 2000: 51), "visual equivalence" (2000: 55), "mandatory legal equivalence" (Tosi 2002: 180, quoted in Biel 2014: 69, 2017: 37), or "multilingual concordance" (DGT 2016: 4) are just some of the labels used to characterise the specific approach to equivalence in the institutional context. Koskinen argues that translations of texts into lesser-used languages are often produced solely to meet the requirements of

Council Regulation 1/1958/EEC. In other words, translations are supposed "**to exist**", even if they do not serve any particular function and translators themselves doubt whether anyone will ever read them (2000: 51). She also criticises "a narrow interpretation of equivalence", which leads to a word-for-word translation of texts. Apart from following literal translation strategies, EU translators are expected to squeeze content in structurally different languages into the same format, so the texts seem **visually equivalent** (2000: 55-56). The institutional factors Koskinen mentions and the constraints imposed on translators result in two illusions: the "illusion of equality" and the "illusion of equivalence" (2000). On the other hand, "**mandatory legal equivalence**" (Tosi 2002: 180) refers to the same legal value attributed to all language versions. Despite the impossibility of achieving full equivalence in legal translation, EU texts are applied by EU citizens in their respective language versions because each language version is deemed authentic and authoritative (Felici 2010: 98, Biel 2014: 61). Finally, "**multilingual concordance**" is closely linked with the consistency quality criterion of EU legislation and means that all language versions must be consistent between each other (Stefaniak 2017: 116-117).

1.5. Genres within EU translation

Translators working for the European Union do not only translate legal acts. The range of texts they work with is immensely varied and spans from highly institutionalised legal acts, administrative texts with less institutional jargon, highly technical reports to informative texts and web translation addressed to the general public. The texts also cover a multitude of subjects dealt with by the EU (Koskinen 2000: 56, Felici 2010: 101).

The European Commission has acknowledged the fact that different **quality criteria** should apply to different **genres**, following criticism for the overuse of strategies associated with legal translation in other forms of communication (Koskinen 2000: 58, Strandvik 2012: 33-34). **Four categories of texts** were classified according to their purposes and risks (European Commission 2015, 2017a) in order to help translators decide which strategy should be applied in a given text: "source-text orientation" or "target-text orientation", "faithfulness to the original", "faithfulness to the purpose of the text", or finally "respect for the reader" (European Commission 2015: 4).

The four categories are:

- **Text category A**: Legal documents
- **Text category B**: Policy and administrative documents
- **Text category C**: Information for the public
- **Text category D**: Input for EU legislation, policy formulation, and administration.

The division of texts into four categories proves Koskinen's point that institutionality is a function of texts, not the institutional setting *per se* (2008: 22-23). Even within an institutional context, the inflowing and outflowing texts can be placed on a **continuum of increasing institutionalisation**, with category A texts at one end, and category C texts at the other end.

Category A texts involve the greatest risks because of the legal effects they create upon publication. The strategies applied by translators when dealing with category A texts are described in section 1.6.

The purpose of **category C** texts is "bridging the gap between citizens and the EU and creating wider interest and trust in EU matters" (European Commission 2017a). Therefore, translators are expected to localise the texts. The products of their work should be concise, clear, persuasive, and read like originals. Category C texts are examples of expert-to-lay communication, which mostly takes place online, either on the EUROPA website or in social media. Translators who work on category C texts have more stylistic freedom and may rearrange the elements of the text. Furthermore, they are expected to come up with catchy but clear slogans, which could facilitate website navigation. In short, they should have a perfect knowledge of target-culture conventions, sufficient IT skills (e.g., creating links or including the most popular search terms in the metadata for the website), and keep up-to-date with discourses in the target culture (European Commission 2009).

Category B and D texts include documents which are not legally binding acts. Therefore the quality criteria are less stringent than in the case of category A texts. Category B texts encompass, e.g., White and Green Papers, reports, guidelines, communications, impact assessments, and explanatory memoranda, while category D texts incorporate documents submitted by Member States on the implementation of legislation, opinions, reports, requests for information, etc., or documents submitted by third countries. In brief, the documents included in the two categories are used for communication between the EU institutions, Member States, and third countries. Therefore, any mistranslations can damage the EU's reputation and political credibility or put the policy development at risk. Especially White and Green Papers need to be clear and read like originals. In such cases, the translator must strike a balance between consistency and readability.

1.6. Peculiarities of translating category A texts

Most research has been conducted in the field of EU legal translation for a number of reasons. For one thing, EU legislation has primacy over domestic law and "becomes legally binding without the need for any declaration of adherence" (Felici 2010: 100). EU secondary legislation interacts with national law and the effects of linguistic discrepancies between the language versions—the equivalence of which is considered an "a priori characteristic" (Koskinen 2000: 49),—have far-reaching implications for the interpretation and application of EU law. Furthermore, such discrepancies "lower the trust of citizens towards the EU and undermine the image of EU institutions" (Stefaniak 2017: 120). They may also result in "hidden costs in society in terms of court proceedings, legal advice, misunderstandings of rights and obligations, and simply non-response to political initiatives or a lack of adherence to the European cause" (Strandvik 2012: 31).

As mentioned in section 1.3, the EU does not produce 24 separate legal acts but one legal act in 24 equally authentic and binding language versions. All EU citizens should be able to rely on their language versions since any mistranslations or discrepancies could place users of a particular language at a disadvantage (Baaij 2012: 11, European Commission 2015: 5). The EU institutions have recognised that the quality of translation heavily relies on the **quality of the source text**. In practice, the drafters of Commission proposals have less and less scope for making changes to the proposal once it has been forwarded to other EU institutions for debates (Robinson 2017: 246). As Strandvik puts it: "[t]he first step [in legal harmonisation] is the drafting of the originals" (2012: 49). In response, the Commission, the Council, and the European Parliament have competed the *Joint Practical Guide for All Persons Involved in the Drafting of EU Legislation* (European Union 2015). The *Joint Practical Guide* (*JPG*) recognises the significance of translation in the legislative process and obliges drafters to take it into account (Rule 5.1.). It also acknowledges the translators' impact and the usefulness of their comments in the drafting process and suggests making changes to the original text when translators encounter difficulties in their work (Rule 5.5.2.).

Consistency is the most important criterion for translators dealing with category A texts and prevails in case of conflict with the remaining criteria: accuracy and clarity (Stefaniak 2017: 116-119). Consistency is both **substantial**, i.e., consistency of terms and definitions within the act itself, and **formal**, i.e., consistency of terms in all EU legal acts from primary legislation to basic acts and implementing or delegated acts (*JPG* Rules 4.3. and 6.2.1., Stefaniak 2017: 116). Internal and external consistency are the necessary conditions for

achieving multilingual concordance and are indispensable for legal harmonisation (Strandvik 2012: 36).

Adherence to a complex set of rules is a prerequisite for maintaining **terminological consistency**. The provisions outlined in Rule 6 of the *JPG* stress that any given term is "to be used in a uniform manner to refer to the same thing, and another term must be chosen to express a different concept". Furthermore, words with different meanings in everyday, technical, and legal language must be used in such a way to avoid any ambiguity. The CJEU has also had an impact on the strategies used by translators of category A texts. According to the **principle of autonomous EU concepts** developed by the CJEU[2], terms used in EU legislation have their independent meanings which may not correspond to the meanings used in national contexts despite their coexistence in the national and the EU legal system (Guggeis and Robinson 2012: 78, Strandvik 2012: 38, Biel 2014: 66, Stefaniak 2017: 115). Terms characteristic of the author's own language or legal system are to be avoided due to the risk of misinterpretation and the lack of equivalence of such terms in other legal systems (Guggeis and Robinson 2012: 74, Pozzo 2012: 198-199, Strandvik 2012: 38, Prieto Ramos 2014: 6, Biel 2014: 66, *JPG* Rules 5.3.1., 5.3.2.). The need for unambiguous terms with precise conceptual boundaries in 24 official languages often leads to the use of **neologisms** (Pozzo 2012: 200, Strandvik 2012: 38), which are translated literally to ensure a uniform interpretation of EU law (Šarčević 1997: 261). As Prieto Ramos stresses, "the translator is at the front line of encountering neologisms from English and becomes a linguistic filter in lexical importation into other languages" (2014: 7). Another strategy developed by drafters and translators is the use of **definitions**. Terms are "designations", which combined with well-drafted definitions ensure clarity at the conceptual level (Strandvik 2012: 40). According to Rule 14.1. of the *JPG*, definitions are necessary when a given term has multiple meanings, but must be understood in only one of them, or when that meaning is limited or extended for the purpose of the legal act. Consistency is also achieved by resolving to **literal translation**. Often criticised in other fields of translation, literal translation is "a conscious technique used on purpose in order to minimise the risk of misinterpretations and to ensure consistency between all language versions" (Stefaniak 2017: 113). As a strategy, literal translation has certain advantages in EU legal texts: legal equivalence is secured (Felici 2010: 99), the risk of future translation problems is reduced in the case of ambiguous terms (Stefaniak 2017: 113), national equivalents are avoided, and the needs of the institutional authors are met. Authors may even suggest using **calques** in order to retain the terms from the

[2] See cases 283/81 *Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health* [1982] and C-103/01 *Commission v. Germany* [2003].

original texts (Prieto Ramos 2014: 8). Nevertheless, literal translation is not always sufficient for achieving a uniform interpretation and application of EU law (Strandvik 2012: 49) since the literal mode is not a reliable method for all text types (2012: 33). Maintaining terminological consistency is largely possible thanks to the use of **terminological databases**—most notably IATE—which are updated, corrected, and completed by terminologists working alongside translators at the DGT (Stefaniak 2017: 111).

Consistency in EU legal translation also goes beyond the level of single terms. Consistency is mandatory in the case of **formulaic expressions** and **recurrent phrases**, which have acquired the status of terms for harmonisation purposes (Strandvik 2012: 44). The **legislative drafting rules** and **conventions** also need to be taken into account (Strandvik 2012: 35). Some rules are purely conventional and include, e.g., the use of capital letters in surnames and acronyms or the use of ISO currency codes (2012: 45). These rules are included in numerous **style guides**, which are either published jointly by the institutions, by a single institution, or by respective language departments to account for typical translation difficulties in a given language (see Chapter 4). Other tools that ensure consistency are, for instance (Biel 2017: 49):

- **document templates**,
- **databases of documents** (EUR-Lex and Curia),
- **CAT tools**,
- **translation memories**, and
- **translation memory management systems**.

Adherence to consistency rules beyond the level of individual terms results in the correspondence of structure labelled by Koskinen as "visual equivalence" (see section 1.4.2). Translators of EU legal acts can neither **interfere with the macro-structure** of the text by changing the division into articles or subdivisions of articles (Guggeis and Robinson 2012: 76) nor **split long sentences**, even if this increases readability (Koskinen 2000: 56, Strandvik 2012: 45, Stefaniak 2017: 117). Should comprehension difficulties arise, sentences may only be divided by semicolons (Guggeis and Robinson 2012: 76). The rules apply for "referral purposes" (Strandvik 2012: 45) and allow translators to run QA checks, e.g., check numbers in the source and target versions.

EU legislation should be "clear, simple and precise" (*JPG* Rule 1.). Therefore, drafters and translators of EU legal acts are required to **set matters of style aside**, e.g., by avoiding synonyms (*JPG* Rule 1.4.1., Strandvik 2012: 39), ellipses (*JPG* Rule 5.2.1.), and grammatically complex structures (*JPG* Rule 5.2.2.). The latter are also avoided due to the lengthy decision-

making process, in the course of which numerous changes to the original text will be made (*JPG* Rule 4.5.2.). However, not all ambiguities in EU legal texts are be resolved in the law-making process. Although translations are normally characterised by means of increased explicitness, disambiguation, and simplification (Baker 1993: 243-245), translators of EU legal texts cannot change the **level of ambiguity** in the target languages. Instead, they must maintain it to the extent possible (Prieto Ramos 2014: 9-10) in order to secure the intended interpretation of the text (Šarčević 1997: 73). Ambiguities in EU legal texts are often deliberate (Stefaniak 2017: 117). Dubbed as "**droit diplomatique**" (Šarčević 2007: 44, quoted in Biel 2014: 61), ambiguities often reflect a political compromise which results from lengthy discussions between different groups of interest. For them, achieving consensus may prove more important than maintaining clarity (Šarčević 1997: 92, Guggeis and Robinson 2012: 62). Moreover, the negotiating parties may leave ambiguities on purpose in an attempt to safeguard national interests (Guggeis and Robinson 2012: 62).

1.7. Conclusions

Research into EU translation seems to present major challenges to researchers. To begin with, concepts used within EU translation clearly defy fundamental concepts developed in the field of Translation Studies, such as the ST, TT, and equivalence. Researchers also have to account for generic variety and different quality criteria established for translating the vast array of EU genres.

Most stringent standards are set on translating category A texts. In addition, translators of EU legislation have to fulfil often contradictory expectations. On the one hand, they are required to avoid national terms and coin neologisms and, on the other hand, to use words in their ordinary sense. Further requirements include maintaining comprehensibility, linguistic correctness, terminological accurateness, and consistency with EU legislation in force, and ensuring multilingual concordance between all 24 language versions. Combined with the requirement of creating texts able to fit in 28 national legal systems, it is simply impossible to meet all institutional expectations (Stefaniak 2017: 119). As an effect, a line has to be drawn between terminological quality from the legal perspective, i.e., consistency with other legislation, and from the perspective of field experts, i.e., consistency with usage, comprehensibility, and applicability (Strandvik 2012: 39). In the case of EU legislation, it is always terminological quality from the legal perspective that prevails. The extremely visible "translatedness" of EU translation also paradoxically compensates for the invisibility of

translators in the institutional context (Koskinen 2000: 61). All these factors make EU legal translation rather source-oriented (Biel 2014: 71).

Nevertheless, as an example of expert-to-expert communication, translated EU legislation serves its purpose and meets the requirements of Council Regulation 1/1958/EEC. All the contradictions discussed in the chapter make conducting research into EU translation particularly interesting. As we will see in Chapter 3, the European Union as an organisation is as exceptional as the translating procedures it has developed. Both the EU and its legal translation reflect an extraordinarily complex political compromise, which binds 28 Member States with various languages, cultures, and legal systems.

Chapter 2

Aims and methodology

Legislative amendments as a genre

2.1. Introduction

The previous chapter concluded that genres affect translation strategies adopted by translators. It also demonstrated that the rich generic variety of EU texts has led to the development of genre-based quality criteria for translating EU discourse. This chapter introduces key concepts related to genre analysis, states the research objectives, and describes the methodological framework adopted for the purpose of this study. The chapter also puts forward the thesis statement and explains why the topic is worth exploring. Last but not least, it outlines the structure of following chapters as integral parts of the genre analysis.

2.2. Genre analysis in Translation Studies

Derived from literary and language studies, the term ***genre*** is widely used within Translation Studies and has been defined by scholars within the field. Swales defines genres as "**communicative events**". These events are characterised by "a set of **communicative purposes**" recognised by the members of a professional group (1990: 58). Genres are used as a means of communication within expert communities. Their **highly conventionalised** internal structure imposes generic constraints on the members of the community using them (Bhatia 1993: 14-15). Cap and Okulska further specify that these standardised, predictable, and abstract constructs allow their users to engage in "**goal-oriented communicative acting**" (2013: 3). Therefore, genres are not static and are shaped by seemingly contradictory forces: **rigid conventions** and **constant socio-cultural change** (Bhatia 2004: 23-25, Cap and Okulska 2013: 3). Genres are also viewed as "**flexible macrostructures**" (Cap and Okulska 2013: 4), which consist of obligatory and optional elements in a predefined order. By and larger, the more creativity and flexibility a particular genre permits, the fewer generic generalisations can be made on its macrostructure.

Unveiling the macrostructure of genres and making generalisations about language use in professional settings is done by means of **genre analysis**, which has become a valuable tool for scholars within Translation Studies. One of the first researchers to recognise the interdependence of genres and translation strategies was the German scholar Katharina Reiss. Reiss claimed that "the type of text is the primary factor influencing the translator's choice of

a proper translation method" (2014 [1971]: 17). In practice, genre analysis has provided scholars with a better understanding of generic conventions and has been used as a component of ESP courses (Swales 1990, Bhatia 1993). As Bhatia notes, genre analysis is a "very powerful system of analysis" since it takes into account not only linguistic but also socio-cultural and psychological factors. Thus, genre analysis offers a deeper insight into the communicative goals and individual strategies used in specific "discourse communities" (Bhatia 1993: 39-40). This potential has also made it a fundamental element of translator training. Rogers stresses that in order to produce texts "fit for purpose", specialised translators need a profound knowledge of genre formats both in the source language for interpretive purposes and in the target language for production purposes (2015: 32). This approach is reflected in recent studies carried out by Ezpeleta Piorno and Borja Albi, both of whom devote considerable attention to the notion of genre. The authors argue that translators of specialised discourse should acquire the "ability to understand and produce texts that conform to the conventions of the areas of expertise" (Ezpeleta Piorno 2012: 168) they are working with because such skills "facilitate their socialisation as communication agents in highly specialised domains" (Borja Albi 2013: 33-34). What all these viewpoints have in common is the recognition of the **practical implications** of genre analysis.

Researchers conducting a genre analysis should take into account the **socio-cultural context** genres are produced in. Bearing in mind the dynamic evolution of genres and the appearance of new means of communication, researchers have shifted from analysing prototypical, standardised generic forms for ESP purposes to studying real-life professional discourse (Bhatia 2004: 157). The latest approaches to genre analysis place a greater emphasis on the process rather than the product of communicative events (Biel 2018: 151) and aim at exploring the social context, in which specific genres are used (Bhatia 2004: 22). Genres are "ways of acting and interacting linguistically" (Fairclough 2003: 17) embedded in professional and institutional practices (Bhatia 2004: 23). Thus, shedding light on the communicational setting allows for a deeper understanding of generic conventions.

A genre analysis should also account for the **relations genres enter into**. Genres form clusters[3], i.e., sequences of genres that are related to each other "either because they rely on each other or because they complement each other in a specific communicative context within a specific discourse community" (Ezpeleta Piorno 2012: 169). For reasons of clarity the term

[3] An overview of possible terms for genre clusters is provided in the article "Genre analysis and translation" by Łucja Biel (2018: 152): "They [genres] tend to form larger, hierarchical and non-hierarchical clusters, known under a number of names—most notably, ***systems of interdependent genres*** (Bazerman 1994), ***genre chains*** (Fairclough 2003: 216); ***constellations of genres*** (Swales 2004: 12); ***networks of genres*** (Fairclough 2006: 34), or ***genre colonies*** (Bhatia 2004: 57)" [emphasis added].

"**genre chain**" shall be applied consistently throughout this dissertation. An example of a **chronological genre chain** are court documents, which are interdependent, appear in a fixed, pre-defined order, and serve the same purpose, i.e., they organise the work of a court handling a specific claim (Borja Albi 2013: 38). Some genres also depend on a **meta-genre** which introduces stylistic rules all users of a specific genre must adhere to. Again, court documents analysed by Borja Albi all relied on statutory instruments, which imposed strict rules on the time and order of issuing certain documents, deadlines for submitting them, their format, content, and macrostructure (2013: 38-39). As discussed further in section 3.4.1., EU legislative acts belong to a **hierarchical genre chain** with primary legislation as the supreme source of law, secondary legislation containing more detailed legal provisions, and tertiary legislation used to supplement or amend secondary legislation. The notions of genre, genre chains, and meta-genres are effective tools which allow professionals and translators to access and reuse "linguistic and extra-linguistic information" essential for managing specialised communication (Borja Albi 2013: 33). Finally, two further relations that researchers conducting genre analyses acknowledge are: **intertextuality**, i.e., how texts relate to other texts, and **interdiscursivity**, i.e., whether genres are mixed or hybridised (Biel 2018: 152).

2.3. Research objectives

This study seeks to analyse **legislative amendments** tabled by Members of the European Parliament (MEPs) as a genre embedded in the ordinary legislative procedure (OLP). In this dissertation, it is argued that although legislative amendments are an **intertextual genre embedded in a hierarchical and chronological institutional genre chain**, they are **used to achieve specific goals** and **can be exploited by members of the discourse community**. The statement has major implications for translating legislative amendments. As a genre, legislative amendments belong to **category A** texts, which are subject to strict quality criteria in translation. Therefore, the study also attempts to explore **the context legislative amendments are produced in** and assess whether this context is linked to **further requirements imposed on translators**. The study also sets out to achieve the following research objectives:

- place legislative amendments within an **institutional genre chain**,
- **define the structure** of legislative amendments,
- determine what **knowledge is indispensable for drafting** legislative amendments,
- identify the **authors** of legislative amendments and **explore the discourse community** they are used in, and
- illustrate what **functions** legislative amendments have in the institutional context.

The study is both exploratory and context-oriented. As an **exploratory study**, this dissertation investigates a topic that has not been researched before and provides an insight into the process of drafting legislative amendments. As a **context-oriented study** within the field of Translation Studies, it seeks to provide researchers with a better understanding of the external factors that affect decisions made by translators.

2.4. Why is the topic worth exploring?

New approaches in Translation Studies focus either on the context of production and reception, on the process of translation, or on its participants. Research into institutional and EU translation largely benefits from examining the context in which texts are produced and translated. Recent studies have shown a growing interest in the external factors that affect translation (Saldanha and O'Brien 2014: 205).

Most research into EU translation has focused on legislative texts translated by the European Commission's Directorate-General for Translation (DGT). The legislative proposals drafted and translated by the European Commission undergo extensive changes after being submitted to the European Parliament (EP) and the Council of the European Union. Each of these two institutions may modify the Commission's text. Legislative amendments are genres that allow MEPs to shape policy outcomes. By tabling legislative amendments, MEPs can leave their mark on acts adopted by the EU. Translation is an integral part of the legislative process and amendments are a genre frequently translated for the needs of MEPs. Still, documents translated by the European Parliament's Directorate-General for Translation (DG TRAD) have not gained as much attention as genres drafted and translated by the European Commission's DGT at the initial stages of legislative procedures. To date, amendments have not been recognised as a genre in their own right and the process of translating them has not been investigated by researchers of institutional translation. More importantly, no research into the context of their production has been conducted so far despite its profound effect on translation strategies. Therefore, this dissertation focuses on legislative amendments as a genre and attempts to provide an overview of institutional factors that have an impact on the translation process. It combines knowledge on EU translation and on the EU's decision-making process, first-hand experience in drafting legislative-amendments gained in the EP, and insights from a case study on amendments to provide answers to the formulated research objectives.

Amendment 28

Proposal for a regulation
Article 16 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.	(c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience ***but no later than 72 hours after the reestablishment of service***.

Or. en

Justification

This amendment aligns with the Regulation on air passenger rights, where there is a limitation of the period when re-routing or continuation can be claimed. This amendment is necessary for reasons of internal logic and reflects changes in the Commission proposal (Article 16(2) and (3); non-codified).

Figure 1: *Example of a legislative amendment tabled to procedure 2017/0237(COD)*

2.5. Methodological framework

Analysing legislative amendments tabled by MEPs poses a number of difficulties, which must be taken into consideration before adopting a specific method of analysis. For one thing, analysing only the **product dimension** would not provide answers to the research objectives stated above. Amendments are embedded in the institutional context. They are drafted and tabled for very specific social, economic, or political reasons, the understanding of which requires **tracing the entire legislative procedure**. The second reason why the studying solely the product dimension would not suffice for achieving the aims of this dissertation is that amendments are examples of **fragmented text**. They are inserted into the original text proposed by the Commission and presented in a table with modifications highlighted in bold italics (see Figure 1). MEPs can both delete and insert strings of text to the Commission's text irrespective of their length. As a consequence, amendments may consist of a single word or lengthy paragraphs. For this reason, corpus methods used to study the product dimension cannot be applied to analyse amendments despite their reliability and accurateness. The result of a statistical analysis would include the entire original units, making it difficult to decide which of the findings are relevant only for the amendments introduced by MEPs. On the other hand, extracting the fragmented texts would inevitably lead to irrelevant results due to the lack of context.

Context-oriented research relies mostly on qualitative methods. Owing to its focus on the social and institutional context, **Bhatia's multidimensional model of applied genre**

analysis (1993, revised in 2004) was chosen as the methodological framework for this study. Dubbed as **Critical Genre Analysis** (CGA) in Bhatia's most recent work (2017a), the method accounts for the fact that genres are always embedded in an institutional context and allows the researcher to explore that context without evaluating professional practices. This differentiates CGA from Critical Discourse Analysis (CDA) which lays great emphasis on investigating the role of power and ideology in social practice and communicating ideological bias in discourse (Bhatia 2017b: 15, 18). The aim of conducting CGA is demystifying "the multi-perspectival and multidimensional nature of professional practices as objectively, realistically, rationally, and rigorously as resources permit" (Bhatia 2017: 18). To achieve these goals, the researcher uses ethnographic methodological frameworks in an attempt to reveal how genres are constructed, interpreted, used, and exploited in professional settings. Due to the exploratory character of this dissertation and the fact that no research has been conducted within the field, Bhatia's model promises to produce reliable results.

Bhatia proposes **seven stages** of conducting a genre-based analysis within the multidimensional and multi-perspective framework (2004: 164-167). Firstly, the researcher should place the genre-text in a situational context. Secondly, the literature on the genre or similar genres, on tools and methods of genre analysis and on the professional community using a specific genre should be surveyed. The third stage includes defining the speakers and the audience of the given text, explaining the historical, socio-cultural or philosophic placement of the community, identifying the network of surrounding texts, and stating the topic of a given text. Stage four includes selecting the corpus, defining the genre or sub-genre, stating generic criteria, motivating the choice of a given corpus, and explaining the purpose of the study. Steps taken within the fifth stage are of a purely linguistic character and include analysing lexico-grammatical patterns, text patterning or textualisation, cognitive or discourse structuring, intertextuality, and interdiscursivity. Stages six and seven seem most interesting for analysing legislative amendments tabled by MEPs due to their focus on ethnographic procedures and studying the institutional context. The advantages of Bhatia's model are both **extensiveness** and **flexibility**. Bhatia acknowledges that the model draws on several types of analytical data and that the researcher may apply only some of the procedures, depending on the genre at hand and the purpose of the study (2004: 181).

2.6. Outline of the genre analysis and applied methods

A genre-based analysis requires completing several stages, each of which includes studying different types of data. The following chapters follow a **top-down design** and proceed from

looking at the amendment as a genre embedded in broader institutional practices to analysing single amendments tabled by MEPs. **Chapter 3** provides a detailed overview of the European Union's institutions, law, competences, principles, and legislative procedures. Most attention is devoted to the OLP as the framework for tabling legislative amendments by MEPs. **Chapter 4** examines meta-genres that drafters of amendments use in their everyday work and discusses the structure of legislative acts adopted by the EU. The chapter also presents the structure of amendments tabled by MEPs and analyses formal and technical rules on drafting amendments. **Chapter 5** explores the discourse community in which amendments are drafted and translated. It investigates what functions amendments serve in the institutional puzzle and how they can be exploited by professionals of the discourse community. Finally, **Chapter 6** analyses real-life amendments tabled by MEPs. The chapter looks at both quantitative and qualitative data to determine what languages amendments are tabled in and whether the modifications approved by the EP result in a terminologically consistent legislative text.

As discussed in the previous section, a genre-based analysis includes applying various methods to complete the subsequent stages of the analysis. For the most part, the following chapters attempt to gather all available data on drafting and tabling legislative amendments obtained from **multiple academic and institutional sources**. However, the relevant findings are also complemented by data collected using **ethnographic methods** such as participant observation and semi-structured interviews with professionals from the discourse community. As Saldanha and O'Brien observe, **participant observation** allows the researcher to access spaces that are in other circumstances inaccessible to scientific examination (2014: 223). In March 2018, I worked as a trainee in the European Parliament, where I could observe the initial stages of committee work and take part in drafting amendments. Personal experience gained during this month of participant observation has provided me with a better understanding of the institutional factors that shape the studied genre. Nonetheless, as Koskinen notes, "analysing a familiar professional activity requires an extra dose of self-reflectivity" (2008: 9). Although personal experience has undoubtedly enriched the study and provided me with an insider view, I decided to gather more data that would balance my observations. Three **semi-structured interviews** were conducted as part of this study. The interviewed experts were one current and one former Accredited Parliamentary Assistant (APA) working at the EP in Brussels and one translator working for DG TRAD. The data obtained during the interviews often included practical explanations of institutional practices. More importantly, the interviewed experts also pointed me in the right directions and stressed which factors are most significant for their everyday routines. Finally, the **linguistic case study** in Chapter 6 combines quantitative and

qualitative methods to find answers to the formulated research questions by analysing real-life amendments tabled by MEPs.

2.7. Legislative amendments as a genre

In his studies on the genre theory, Bhatia identifies **six features** that all genres have in common (2004: 23). These features allow researchers to assess whether given texts constitute genres or not. This section examines why legislative amendments should be considered as a genre in their own right by comparing Bhatia's list of features with the characteristics of amendments tabled by MEPs.

Firstly, Bhatia understands genres as **recognisable communicative events**. He claims that their communicative purposes are clear to the members of the professional or academic community they are systematically used in. This is inevitably true of amendments. Amendments are used on a regular basis in the EP and are embedded in the legal framework of the OLP. Their drafters pursue very specific goals which are achieved once amendments make their way into the final versions of legislative acts adopted by the EU institutions.

Secondly, genres are **highly structured** and **conventionalised** examples of language use. Bhatia further maintains that genres impose limitations on their users both in terms of the objectives they can accomplish and the linguistic resources they can use when choosing a specific genre. Amendments also meet these requirements. When drafting amendments, their authors must comply with a set of rules on their structure and content. The linguistic repertoire includes EU terminology and reoccurring formulaic expressions set out in existing legislation and meta-genres. Furthermore, technical rules must also be followed in order to facilitate voting and translation.

Thirdly, Bhatia claims that the members of a given professional community are by far most aware of the **scope of application** of particular genres. What is more, a lacking knowledge of generic conventions may even hinder a correct interpretation of their content (Bhatia 1993: 15). Amendments are a perfect example of this. The EP publishes all internal documents discussed in committees and in the plenary in electronic format. Still, examining these internal documents may pose a challenge for outsiders. Understanding the functions amendments serve within the decision-making process requires both detailed institutional knowledge and keeping up to date with the latest developments in the EP. Much of EP politics takes place outside of committee and plenary venues and involves seeking compromises with other MEPs and political groups. Moreover, the ability to draft and examine amendments is largely limited to current and former MEPs, APAs, policy advisors, and experts holding workshops for the EP's

employees. Over the course of time, this know-how has also been acquired by, e.g., governmental experts from the EU's Member States or interest groups.

Fourthly, Bhatia stresses that genres can be **exploited by experts** within the field, who may use them to achieve private or organisational goals. Amendments definitely fulfil this criterion. They are embedded in an institutional setting, which promises to give voice to stakeholders from all Member States. Drafters of amendments can use them to express their own points of view or the stances of key stakeholders. The number of entities that seek contact with MEPs and try to influence the outcome of political negotiations within the EP is staggering (see Chapter 5). Among them are governmental experts from Member States, business associations, interest groups, NGOs, trade unions, citizens, etc. Their varying interests are all reflected in amendments tabled by MEPs.

In the fifth point, Bhatia argues that **social actions give rise to genres**. Genres form an essential part of institutional practices and provide insight into organisational and disciplinary cultures. The same goes for amendments, which allow drafters to act within the institutional context of the EP. The drafting procedure is preceded by a series of events in the EP's venues and beyond them. From public hearings and debates organised by the relevant committee, meetings with lobbyists, conferences, correspondence with national experts to meetings of political groups—all these events allow MEPs and their assistants to assess the impact of new legislation and form an opinion on the necessary modifications. Amendments are the result of that complex process and one of the main tools MEPs use to pursue their political goals. Their highly conventionalised form reflects the organisational culture of the EP, which must conduct its work according to the provisions of EU law and multiple interinstitutional agreements in order to safeguard the right of all interested parties to monitor the EP's activities.

Finally, Bhatia claims that all professional genres have an **integrity** of their own, which can be explained by investigating textual, discursive, and contextual factors. Genres are social constructs and they never emerge in a vacuum. Understanding the context in which a given genre is used allows us to grasp its micro- and macrostructure. Hopefully, an analysis of various dimensions central to the process of drafting of amendments will result in a better comprehension of real-life amendments tabled by MEPs.

2.8. Conclusions

The chapter introduced key terms and laid out the theoretical dimensions of this dissertation. It stated the aims of the study, formulated the thesis statement, identified a knowledge gap within Translation Studies, and established the importance of the topic. It was argued that Bhatia's

multidimensional model of applied genre analysis (1993, 2004) constitutes the most effective framework for conducting a genre-based analysis of legislative amendments tabled by MEPs. The chapter outlined the stages of the analysis, described the methods applied throughout the dissertation, and gave reasons for their adoption. Last but not least, the chapter argued that legislative amendments are characterised by a set of features which distinguish genres from remaining texts. Embedded in a hierarchical and chronological genre chain and dependent on numerous meta-genres for their form and content, legislative amendments are examples of conventionalised language use with a limited scope of application. Still, they are systematically used within the discourse community and can be exploited to reach various objectives. These characteristics make legislative amendments a genre in their own right.

Chapter 3
Legislative amendments as a genre embedded in the ordinary legislative procedure

3.1. Introduction

The primary aim of this chapter is to place legislative amendments in the institutional context. The chapter provides a brief overview of the EU institutions and their post-Lisbon functions and of basic concepts derived from EU law, including legal sources, general principles, and areas of EU competence. Having mapped the main elements of the institutional puzzle, the chapter analyses the EU's complex decision-making process. Most attention is devoted to the ordinary legislative procedure (OLP) as the default rule for adopting EU secondary legislation. It is argued that legislative amendments tabled to committees during the first reading in the European Parliament (EP) account for most of the substantial changes introduced to legislative proposals by the EP. Legislative amendments are also shown to occupy a central role in the negotiations that accompany legislative work. Last but not least, light is shed on institutional practices that allow the EU institutions to bypass stricter rules on conducting work at second and third readings of the OLP.

3.2. EU integration timeline: from the ECSC to the Treaty of Lisbon

What we now recognise as the European Union owes its origins to the process of institutionalising peacekeeping bodies in the post-war era. The Paris Treaty establishing the European Coal and Steel Community (ECSC) was signed in 1951 by six countries: Belgium, the Netherlands, Luxembourg, France, Italy, and West Germany. The drafters of the Treaty aimed at laying down rules for a common market for coal and steel, which were considered necessary resources for waging war (Craig 2017: 13, Robinson 2017: 229). The economic benefits associated with the success of the ECSC provided a push towards further cooperation. The Treaties of Rome were signed by "the Six" in 1957 and created further Communities, which were to function alongside the ECSC: the European Economic Community (EEC) and the European Atomic Energy Community (EAEC). Since 1957, the Treaties establishing the ECSC, the EEC, and EAEC, also referred to as the "founding Treaties" (Robinson 2017: 230), have been amended several times and new countries have decided to join the initial six. European integration, which began as a peacekeeping project, was deepened by five "revising" or

"amending" treaties (Witte 2017: 183): the Single European Act (SEA), the Maastricht Treaty, the Treaty of Amsterdam, the Treaty of Nice, and the Treaty of Lisbon.

The evolution from the ECSC to the European Union reflects the growing number of policy areas covered by the EU. While initial cooperation was purely technical and revolved around the creation of an internal market (Strandvik 2012: 29), unanimous decisions made by the Member States resulted in Treaty amendments which granted new powers to the EU. These new powers have included a vast array of subject matter: from economic ties to social and political issues (Craig 2017: 35-36). The "qualitative leap" (Strandvik 2012: 29) was made with the **Treaty of Maastricht**. It established the European Union as a political union with new, not merely economic competences. These included the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) within the three-pillar system, economic and monetary competences within the institutional frames of the European System of Central Banks (ESCB) and the European Central Bank (ECB), as well as competences within areas such as culture, public, health, consumer protection, education, training, and youth (Strandvik 2012: 29, Craig 2017: 20-21, 30).

The most recent revising treaty—the **Treaty of Lisbon**—made crucial structural changes, which were intended to make the decision-making process easier and more transparent. It eliminated the pillar structure (Craig 2017: 29), which had reflected the anxiety of Member States to restrict their own sovereignty, by subjecting the second and third pillars to EU competence (Craig 2017: 21, Woods *et al*. 2017: 61). As an effect, the EU was given a single legal personality (Craig 2017: 27, Woods *et al.* 2017: 59). The Treaty of Lisbon also introduced the Citizen's Initiative (Article 11(4) TEU) and gave both national parliaments (see section 3.4.2.) and the European Parliament (see section 3.3.2.) more power in the decision-making process.

3.3. Who is who? Navigating the EU's institutions

In this section, the main EU institutions, i.e. the European Commission, the European Parliament, the Council of the European Union, the European Council, and the Court of Justice of the European Union will be discussed. Most attention will be devoted to the European Commission, the European Parliament, and the Council of the European Union as the institutions responsible for drafting, amending, and adopting secondary legislation.

3.3.1. European Commission

According to Article 17 TEU, the European Commission promotes the general interest of the Union and is completely independent in performing its tasks. The **College of Commissioners** consists of 28 members[4]: the Commission President and 27 Commissioners from all Member States (European Parliament 2017a: 6). The College of Commissioners is a collegiate body, i.e., a body jointly responsible for its decisions, which can only be removed as a whole by a censure vote of the European Parliament, amounting to two-thirds of votes cast by MEPs (European Parliament 2016: 6, Peers 2017: 45). Individual Commissioners are nominated by the governments of the Member States. The Commission's President is nominated by the European Council and approved by a majority vote of the European Parliament (Peers 2017: 44). The Commission is divided into policy departments called **Directorates-General**, each of which is responsible for a different policy area and is usually headed by a Commissioner[5]. The scope of interest of each Directorate-General is reflected in the division of tasks allocated to the committees in the European Parliament (Peers 2017: 48, 54) and the preparatory bodies in the Council (2017: 63).

The Commission has mostly **executive functions**. It ensures that the Treaties and EU legislation are applied by Member States, executes the budget, adopts implementing or delegated acts (see section 4.1.4.), which specify the conditions of applying EU secondary legislation, and is responsible for the EU's day-to-day administration (Peers 2017: 41, 46-47, Robinson 2017: 230). However, one crucial responsibility of the Commission sets it apart from all other EU institutions: its "**near-monopoly**" (Peers 2017: 46) **on submitting legislative proposals**.

It is worth noticing that the competences and the functioning of the Commission do not mirror those of national governments. Firstly, the Commission is not chosen among members of a victorious party after national elections. Instead, it is composed of politicians nominated by 28 governments with various ideological backgrounds, who are by no means bound by any election manifestos. Peers also stresses that the removal of the Commission does not result in early elections to the Parliament (2017: 54) and that the Parliament lacks the right to remove individual Commissioners (2017: 45), which makes the link between the legislative and the executive branch relatively weak. Secondly, despite the extensive powers it enjoys, the

[4] See further Peers (2017: 41-42) on the changes in the number of Commission members.
[5] The full list of departments and executive agencies of the European Commission is available at: <https://ec.europa.eu/info/departments> DOA: 13 April 2019.

Commission is not responsible for the implementation of EU legislation, which falls into the competence of Member States (Peers 2017: 40, 47).

3.3.2. European Parliament

The European Parliament (EP) is the only EU institution chosen by **universal suffrage**. Article 14 TEU specifies that the EP is elected for a term of five years by direct universal suffrage. The post-Lisbon Parliament consists of a maximum of 750 Members of Parliament (MEPs) and the Parliament's President. Seats are allocated according to a system of **degressive proportionality**, with most seats allocated to the most populous Member States. Although the EP is sometimes compared to a lower house in a bicameral system due to its appointment and functions (Peers 2017: 39), it differs from national parliaments to a considerable extent. Firstly, the EP's **five-year term** is rigidly fixed (Peers 2017: 50) and cannot be shortened, even if the Commission as the executive power is removed by a censure vote (see section 3.3.1.). Secondly, MEPs do not need to form governing coalitions due to the weak link between the legislative and the executive branch (Lelieveldt and Princen 2015: 165, Peers 2017: 54). Even though MEPs are supposed to represent all EU citizens (Article 14(2) TEU), the elections to the EP are fought on national issues (Dionigi 2017: 19). In the Parliament, MEPs join one of the **political groups**[6], which broadly reflect the ideological stances of the domestic parties that have gained seats in the elections. Each legislative proposal of the Commission is weighed by the political groups separately "**on a case-by-case basis**" (Peers 2017: 54) and coalitions between the groups are formed *ad hoc* around positions on particular policy issues (Lelieveldt and Princen 2015: 165).

Today, the EP exercises a number of prerogatives, but this was not always the case. What we now recognise as the European Parliament was established in 1951 as part of the ECSC (Lelieveldt and Princen 2015: 153-154). The **Common Assembly**, as the institution was called, was neither chosen directly by citizens nor did it have a say in legislation (Craig 2017: 15-16). However, all revising treaties—from the SEA to the Treaty of Lisbon—have extended the Parliament's powers, assigning it the role of a "**co-legislator**" (Woods *et al*. 2017: 74) on an equal legislative footing with that of the Council (Peers 2017: 51). Two categories of power rest with the EP. According to Article 14 TEU: **it shares legislative and budgetary functions with the Council** and "exercise[s] functions of **political control and consultation**". The impact of Parliament's actions falling within the former category of power

[6] See Lelieveldt and Princen 2015: (156-158) for a discussion on the political groups active in the EP.

has been significantly enhanced with the introduction of the **co-decision procedure** by the Treaty of Maastricht (Woods *et al*. 2017: 74, 75), which was then extended to further areas of policy by both the Treaties of Amsterdam and Nice (Craig 2017: 21, 23, Peers 2017: 52). With the Treaty of Lisbon, co-decision was officially recognised as the **ordinary legislative procedure** (see section 3.5.1.) and the scope of its application was dramatically broadened to include 85 areas of EU action (European Parliament 2017a: 1-2, Peers 2017: 52).

Despite its strong position as a co-legislator, the EP still does not have a say in some areas of EU policy. Although the EP's role has been strengthened in the course of time to address concerns over the EU's lacking democratic accountability (Peers 2017: 38), Member States have not been willing to risk being outvoted in areas crucial to their national sovereignty (see section 3.4.3). This is why the role of the EP is kept to a minimum in areas of paramount concern to Member States (Lelieveldt and Princen 2015: 93). In such areas, decisions are made according to the **special legislative procedure** (SLP), in which the EP is either consulted or its consent is required (see section 3.5.2).

Similarly to national parliaments, day-to-day work in the EP is conducted in **committees**. Currently, there are over 20 standing committees in the EP specialised in various areas of EU policy[7]. Committee meetings take place twice a month in the so-called "pink weeks" in Brussels[8]. Each MEP is assigned as a full member to one committee and as a substitute member to one or two further committees by their political group (Dionigi 2017: 26). It is the committees that are responsible for reviewing the Commission's legislative proposals, i.e., adopting a report with amendments to the proposal and tabling it for a vote in the plenary. Every year, 12 plenary sessions are held in Strasbourg and 6 mini-sessions in Brussels. In the plenary, MEPs from all committees debate on the legislative proposals prepared by the Commission and on the amendments tabled to those proposals before casting their votes.

3.3.3. Council of the European Union

The Council is purely **intergovernmental** in character. It consists of "representative[s] of each Member State at ministerial level" (Article 16(2) TEU). According to Article 10(2) TEU, the individual ministers are democratically accountable to their national parliaments or their citizens. However, the Council's accountability is problematic due to "**the problem of many**

[7] The full list of committees in the EP is available at: <http://www.europarl.europa.eu/committees/en/parliamentary-committees.html> DOA: 13 April 2019.

[8] See further: European Parliament, *The secret behind the Parliament's colourful calendar*. Available at: <http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20140620STO50109/the-secrets-behind-parliament-s-colourful-calendar> DOA: 13 April 2019.

hands" (Lelieveldt and Princen 2015: 288), i.e., the lack of individual accountability of its members and the frequent changes in its composition (Peers 2017: 55). The work of the Council is conducted at three levels. Article 240(1) TFEU specifies that the Council is assisted by the **Committee of Permanent Representatives** of national governments (COREPER), which is in turn supported by numerous **working parties** (European Parliament 2017a: 4). Formally, both working parties and COREPER cannot make any binding decisions (Peers 2017: 63). Still, most procedural agreements between Member States are reached at the level of Council's preparatory bodies (Lelieveldt and Princen 2015: 289), while only the most sensitive issues are discussed by respective ministers (Peers 2017: 63).

Voting procedures in the Council vary depending on the subject matter. The Council makes decisions either by a **qualified majority vote** (QMV) or by **unanimity**. When votes are cast under the OLP, the QMV is recognised as the "default rule" (Bradley 2017: 122, Peers 2017: 57). By contrast, most legal acts passed under the SLP require unanimity (Lelieveldt and Princen 2015: 94-95). The QMV was first introduced in November 2014 by the Lisbon Treaty and its aim was to reconcile the interests of both larger and smaller Member States (Lelieveldt and Princen 2015: 95). When the Council votes on a legislative proposal put forward by the Commission, the QMV amounts to at least 55% of Member States representing a minimum of 65% of the EU population; however, should the proposal originate from EU citizens or other EU bodies (Article 238(3)(b) TFEU), the threshold is raised to 72% of Member States representing 65% of the EU's population (Peers 2017: 59-60).

Article 16(1) TEU mentions two categories of functions carried out by the Council: **legislative** and **budgetary functions** exercised jointly with the EP and "**policy-making and coordinating functions**". While the Council and the EP enjoy equal status as co-legislators in the ordinary legislative procedure (OLP), the EP's role is minimised to that of consultation or consent in the SLP (see section 3.5.2.). An example of an area subject to the SLP is **foreign affairs**, which the Council is largely responsible for (see section 3.4.3.). Policy-making and coordinating functions of the Council are reflected in its right to lay down guidelines for the management of policy areas (see section 3.4.1.5. on the OMC) too sensitive for EU legislation (Bradley 2017: 103, Peers 2017: 57).

3.3.4. European Council

The European Council was established in 1974 to facilitate holding regular **summit meetings** (Craig 2017: 17). The institution functioned on an informal basis until it was formally

established in the Single European Act of 1987 (Peers 2017: 66). However, it only gained the status of an EU institution with the ratification of the Treaty of Lisbon (2017: 67).

Rules on the composition and functioning of the European Council can be found in Article 15 TEU. The members of the European Council are the heads of state or government of the Member States, the President of the European Council, the President of the European Commission, and the High Representative for Foreign Affairs and Security Policy (see section 3.4.3.). The European Council meets at least twice every six months, but it can be summoned more often should the need arise. Pursuant to Article 15(1) TEU, the institution does not exercise any legislative functions, but rather "**define[s] the general political directions and priorities**" of the EU. The European Council's framework allows Member States to discuss the most divisive issues and reach ultimate decisions (Peers 2017: 68). Decisions are made by **consensus** "[e]xcept where the Treaties provide otherwise" (Art 15(4) TEU). Despite their political significance, the European Council's meetings are not public (Peers 2017: 69).

3.3.5. Court of Justice of the European Union

The main task of the Court of Justice of the European Union (CJEU) is to **interpret primary and secondary law** (Article 19 TEU). Apart from that task, the CJEU also conducts **infringement proceedings** against national governments in cases of non-compliance with EU law, **sanctions EU institutions** if their inaction is proved to have harmed the interests of individuals or companies, and **annuls EU secondary legislation** if it violates provisions set out in primary EU legal sources (European Parliament 2017a: 9). The CJEU is divided into the two bodies: the **Court of Justice** and the **General Court**, both of which employ judges from all Member States. As regards legal assistance, the Court of Justice additionally relies on eleven Advocates General, who serve six-year terms (Robinson 2017: 231).

3.4. EU law: sources, general principles, and competences

This section provides an overview of the sources of EU law, which determine fundamental legal principles and areas of EU competence. These will prove crucial in the further parts of the dissertation, particularly in the sections on the ordinary legislative procedure (OLP).

3.4.1. Sources of EU law

The sources of EU law follow a hierarchical legal design. **Primary law** forms "the apex of the pyramid", while **secondary law** includes all acts which allow the EU to achieve the objectives set in the Treaties (Bradley 2017: 104.). Secondary law may be further spelled out in detail in

delegated and implementing acts (see section 3.4.1.4.) adopted by the Commission or the Council (Robinson 2017: 247). In order to illustrate the rationale behind the complex hierarchical structure of EU law, an additional subsection (3.4.1.5.) on **non-binding acts** and **soft law** is included. Although such acts cannot be labelled as sources of EU law, their mere existence proves that the unique design of the European Union follows a complex political compromise. EU binding acts are only allowed in areas, which the Member States have recognised as subject to EU legislation, or *conferred* on the EU (see section 3.4.2.), with "politically sensitive" or "economically significant" issues (Lelieveldt and Princen 2015: 101) adopted under SLPs (see section 3.5.2.). Non-binding acts or soft law are passed in areas where EU control mechanisms would be "inappropriate", or when the scope of application proves "too sensitive" for passing binding EU legislation (Bradley 2017: 103). The final source of EU law, which will not be discussed here, are international agreements (Woods *et al*. 2017: 89), which the Council may enter into according to the procedure outlined in Article 218 TFEU (Bradley 2017: 101).

3.4.1.1. Primary law

The Treaty of Lisbon came into force on 1 December 2009 and redefined the structure of the European Union. Following the Treaty of Lisbon, the European Union is primarily based on two Treaties of the same legal value: the **Treaty on the European Union** (TEU), a consolidated and amended version of the Treaty of Maastricht, and on the **Treaty on the Functioning of the European Union** (TFEU), which is a revised version of the Treaty of Rome (Craig 2017: 29, Robinson, 2017: 230, Witte, 2017: 183). The Paris Treaty establishing the ECSC was not taken into consideration as a founding treaty, as it expired in 2002 (Craig 2017: 13). Pursuant to Article 6 TEU, the **Charter of Fundamental Rights of the European Union** has the same legal value as *the Treaties*, i.e., the TEU and the TFEU. The Charter was drafted and accepted by Member States in 2000 as part of the Nice agenda, but it only acquired legal status with the ratification of Treaty of Lisbon (Craig 2017: 25). The document comprises all the rights enjoyed by EU individuals and covers the case law of the CJEU, the rights and freedoms established in the European Convention on Human Rights, as well as all other rights recognised by the constitutions of the Member States and key international agreements[9].

[9] European Commission, *Why do we need the Charter?* Available at: <https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en> DOA: 13 April 2019.

3.4.1.2. Case law of the CJEU

The case law of the CJEU is a vital source of EU law. Since its establishment as a single court within the framework of the ECSC, the CJEU has contributed to a more effective implementation of EU legislation (Craig 2017: 18) by developing fundamental principles, without which the EU would never have become effective in so many policy areas (Bobek 2017: 144). Due to their judicial origin, key principles such as direct effect, primacy, and implied powers do not figure in the Treaties (Bobek 2017: 144, Robinson 2017: 231).

The principle of direct effect came into existence in 1963 with the judgement of *Van Gend en Loos*, while the principle of precedence was enshrined in the *Costa versus Enel* case in 1964[10]. **Direct effect** means that EU provisions may be immediately invoked by individuals before both national and European courts without the need of further implementation by national authorities, i.e., "EU law speaks for itself to the national judge or administrator in an unmediated way" (Bobek 2017: 146). **Primacy**, or *precedence* as it is referred to in EUR-Lex sources, means that EU law has primacy in application whenever a conflict arises between provisions incorporated in national and EU legislation (Bobek 2017: 161, Woods *et al*. 2017: 114). Bobek emphasises that the combination of the two principles has produced a "synergetic effect" (2017: 162) and allowed the CJEU to accord EU law the same legal status in all Member States, irrespective of their constitutional traditions (2017: 163). Woods *et al*. conclude that the "twin" principles have played a central role in ensuring EU law is applied and integrated consistently in all Member States (2017: 144). The **principle of implied powers** is also of judicial origin and allows EU institutions to exercise powers not mentioned in Treaties if these prove indispensable to achieving the EU's objectives (Woods *et al*. 2017: 68).

3.4.1.3. Secondary law

Secondary legislation includes all binding legal acts adopted by the EU institutions under ordinary or special legislative procedures. Prior to the Lisbon Treaty, each pillar relied on different legal instruments, but the amended TFEU lists four categories of legal acts common to all areas of EU policy: regulations, directives, decisions, recommendations, and opinions (Woods *et al*. 2017: 69). These legal instruments are mentioned in Article 288 TFEU, which provides an explanation of the types and purposes of the various acts passed by the EU.

[10] See further: EUR-Lex, *Summaries of EU legislation: The direct effect of European law* and *Precedence of European law*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al14547> and <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14548> DOA: 13 April 2019.

Regulations "shall have general application" and "be binding in [their] entirety and directly applicable in all Member States". These legal acts assume a normative character and are addressed to all Members States (Woods *et al*. 2017: 70), which do not need to take any further measures for a regulation to become law, although the regulation itself may impose implementing provisions on national authorities (Bradley 2017: 99). Therefore, regulations are the obvious choice for EU-wide policy frameworks, which require all Member States to follow uniform legal provisions (Lelieveldt and Princen 2015: 79).

What sets **directives** apart from regulations is the fact that they need to be "transposed" by Members States (Lelieveldt and Princen 2015: 79-80, Bradley 2017: 100). Directives give Member States greater discretion as to how particular provisions can be implemented (Woods *et al.* 2017: 70). Thus, directives are considered to reflect the principle of subsidiarity. In short, the EU only specifies its objectives, while Member States are left with adopting legal provisions in order to achieve EU targets (Bradley 2017: 100). As Lelieveldt and Princen argue, directives leave room for flexibility, which sometimes proves convenient due to natural, legal, cultural, or social differentiation among Member States (2015: 80). However, it is often claimed that directives have become so "detailed" (Lelieveldt and Princen 2015: 80) and "highly technical" (Bradley 2017: 100) that the discretion to the method and form of implementation is, in fact, severely limited.

Article 288 TFEU specifies that **decisions** are legal acts which may be either of general application or have a specific addressee. Decisions require no further implementation and can be addressed to both Member States and individuals (Woods *et al*. 2017: 70).

Article 288 TFEU also mentions **recommendations** and **opinions** as legal acts of the EU. Nevertheless, recommendations and opinions have no binding force and are of persuasive character only.

3.4.1.4. Delegated and implementing acts

A delegation of powers to a particular body within a legal system has clear advantages: the efficiency of the system is not obstructed and work on detailed areas is carried out by experts (Woods *et al.* 2017: 79). The Treaty of Lisbon introduced procedures for delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU) to address concerns over the transparency of the comitology procedure. As mentioned in section 3.3.1., adopting delegated and implementing acts is an executive function performed by the Commission (Peers 2017: 47). Such acts are especially useful if measures need to be taken quickly and introduced uniformly by the Member States, and if they require work of a purely technical nature (European

Parliament 2017a: 43). **Delegated acts** are of general application and supplement or amend non-essential elements of a basic act. The use of delegated acts by the Commission is supervised by the EP and the Council, which may revoke the delegation. Furthermore, a delegated act may only enter into force if no objection is raised by either of the two co-legislators (European Parliament 2017a: 43, Peers 2017: 47, Woods *et al*. 2017: 79-80). **Implementing acts** are adopted by the Commission or the Council when "uniform conditions for implementing legally binding Union acts are needed" (Article 291(2) TFEU). If the Commission is responsible for passing a given implementing act, its steps are monitored by committees made up of officials from the Member States (Peers 2017: 47).

3.4.1.5. Non-binding acts or "soft law"

As mentioned in section 3.4.1., soft law has no legal effects. Therefore, some authors argue that it should not be referred to as law at all (Bradley 2017: 103). EU soft law allows Member States to exchange best practices, agree on certain policies, and adopt guidelines in the Council. A notable example of EU soft law is the **open method of coordination (OMC)**. Originally, the OMC was intended to cover policy areas not conferred upon the Union, the implementation of which was crucial for reaching the EU's strategic goal—making the EU the most competitive and dynamic knowledge-based economy in the world based on sustainable development, job opportunities, and social cohesion (Krzyżanowski and Wodak 2013: 121-122). Compliance with this intergovernmental method is voluntary and is measured by means of benchmarking, monitoring, target-setting, and peer review (Bradley 2017: 103, Woods *et al*. 2017: 72). The reason for this is that the policy areas it spans—economy, social cohesion, and environment—are politically sensitive and major discrepancies in these areas still exist among Member States (Krzyżanowski and Wodak 2013: 122). Despite its advantages, EU soft law has come under criticism due to the difficulties of holding policymakers to account, the lacking transparency of the decision-making process (Woods *et al*. 2017: 72), and low implementation (Krzyżanowski and Wodak 2013: 122).

3.4.2. Principles of conferral, subsidiary, and proportionality

EU institutions are bound by three key principles, which limit the scope of their actions. Article 5 TEU states clearly: "The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality."

The **principle of conferral** concerns the division of competences between the Union and the Member States. Bradley argues that the principle of conferral is "repeated insistently throughout the Union Treaties" (2017: 105) and already appeared in the ECSC Treaty, which prevented the Community institutions from acting beyond their powers (2017: 106). Bradley also stresses that the CJEU was made responsible for securing compliance with the principle, which has "long been considered to be a constituent element of the institutional balance" (ibid.). Nonetheless, Woods *et al*. observe that two aspects concerning the principle of conferral were only made explicit in the Lisbon Treaty: the power of Member States to confer competences on the EU (Article 1 TEU) and the delegating relationship between Member States and the Union (Articles 4(1), 5(2) TEU), with the Member States retaining all competences not conferred upon the EU (2017: 56). The rationale for introducing such precise articles could be the need to reassure the Member States that they are indeed the "Masters of the Treaties" (cf. Bobek 2017: 166) amid the growing scope of competences conferred upon the EU.

The **principle of subsidiarity** is formulated in Article 5(3) TEU. Subsidiarity was first introduced by the Treaty of Maastricht (Craig 2017: 21, Robinson 2017: 232). Following the definition provided by Lelieveldt and Princen, subsidiarity means that the "EU is only allowed to act if the objectives of that action can be better reached at EU level than at Member State level" (2015: 85). However, Article 5(3) TEU also enumerates the multiple layers of government—central, regional and local levels—at which decisions may be taken within Member States. Woods *et al.* (2017: 64) and Bradley (2017: 111) further suggest that Article 5(3) is entwined with Article 10(3), which expresses the need for taking decisions as openly and close to the citizen as possible.

The **principle of proportionality** is outlined in Article 5(4) TEU. According to it, "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". Lelieveldt and Princen explain that the principle of proportionality aims at keeping legislation in proportion—or to a minimum—to the objective to be achieved (2015: 98), while Woods *et al.* imply that the principle requires the EU to provide Member States with general outlines rather than to impose concrete measures on them (2017: 67).

The rules on the principles of conferral, subsidiarity, and proportionality have their practical implications. Firstly, EU institutions must state the rationale for their actions in the **preamble** to any draft legislation. This requirement allows for a check on the compliance of measures taken at the EU level with the three core principles (Article 296 TFEU, Article 5 Protocol No. 2 TFEU, Bradley 2017: 106, Robinson 2017: 232, Woods *et al*. 2017: 74-75). Secondly, Articles 12 TEU and 69 TFEU, as well as Protocol No. 2 to TFEU also introduce

provisions which enable **national parliaments** to check whether legislative proposals comply with the principle of subsidiarity. All legislative proposals must be sent to national parliaments, which have eight weeks to submit **reasoned opinions** if they find that a certain proposal violates the principle of subsidiarity (European Parliament 2017a: 8). They may also ask the European Commission for further clarification (Lelieveldt and Princen 2015: 98). Should one-third of parliaments—or a quarter in case of proposals concerning judicial cooperation in criminal matters and police cooperation—express their concerns (the so-called *yellow card*), the Commission must review its draft. Should more than a half of national parliaments submit reasoned opinions and the Commission decide to maintain its draft (*orange card*), the EP and the Council decide on the draft's compliance with the principle of subsidiarity before the end of the first reading (Lelieveldt and Princen 2015: 98-99, Woods *et al*. 2017: 65-67, Bradley 2017: 112-117, European Parliament 2017a: 8). However, Lelieveldt and Princen imply that national parliaments most typically submit **ordinary opinions** and ask for clarification, instead of issuing reasoned opinions. Thus, national parliaments give the Commission access to invaluable information on the difficulties the legislative proposal may face in the upcoming negotiations with the EP and the Council (2015: 99).

The principles of subsidiarity and proportionality play a fundamental role in the **CJEU's review of the legality of EU legislation** (Robinson 2017: 232). However, Bradley points to the fact that the principle of proportionality is rarely the subject of judicial review (2017: 117). One of the reasons for this is the obligation imposed on the Commission in Article 2 under Protocol No. 2 TFEU, according to which "the Commission shall consult widely" before submitting legislative proposals and the consultations shall "take into account the regional and local dimension of the action envisaged". In practice, **extensive consultations** and **impact assessments** are carried out before the Commission puts forward any legislative proposal (European Parliament, 2017: 6). Therefore, it is difficult to prove that the principle of proportionality was violated since all other possible policy measures and the extent to which they serve to achieve the purpose set out in the legislative proposal would have to be evaluated (Bradley 2017: 117).

3.4.3. EU competences according to the amended TEU and TFEU

The TFEU introduces three fundamental categories of EU competence (Article 2 TFEU): exclusive, shared, and supporting. While the previously mentioned principles of conferral and proportionality apply to all EU legislation, the principle of subsidiarity only concerns shared and supporting competences (Robinson 2017: 232). Articles 2(3) and 2(4) TFEU specify that

the EU has two further areas of competence referred to as "special competences"[11], which do not fit into the categorisation mentioned above (Bradley 2017: 108). These are the coordination of economic and employment policies and defining and implementing a common foreign and security policy.

Article 3 TFEU specifies which areas are subject to the EU's **exclusive competence**. These include: the customs union, "competition rules necessary for the functioning of the internal market", the monetary policy for countries within the Eurozone, the "conservation of marine biological resources under the common fisheries policy", the "common commercial policy", and the adoption of international agreements which allow the Union to "exercise its internal competence". Woods *et al*. explain that exclusive competence means that only the EU is allowed to take action in these areas (2017: 62).

Article 6 TFEU defines that the EU has "competence to carry out actions to support, coordinate or supplement the actions of the Member States". This **supporting competence** is referred to as "ancillary" or "complementary" by Bradley, who explains that the category includes matters "too close to national or local interests", to "identity", or "otherwise too politically sensitive" to grant the Union any more extensive influence" (2017: 110). Protection and improvement of human health, industry, culture, tourism, education, vocational training, youth, sport, civil protection, and administrative cooperation are all mentioned in Article 6 TFEU as areas of EU supporting competence.

Article 4 TFEU states that **shared competence** concerns all competences conferred upon the EU which are not mentioned in Articles 3 and 6 TFEU. As Bradley puts it, the "bulk of Union competences fall within the category described as shared", which he labels as a "residual category" (2017: 109). Article 4 TFEU enumerates areas of competence considered as shared, but the list is by no means exhaustive (Woods *et al*. 2017: 63). The label *shared* is regarded by Bradley as misleading (2017: 109) because according to Article 2(2) TFEU once the EU has taken action, Member States may only act to the extent that the EU has not acted, has refrained from acting or has allowed them to do so (Woods *et al*. 2017: 62).

Economic and employment policies or the Common Foreign and Security Policy (CFSP) are examples of **sensitive areas**. In their essence, sensitive areas are "close to the vital interests" of Member States' governments (Lelieveldt and Princen 2015: 93), which is why Member States have not conferred all competences within these areas upon the EU. In such

[11] EUR-LEX, *Division of competences within the European Union.* Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:ai0020> DOA: 13 April 2019.

cases, the roles of the Commission and the EP are modest, while major decisions are taken by Member States at the level of the Council.

The coordination of economic and employment policies takes place within the framework of the **Economic and Monetary Union** (EMU). Craig argues that the "constitutional architecture" of the EU was significantly affected by the financial crisis, which began at the same time when the Treaty of Lisbon was being ratified (2017: 30). In order to combat the crisis, numerous measures were taken, from ordinary EU legislation to intergovernmental agreements (2017: 31), which have extended the scope of economic and employment competences. The EMU involves several actors: the European Council, the Council, the Eurogroup, Member States, the European Commission, the European Central Bank, and the European Parliament[12].

The legal instruments and decision-making process within the **CFSP** vary to a considerable extent from other areas of EU competence, which reflects the CFSP's special status within the former pillar structure (Bradley 2017: 110). As Lelieveldt and Princen note, no legislation is passed under the CFSP (2015: 92) and the repertoire of instruments in this policy area differs from the basic instruments which form the "legal toolkit" of EU's secondary legislation (2015: 78, 80). The actors responsible for this particular area of competence are the European Council, the Council, and the High Representative for Foreign Affairs and Security Policy, the latter of which is a "double-hatted Commissioner" responsible for representing the EU in foreign affairs and ensuring that EU's actions in this area are effective and united (Bradley 2017: 110, Woods *et al*. 2017: 73). Since the ratification of the Treaty of Lisbon, the High Representative serves a 5-year term within the Commission as its Vice-President and additionally answers to the Council (Peers 2017: 43). The EP, the Commission, and the CJEU occupy minor roles within the CFSP (Bradley 2017: 110). The EP is only consulted and informed by the High Representative with regards to foreign policy choices (Peers 2017: 53). According to Article 40 TEU and Article 275 TFEU, the CJEU may only review restrictive measures against natural or legal persons, e.g., sanctions against persons or organisations (Lelieveldt and Princen 2015: 81), or assess whether the measures taken under CFSP exceed the powers conferred upon the EU (Bradley 2017: 110, Articles 3-6 TFEU).

[12] See further: European Commission, *What is the Economic and Monetary Union? (EMU)* Available at: <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/economic-and-monetary-union/what-economic-and-monetary-union-emu_en> DOA: 13 April 2019.

3.5. Legislative procedures

According to Article 289(3) TFEU, EU legislative acts are adopted under a legislative procedure—either an ordinary (OLP) or a special (SLP) one. **Legislative acts** concern policy areas conferred upon the Union specifically mentioned in the Treaties, which also determine the type of legislative procedure to be followed. All residual areas not specified in the Treaties result in the adoption of **non-legislative acts** (Robinson 2017: 236). As already mentioned earlier, the various legislative procedures either give more power to the intergovernmental branch of the EU, i.e., the Council, or to the supranational institutions, i.e., the Commission and the EP, depending on the matter at stake and the willingness of Member States to entrust the EU institutions with making decisions in certain policy areas. A particularly useful observation is made by Lelieveldt and Princen, who view the EU's legislative procedures as a **continuum** with the OLP at one end of the spectrum, and a SLP including an advisory role of the EP, a unanimous vote in the Council, and a limited right of initiative on the behalf of the Commission at the the other end (2015: 82).

3.5.1. Ordinary legislative procedure (OLP)[13]

With the ratification of the Treaty of Lisbon, the ordinary legislative procedure has become the standard rule for adopting all secondary legislation at the EU level. The OLP recognises the EP and the Council as equal co-legislators, who on the basis of a Commission proposal agree on a joint text. The OLP is outlined in Article 294(1) TFEU.

3.5.1.1. Commission's proposal

The European Commission enjoys a "quasi-monopoly" (European Parliament 2017a: 6) on the legislative initiative[14]. The Commission is obliged to consult its proposals with experts, stakeholders and Members States. It uses **Green Papers** and **White Papers** to keep all interested parties informed about the developments in various policy areas. The former documents list policy choices still being examined by the Commission, while the latter contain tentative proposals and launch more concrete debate (Robinson 2017: 239). Once the Commission proposal has been completed, it is translated into all remaining official languages and published in EUR-Lex (Robinson 2017: 239). Before the proposal is sent to the EP and the

[13] This section is largely based on the European Parliament's latest edition of the *Handbook on the Ordinary Legislative Procedure* (2017).

[14] The OLP may also be initiated by the European Central Bank, the European Investment Bank, a group of Member States, or the CJEU in cases specified by Treaties. The EP, the Council, or 1 million citizens may also ask the Commission to submit a legislative proposal. Nevertheless, it is up to the Commission take action. See European Parliament 2017a: 13 and Bradley 2017: 120-123 for details.

Council, it is also consulted with one or two advisory bodies of the EU pursuant to Articles 304 and 307 TFEU: the European Economic and Social Committee (EESC) and the Committee of Regions (CoR). This phase of **consultation** is only obligatory if the proposal is related to the scope of interest of the relative bodies (Robinson 2017: 239, Lelieveldt and Princen 2015: 85). The Commission also forwards its proposal to national parliaments for a **subsidiarity check** (see section 3.4.3.). The OLP is finally launched when the Commission's proposal is sent to the EP and to the Council. The successive stages of the OLP are referred to as **readings** and are subject to different rules. The Commission is present during debates in the EP, whether at committee or plenary level, where it defends the initial proposal. The Commission remains a key player due to its right to alter or withdraw the proposal at any time before the Council adopts its position in the first reading (Guggeis and Robinson 2012: 66, Bradley 2017: 121-122, Robinson 2017: 241).

3.5.1.2. First reading in the Parliament

In the EP, the first reading takes place within **committees**, which are responsible for adopting the EP's position prior to the plenary stage (Dionigi 2017: 26). In the first reading, the EP can approve, amend or reject the Commission's proposal. In practice, MEPs most often suggest amendments (Lelieveldt and Princen 2015: 86). Amendments tabled by MEPs are a proof of their active participation in EU matters and, if successful, can be further used to rally support for desired policy outcomes. More than one committee can take part in reviewing the Commission's proposals. The EP has developed rules for assigning the proposals—or *dossiers*, as they are referred to in jargon—to relevant committees depending on their remit of interest[15]. It is then up to the **coordinators** in the relevant committee to decide which of the political groups will appoint the **rapporteur** (Dionigi 2017: 27-28), i.e., the MEP responsible for preparing the committee's draft report and leading it through the successive stages of the procedure. The rapporteur is also given a mandate by the committee or the plenary to represent the EP in interinstitutional negotiations with the Commission and the Council (Robinson 2017: 240). It is worth noticing that the rapporteur is the first MEP to suggest amendments to the Commission's proposal (Dionigi 2017: 27). Political groups may also appoint **shadow rapporteurs**, whose main task is to monitor the rapporteur's work (Lelieveldt and Princen 2015: 85) and represent the positions of their political groups (Dionigi 2017: 27).

[15] See European Parliament 2017a: 14-15 for details on forwarding proposals to committees and different committee configurations.

Once complete, the **draft report** is presented during the committee meeting. After the rapporteur's presentation, the Chair of the Committee sets a deadline for tabling **amendments**. At this stage, amendments can be tabled by all MEPs, as long as they are co-signed by a full or a substitute member of the committee responsible for the dossier. Debates on particularly important dossiers can be accompanied by additional expert hearings and impact assessments. As a rule, the more controversial the Commission proposal and the rapporteur's draft report are, the more conflicting amendments have to be later reconciled by the rapporteur and shadow rapporteurs during informal meetings. Their efforts result in **compromise amendments** (Dionigi 2017: 29), which are then put to the vote at the next committee meeting. All documents discussed in the committees (draft reports, draft opinions, amendments, working documents, etc.), meeting agendas, and broadcasts from committee meetings are available online[16].

Once the committee has adopted its **report** with amendments to the Commission's proposal, it is forwarded to the **plenary**. Reports with far-reaching economic or social consequences are usually preceded by debates. At this stage, amendments may still be tabled but only by the committee responsible, by a political group or by at least 38 MEPs (Robinson 2017: 240). For the report to be approved by the EP, a simple majority is needed (Lelieveldt and Princen 2015: 86). Similarly to the previous stage, documents and broadcasts from plenary sessions are available on the EP's website.

3.5.1.3. First reading in the Council

As mentioned earlier, most Council decisions are discussed at the level of preparatory bodies. Both the Council and the EP conduct their work simultaneously, although the EP must finalise its first reading procedure before the Council. While waiting for the result of EP's plenary vote, the Council may suggest changes to the Commission's proposal and reach a political agreement known as the **general approach**, which constitutes a mandate in negotiations with the remaining EU institutions (Robinson 2017: 240). If the Commission approves the outcome of the first reading in the EP, the Council may accept it by a qualified majority vote, thus formally adopting the legal act and ending the OLP. However, according to Article 294(9) TFEU, any amendments originating either from the EP or the Council not approved by the Commission require unanimity on the behalf of the Council (Bradley 2017: 122, Lelieveldt and Princen 2015: 86-87, Woods *et al.* 2017: 75). If the Council cannot accept the result of the EP's work, it adopts a **common position** pursuant to Article 294(5) TFEU. The common position is

[16] See the subsections "Meetings" and "Documents" on the website of European Parliament's committees at: <http://www.europarl.europa.eu/committees/en/home.html> DOA: 13 April 2019.

forwarded to the EP with statements of reasons and becomes the basis for further discussion in the second reading (Bradley 2017: 121, Lelieveldt and Princen 2015: 86, Woods *et al.* 2017: 75).

3.5.1.4. Second and third readings in the Parliament and the Council

Contrary to the first reading, second and third reading procedures are subject to strict time limits and place major constraints on the co-legislators. Therefore, second and third readings are generally avoided and the institutions seek to reach an agreement in the first or early second reading, i.e., either the Council adopts the EP's first reading outcome without any amendments or the EP accepts the Council's common position.

In the **second reading**, the EP and the Council have a maximum of 4 months each to complete the procedure. No new amendments may be tabled. The only admissible amendments include: amendments to the common position of the Council, interinstitutional compromise amendments, amendments passed in the first reading but not approved by the Council (Lelieveldt and Princen 2015: 87), or amendments resulting from a new fact or a new legal situation (Dionigi 2017: 32). Furthermore, any amendments on the EP's side now require an absolute majority, i.e., at least 376 MEPs, although the EP accepts the Council's common position by a simple majority (ibid.). The Council accepts the EP's second reading outcome by a qualified majority and rejects it by unanimity. If the Commission does not support the amendments introduced by the EP, the Council must vote unanimously to adopt them (Lelieveldt and Princen 2015: 88).

If the Council does not approve the EP's position from the second reading, a **conciliation committee** is formed and the third reading is initiated. In this last chance scenario, representatives of the Council, the EP's negotiating team, and the Commissioner responsible for the legislative proposal meet to produce a joint text. The respective steps—forming the conciliation committee, concluding an agreement, and voting on the joint text in both institutions—must be completed within 6 weeks each, with the possibility of extending each of the declines by a maximum of 2 weeks (Dionigi 2017: 31, Lelieveldt and Princen 2015: 89).

3.5.1.5. Why is the first reading so crucial and what are trilogues?

The entry into force of the Treaty of Lisbon resulted in **a vast majority of legislative proposals adopted under the OLP**. Exact figures[17] amount to 89% of legislative proposals adopted under the OLP in the 7th term (2009-2014) and 91% in the first half of the 8th term (2014-2016). Another important trend is **the adoption of most legislative acts in the first reading** (Bradley 2017: 123, Dionigi 2017: 34, Lelieveldt and Princen 2015: 90-91, Robinson 2017: 241). 85% and 75% of legislative acts were adopted in the first reading in the 7th and in the first half of the 8th term, respectively. It also is worth stressing that almost all remaining legislative acts (22%) during the first half of the 8th term were concluded at an early second reading, while no legislative acts were adopted in the conciliation stage.

Most legislative acts are adopted in the **first reading** because of the stricter rules that apply to second and third reading procedures. Lelieveldt and Princen describe the OLP as a "funnel", in which stricter deadlines, higher voting thresholds, and the inadmissibility of new amendments "push" the three institutions to reach an agreement. As Dionigi notes, it is by far easier to make changes to the Commission's proposal in the first reading (2017: 31). Low voting thresholds in the EP make lobbying at this stage of the procedure particularly fruitful. MEPs and stakeholders can shape the provisions of given legislative proposals to a considerable extent as long as the dossiers are discussed in the relevant committees. At the plenary stage, amendments must be tabled by the respective committee, a political group, or a minimum of 38 MEPs. This is why substantial amendments are always tabled in committees. Failing to get involved in the first reading is described as "**fatal**" (De Cock 2010: 108) due to the stringent rules on the admissibility of amendments in the second reading.

The rules on the OLP may resemble a volleyball exchange. According to the rules, the EP and the Council adopt a strategy, pass the ball over the net to each other's part of the court, and wait for the response. However, this is far from the truth. After all, the EP and the Council must reach an agreement. Were they to blindly follow the rules on the OLP without consulting each other, hardly any legislative acts would be adopted in the first reading. This is why the Commission, the EP, and the Council engage in informal meetings called **trilogues**. Their effect is a first, early second, or second reading agreement. Formalised in 2007 (Guggeis and Robinson 2012: 66, Robinson 2017: 241), trilogue meetings are attended by representatives of each institution who have been given a negotiating mandate. The EP's negotiating team can enter into trilogue negotiations with a **committee mandate** or **plenary mandate** (Dionigi

[17] All figures quoted in this paragraph are available in the *Handbook on the Ordinary Legislative Procedure* (2017: 50-51).

2017: 32). The former possibility requires a qualified majority vote at the committee level and a complete committee report as mandate. The latter relies on the EP's *de facto* first reading outcome and the dossier being referred back to the relevant committee for it to enter interinstitutional negotiations with a plenary mandate.

Although the use of trilogues has facilitated the law-making process, it has also raised concerns over the **transparency** of the OLP. The reason for this is that trilogue negotiations are conducted behind closed doors. What is more, trilogue documents are not released to the general public (Woods *et al.* 2017: 78). These concerns were acknowledged by the EP, which revised its Rules of Procedure both in 2012 and 2017 to increase the accountability of policymakers who take part in trilogues. According to the new rules, the negotiating team is obliged to inform the committee about the recent developments after each round of trilogue meetings. Provisional agreements reached in trilogues are also put to a committee vote and made public before being forwarded to the plenary (European Parliament 2013a). Last but not least, the mandate for entering into interinstitutional negotiations is always public and the rules for obtaining it are clearly stated.

On the whole, any first reading agreement means that trilogues were attended by the EP's negotiating team with a committee mandate, while early second reading agreements indicate that the negotiating mandate was voted over in the plenary. The relatively large number of acts adopted at an **early second reading** in the first two years of the 8th term (22%) resulted from the fact that the EP had concluded many first reading positions before the end of the 7th term, but it had not managed to initiate interinstitutional negotiations. In such cases, files are carried over to the next legislative term. The higher proportion of early second reading agreements may be also linked to a second factor. It is easier for the committee to enter interinstitutional negotiations after the EP has adopted its first reading position. When decisions are made at the plenary, the committee only needs to inform the plenary about its decision to enter trilogues and that decision cannot be challenged. On the other hand, entering interinstitutional negotiations with a committee mandate can be challenged by 76 MEPs, who can request a single plenary vote on the committee's decision.

The relevant committee must enter interinstitutional negotiations with a plenary mandate before the Council finalises its first reading procedure if it wants to reach an early second reading agreement. Nevertheless, the Parliament has found a way of keeping files in the first reading and securing a plenary mandate for its negotiating team. This allows the EP not only to dodge strict time constraints imposed on co-legislators in the second reading but also to avoid accusations of lacking transparency. According to Rule 59a (European Parliament

2017b), the plenary can approve a request to refer a given file back to the committee after adopting its first reading position. In this scenario, interinstitutional negotiations formally take place during the first reading and the EP's negotiating team enters them with a plenary mandate. An example of a contentious legislative file that was referred back to the committee following the adoption of first reading position was procedure 2016/0280(COD), i.e., the Directive on copyright in the Digital Single Market (Interview 2). Referred to as "ACTA 2" by its opponents, the directive was intended to protect the copyrights of artists, but the discussion on it took an unexpected turn when Internet giants such as YouTube got involved in the debate. The move to refer the file back to the committee and keep it in the first reading was definitely strategic. The EP earned more time to conduct work on the file and prevented a barrage of criticism that would inevitably be directed at the committee for entering trilogues without a plenary mandate.

3.5.2. Special legislative procedures (SLPs)

In section 3.4.1., the hierarchy of EU legal acts and the existence of soft law was said to have resulted from a political compromise. It was also argued that special competences of the Union mentioned in section 3.4.3. require decisions made at the Council level without the equal participation of the EP or the Commission. The SLP offers yet another example of the Member States' will to exert greater control over areas they consider central to national sovereignty (Lelieveldt and Princen 2015: 93).

Article 289(2) TFEU acknowledges the possibility of adopting legislation under **special legislative procedures**. SLPs are usually "derogations from the application of the OLP in a particular area" (Bradley 2017: 123) and allow Member States to have a greater say in legislation on matters of particular interest to them. In general, the logic behind a SLP follows a diminished role of the EP and the Commission, as well as the insistence on an unanimous vote in the Council. The Treaties do not provide a detailed description of all possible SLPs; instead, relevant articles refer to areas subject to SLPs and the legislators must determine their further steps according to the intended purpose (European Parliament 2017a: 42).

Two SLPs seem most significant due to their frequent use prior to the introduction of the co-decision procedure in the Maastricht Treaty: the consultation and consent procedures. The **consultation procedure** was the default procedure until the ratification of the SEA (Woods *et al.* 2017: 78). It requires the Council to make decisions only after it has consulted them with the EP. Nevertheless, the Council is not legally bound to take the EP's suggestions into consideration (European Parliament 2017a: 42, Woods *et al*. 2017: 78). The procedure still applies to a "limited number of policy areas" (European Parliament 2017a: 42) or "derogation

cases" (Bradley 2017: 123), e.g., cross-border police cooperation, economic and monetary policy, or social security and social protection (Bradley 2017: 123, Woods *et al*. 2017: 78). The **consent procedure** was, on the other hand, introduced by the SEA and compels the Council to gain the EP's consent before acting (European Parliament 2017a: 43, Woods *et al.* 2017: 78). This scenario does not foresee any amendments on behalf of the EP. Most notably, the consent procedure is applied in the adoption of the multi-annual financial framework[18] (European Parliament 2017a: 43, Bradley 2017: 123).

3.6. Conclusions

To conclude, the European Union's legal system is truly one of a kind. In fact, it is so peculiar that researchers use the label *sui generis* to describe it (Witte 2017: 185, 191). The EU is neither a federation of Member States nor is it merely an international organisation (Strandvik 2012: 30, Witte 2017). Although the EU began as a peace-making and wealth-creating project, it has extended the scope of its competences and developed a distinct legal system. The subsequent competences were conferred on the EU by the Member States themselves to facilitate decision-making in matters better resolved at the international level. As an effect, the EU and its legal system reflect a very complex political compromise worked out in the course of time by an ever-growing number of actors. Therefore, it is no surprise such a legal system resembles an intricate maze with various provisions for subject matters which fall into the EU's exclusive, shared, and supporting competence. Within this maze, the EP has received considerable power and is currently a major player in the EU's decision-making process. The OLP is the default legislative procedure in the EU. Most changes to legislative proposals are made in the first reading in the form of amendments tabled by MEPs. These amendments must be reconciled within parliamentary committees, whose negotiators receive a committee or a plenary mandate to enter interinstitutional negotiations with representatives of the Commission and the Council. Amendments are systemically used in the EP as they allow MEPs to act within the institutional setting. As a genre embedded in the OLP, amendments belong to both a hierarchical and chronological genre chain. They enter into hierarchical relations with the legislative acts they intend to modify. Chronologically, they appear only after the European Commission has concluded drafting work, carried out consultations and impact assessments, and forwarded its legislative proposal to the EP.

[18] Although foreign policy measures do not result in any legislation being adopted (see section 3.4.3.), the EP's consent is also necessary in the area of the CFSP. The Council must gain the EP's consent in numerous non-legislative procedures, e.g., when adopting international agreements, in cases of a serious breach of fundamental rights, for the accession of new EU members, or for a withdrawal from the Union. See further European Parliament 2017a: 43.

Chapter 4

Legislative amendments as a genre constrained by meta-genres

4.1. Introduction

The previous chapter has shown that legislative amendments are embedded in the OLP and belong to a hierarchical and chronological genre chain that ultimately leads up to the adoption of EU secondary legislation. Apart from the procedural restrictions enumerated in Chapter 3, legislative amendments are also shaped by numerous meta-genres which determine their structure, content, and format. This chapter proceeds from a review of meta-genres that relate to legislative amendments to an account of key drafting requirements. It also discusses the role of software in improving the quality of amendments tabled by MEPs. The chapter is largely based on a synthesis of the studied meta-genres and internal documents. The synthesis is supported by insights gained from participant observation and semi-structured interviews.

4.2. Identifying meta-genres

As Guggeis and Robinson rightly observe, the European Union's legislative acts may be regarded as alien by Member States and their nationals. In order to minimise the risk of non-compliance with EU legislation, the EU institutions decided to lay down clear-cut rules on the macro- and microstructure of legislative acts. Rigid drafting rules are part of a long-term strategy which aims at making EU law more user-friendly and acceptable for all subject to it (2012: 52). Over the course of time, the institutions have also recognised the need to combine efforts and adopt a common approach to drafting requirements. This has resulted in the establishment of joint rules and guidelines concerning the "form and presentation" (2012: 53) of EU legislative acts. Since rules on drafting amendments are inextricably linked to general drafting guidelines, this section will discuss key meta-genres that drafters of amendments use as reference texts.

In the case of EU legislative acts, some meta-genres are of a statutory character and include even **primary legislation**. The Treaties set minimum requirements for the macrostructure of EU leiglsaitve acts (Guggeis and Robinson 2012: 53). For instance, Article 288 TFEU distinguishes between different categories of legal instruments (regulations, directives, decisions, recommendations, and opinions), while Articles 296 and 297 TFEU compel the institutions to state the rationale for adopting each act and to include provisions on the signature, publication, and entry into force.

Interinstitutional agreements can also assume a meta-generic role. They clarify the roles each of the institutions plays in the law-making process. Two such agreements should be mentioned due to their partially meta-generic character. The **Interinstitutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community Legislation** (OJ C 73, 17.3.1999) acknowledges that EU legislation must be clear, simple, and precise. The authors of the agreement—the EP, the Council, and the Commission—argue that a proper understanding of legal provisions is a prerequisite for the uniform implementation and application of EU legislation. As Guggeis and Robinson point out, the agreement consists of a set of 22 guidelines, the majority of which were already well-established in institutional practices (2012: 56). However, it was the first joint agreement in which the three institutions decided to harmonise and codify drafting practices. Intended for internal use, the agreement defines the structure of legislative acts and officially introduces fundamental drafting rules, e.g., the avoidance of overly complicated structures, abbreviations, and terminology specific to national legal systems. The agreement compels the institutions to keep terminology consistent and adapt the form and language of EU acts to the needs of their addressees. The **Interinstitutional Agreement of 13 April 2016 on Better Law-Making** (OJ L 123, 12.5.2016) replaced an earlier agreement on the same subject matter adopted in 2003 (OJ C 321, 31.12.2003). It also addresses drafting quality and includes meta-generic rules on the structure of legislative proposals. According to the agreement, the Commission is required to include an explanatory memorandum in its proposal. The explanatory memorandum consists of a justification regarding the choice of a legal basis, the type of legislative act chosen, and a provision on the proposal's compliance with the principles of subsidiarity, proportionality, and with fundamental rights. In the explanatory memorandum, the Commission is also expected to present a brief account of the results of public consultations, impact assessments, and ex-post evaluations of existing legislation.

The **European Parliament's Rules of Procedure** (European Parliament 2017b) are yet another example of a document with regulatory and meta-generic functions. Substantially revised in January 2017, the Rules of Procedure were adapted to comply with the 2016 Interinstitutional Agreement on Better Law-Making. They contain rules on the admissibility of amendments (Rule 170), the authorship of amendments for the consideration of the committee or the plenary (Rules 169, 208), the tabling and presenting of amendments at the committee and plenary level (Rules 169, 170), as well as rules on different types of amendments, such as compromise (Rules 170, 174), oral (Rule 169), or consolidated amendments (Rule 193).

Each of the EU institutions involved in law-making has also developed its own **drafting manuals**. The secondary role of the Parliament in the law-making process prior to the introduction of the co-decision procedure means that most of these drafting manuals were either developed by the Council or the Commission. The Council, as the institution previously responsible for the legal-linguistic finalisation of texts, has continued to produce its own internal drafting manual referred to as the *Manual of Precedents for Acts Established within the Council of the European Union* since 1963. Although the manual created by the Council's lawyer-linguists is available in all official languages, it is not available to the public (Guggeis and Robinson 2012: 56-57). Apart from information on all types of acts passed by EU institutions, the manual also contains templates with examples of standard wording. As the institution initiating legislative procedures, the Commission has also published its internal *Legislative Drafting—a Commission Manual*. Similarly to the Council's manual, up-to-date editions of the Commission's guidebook are not available to the public.

The fact that drafting rules appear in internal documents of other EU institutions could potentially present a difficulty for drafters of amendments in the EP. Nevertheless, EU institutions have succeeded in compiling essential information on drafting requirements in joint, concise, and open-source **guidebooks**. Following the commitments made in the Interinstitutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community Legislation, the legal services of the three institutions have drawn up the ***Joint Practical Guide for Persons Involved in the Drafting of European Union Legislation*** (European Union 2015). First published in 2000, the *Joint Practical Guide* (*JPG*) has been edited a number of times with the most extensive changes introduced after the ratification of the Lisbon Treaty. Divided into sections on various parts of EU legislative acts, the guidebook is a collection of general drafting rules. What makes it particularly useful are the numerous examples of targeted and undesirable drafting techniques that illustrate the guidelines. However, the *JPG* is very broad in scope. It neither covers more detailed drafting rules nor contains standard wording. Most importantly, no language-specific or stylistic concerns are addressed in the guidebook. This is why the administrative and legal-linguistic services of the three institutions decided to supplement the *JPG* with a document that would fill in that gap. Produced in 2016, the *Joint Handbook for the Presentation and Drafting of Acts Subject to the Ordinary Legislative Procedure*[19] sets out to provide drafters with a toolbox of standard formulas and drafting solutions for all cases they may encounter (Robinson 2017: 245).

[19] The English version is available online at: <https://www.consilium.europa.eu/media/32619/joint-handbook-en-january-2018_2018_01_25_def.pdf> DOA: 13 April 2019.

Given the standardisation of language and working practices within the institutions, access to more elaborate and language-specific drafting principles is of overriding importance for drafters. This is where **style guides** prove exceptionally useful. Published first in 1993 as the *Vade-mecum for Editors,* the ***Interinstitutional Style Guide*** (European Union 2011) is now available in all official languages and draws together both conventions common to all languages and language-specific rules regarding, e.g., punctuation, spelling, common mistakes, the use of numbers, abbreviations, dates, symbols, acronyms, etc. In matters of a linguistic nature, references are made to acclaimed dictionaries relevant for each of the 24 official languages, e.g., references for English include dictionaries published by the Oxford University Press. The *Interinstitutional Style Guide* also contains precise information on all documents published in the *Official Journal of the European Union*: on their structure, titling, and numbering. Moreover, it is available in paper, PDF, and electronic versions. The electronic version is a website with hyperlinks that greatly facilitate navigation. Produced by a working group of "representatives from the various linguistic entities of the institutions: lawyer-linguists, translators, terminologists, proof-readers, etc." (European Union 2011: 6), the *Interinstitutional Style Guide* has become the official reference for all EU institutions, bodies, and agencies. **Language-specific style guides** for authors and translators are also used, e.g., the *English Style Guide*[20] for English or *Vademecum Tłumacza*[21] for Polish. They are most typically published by the respective language departments of the Commission's Directorate-General for Translation (DGT).

Amendments tabled by MEPs also rely on **templates** and are subject to technical requirements. Model 06_00. ***Examples and General Rules for Legislative Amendments*** (European Parliament 2018) is an open-access document included in the list of parliamentary RdM templates[22] on the EP's website. Last updated in February 2018, the document lists purely technical rules on the drafting of amendments. Similarly to the *JPG*, the template uses examples of correct and incorrect ways of presenting texts. Compliance with these requirements is a prerequisite for the smooth processing of amendments by the EP's staff, lawyer-linguists, and translators. Nonetheless, no reference is made to other meta-genres with more elaborate, stylistic, or language-specific drafting rules.

[20] Available at <https://ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf> DOA: 13 April 2019.
[21] Available at: <http://ec.europa.eu/translation/polish/guidelines/documents/styleguide_polish_dgt_pl.pdf> DOA: 13 April 2019.
[22] The list of all Parliament's templates - "Recueil de modèles" - is available at: <http://www.europarl.europa.eu/dm4epRDM/?view=models> DOA: 13 April 2019.

To sum up, amendments rely on various meta-genres which may include legally binding texts, regulatory documents, drafting manuals, guidebooks, style guides, and templates. The number of available meta-genres results from the historically dominant roles of the Commission and the Council, each of which developed their own meta-genres for internal use. The meta-genres published by the respective institutions reflect their input in the law-making process, with the Commission involved mainly in drafting activities and the Council concerned with the legal-linguistic finalisation of texts. The stronger role of the EP in the co-decision procedure and the growing number of persons involved in the drafting of EU legislation have resulted in the adoption of interinstitutional agreements and the publication of joint guidebooks and style guides for the sake of procedural and linguistic harmonisation. As a result, drafters of amendments are confronted with numerous meta-genres, only one of which deals exclusively with amendments. Institutional constraints discussed in Chapter 5 seem to leave little time for searching for references in the remaining sources, which may have a negative impact on the quality of amendments tabled by MEPs.

4.3. Standardised structure of EU legislative acts

All EU legislative acts follow a standard structure and include the following elements: title, preamble, enacting terms and, where necessary, annexes. Each of these elements has a structure of its own and is governed by a separate set of rules. Identifying them and their respective functions is important for drafters of amendments. Such organisational knowledge allows them distinguish provisions which produce legal effects from remaining sections of legislative acts. It is also crucial for maintaining internal textual consistency between normative and non-normative parts of legislative acts (see section 4.4.4.). The following paragraphs are largely based on the *Joint Practical Guide* (European Union 2015) and the relevant rules are indicated in brackets.

The **title** provides all readers of EU legislation with basic information about the legislative act. It contains keywords that make it easy to identify both the subject and the addressees of a given act (Rules 8.1., 8.2. and 8.3.). The title always includes the following information: the type of legislative act (regulation, directive, decision); an acronym of the field concerned (EU, CFSP, or Euratom); the year and the sequential reference number of the act, i.e., the consecutive number of the L series of the *Official Journal*; the name of the institution(s) that adopted the text; the date of signature or adoption, and the subject matter.

Despite its non-normative character, the **preamble** is a vital part of any legislative act. It can be divided further into three parts: the adopting institution(s), citations, and recitals.

Everything between the title and the enacting terms is considered to belong to the preamble. **Citations** allow drafters to identify the legal basis, i.e., the legal provisions that confer competence on the institution responsible for adopting the act. The items cited follow a strict order with Treaties usually mentioned in the first citation and secondary legislation in the second citation (Rules 9.3., 9.4., 9.5.). Preparatory acts are referred to in the following citations with footnote references (Rules 9.10. and 9.11.) and include mostly opinions delivered by EU institutions. The main difference between citations and recitals is that citations refer solely to the legal basis while **recitals** comprise the reasons for adopting a particular legislative act. The English section with recitals begins with the word "whereas" (Rule 10.1.) and is obligatory in regulations, directives, and decisions. It allows all concerned parties to examine if the institutions had acted within their scope of competence (Rule 10.2.). Thus, recitals are of significant importance for national parliaments, which are responsible for conducting subsidiarity checks. Well-drafted recitals are concise and repeat neither the legal basis mentioned in citations nor the provisions listed in the enacting terms (Rule 10.5.1.). Recitals may take on various forms depending on the subject matter and on the relevant scope of EU competence. In some cases, the reasons for adopting individual provisions are also mentioned in the recitals. Examples may include particularly important provisions, derogations, departures from the general schemes of rules, exceptions, or provisions that may be considered as biased by certain stakeholders (Rules 10.9. and 10.14.).

Enacting terms form the most fundamental part of EU legislative acts. They lay down legal provisions and include all information needed to apply them correctly, e.g., definitions. Owing to their normative nature, enacting terms are expected to contain clearly stated legal provisions. Any justifications, desires, declarations, or intentions are inessential and are avoided (Rule 12.1.). Similarly, drafters are required to refrain from citing or paraphrasing existing legal provisions given the legal uncertainty this produces (12.2.) and from repeating the title of the act or the content of other articles (Rules 12.3. and 12.4.). Enacting terms usually follow a standard structure: subject matter and scope, definitions, rights and obligations, provisions delegating powers and conferring implementing powers, procedural provisions, measures relating to implementation, and transitional and final provisions (Rules 15.1. and 15.2.). Most of these components use standard formulaic expressions (Rule 15.1.). Only the rights and obligations and procedural provisions sections vary considerably depending on the subject matter of the legislative act (Rule 15.2.).

Enacting terms are followed by **final provisions** and **annexes**. The former specify the date of entry into force, the deadline for transposition, and the temporal application of the act,

while the latter concern technical aspects of the act. Final provisions are not necessarily of interest to drafters of amendments, but annexes often contain essential details that supplement the provisions of enacting terms. Annexes are usually used when the volume of these details is too vast or too technical to incorporate it in the body of enacting terms. Annexes are regarded as an integral part of the act and must refer to provisions set out in the enacting terms (Rules 22.1. and 22.2.).

4.4. Technical aspects of drafting amendments

This section discusses the technical aspects of drafting amendments: the structure of legislative amendments, different types of amendments, as well as software, technical, and formatting issues.

4.4.1. Classification of amendments

By default, amendments are tabled in writing within the set deadline. Once the deadline for tabling amendments in writing has passed, MEPs may only make oral or compromise amendments. However, they must bear in mind that other rules apply to both of these categories. **Oral amendments** are possible during the vote, but they are treated as amendments not made available in all the official languages (see section 4.4.4.). MEPs are rather reluctant to make oral amendments after the set deadline because this does not give them enough time to secure the support of fellow MEPs. More often, MEPs will use oral amendments to signal linguistic inconsistencies or technical issues (Interview 2). Similarly to oral amendments, **compromise amendments** also appear after the set deadline, but they are used for different purposes. They are the effect of consultations between the rapporteur and shadow rapporteurs and aim at regrouping sets of amendments tabled by individual MEPs or at providing an alternative voting possibility in cases of conflicting amendments. Pursuant to Rule 170(4), compromise amendments may replace or change more than a single logical unit because they always relate to those parts of the text which have been subject to numerous changes. In most cases, they are tabled by political groups representing a majority in the EP, the committee chairs, the rapporteurs concerned, or the authors of other amendments. Tabling compromise amendments results in the withdrawal of amendments made previously to the same passages. Compromise amendments are put to the vote during the following committee meeting and are included in the final committee report, which is then forwarded to the plenary.

One more term we can come across in institutional provisions and guidelines are **consolidated amendments**. Consolidated amendments are not another amendment type but

rather a way of presenting amendments within the text. They are most commonly used in provisional agreements between the EP and the Council because they allow readers to follow the logic of the text and trace all changes without having to compare the original legislative proposal with a separate document consisting solely of amendments. This is why consolidated amendments do not follow the structure of the amendments described above. Any text deleted from the Commission's proposals is either signalled by strikeout, e.g., ~~ABC~~, or by the ▉ symbol. Added text is indicated by the use of bold italics.

4.4.2. Structure of legislative amendments

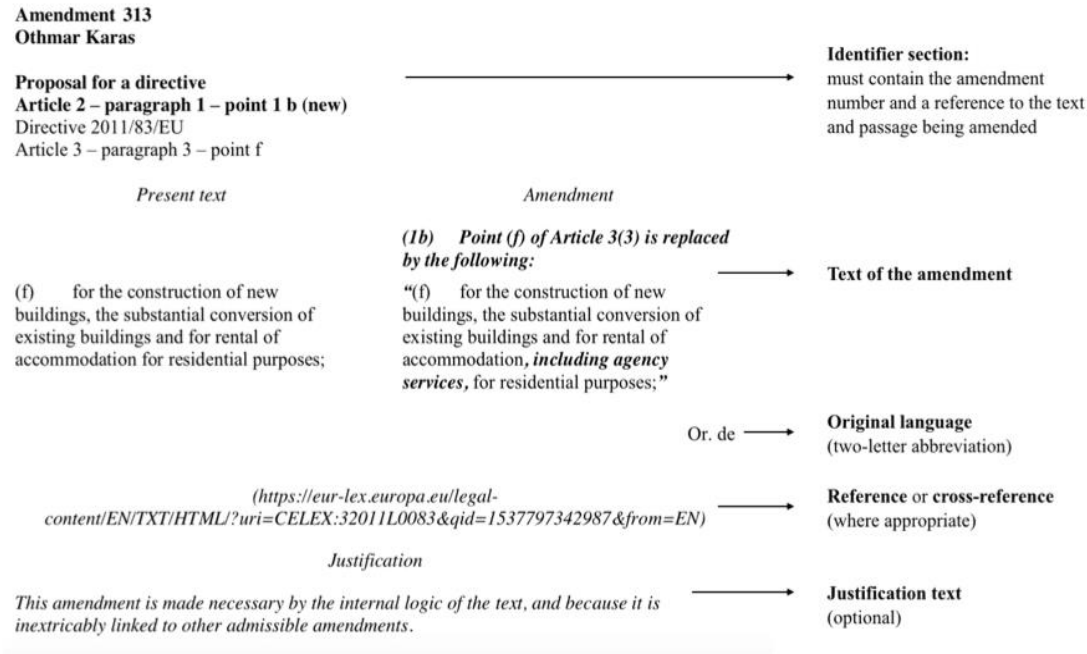

Figure 2: *Example of a legislative amendment tabled to an amending act*

Similarly to other legislative genres, amendments also have a standardised structure. They consist of a number of elements that allow all persons involved in the decision-making process to identify their authors and the modifications they made to the original text. Once the deadline for tabling amendments by MEPs has passed, they are compiled into a single document and receive consecutive numbers. All amendments follow the logical sequence of citations, recitals, enacting terms, final provisions, and annexes found in the original legislative proposal. This allows the reader to trace the viewpoints of several MEPs on the very same pieces of the Commission's text.

The basic structure of a legislative amendment includes an identifier section and two columns with the original text in the left-hand column and the amended text in the right-hand

column (see Figure 2). The obligatory elements of the **identifier section** are the amendment number and the reference to the text and the passage being amended (European Parliament 2018: 3). However, the identifier section can include more elements (see Figure 3). The most important part of the amendment is the **amended text in the right-hand column**. Any modifications introduced by the drafter are indicated by the use of ***bold italics*** to aid tracking changes. Footnotes may appear both in the original text and in the amended text. They are used to make references to other legislative acts or procedures. The **original language** of the amendment ("Or." followed by a two-letter abbreviation for the language, e.g., *Or. en*) appears in all documents prior to the adoption of the EP's final report in the plenary (European Parliament 2018: 4). Further possible elements of an amendment are cross-references and justifications. The use of **cross-references** facilitates the work of drafters and translators. It is highly recommended that drafters fill this section in whenever they reposition or repeat a given passage (see section 4.4.4.). **Justifications** are optional, but making effective use of them allows drafters to explain the reasons for tabling a given amendment.

Date	A8 number/Am number / B8 number(s)/Am number
Amendment **Number**	
Tabler, Tabler, Tabler, etc.	
on behalf of the … Group/Committee on …	
Tabler, Tabler, Tabler, etc.	
on behalf of the … Group/Committee on …	
Compromise amendment replacing Amendments …	
Parliament document to be amended	**A8 number/B8 number**
Author of Parliament document to be amended (MEP, Group, Committee etc.)	
on behalf of the … Group/Committee on …	
Short title	
Sundry references COM – C8 – procedure – etc.	
Unit of Parliament document/other institution or government initiative document to be amended	
(Sub-)unit of document to be amended (new or not)	
Existing act (for an amending act)	
(Sub-)unit of the existing act (new or not) (for an amending act)	
Heading, text to be amended	*Amendment*
Text to be amended	Amendment text
	If appropriate, continuation of amendment
Or. ll	
(Reference or cross-reference)	
Justification	
Justification text	

Figure 3: *The structure of legislative amendments (European Parliament 2018: 45)*

4.4.3. Software

Today, amendments are drafted with the use of an XML-based web editor called AT4AM—short for *Authoring Tool for Amendments*. **AT4AM** is an e-parliament programme with a practical interface for creating and managing legislative amendments (DG ITEC 2017: 4). The programme was launched in 2010 (European Parliament 2013b) and has dramatically improved the quality of amendments drafted by MEPs (Fabiani 2013). Before the introduction of AT4AM, amendments were drafted manually with the help of **DocEP**, i.e., a set of macros developed in Microsoft Word and ad hoc templates (AT4AM 2009, Fabiani 2013). The system was largely inefficient because it involved mastering complex drafting rules and searching through hundreds of templates (Fabiani 2013). Despite the fact that DocEP creates documents using the "standard wording" (DG TRAD 2018a: 2) found in the EP's official RdM templates, maintaining the appropriate layout continued to be problematic. When using templates, drafters were required to type information into the identifier section manually and copy and paste the passages they wanted to amend into a ready-made table. They were also expected to identify the minimum units eligible for amending and highlight the amended passages in bold italics (AT4AM 2009). These steps were not only time-consuming, but also led to errors that hampered work at other stages of the procedure, e.g., during translation and legal-linguistic revision. As an advanced web editor, **AT4AM transmits all necessary metadata** on the legislative procedure and **automates purely technical processes** of tabling amendments, so that drafters can fully concentrate on the amended text, rather than on meeting technical requirements (Fabiani 2013, DG ITEC 2009).

AT4AM has many **practical functions**. The browser allows its users to retrieve the texts of legislative proposals allocated to given committees in all official languages. Detailed information on the dossier, i.e., the type of procedure, the committee responsible for it, links to EUR-LEX and to the *Legislative Observatory,* deadlines, information on the rapporteur, and even FAQs are all integrated in the browser (DG ITEC 2009, 2017). AT4AM uses different colours (green, orange, and red) to inform drafters about the proximity of the deadline for tabling amendments (DG ITEC 2017: 9). Within the amendment editor, users can keep track of all changes they made to the text thanks to the "history revision" function (AT4AM 2012). The programme stores amendments and allows MEPs and their staff to table or withdraw them electronically. Amendments may also be exported to MS Word in full compliance with the RdM templates for review or for signature (DG ITEC 2017: 4). What is more, AT4AM is integrated with the EP's digital signature system, which makes it possible to sign amendments electronically (AT4AM 2012). Once tabled, amendments are visible to

the committee secretariat, which reviews tabled amendments, registers them, and generates lists of tabled amendments (DG ITEC 2017: 4). The browser also facilitates communication between committee secretariats and MEPs. Upon reviewing tabled amendments in electronic format, committee secretariats can inform MEPs about any technical issues quicker than in the case of amendments submitted on paper (Interview 1).

AT4AM is used during all stages of parliamentary work. The programme uses three sections: Draft, Amendment, and Final (DG ITEC 2017: 10). The **Draft Section** is only visible for the committee secretariat and the rapporteur, the latter of whom can prepare the draft report using the browser. The **Amendment Section** is accessible to MEPs once all language versions of the dossier have been imported into AT4AM (DG ITEC 2017: 9). Clicking on a given dossier activates an open editor with the source text view. The drafter simply chooses a passage to amend (i.e., a predefined minimum unit) and a pop up with three options to choose from appears: *Amend*, *Add new element*, or *Delete*. Choosing one of these options opens the Amendment Dialog with a two-column view similar to that in DocEP macros (DG ITEC 2009, AT4AM 2012). All changes to the original text are made in the Amendment Dialog. The **Final Section** is used for storing all tabled amendments and is only available to the committee secretariat following the committee vote. During the plenary stage, AT4AM can also be used to table amendments in compliance with rules mentioned in section 3.5.1.2.

Despite the indisputable superiority of AT4AM over DocEP, the latter tool is still widely used. The reason for this is simple—**AT4AM is an internal web-based tool** that is only made available to MEPs using the EP's Intranet. To access the browser, MEPs must type in their EP login and password. This means that all other actors involved in drafting amendments (see Chapter 5) must rely on other tools. On the other hand, **DocEP is an open-source tool** that can be downloaded from the EP's website. Apart from frequent updates, the use of DocEP is further facilitated by three available user guides (DG TRAD 2018a, 2018b, and 2018c). Therefore, DocEP is widely used by all drafters outside of the EP, who provide MEPs with ready-to-table amendments (see Chapter 5). DocEP is also used to preview exported documents. All official documents on the EP's webpages are generated with the use of DocEP and come either in MS Word or PDF files.

4.4.4. Rules on the admissibility, drafting, and formatting of amendments

One of the challenges of drafting legislative amendments is the number of rules that must be taken into account. While some of these rules are linked to general rules on drafting and tabling

amendments, other rules are purely technical and apply either to DocEP or AT4AM users. The following paragraphs analyse the rules on the admissibility of amendments and technical requirements related to the various parts of amendments mentioned in section 4.4.2. Rules which apply to DocEP are also included to illustrate how efficient drafting has become thanks to AT4AM.

The Rules of Procedure of the EP (European Parliament 2017b) include provisions on the **admissibility of amendments** (Rule 170). Inadmissible amendments do not relate to the subject matter of the amended text, seek to delete or replace the entire text, relate to more than a single logical unit (e.g., a paragraph or an article), or address only the linguistic correctness and terminological consistency of the language the amendment is tabled in. Linguistic, stylistic, and terminological amendments usually apply only to a single language version. In other words, they do not affect all 24 language versions. Such amendments are avoided according to Rule 169(9), which requires the EP to postpone the committee or plenary vote until amendments have been translated into all official languages. Amendments which concern only one of the language versions simply cannot be rendered in the remaining languages (Interview 3).

The "single logical units" in Rule 170 are also dubbed as "**minimum units**" in guidelines on drafting amendments. Drafters using AT4AM do not need to identify minimum units because they are automatically highlighted by the web editor within the full text of the Commission's proposal uploaded in XML format. In DocEP, drafters need to identify the minimum units and copy-paste them into the ready-made table in MS Word (AT4AM 2009). The minimum unit is defined as "the smallest possible logical unit of the text concerned" (European Parliament 2018: 11). Single recitals and citations are good examples of minimum units. Other examples are articles consisting of a single paragraph, an introductory part, a point, or an indent. Undivided paragraphs and subparagraphs are also regarded as minimum units, regardless of whether they are numbered or not. Drafters are required to reproduce minimum units in full in the amendment columns, i.e., a single minimum unit cannot be further divided into single sentences because their number may differ in various language versions (2018: 13). Furthermore, one amendment should be tabled to one minimum unit only. Even if various passages are related to each other, the drafters are to avoid tabling one amendment to more than one minimum unit. An amendment covering more than one paragraph is only admissible if the paragraphs are consecutive (2018: 12). Amendments tabled in accordance with these rules do not reproduce unamended passages of the text and are meant to simplify the voting procedure (2018: 14).

The **identifier section** is filled in automatically by AT4AM, but it may pose difficulties for drafters working in DocEP. The line identifying the minimal unit to be amended is an obligatory element of the identifier section. It starts with the most general component (e.g., *Article*) and ends with the most specific component (e.g., *point, indent*) subject to an amendment. It is worth noticing that the full names of the subdivision units are used, e.g., *Article 2—paragraph 1—point b* instead of shortened forms, e.g., *Article 2(1)(b)*. These units are separated from each other by dashes in all EU languages (European Parliament 2018: 20). Identifying the passages correctly requires conforming to rules on the structure and numbering of subdivisions in EU legislative acts in the respective languages[23]. Even minimum units that are not numbered in the original proposal, e.g., subparagraphs, are numbered in the identifier section. The rationale for this is purely technical. Numbering the amended provisions in the identifier section makes using translation memories easier because cardinal numbers are transcribed automatically (2018: 21). When inserting entirely new provisions, drafters are expected to follow a set of rules outlined in Model 06_00. *Examples and General Rules for Legislative Amendments* (European Parliament 2018) to fill in the identifier section properly. There are currently five numbering systems used in EU legislation (Latin, Germanic, Portuguese, Greek, and Bulgarian). While the Germanic numbering system is used for most EU official languages (e.g. English, German, or Polish), French, Spanish, Italian, and Dutch fall into the Latin category (2018: 22). When numbering entirely new provisions, the word *new* is added in round brackets to the identifier line, e.g., *Article 5a (new)*. New provisions inserted before any other provisions within a given category, e.g., the first citation, recital, or article, are also differentiated from already existing provisions with a given number. Supposing that *Recital 1* is the provision from the original text, alternatives to introducing a new recital with the same number could be: *Recital -1 (new), Recital -1a (new), Recital -1b (new),* and so on (2018: 23).

Once an amendment is ready, it should be highlighted. **Highlighting** is used to signal exactly which passages of the original text were amended. As already indicated in section 4.4.2., changes to the text are marked with the use of bold italics. On the whole, only the parts of the amendment that differ from the original require highlighting. Words are highlighted in full, even if the drafter only added a prefix or suffix. Grammatical changes or any modifications to the sentence structure also require highlighting (European Parliament 2018: 5-6). Proper highlighting is essential during the translation process since translators

[23] For English see European Union 2015: 45 or the *Interinstitutional Style Guide*, section 2.7. *Subdivisions of acts* available at: <http://publications.europa.eu/code/en/en-120700.htm> DOA: 13 April 2019.

are expected to translate the missing text, insert it into the right-hand column, and check for any further adjustments at the level of sentences (Interview 3). Clearly highlighted modifications make that task easier. Similarly to identifying minimum units and filling in the identifier sections, highlighting is done automatically by AT4AM and must be done manually by DocEP users.

Although AT4AM automates purely technical processes, some rules are still applicable to more complex drafting steps. One example is the **reference section**. According to the rules on drafting amendments, it is used whenever passages are repositioned or repeated for reasons of safeguarding quality and consistency in all language versions. Repositioning may apply to pieces of text within single amendments or between several amendments. In such cases, drafters are required to use the reference section and pinpoint the passages that have been repositioned, e.g., "Points (a) and (c) have become points (c) and (a) respectively in the amendment" or "See amendment relating to Article 3" (European Parliament 2018: 8-9). The same rule applies to repeated passages. Drafters may repeat passages that appear in the same legislative proposal, in other legislative acts, or in passages that restore the wording adopted at earlier stages of the OLP (2018: 10). Identifying the source wording of the tabled amendment not only accelerates the translation process, but more importantly, secures the consistency of acts adopted by the EP in all official languages (2018: 24). If an amendment applies throughout the text of the entire legislative act, e.g., it introduces a new term for a given phenomenon, drafters are encouraged to use the reference section within a single amendment rather than table more amendments on the same issue (2018: 6, 11). An example of a reference section, in this case, could be: "This amendment applies throughout the text. Adopting it will necessitate changes throughout" (2018: 7). A limited set of rules apply to **justifications**. They are generally used to explain the reasons for tabling a given amendment. For justifications to be translated by DG TRAD, they may not extend a maximum of 500 characters. Drafters are also expected to use them if they are necessary for understanding a given amendment (European Parliament 2018: 3, 24).

Apart from the rules found in the EP's templates, one crucial practice was also mentioned in Interview 1. Drafters need to **look globally** at an entire legislative proposal and **secure internal textual consistency**. Individual legislative provisions with far-reaching economic or social consequences are often explained in the recitals and many provisions are further spelled out in annexes. This means that MEPs who decide to table substantial amendments to enacting terms are also expected to add or amend existing recitals and double-check if their modifications are consistent with the details included in the annexes. Amendments inconsistent with the remaining parts of the text may be regarded as fragmentary and are likely

to fall either in the EP or during interinstitutional negotiations. Therefore, substantial political amendments are likely to be accompanied by amendments to recitals and annexes. Although this practice may seem to contradict the requirements on using the reference section mentioned above, it shows that individual MEPs have acknowledged the need of producing a logical and coherent text. What is more, the practice functions as an unwritten rule and was also followed by drafters of the amendments analysed in Chapter 6.

4.5. Conclusion

The previous chapter concluded that legislative amendments are a genre embedded in a chronological and hierarchical genre chain. They depend on other genres used within the OLP for their content and are used at pre-defined stages of the OLP. This chapter has also shown that legislative amendments are subject to stringent drafting and formatting rules outlined in numerous meta-genres. Drafting legislative amendments requires both general knowledge on drafting EU legislation and genre-specific knowledge relating to the structural, technical, and formatting requirements. Both categories can be considered as a vital part of MEPs' "organisational knowledge" (Wodak 2009: 70). The meta-genres disseminated within the institutional setting include manuals, guidebooks, style guides, or templates. However, the large number of drafting requirements is partly compensated for by technology, which has markedly improved the quality of legislative amendments by automating technical and repetitive processes.

Chapter 5

The art of amendment: exploring the discourse community

5.1. Introduction

The previous chapters placed legislative amendments in the institutional setting, defined their structure, and examined the generic constraints imposed on them by other genres of the institutional genre chain and by meta-genres. This chapter focuses on exploring the social context which legislative amendments are drafted in. It identifies the members of the discourse community who take part in drafting legislative amendments and discusses the social actions behind language use. The following sections largely constitute a synthesis of the findings on the discourse community obtained from multiple sources. All sections have definitely benefited from insights gained from participant observation. Where appropriate academic or institutional resources were available, these insights were supported by relevant literature. However, where no research had been previously conducted, semi-structured interviews were the main method used for collecting data. Therefore, this chapter is combines different types of data and various viewpoints. In that sense, it is "ethnographic-oriented" and attempts to investigate social phenomena by "engaged observation and interpretation" (Koskinen 2008: 38).

5.2. Who takes part in amending the Commission's proposal?

MEPs table amendments, but they are not the only persons involved in the process of amending Commission proposals. The list also includes EP staff, lobbyists, interest groups, governments of Member States, lawyer-linguists, and translators. This section will examine the roles each of these groups plays in the decision-making process.

5.2.1. MEPs

There are two factors that contribute to MEPs' success: knowledge and time. As Wodak argues, MEPs are, on the one hand, acutely aware of the impact they can have on the well-being of their national electorate, but on the other hand, they are also conscious that it takes a lot of **time** before they have gained sufficient **knowledge** to exert considerable influence (2009: 92-93). Given the highly technical nature of dossiers discussed in committees, making valuable contributions to EU legislation requires detailed and comparative research on the impact of the proposed measures (Lehmann 2009: 55). While the Commission has 3-4 years to prepare legislative proposals and consult stakeholders from all EU countries, the MEP rapporteur is

required to finish his or her draft report in a few months (Dionigi 2017: 14) and the remaining MEPs usually have a week to table their amendments (Interview 1). With over 20 standing committees discussing at least a couple dossiers at a time, individual MEPs have neither the time nor the necessary knowledge to make informed choices (Dionigi 2017: 28). All these factors make MEPs reliant on the support of a number of actors who advise them on policy choices. As long as MEPs belong to a larger political group or national delegation, they can always consult their colleagues from other committees about the best voting options before the plenary vote (Interview 1). Political groups also work out collective voting recommendations for their MEPs, which are largely based on the opinions of MEPs who have gained extensive expertise in the disputed policy area (Dionigi 2017: 28).

The tension to gain organisational, political, and expert knowledge (Wodak 2009: 46) is further increased by the enormous **mobility** of MEPs. Not only do MEPs travel from Brussels to Strasbourg each month for the plenary, but they also regularly visit their national constituencies on weekends and during "turquoise" weeks reserved for activities undertaken outside of the EP. There, MEPs appear at various events and in the media in an attempt to keep up with the latest political developments in their constituency and secure themselves re-election. However, European opinions and values are not always easy to understand for voters or even national politicians. MEPs often find themselves "translat[ing] European issues into national needs" (Wodak 2009: 81-82). This is why MEPs are most eager to get involved in issues that will resonate with voters at the national and local level (Lehmann 2009: 52, Piechowicz 2013: 84). Exposure to immense time pressure and the need to deliver on their promises to the electorate mean that MEPs must prioritise which items on the agenda are most important for achieving their political objectives. Therefore, they tend to focus on selected dossiers and skip other parts of committee meetings or plenary debates (Wodak 2009: 114-115).

5.2.2. EP staff

Accredited Parliamentary Assistants (APAs) work directly for MEPs. All MEPs receive a secretarial allowance and may decide how many assistants to employ and what their responsibilities should include. While some MEPs employ fewer assistants to tackle highly complex policy issues, others prefer to hire more assistants, some of whom are inevitably involved in more administrative work (De Cock 2010: 54). Overall, APAs may sign a contract with one of the two following annexes attached: drafting and advisory duties or secretarial duties. Moreover, some MEPs jointly employ and remunerate APAs, especially if they are experts in given policy areas (Interview 1 and 2). APAs are based in the EP in Brussels, but

MEPs can also hire local assistants who work in their national constituency. MEPs can employ three to four personal APAs in Brussels and, additionally, local assistants in their constituency. An APA's remuneration largely depends on the size of the MEP's team and is subject to an official EP pay grade. MEPs can also hire trainees, or *stagiaires*, who are either unpaid or receive an allowance of approximately 1,000 EUR per month.

Tasks covered by APAs vary significantly depending on their relationship with MEPs. First and foremost, APAs may manage correspondence intended for their employers and brief them on the latest developments. Secondly, the vast majority of MEPs rely on their assistants for carrying out committee work, which includes drafting amendments, scrutinising legislative proposals, and staying up-to-date with the latest developments within committees. This is reflected in collective workshops on drafting EU legislation organised for APAs, policy advisors, and remaining EP staff instead of the MEPs themselves (Interviews 1 and 2). Drafting amendments—which are then tabled by rapporteurs, shadow rapporteurs, or individual MEPs—includes conducting background research and contacting stakeholders. To achieve their goals, APAs maintain contacts with other EU officials and governmental or individual experts from MEPs' constituencies, including interest groups and lobbyists (Interview 1). Thirdly, MEPs may expect APAs to prepare speeches, parliamentary questions, and explanations of vote for them. In fact, some responsibilities bring APAs close to PR professionals. They may organise interviews, work with the media, prepare press releases, or manage social media content. Last but not least, APAs are also largely responsible for logistics, e.g., they schedule meetings, book tickets, secure visitor badges to the EP, etc. As Wodak rightly observes, APAs "selectively manage flows of information" to their employers (2009: 118). This puts APAs in a position of considerable power. By filtering content and briefing MEPs on the latest developments APAs gain thorough organisational knowledge. They also set the agenda for MEPs and embody their "diary and memory" (2009: 117-118). De Cock acknowledges that assistants play a central role in the daily routines of MEPs and refers to them as "gatekeepers", whose role in the decision-making process cannot be ignored (2010: 55).

While APAs can shape the opinions and the policies of individual MEPs, **policy advisors** contribute to policy-making at the level of the EP's political groups. Policy advisors follow dossiers discussed at the level of committees. They are responsible for gathering background information for political groups (De Cock 2010: 59). This means that they keep in contact with a vast array of parties—from representatives of national parties, national experts, Commissioners, NGOs, labour unions to interest groups and lobbyists. Thus, they are an invaluable source of information on the state of play of particular dossiers. Owing to their expert

and organisational knowledge, policy advisors assist political groups in working out a position on the discussed policy issues. Following negotiations, the political group's final position is translated into voting recommendations for remaining MEPs, which circulate in the form of voting lists.

Other EP staff involved in drafting amendments are permanent staff working for committee secretariats. Each committee has its own **committee secretariat**. The committee staff can play a major role in shaping the work of committees and are valued by rapporteurs due to their expertise in the areas covered by the committee. Therefore, committee staff may carry out some of the following responsibilities: inform the rapporteurs on the past positions of the committee, conduct background research, or support rapporteurs in drafting activities (De Cock 2010: 61).

Although the **European Parliamentary Research Service** (EPRS) is not directly involved in amending the Commission's proposals, it can assist MEPs in exploring possible policy options. The EPRS is an in-house research centre and think tank that provides MEPs with "independent, objective, and authoritative" analyses on various policy options (EPRS 2017). Set up in 2013, the service was intended to supply individual MEPs with unbiased information (Dionigi 2017: 14). It carries out research on specific policy options, responds to requests for research from individual MEPs, and provides library services at the premises of the EP. The EPRS also supports committees, e.g., by publishing initial appraisals of the Commission's impact assessments (IAs), preparing reports on legislative initiatives put forward by committees, undertaking assessments of existing EU policies, and providing up-to-date data on the implementation of policies (EPRS 2017).

5.2.3. Lawyer-linguists

The EP's lawyer-linguists work in the Directorate for Legislative Acts (DLA), which is part of the Directorate-General for the Presidency (Guggeis and Robinson 2012: 67). Šarčević and Robertson argue that lawyer-linguists enter the stage once policy issues have been largely settled and focus on aligning all language versions (2013: 189). Although this is true for legal-linguistic revision, it does not cover drafting support provided by lawyer-linguists during earlier stages of the legislative procedure. Therefore, this section will also focus on the extent to which lawyer-linguists can actively take part in drafting amendments.

Lawyer-linguists become involved in the legislative procedure as soon as the Commission's proposal arrives in the EP. When that happens, a "file coordinator" is allocated to the respective file and follows the entire legislative procedure up to the adoption and

publication of the act in the *Official Journal*. Lawyer-linguists work in topic teams dedicated to one or two committees. They are present during negotiations at various stages of the procedure and provide assistance to MEPs working on the draft versions of legislative proposals (European Parliament 2012).

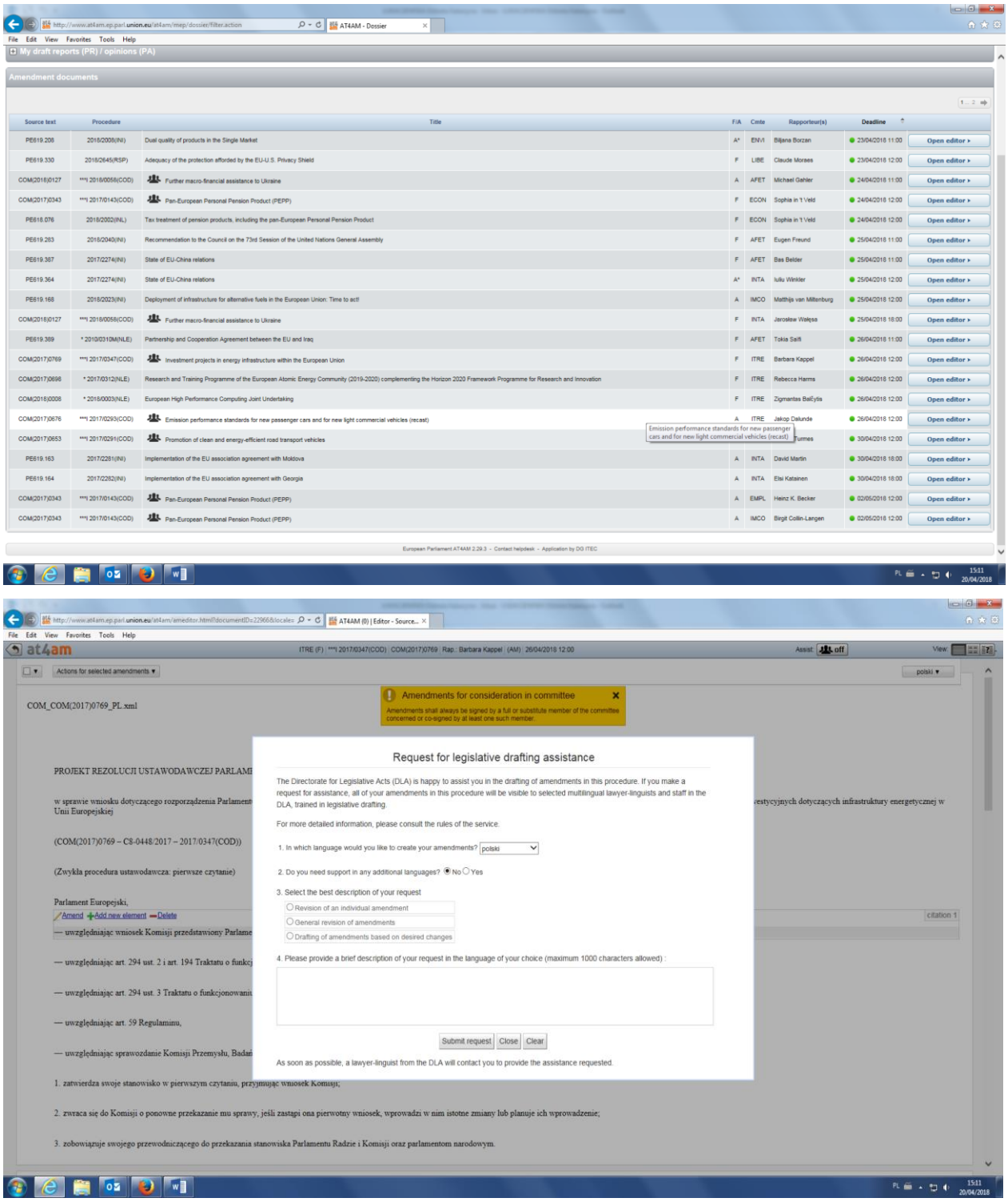

Figure 4: *AT4AM—Active assistance icons and the "Request for legislative drafting assistance" window*

MEPs and APAs can also seek the support of lawyer-linguists via the EP's software. Apart from lifting technical burdens off the shoulders of MEPs, the team responsible for AT4AM added a unique feature to the web editor that vastly improves the quality of amendments tabled by MEPs (Interviews 1 and 2). The **Drafting Support Tool** (DST) allows MEPs to access the drafting and procedural expertise of lawyer-linguists in the DLA. Files that have been allocated to lawyer-linguists are marked in the system with an icon for active assistance (see Figure 4). Clicking on the Assist: ON/Assist: OFF button opens a request window, in which the drafters can ask DLA staff for assistance in drafting amendments (AT4AM 2015). Such assistance may include revising single amendments, revising all amendments ready for tabling, or supporting the MEPs in drafting amendments based on their political objectives. A request for assistance generates an automatic email, which lawyer-linguists are required to respond to within 24 hours (Interview 2) due to the strict deadlines for tabling amendments (AT4AM 2015).

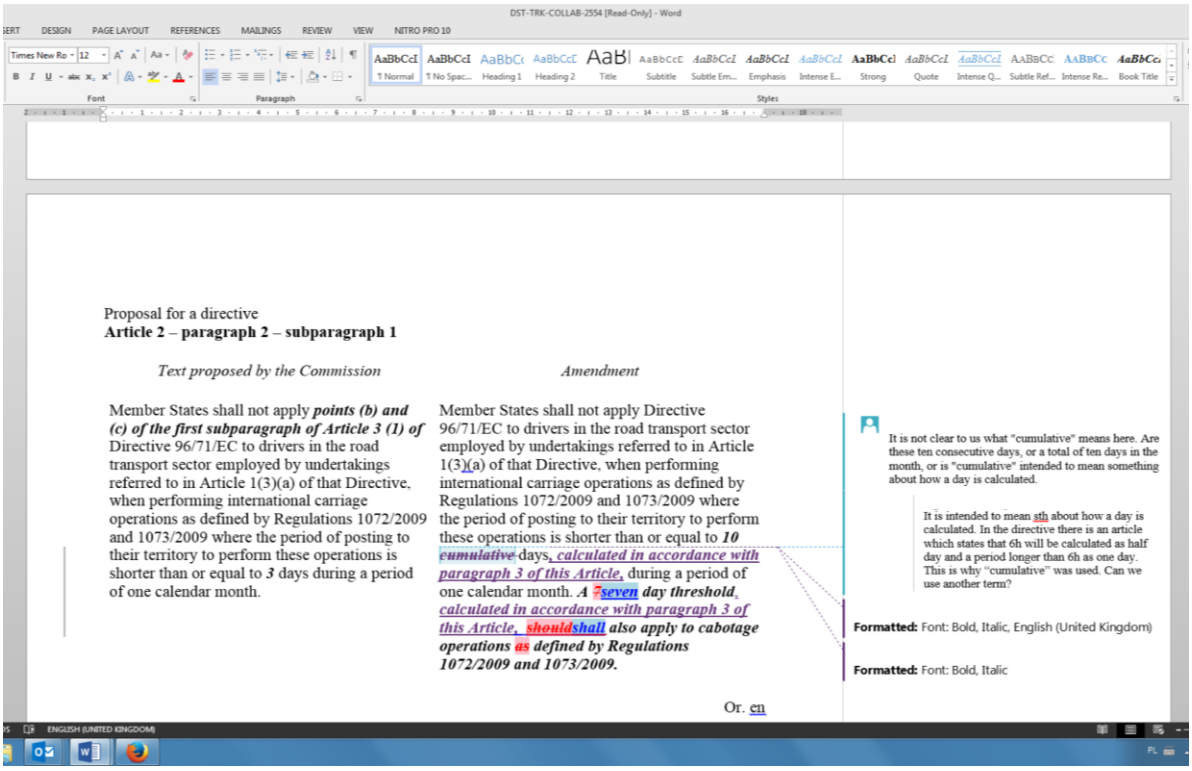

Figure 5: *Legal-linguistic assistance—amendment exported to MS Word*

All further communication between drafters and lawyer-linguists is carried out with the use of collaboration tools. They are included in the web editor and resemble tools used in MS Word (Interview 1). Changes can be tracked and both sides can exchange comments. For means of controlling live collaboration functions, the segments remain locked while one of

the parties is working on them. Once that party saves all changes and abandons the segment, it is released automatically (DG ITEC 2017: 35). The amendments can be exported to MS Word with or without the track changes mark-up and comments (ATAM 2012, see Figure 5). The deadline for making requests for drafting assistance is 24 hours shorter than the deadline for tabling amendments (Interview 2). Overall, well-drafted amendments have a greater chance of gaining the support of fellow MEPs and being incorporated into the final text approved in the plenary. Nonetheless, MEPs sometimes find that the wording used in amendments drafted by lawyer-linguists does not meet their political objectives and table their own amendments even if they are of inferior quality (Interview 2).

Guggeis and Robinson argue that the legislative procedures in the EP pose a **challenge to the quality of adopted legislation**. The Commission's proposals are scrutinised by committees and may undergo extensive changes. Amendments introducing these changes are rarely prepared by drafters with legal qualifications. Moreover, few amendments are drafted by native speakers. The result of the lengthy negotiations in committees is usually a collaboratively compiled text with compromise provisions and "deliberate ambiguities" (2012: 62). With difficulties multiplying in the translation process, lawyer-linguists make sure that the texts adopted by the EU institutions are linguistically and legally consistent in all the language versions. They intervene if terms are used inconsistently or if ambiguous provisions require inserting definitions in the act (Guggeis and Robinson 2012: 71-72).

Texts adopted by the EP and the Council are subject to **legal-linguistic finalisation** Referred to as "**co-revision**" by Guggeis and Robinson (2012: 70), the shared revision of texts by lawyer-linguists from the EP and the Council constitutes the last stage of the legislative procedure. It is initiated once the EP and the Council successfully conclude trilogues and can last up to 6-8 weeks. During this stage, the lawyer-linguists of both institutions examine and revise the texts. All revisions are exchanged in track-changes. Member States are also consulted and their suggestions are discussed by the lawyer-linguists in the EP and the Council (Guggeis and Robinson 2012: 68, Šarčević and Robertson 2013: 190). **Meetings** are held to harmonise the efforts of lawyer-linguists. During the pre-meeting, the file-coordinator and the English lawyer-linguists from the EP, the *chef de file* and the English lawyer-linguists from the Council, the Council administrator who represents Member States, as well as the expert who drafted the Commission's proposal may introduce changes to the base text. These changes result from difficulties reported by lawyer-linguists of remaining languages and are incorporated into the base text to ensure consistency and

uniformity in all language versions. The English base text is also revised at the final meeting, which is additionally attended by one Council lawyer-linguist for each of the remaining 23 languages. Texts in languages other than English are analysed by lawyer-linguists with the support of experts from Member States (Guggeis and Robinson 2012: 68-69, Šarčević and Robertson 2013: 190).

5.2.4. Translators

In no other EU institution is multilingualism as important as in the EP, where MEPs from all Member States are guaranteed the right to draft documents and deliver speeches in any official language of their choice. As Wodak observes, multilingualism in the EP can be directly linked to the need and will of MEPs to present national viewpoints in their national languages (2014: 139). While speeches are interpreted simultaneously during committee meetings and plenary sessions, EP's documents are translated by the Directorate-General for Translation (DG TRAD). This section will focus on the peculiarities of translating legislative amendments mentioned by a translator working for DG TRAD (Interview 3).

The main difficulty of translating amendments seems to be **inconsistent terminology**. Although much of the terminological work has already been completed by terminologists in the Commission's DGT, EP translators sometimes find inconsistencies that their colleagues in the Commission have overlooked. In such cases, EP translators contact the DGT's terminologists and ask for assistance in finding optimal solutions. Occasionally, translators from the DGT may inform their colleagues from DG TRAD about mistakes they have identified only after the publication of the texts and suggest how these mistakes can be corrected. However, new terms or inconsistently used terms introduced by MEPs require a different approach. Apart from doing research and asking terminologists for their suggestions, translators working on the same files in DG TRAD also consult each other and agree on how to translate given terms into their target languages. If these measures prove insufficient, they may also contact the Quality Coordination Unit, which is responsible for dealing with queries on translations or originals and disseminating information on the desired translation solutions. If there are issues that need to be discussed with the drafters of amendments, translators can either contact the file coordinator, whose contact details are included in the workflow tool used by DG TRAD, or ask the Quality Coordination Unit for assistance. In both cases, the drafters of amendments are contacted. On the whole, it seems that DG TRAD has worked out reliable quality assurance procedures in dealing with terminological difficulties. Quality control mechanisms are also implemented and include

weekly group meetings, where terminology and other work-related issues are discussed. Translators who attend the meetings are divided into groups depending on the subject matter they specialise in.

Further issues concern the **format**, **admissibility**, and **quality** of amendments. Amendments are presented in two columns and any modifications introduced by the drafters are highlighted in bold italics. Since the Commission's proposal has already been translated, EP translators only focus on the right-hand column of the text. After completing a given segment, they compare the changes in the right-hand column with the original text and highlight the modifications manually. Some minimum units can be very long. Even if the MEP only changed a single word in the amendment, translators thoroughly examine the amendment and check if further modifications in the target text are necessary, e.g., if the case or verb forms need to be adjusted in highly inflected target languages. The task requires deep concentration and can prove quite demanding, especially if translators are working under time pressure. Despite introducing clear rules on the admissibility of amendments, inadmissible amendments—particularly linguistic amendments—are still tabled by MEPs. Linguistic amendments are considered problematic because they apply to a limited number of language versions. This means that not all translators will be able to render the changes in their target languages. The interviewed translator used the example of politically correct pronouns inserted into the English or German texts and argued that the forms cannot be rendered in all of the remaining languages. As a result, linguistic amendments will not appear in all language versions and MEPs will not be able to vote on them. On the other hand, some amendments are of poor quality. They may include typos or their language may be convoluted and difficult to understand. All these factors affect the quality of translation.

Social aspects of working for DG TRAD and translating amendments also play a vital role. The theme that kept emerging during the interview was definitely **workload**. Apparently, both translators in DGT and DG TRAD have experienced increased workload and time pressure during the 8th legislative term of the EP. Still, time pressure seems to be particularly intense for translators at DG TRAD due to the need of supplying MEPs with 24 language versions of documents as soon as possible for them to engage in further negotiations (Interview 2). As an effect, translators lack the time to follow the subsequent stages of legislative procedures in the EP. This may contribute to a feeling of being **isolated from the policy-making process**. Generally, translators working for DG TRAD are encouraged to keep up-to-date with the latest developments in the committees of their remit. However, given the excessive workload and the vast number of procedures under discussion in the EP,

following all dossiers is simply not possible. More often, translators will search for specific, context-related information in reference documents. Examples include checking the gender of the rapporteur for linguistic purposes or verifying the political background of MEPs who table vague or politically sensitive amendments. The lack of involvement in the policy-making process is also linked to the **repetitive character** of the translators' work, who fulfil their tasks at pre-defined stages of the procedure and do not witness the final effect of their efforts. Last but not least, **feedback** from proof-readers and from the Quality Coordination Unit usually focuses on mistakes. This can give translators the impression that the good solutions they put forward are not appreciated.

On the other hand, many positive social aspects were also mentioned during the interview. Translators are aware that **MEPs often rely on their work** to make key decisions. Many translators want their translations to serve a practical purpose and enjoy it when their efforts are appreciated (Interview 2). Amendments are a genre systematically used by MEPs. Many MEPs analyse all amendments once they have been translated into their national language (Interview 1). Therefore, translations of amendments help MEPs arrive at political decisions. Furthermore, translators are becoming **more visible** due to initiatives aimed at bridging the gap between various professional groups working for the EP. The translator mentioned that her language department maintains good relations with lawyer-linguists and MEPs. Both groups were said to have met the translators working for DG TRAD on various occasions and learned about their work. Finally, **friendly relations** within colleagues from the language department, **mutual support**, and **solidarity** were also identified as positive social aspects of working as a translator for DG TRAD.

Another aspect of translating for institutions is **reusing available translation memories**. Referred to by Dollerup as "recycling" (see section 1.4.1.), the practice increases productivity and is absolutely essential for achieving consistency of the drafts produced at various stages of the legislative procedure. Genres produced by the EP are "evolutive" (Chartier-Brun 2018: 2), which means that after a few rounds of debates and modifications, draft versions are incorporated into the final versions adopted by the committees or the plenary. Integrating available translation memories minimises the time translators spend on searching for reference documents and maximises consistency levels. This is why the EP's IT services have developed applications tailored to the needs expressed by translators. The "**e-Parliament application chain**" can be easily integrated because all files are created in the Atoma Ntoso XML format (Fabiani 2013, Chartier-Brun 2018: 2-3). Similar to HTML, XML carries both information on the data and the format, and is widely used on the World Wide Web or intranets.

Akoma Ntoso is an open, extensible, and customisable XML standard best suited to the needs of drafting legislation (Fabiani 2013). The use of a single format minimises errors resulting from the use of various applications, guarantees a better quality of texts, and makes it easier to reuse stored data (Chartier-Brun 2018: 2). As already mentioned in Chapter 4, MEPs create amendments in XML format in the web editor AT4AM. Further XML-based applications used to process and translate amendments are DM-XML, PURE-XML, and Cat4Trad (Chartier-Brun 2018: 4). **DM-XML** is a document modelling tool which generates the correct models of processed legislative documents, **PURE-XML** is a storage repository where all content created in the XML-based applications is stored, and **Cat4Trad** is a CAT tool created exclusively for DG TRAD.

The EP's application chain has largely improved the **translation workflow**. Once a translation request is made, a number of actions take place automatically. Documents are pre-treated by **SPA** (Safe Protocol Automation), which also retrieves all related TMX files from **Euramis**, i.e., a system of databases where EU's translation memories are stored (Chartier-Brun 2018: 5). The TMX files include both documents relating to the same procedure (**reference files**) and documents relating to other procedures (**retrieval files**). Metadata included in TMX files in Euramis is recognised by the software and appropriate indices are used to differentiate between reference and retrieval files (Chartier-Brun 2018: 4-6). The document requested for translation is imported into Cat4Trad, which automates most **pre-translation tasks**. Cat4Trad fills in the left-hand column (the Commission's proposal) using the resources stored in PURE-XML, while standard elements such as headings or titles are filled in using DM-XML. Remaining parts of the amendment are pre-translated against the TMX reference files. In other words, concordance matches from the reference files are filled in automatically (Chartier-Brun 2018: 6-7). During **translation**, the translator has access to all concordance matches from three indices: reference, retrieval, and shared. The **shared index** contains all segments created during translation. This means that if more than one person is working on the same document, translators can view segments confirmed by their colleagues in real-time (Chartier-Brun 2018: 4, 7, 8). Cat4Trad also helps translators **finalise the translation process** by saving the XML version of the document in PURE-XML, sending TMX files for an update in Euramis, and creating a DocEP document on the drive of the translation unit (Chartier-Brun 2018: 9).

All in all, translating amendments is a task that requires accuracy and concentration. Understanding the context and keeping up-to-date with parliamentary procedures is definitely useful but not always possible. Maintaining a high quality of translations used in the EP is

important not only for the implementation of the multilingualism policy but also for image-related reasons (Interview 2). Mistakes may even hinder the negotiation process at the committee level, especially if they appear in the English versions of texts and concern terminology (Interview 1). From the translator's point of view, such mistakes occur very rarely, but once they do, "everyone knows about them" (Interview 3). It seems that the issues mentioned in this section are being addressed by applying at least three different strategies: following quality assurance and control procedures within the language departments, increasing the awareness of the role of translators in the institutional context, as well as developing and integrating software to support translators in their work.

5.2.5. Governments of Members States

MEPs may find themselves seeking a balance between two—sometimes contradictory—forces: representing the **general interest of EU citizens** and safeguarding **national interests**. Considering that MEPs are elected by direct suffrage, voting for provisions that threaten national or local interests is risky. Therefore, MEPs count on their national governments to provide them with voting recommendations, which would secure a positive outcome for their Member State and, at the same time, improve the MEPs' national standing (Interview 1). Thus, cooperation between MEPs and national governments can prove extremely successful for both sides (Interview 2). Nonetheless, restricting access to reports drawn up by governmental experts and to briefings on the policy developments in the Council can also be used as a powerful tool against political opponents.

Wodak argues that restricting access to knowledge is an integral part of politics, or a strategic "power-play" (2009: 16). Her point is extremely valid in the case of information distribution in the EP. According to a former policy advisor in the EP, the **flow of information** between governments and MEPs depends on the system of information exchange adopted by the respective government. Some governments grant all MEPs representing their country in the EP access to governmental and expert documents, regardless of the MEPs' political affiliation. By contrast, other governments only cooperate with MEPs with the same political background (Interview 2). The latter system leaves remaining MEPs highly dependent on contributions made by individual stakeholders. It also makes them vulnerable to criticism over voting against the national interest of their country. Therefore, cooperation between MEPs and national governments is, beyond doubt, a significant part of politics in the EP. Difficulties may arise if MEPs do not have access to governmental documents, or if the voting recommendations of their political groups contradict the desired voting outcomes of national governments. Ultimately,

conflicting points of view represented by MEPs and ministers from their Member States may also result from different understandings of what constitutes national interest. In such cases, national disagreements are reflected in a power struggle at the EU level and both sides have lesser chances of getting their points across.

5.2.6. Lobbyists and interest groups in the European Parliament

Dionigi asserts that lobbying is an "integral part of EU institutions" and a "prerequisite for the functioning of the [institutional] system" (2017: 1-2). The statement is not only accurate but also points to yet another group of actors involved in the decision-making process. Owing to the impact they have on legislative outcomes and the ways in which they exploit genres to achieve strategic goals, it seems more than reasonable to devote some space to interest groups and lobbyists in this chapter.

5.2.6.1. Definitions and estimates

In their discussions on lobbying, researchers use different terms to describe the lobbying venue and the conditions stakeholders face when engaging in lobbying activities. One important distinction is made between interest groups and lobbyists. **Interest groups** are defined as formally organised associations of individuals or organisations that share preferences regarding the outcomes of governmental decision-making and seek to influence policy. **Lobbyists**, on the other hand, are understood either as individuals, firms, or PR consultants that attempt to shape policy on behalf of interest groups (Lelieveldt and Princen 2015: 129, Dionigi 2017: 2-3). Lobbying itself is usually divided into **inside** and **outside lobbying**. The former category involves establishing direct contact with policy-makers and convincing them to support convenient policy options. In the case of the latter category, desired outcomes are achieved by mobilising the general public, which puts pressure on policy-makers (Lelieveldt and Princen 2015: 139). Interest groups must also take into account the system of political representation in a given institutional setting. In **corporatist systems**, only a limited number of interest groups have privileged access to policy-makers. Nonetheless, this access allows them to exert a considerable impact on the decision-making process. In **pluralist systems** of interest representation, more interest groups have access to policy-makers, but in order to exercise influence, they have to compete against one another (Lelieveldt and Princen 2015: 135).

Lelieveldt and Princen argue that lobbying at the European Union is more pluralist than corporatist in nature (2015: 137) and that most interest groups at the EU level resort to inside lobbying (2015: 140-142). The pluralist design is supposed to guarantee interest groups from

all Member States equal access to policy-makers. The reasons why interest groups choose inside lobbying strategies are more complex. Outside lobbying is only successful if policy-makers are sensitive to public opinion, if the interest groups are capable of mobilising the general public, and if the issues at stake are close to the daily lives of citizens (Lelieveldt and Princen 2015: 142). All three requirements are seldom met at the EU level. Apart from the EP, the Members of which seek re-election within the national context, the remaining EU institutions are not directly elected. This accounts for a lack of electoral connection and sensitivity to public opinion. Very few interest groups are also capable of coordinating massive protests at the European level due to language barriers and the difficulty of attracting media attention from all EU countries. Inside lobbying also remains the default rule because issues central to the daily lives of EU citizens are still largely dealt with by the governments of Member States. Even if the EU is responsible for some of these policies, most EU citizens remain unaware of the fact. Despite the availability of all documents and broadcasts, tracking the EU's decision-making process requires not only sound knowledge, but it is also largely overlooked by national media, which give national frames of interpretations to EU affairs and reaffirm the role of nation-states (Dionigi 2017: 19). All of these factors make outside lobbying in the EU an "exception" (Lelieveldt and Princen 2015: 142).

The growing number of EU competences has been reflected in the increasing estimates of interest groups seeking to influence policy outcomes at the EU level (Kurczewska 2011: 293, Dionigi 2017: 1). Furthermore, the EP has become a lobbying target of equal significance to that of the Commission due to its enhanced role in the OLP since the ratification of the Lisbon Treaty (Kurczewska 2011: 287, 290, Piechowicz 2013: 79, Dionigi 2017: 2). It is impossible to provide an exact figure of interest groups that lobby EU institutions (Dionigi 2017: 1). Even if the **Transparency Register**[24] operated jointly by the Commission and the EP since 2011 is taken into account, the estimate will be far from accurate. As of April 2019, there were nearly 12,000 entities in the Register, which amounts to 16 interest groups per MEP. Registered entities enjoy a number of benefits. They receive access to the EP's premises, are invited to speak at public hearings in the EP, receive notifications about consultations in the Commission, and can meet with top-representatives of the Commission (Dionigi 2017: 17). Still, many interest groups are not included in the Transparency Register. Notable examples are permanent representations of Member States, municipal authorities, third countries' governments, religious communities, political parties, international NGOs (Dionigi 2017: 1, 16), or lobbyists

[24] Available at: <http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en> DOA: 13 April 2019.

who operate from a different location than Brussels (Lelieveldt and Princen 2015: 130). The number of both registered and unregistered interest groups continues to rise, which only proves that lobbying EU institutions is considered worthwhile.

Various interests are represented at the EU level—private and public, business and nongovernmental. Lelieveldt and Princen (2015: 130-132) list 8 types of interest groups represented at the EU level: firms (31%), business associations (25%), governmental organisations (11%), citizens groups (11%), non-profit organisations (10%), professional associations (4%), research institutes (3%), and trade unions (1%). Clearly, business interests dominate the scene. It is also worth mentioning that stakeholders from the field of business can lobby the Commission or the EP through various channels and at different levels, e.g., directly, through their national or European business association (Lelieveldt and Princen 2015: 131-134), or both at the national and EU level (2015: 142-143).

5.2.6.2. What skills does lobbying MEPs require?

Lobbying in the European Parliament is essential for a number of institutional factors. Firstly, lobbying allows MEPs and APAs to acquire **highly technical knowledge** despite major time constraints. Interest groups benefit from the busy agenda of MEPs, their lack of expertise in specialised policy areas, and the enormous workload in the EP. They often translate complex information into "brief and digestible notes" (Dionigi 2017: 35) for MEPs, APAs, and policy advisors. Therefore, lobbying is accurately defined by Lelieveldt and Princen as "**resource exchange**" (2015: 145). Secondly, the knowledge lobbyists share with MEPs and EP staff can be used to **legitimise policy decisions**. MEPs are more sensitive to matters of local or national concern and to the public good than the European Commission (Piechowicz 2013: 84), which is why they often revise the impact assessments carried out by the Commission and invite experts to committee meetings (2013: 78). Both the Commission and the EP encourage interest groups to get involved in the legislative process. The information lobbyists share gives a rich insight into the preferences and expectations of stakeholders engaged in shaping particular policy areas (Kurczewska and Jasiecki 2017: 30-31). Arguments provided by lobbyists are also a tool used collectively by the EP to strengthen its position vis-à-vis the remaining EU institutions (Kurczewska 2011: 290-291). Thirdly, MEPs cooperate with interest groups, because they provide them with "**political capital**" (Dionigi 2017: 34) and can improve the political standing of MEPs both at constituency, national, and EU level (Lehmann 2009: 52). Rapporteurs are especially keen on asking interest groups for resources when they are preparing draft reports for the consideration of their committee. A well-justified draft report backed by

a comparative assessment on the impact of the proposal on the law, practices, and the situation of citizens in various EU Member States (Lehmann 2009: 55), additionally supported by extensive scientific data (Kurczewska 2011: 288-290), can earn the rapporteur an excellent reputation. MEPs considered conscientious by their fellow colleagues are often given more responsible functions and are assigned important dossiers (Piechowicz 2013: 82, Interview 1).

Interests groups and lobbyists need to have considerable **institutional knowledge** to accomplish their objectives. They need to be aware of the fact that lobbying at the EU level requires **compromises**. The vast array of interests to be accounted for means that individual stakeholders cannot singlehandedly determine the outcome of policy-making. Dionigi also highlights that EU legislation is evaluated every three to five years. Amending acts or recasts are constantly adopted to "**fine-tune**" existing provisions. This means that lobbyists can neither "kill off" nor change the substance of legislative proposals. The fact that the same issues are discussed every few years also makes establishing trustworthy relations and maintaining frequent contact with MEPs highly beneficial (2017: 20-21). Furthermore, lobbyists need to know when to engage in lobbying activities and whom to target. As argued in section 3.5.1.5., lobbying is most successful at the **committee stage** of the first reading. At this stage, any objectives can be met by targeting a few prominent MEPs. The first targeted MEP is the **rapporteur**. The rapporteur's aim is to compile a report that will gain the support of most MEPs in a given committee. Thus, contacts between the rapporteur and interest groups are absolutely necessary for gaining an overview of possible lobbying positions (Piechowicz 2013: 79). **Shadow rapporteurs** also shape policy to a large extent. They take part in reconciling the positions of EP's political groups and may table compromise amendments (Dionigi 2017: 27, 29). **Remaining MEPs** are targeted mostly for the sake of tabling desired amendments (De Cock 2010: 108). Convincing them usually requires addressing issues important for their constituency (Lehmann 2009: 52). Kurczewska also notes that political affiliation can account for the MEPs' readiness to contact specific interest groups (2011: 288). This point is also linked to the knowledge of **power constellations** in the EP. Lobbyists need to be careful not to push for changes that would contradict common goals set by the Commission in its annual work programmes. What is more, they should also realise that the adoption of each legislative file depends on an agreement between the largest parties and not fringe groups (Dionigi 2017: 24-25).

Interests groups and lobbyists are EU-insiders with comprehensive organisational knowledge. Some former MEPs are known to work for interests groups (Interview 2), which partially explains how this knowledge is disseminated among lobbyists. Lobbyists are usually

thoroughly familiar with **generic conventions** and know how genres can be exploited to produce beneficial policy outcomes. Interestingly, lobbyists often use templates that mirror those used in the EP to send proposals of amendments or voting recommendations to MEPs. As an example, Dionigi mentions templates of voting lists sent by political groups with changed headings, which indicate how a given interest group would like MEPs to vote. This strategy is allegedly intended to persuade MEPs by "speak[ing] their language" (2017: 30). Preparing amendments that comply with general and genre-specific drafting rules is another practical skill that many lobbyists apply. Nevertheless, they must be careful not to have exactly the same amendment tabled by more than one MEP. Such situations make it clear that the MEPs did not draft the amendments themselves (De Cock 2010: 108) and may be embarrassing for both sides. The fact that stakeholders use and adjust formats acknowledged by the institutions supports Bhatia's argument (see Chapter 2) that genres can be exploited by professionals to achieve strategic goals.

5.3. Functions of legislative amendments

Having explored the discourse community, the next research objective of this dissertation was determining the functions of legislative amendments. This section brings together functions mentioned by two APAs who carried out advisory and drafting duties for Polish MEPs before or at the time of conducting research for this dissertation (Interviews 1 and 2).

Legislative amendments seem to serve various functions. The primary function of tabling amendments is the **legislative function**. Once amendments pass through the multiple stages of the OLP and are incorporated into legislative acts adopted by the EU institutions, they affect the everyday lives of millions of EU citizens. Aware of their role as policy-makers, MEPs table amendments to make proposals discussed in the EP a reality. This function is also connected to **pursuing political goals**. MEPs can pursue nearly "any political goals at the level of committees" (Interview 1). Targeted by both national governments and interest groups, MEPs learn to identify which interests are worth representing to achieve their own political objectives depending on their political stances, the needs expressed by their voters, and the power constellations in the EP. Again, amendments that make it through the entire legislative procedure and become law can be used as a means of developing a political identity and communicating it to the electorate. This **image-related function** is closely linked to boosting political careers. In the EP, MEPs are ranked according to the activities they engage in. The more active and visible given MEPs are, the more responsible functions are allocated to them. Apart from the EP's internal ranking, independent studies on MEP activity and influence are

also issued by the media and think tanks such as VoteWatch Europe[25]. Hence, MEPs who actively participate in legislative work can both pursue their international political career and use high positions in rankings to convince voters to re-elect them in the future.

Interestingly, legislative amendments can also be used to achieve the exact opposite of the goals mentioned above. Legislative amendments can be tabled to **obstruct** or **postpone parliamentary work**. A substantial number of tabled amendments means that more efforts are required to reach a compromise and secure the successful adoption of legislation. A recent example of this strategy were legislative amendments tabled in the plenary by MEPs from Central European Member States before the vote on the Mobility Package. The package included three proposals which were of overriding importance for the transport sector, i.e., the posting of drivers, drivers' rest periods, and access to the occupation of road transport operator and to the road haulage market. Already once referred back to Committee on Transport and Tourism (TRAN) following an unsuccessful vote in the plenary in July 2017[26], the Mobility Package was supposed to be put to the final vote during the March 2019 session in Strasbourg. However, owing to the enormous number of amendments tabled to the plenary, the vote was postponed. The President of the EP also asked the committee to "filter" the amendments before forwarding them again to the plenary[27]. Polish MEPs from mainstream political groups willingly admitted that they had tabled more than 1,000 legislative amendments to obstruct parliamentary work and minimise the damages of adopting legislation harmful for the Polish transport sector[28]. By contrast, obstructive strategies are mostly followed by Eurosceptic politicians from fringe groups. In the words of the interviewed APA (Interview 1):

> Eurosceptics, for example the ENF political group, aim at sparking off unrest among voters and **destabilising the EU** by resorting to radical rhetoric and tabling **populist amendments**. They also achieve another goal: by tabling such amendments, they **obstruct the work of committees**. They then argue that EU institutions are hesitant to clear the backlog of work [emphasis added].

Therefore, it seems that legislative amendments can not only be used to promote legal change but also to resist it. While tabling large numbers of amendments can jeopardise the adoption of

[25] Analyses on MEPs' votes, activities, and influence are available at: <https://www.votewatch.eu> DOA: 13 April 2019.
[26] See press release of the European Parliament available at: <https://www.europarl.europa.eu/news/en/press-room/20180628IPR06807/meps-return-mobility-package-proposals-to-committee-for-further-consideration> DOA: 13 April 2019.
[27] See press release of the European Parliament available at: <https://www.europarl.europa.eu/news/en/press-room/20190321IPR32113/mobility-package-postponed> DOA: 13 April 2019.
[28] See the news report published by the Polish Radio available at: <https://www.polskieradio24.pl/5/1223/Artykul/2288798?fbclid=IwAR1bOwU_e8rW4DXLWasOOukvdqZWSdR2LSW3optpj0JMR4HPhV09_0Xw9rM> DOA: 13 April 2019.

undesirable legislative acts, radical and populist amendments can be used to impede procedures and reinforce a Eurosceptic discourse.

5.4. Conclusions

To conclude, legislative amendments are central to policy-making in the EP. They are the means by which MEPs act within the institutional setting and contribute to the outcome of legislative procedures. Even though legislative amendments are an embedded genre that heavily depends on various meta-genres for its structure, format, and content, the members of the discourse community have learned how to exploit them in order to pursue strategic goals. These conclusions support the claim that legislative amendments are a genre in their own right and that they are recognisable communicative events.

Legislative amendments tabled in the EP are the result of collaborative drafting efforts. The quality of their form and content is crucial for the smooth flow of legislative work in the EP. However, factors peculiar to the EP's institutional setting seem to undermine both notions of quality. On the one hand, **formal quality** may be impaired by non-compliance to general and genre-specific drafting rules. It also largely depends on the quality of translation, which, in turn, may suffer from factors such as: the use of English by predominantly non-native speakers, deliberate ambiguities, the poor quality of amendments, or the use of inconsistent terminology. On the other hand, **content** seems to be affected by the dynamics of the discourse community. Time pressure, the trade-off between representing EU values and safeguarding national interests, the reliance on resource exchange, and the pursuit of individual political objectives are all factors that may have a negative effect on the content of amended legislation.

In view of the above, the EP has taken measures to raise the quality of amended legislation. The development of customisable software with the DST service for MEPs and an XML-based application chain for translators has the potential of improving the formal quality of amendments and maximising multilingual concordance. Content issues have been addressed by the establishment of the EPRS, which supplies MEPs with information on various policy options. Finally, legal-linguistic finalisation prior to the publication of EU legislative acts in the *Official Journal* is the *sine qua non* for ensuring the consistency of the base text and, as a result, of all language versions.

Chapter 6

Linguistic case study of amendments tabled by MEPs

6.1. Introduction

The previous chapter concluded that a variety of factors central to the amending stage may impair the quality of legislation adopted by the EP. This chapter presents the findings of a linguistic case study carried out on real-life amendments tabled by MEPs. As an exploratory research project, this linguistic case study focuses on providing answers to two research questions. These questions relate to both the languages amendments are tabled in and the terminological consistency of texts approved at various stages of the OLP. The research questions are explored by using both quantitative and qualitative methods. The evidence presented in this chapter complements the previous stages of the genre analysis and allows a deeper insight into the functions of amendments as an embedded genre.

6.2. Methodology

As Koskinen notes, linguistic case studies usually focus on final documents and fail to acknowledge that the drafting process consists of numerous **intermediate versions** (2008: 119). Capturing the complexities of producing and negotiating intermediate versions of legislative acts in the EP requires a novel approach tailored to the research questions and to the features of such versions. This section presents an overview of the material analysed as part of the linguistic case study and the research methods employed in the analysis.

6.2.1. Research questions

Table 1: *Research questions explored in the study*

Q1: What languages are amendments tabled in and what does that say about multilingualism in the EP?
Q2: What effect do amendments adopted to the Commission's proposal have on the terminological consistency of the act?

This linguistic case study was designed to find answers to two research questions (see Table 1). Firstly, the study explores what **languages amendments are tabled in** and what this says about **multilingualism** in the EP. Secondly, the study analyses the effects amendments have on the

legal terminology used throughout the legislative act chosen for the purpose of this study and assesses whether the final text is **terminologically consistent**. Answers to these questions can either support or dismiss the claim that the quality of legislative acts amended by the EP suffers from the factors discussed in Chapter 5.

Table 2: *Timetable of procedure 2017/0237(COD) in the EP*

Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations (recast)	
Proposal submitted to the EP	27.09.2017
TRAN assigned as committee responsible for the proposal	5.10.2017
MEP Bogusław Liberadzki appointed rapporteur	25.10.2017
IMCO assigned as opinion-giving committee	26.10.2017
MEP Dennis de Jong appointed rapporteur for opinion	4.12.2017
Draft Report by MEP Bogusław Liberadzki presented in TRAN	19.03.2018
Public hearings and debates (TRAN)	20.02.2018, 19.03.2018, 25.04.2018
Debates (IMCO)	21.02.2018, 21.03.2018, 16.05.2018
Deadline for tabling amendments (TRAN)	27.03.2018
Deadline for tabling amendments (IMCO)	11.04.2018
Committee vote (IMCO)	4.06.2018
Compromise amendments debated in TRAN	20-21.06.2018
Committee vote (TRAN)	9.10.2018
TRAN's Report forwarded as the DEPLR to the plenary	18.10.2018
Plenary debate over the DEPLR and amendments tabled in the plenary	14.11.2018
Plenary vote	15.11.2018
overall: **637** amendments (TRAN) & **375** amendments (IMCO)	
DEPLR: **135** amendments (TRAN) & **118** annexed amendments (IMCO)	
EPLR adopted in the plenary	

source: *Legislative Observatory*

6.2.2. Analysed material

The material analysed as part of this linguistic case study was divided into two sets. The first set (Set 1) was created mainly for statistical and referential purposes, while the second set (Set 2) included a chronological "document chain" (Koskinen 2008: 125) composed of intermediate versions relating to procedure 2017/0237(COD)[29]. The sets were also analysed

[29] All information concerning this procedure, e.g., the key players involved, subsidiary checks by national parliaments, the completed stages of the OLP, the rapporteurs and shadow rapporteurs anointed by the EP, as well as a full briefing are available

with the use of different research methods. Set 1 was analysed using quantitative methods to find answers to Q1, while Set 2 was studied using qualitative methods with the aim of addressing Q2 (see Table 1). This section presents the documents chosen for the purpose of the of conducting the study and argues that the texts are representative of their genre.

Set 1 consists of all amendments (AM-documents) relating to OLPs discussed in the EP, exported to PDF format, and published on the EP's website in February, March, and April 2018. This time period roughly corresponds to the timetable of procedure 2017/023(COD) presented in Table 2. Moreover, the data collected from three consecutive months comprises of a total of **12,885 amendments** tabled to **54 dossiers** and discussed at **16 parliamentary committees**. In line with the rules on allocating Commission proposals to committees (see section 3.5.1.2.), some dossiers concern the same OLP, which more than one committee was responsible for. Set 1 does not include compromise amendments, which are tabled according to different rules and draw heavily on earlier amendments tabled by MEPs (see section 4.4.1.).

Set 2 comprises all documents grouped in dossier TRAN/8/11122 and additional documents accessed from the EP's Legislative Observatory relating to procedure 2017/0237(COD). As mentioned above, the documents form a chronological chain, which contains numerous versions of the same legal provisions drafted by various authors. The set includes the following texts:

- the Commission's **recast proposal,**
- the **draft report** presented to TRAN with the first **55** amendments,
- **amendments 56-348** and **349-637** tabled in TRAN,
- **compromise amendments 00-135** regrouping all amendments previously tabled in TRAN,
- the **Draft European Parliament Legislative Resolution** forwarded by TRAN to the plenary with **135 amendments**,
- **amendments 136-140**, **141-141**, and **142-145** tabled in the plenary on behalf of political groups, and
- the **European Parliament Legislative Resolution** adopted by the plenary.

at: <https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2017/0237(COD)&l=en> DOA: 13 April 2019.

The findings of any analysis can only be valid if texts are **representative** of their genre. Set 1 includes over 12,800 amendments, which were tabled within a period of three months. Therefore, AM-documents in Set 1 can be considered as representative of their genre and the results of the **quantitative analysis** may be generalised to commonplace institutional practices. However, a qualitative analysis cannot be performed on such a large sample. Amendments are embedded in the institutional context. They are drafted and tabled for very specific reasons, the understanding of which requires tracing the entire legislative procedure. As Koskinen observes, it is worthwhile to "immerse oneself" in the text and discover the qualities that define it (2008: 125). Focusing on a single text allows the researcher to closely study the context of its production, which would not be possible in the case of large samples analysed with the use of corpus methods.

There are many reasons why amendments relating to procedure 2017/0237(COD) tabled in TRAN (Set 2) were chosen for the **qualitative analysis**. Firstly, the act is a regulation, which means that it has general application in all Member States and is binding in its entirety. Regulations are also connected with the highest translational and terminological risks because they are automatically incorporated into the legal system of all Member States. Secondly, the regulation governs an area central to the daily lives of millions of EU citizens, i.e., travelling by train. It is a perfect example of legislation that seeks to protect the rights of EU citizens, improve the quality of their lives, and promote a positive image of the EU. Thirdly, MEPs were clearly very interested in making a contribution to the act and tabled a substantial number of amendments to the Commission's proposal. What is more, the proposal does not cover a highly technical subject matter, which makes it easier to examine the various arguments that accompanied the decision-making process. However, the most important reason for choosing amendments tabled within procedure 2017/0237(COD) was personal experience. The draft report was presented to the Committee on Transport and Tourism (TRAN) on 19 March 2018 and the deadline for tabling amendments was set on 27 March 2018 (see Table 2). Not only was I present during TRAN's meetings during that week but I also had the opportunity of attending meetings with APAs, MEPs, and lobbyists interested in shaping the provisions of the recast proposal. The observations on the process of drafting, negotiating, and co-signing amendments have allowed me to follow the further stages of the procedure even after my traineeship had come to an end. Although the following analysis is purely textual, the ethnographic data collected during my traineeship in the European Parliament has definitely provided me with invaluable background information on the topic.

Two committees were involved in reviewing the Commission's proposal. The committee responsible for legislative work, or the "lead committee" (European Parliament 2017a: 14), was the Committee on Transport and Tourism (**TRAN**), while the Committee on the Internal Market and Consumer Protection (**IMCO**) was appointed as the opinion-giving committee. Overall, **637** amendments were tabled in TRAN and **375** in IMCO. The amendments were later discussed and regrouped into compromise amendments. Following a simple majority committee vote, TRAN's report was forwarded to the plenary as the Draft European Parliament Legislative Resolution (DEPLR) with a total of **135** amendments. The amendments approved by IMCO (**118**) were included in the annex to the DEPLR. However, it is the report adopted by the lead committee that provides the basis for all further discussions in the plenary. This is why documents in dossier IMCO/8/11375 were not included in Set 2. Before the plenary vote, additional amendments were tabled on behalf of political groups (AM-documents 136-140, 141-141, and 142-145). The final outcome of the legislative procedure in the EP was the European Parliament Legislative Resolution (EPLR) adopted in the plenary on 15 November 2018**.**

Procedure 2017/0237(COD) concerns a **recast proposal**. The recasting technique is directly linked to legal simplification and imposes severe limitations on drafters of legislative amendments. According to the Interinstitutional Agreement on a More Structured Use of the Recasting Technique for Legal Acts (OJ C 77, 28.03.2002), recasting results in the adoption of a new legal act, which incorporates both the substantial amendments it makes to an earlier act and the unchanged provisions of that act. For its adoption, the new legal act requires compliance with the standard decision-making process, which in the majority of cases is the OLP. Upon its entry into force, the new legal act **replaces** and **repeals** the earlier act. Recast proposals deal primarily with **substantial amendments**, i.e., changes which affect the substance of the earlier act, rather than purely formal or editorial modifications. These changes are marked in grey throughout the Commission's proposal. MEPs may amend recast proposals according to the procedure outlined in Rule 104(3) of the EP's Rules of Procedure. Overall, **amendments to recast proposals** are admissible as long as they concern the parts modified by the Commission. However, MEPs may table amendments to unchanged parts of the proposal "by way of exception" and on "a case-by-case basis" for "pressing reasons relating to the internal logic of the text", or if these amendments are "inextricably linked to other admissible amendments" (European Parliament 2017b). Unfortunately, AT4AM makes no distinction between original passages and the provisions amended in the Commission's recast proposal. Therefore, drafters are required to perform multiple tasks. Not only do they focus on drafting mutually consistent

amendments that fit seamlessly into the text, but they also double-check if their amendments refer to passages amended by the Commission. Drafters may also check the wording of provisions in the original legislative act prior to the Commission's recast or in other existing legislative acts referred to in the text. Considering that they also scrutinise draft reports or draft opinions and use various resources delivered by stakeholders, amending recast proposals usually involves simultaneous operations on several documents.

6.2.3. Research methods

Given the characteristics of the sample and the research questions, two research methods were developed for the purpose of this study.

The **first research method** was developed to provide answers to Q1 and involved the use of both quantitative and qualitative approaches. First, all amendments relating to procedure 2017/0237(COD) tabled in TRAN and IMCO were counted according to the languages they were tabled in (see section 6.3.1.). Then, the same operation was performed on all AM-documents in Set 1 (see section 6.3.2.). The second step provided statistical data from a larger sample of amendments tabled to various committees in the EP. Furthermore, the results obtained in the second step made it possible to assess whether the statistical data collected from AM-documents relating solely to procedure 2017/0237(COD) was representative of commonplace practices in the EP. Statistical data was acquired using PDF-search software and compiled in detailed spreadsheets. The figures for the particular languages were then summed up using formulas. Finally, the statistical results were complemented with the insights into multilingualism in the EP gained from the semi-structured interviews and participant observations (see section 6.3.3.). This final step included the triangulation of quantitative and qualitative data, which facilitated the validation of results obtained by applying different research approaches.

The **second research method** was a multistage comparative analysis of terminological shifts designed to provide answers to Q2. Similarly to Koskinen's analysis of intermediate draft versions prepared by the European Commission (2008: 117-125), this comparative analysis was concerned with mapping the process of drafting legislative texts and analysing shifts. The analysis proceeded chronologically and compared legal terms from Article 3 (*Definitions*) used in the Commission's recast proposal, in TRAN's report (DEPLR), and in the first reading position adopted in the plenary (EPLR). The subsequent shifts were also traced to amendments tabled at the relevant stages of the procedure. Terminological shifts in the DEPLR could be traced directly to the amendments tabled ahead of the committee vote—637 amendments tabled

by individual MEPs and 135 compromise amendments. Any later terminological shifts in the EPLR resulted from amendments tabled in the plenary. Since most amendments to Article 3 were adopted at the committee level, sections 6.4.1. and 6.4.2. compare the legal terms used in the Commission's recast proposal and the DEPLR. The sections also assess whether the changes approved by TRAN result in a terminologically consistent text by examining the provisions of the act where the relevant terms are used. Section 6.4.3. follows the same methodology in investigating terminological shifts and their impact on the terminological consistency of the EPLR. Finally, section 6.4.4. sums up the findings and section 6.4.5. provides probable explanations for the findings of the multistage comparative analysis.

6.3. Q1: Languages of tabled amendments and multilingualism

MEPs may table amendments in any of the official EU languages. Linguistic choices made by drafters shed light on institutional practices connected to the multilingualism policy. They also allow us to assess to what extent drafters use languages as native or non-native speakers. The following sections analyse the quantitative data[30] obtained from AM-documents in Set 1 and explore why given languages are chosen for the purpose of drafting legislative amendments.

6.3.1. Languages of amendments tabled in procedure 2017/0237(COD)

Table 3: *AMs tabled to procedure 2017/0237(COD) in TRAN and IMCO according to the language they were tabled in*

	EN	**DE**	**FR**	**ES**	**NL**	**CS**	**EL**	**RO**	**HU**	*x*	**Total**
2017/0237 TRAN	406	50	74	17	6	-	9	4	7	*9*	**582**
2017/0237 IMCO	262	50	12	-	9	9	-	4	-	-	**346**
Total	**668**	**100**	**86**	**17**	**15**	**9**	**9**	**8**	**7**	*9*	**928**
%	**71.98**	**10.78**	**9.27**	**1.83**	**1.62**	**0.97**	**0.97**	**0.86**	**0.75**	*0.97*	

Amendments to procedure 2017/0237(COD) were tabled in 9 languages. These languages included English, German, French, Spanish, Dutch, Czech, Greek, Romanian, and Hungarian. Statistical data on the number of amendments tabled in each of the languages is presented in Table 3.

[30] All data analysed in this section is gathered in Tables 3-7. The respective language codes and acronyms of the parliamentary committees are explained in the *Abbreviations and acronyms* section on pages 8-10. The symbol *x* used in the tables stands for lacking or incorrect language codes in the original documents.

The data outlined in Table 3 clearly shows that MEPs and APAs were **most likely to choose English** for the purpose of drafting amendments. Amendments tabled in English accounted for nearly **72**% of all amendments. Amendments tabled in German and French came in second and third place with 10.8% and 9.3% each. Interestingly, amendments tabled in English, German, and French originated from several different MEPs or groups of cosignatories, while amendments in all remaining languages were tabled by the same MEPs. To be specific, 17 Spanish, 15 Dutch, 9 Czech, 9 Greek, 8 Romanian, and 7 Hungarian amendments were all signed or co-signed by the same MEPs, who tabled amendments to dossiers in both committees. Furthermore, **amendments tabled in English were tabled or co-signed by MEPs of various nationalities**. By contrast, amendments tabled in all remaining languages were either tabled by a single MEP or co-signed by two MEPs of the same nationality. These results suggest that English is the preferred option for MEPs who wish to convince colleagues from other EU countries to co-sign their amendments.

6.3.2. Languages of amendments in Set 1

Despite the insight they provide, results obtained from two dossiers cannot be considered as representative for all institutional practices. Nevertheless, the results presented in Table 3 are a good starting point for carrying out an analysis on a larger sample of amendments. The following section examines what languages all amendments subject OLPs and published on the EP's website in February, (see Table 4) March (see Table 5), and April 2018 (see Table 6) were tabled in.

What is striking about the figures in all three tables is the **overwhelming dominance of English** as the language chosen by drafters of amendments. The figures for English are in each case slightly below or above **70**%. English is also **the only language that amendments were always tabled in**, regardless of the committee or the procedure involved. English was chosen **7.5 to 13 times more often** than the second most commonly chosen drafting language.

Nevertheless, data collected in Tables 4-6 seems to show no clear correlation between the number of amendments tabled in the respective languages and the number of MEPs speaking these languages as their L1. It is worth noting that English is not the most commonly spoken L1 in the EP. With 114 MEPs from Germany and 18 MEPs from Austria, **German seems to be the most popular L1** in the EP. Figures for **French** may vary depending on the linguistic preferences of French (74), Belgian (21), and Luxembourgish (6) MEPs. However, even considering that all these MEPs used French as their L1, there would be still fewer MEPs speaking French than German. On the other hand, **90 MEPs come from Member States with**

English as the official language[31] (the UK, Ireland, and Malta). **Italian** comes in fourth place with 73 MEPs and is followed by **Spanish** (54) and **Polish** (51). All remaining Member States hold a maximum of 32 (Romania) or a minimum of 6 (Cyprus and Estonia) seats in the EP. In view of the above, the data on the languages chosen for the purpose of drafting amendments is rather puzzling. **The only consistent trend seems to be the dominant position of English**. Although French comes in second in all the tables, the difference between the number of French and German amendments in April 2018 is rather subtle (297 to 290). German itself does not seem to hold a strong position as the third most popular drafting language. For example, there were over 2 times as many amendments tabled in Italian than in German in March 2018. The remaining languages occupy various positions over the period of three months. In each case, languages that come in fourth or fifth place account for less than 4% of all amendments. Thus, no valid generalisations on their share in parliamentary practices can be made.

Data presented in the Special Eurobarometer (2012) also fails to account for the results obtained in this study. All five **Romance languages** used in the EU (French, Spanish, Italian, Portuguese, and Romanian) appear in Tables 4-6. The only exception is Spanish, which does not appear in Table 5. On the other hand, **Slavic languages**, which are spoken in six Member States, or at least by 121 MEPs, seem rather underrepresented in the tables. The relatively high number of **Portuguese** amendments could be explained by the fact that 62% of Portuguese citizens are unlikely to speak any foreign languages (Special Eurobarometer 2012). However, the example of **Hungary** undermines that claim. Although both countries have the same number of seats in the EP (21) and similar rates of citizens who only speak their native language (62% for Portugal and 65% for Hungary according to the Special Barometer 2012), Hungarian MEPs tabled considerably little amendments in their L1 compared to Portuguese MEPs. Consequently, it is difficult to find a clear correlation between data on MEPs' L1 and the number of amendments tabled in each respective language.

[31] All data on the apportionment of seats in the EP mentioned in this section is relevant for the 8th legislative period (2014-2019).

Table 4: *AMs tabled to OLPs published on the EP's website in February 2018 according to the language they were tabled in*

(COD) Committee	EN	FR	DE	IT	ES	NL	PT	RO	PL	LT	HU	CS	EL	FI	SV	ET	*x*	Total
2017/0128 LIBE	52	-	-	-	-	-	-	7	-	-	-	-	-	-	-	-	*1*	**60**
2017/0228 ITRE	48	3	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	**55**
2017/0122 TRAN	309	30	32	21	22	2	7	9	8	11		-	-	-	-	-	*1*	**452**
2017/0113 TRAN	41	10	-	2	-	5		4	-	4	1	-	-	-	-	-	-	**67**
2017/0114 TRAN	176	47	118	18	22	-	3	9	-	1	10	3	-	-	-	-		**407**
2017/0123 TRAN	206	39	37	23	51	21	12	6	4	-	-	1	-	-	5	-	-	**405**
2017/0121 TRAN	335	39	29	24	92	-	11	7	4	10	-	4	-	-	-	-	-	**555**
2017/0128 TRAN	114	6	12	2	2	4	6	-	-	1	3	-	-	-	-	-	*4*	**154**
2017/0328 AFCO	6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**6**
2017/0326 AFCO	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**3**
2017/0224 AFET	95	50	6	29	-	-	-	-	-	-	-	-	9	-	-	4	-	**193**
2016/0402 EMPL	114	28	29	-	-	15	-	-	-	-	2	-	-	-	-	-	-	**188**
2016/0403 EMPL	48	13	14	-		12	-	-	-	-	2	-	-	-	-	-	-	**89**
2017/0035 ITRE	45	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	**57**
2017/0225 LIBE	95	-	-	-	-	-	-	11	-	-	-	-	-	-	-	-	-	**106**
2017/0224 ECON	91	39	7	-	-	-	12	-	-	-	-	-	-	5	-	-	-	**154**
2017/0114 ENVI	34	85	46	20	-	-	-	-	-	-	-	-	-	-	-	-	-	**185**
2016/0360A ECON	855	-	60	-	-	-	6	-	-	-	-	-	-	-	-	-	-	**921**
2017/0121 EMPL	246	54	-	27	9	4	5	-	-	-	-	-	-	-	-	-	-	**345**
2017/0122 EMPL	93	31	-	21	3	13	1	-	9	-	-	-	-	-	-	-	-	**171**
2016/0361 ECON	165	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	**169**
2016/0362 ECON	554	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**554**
2017/0123 EMPL	131	45	1	20	8	35	-	-	8	-	1	-	-	-	-	-	-	**249**
Total	**3856**	**519**	**391**	**219**	**209**	**111**	**67**	**57**	**33**	**27**	**19**	**8**	**9**	**5**	**5**	**4**	*6*	**5545**
%	**69.54**	**9.36**	**7.05**	**3.95**	**3.77**	**2.00**	**1.21**	**1.03**	**0.60**	**0.49**	**0.34**	**0.14**	**0.16**	**0.09**	**0.09**	**0.07**	*0.11*	

Table 5: *AMs tabled to OLPs and published on the EP's website in March 2018 according to the language they were tabled in*

(COD) Committee	EN	FR	IT	DE	CS	RO	PT	EL	PL	HU	FI	SV	Total
2017/0225 BUDG	14	-	-	-	-	-	-	-	-	-	-	-	**14**
2017/0087 IMCO	227	41	-	7	33	14	-	-	18	-	-	-	**340**
2017/0158 CULT	135	33	4	42	-	-	-	-	-	-	-	-	**214**
2017/0309 BUDG	2	-	-	-	-	-	-	-	-	-	-	-	**2**
2017/0220 CULT	39	49	-	-	-	-	28	-	-	-	-	-	**116**
2012/0060 INTA	97	14	-	-	-	-	-	-	-	-	-	1	**112**
2017/0326 ECON	11	-	-	-	-	-	2	-	-	-	2	-	**15**
2017/0225 IMCO	334	36	-	-	12	11	-	-	-	-	-	-	**393**
2017/0336 ENVI	9	8	-	-	-	-	-	-	-	-	-	-	**17**
2017/0220 PETI	197	-	35	-	-	-	-	10	-	2	-	-	**244**
2017/0090 ECON	242	2	-	-	-	-	1	-	-	-	-	-	**245**
2017/0043 PECH	134	-	37	8	-	-	2	-	-	-	-	-	**181**
2017/0224 ITRE	207	7	37	-	-	14	-	12	-	-	-	-	**277**
2016/0397 PETI	88	-	17	-	-	-	-	10	-	-	-	-	**115**
Total	**1736**	**190**	**130**	**57**	**45**	**39**	**33**	**32**	**18**	**2**	**2**	**1**	**2285**
%	**75.97**	**8.32**	**5.69**	**2.49**	**1.97**	**1.71**	**1.44**	**1.40**	**0.79**	**0.09**	**0.09**	**0.04**	

Table 6: *AMs tabled to OLPs published on the EP's website in April 2018 according to the language they were tabled in*

(COD) Committee	EN	FR	DE	PT	IT	ES	NL	RO	PL	CS	SK	EL	HR	BG	HU	LT	*x*	Total
2016/0411 TRAN	9	2	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	**12**
2017/0309 REGI	55	5	-	22	-	-	-	11	-	-	4	-	6	-	-	-	-	**103**
2017/0228 IMCO	137	16	2	-	13	-	-	5	-	6	-	-	-	11	-	-	-	**190**
2017/0085 FEMM	316	-	26	43	23	12	-	-	21	-	3	-	-	-	-	-	-	**444**
2017/0085 EMPL	410	23	34	86	31	21	53	-	-	-	3	-	-	-	-	-	-	**661**
2017/0226 LIBE	127	-	-	-	10	-	-	13	-	4	-	-	-	-	-	-	-	**154**
2017/0309 ENVI	124	24	51	-	3	11	-	-	8	-	4	-	6	-	-	-	-	**231**
2017/0224 INTA	365	36	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**401**
2017/0290 ENVI	41	22	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	**68**
2017/0136 ECON	456	22	26	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**504**
2018/0058 AFET	10	32	5	-	-	-	-	-	-	-	-	4	-	-	-	-	-	**51**
2017/0347 ITRE	2	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	**4**
2018/0058 INTA	14	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**26**
2017/0225 ITRE	499	28	1	-	-	-	-	11	-	-	-	-	-	-	-	-	-	**539**
2017/0143 ECON	689	1	33	-	-	16	-	-	-	-	-	-	-	-	-	-	-	**739**
2017/0237 TRAN	406	74	50	-	-	17	6	4	-	-	-	9	-	-	7	-	*9*	**582**
2017/0237 IMCO	262	12	50	-	-	-	9	4	-	9	-	-	-	-	-	-	-	**346**
Total	**3922**	**297**	**290**	**153**	**85**	**77**	**68**	**48**	**29**	**19**	**14**	**13**	**12**	**11**	**7**	**1**	*9*	**5055**
%	**77.59**	**5.88**	**5.74**	**3.03**	**1.68**	**1.52**	**1.35**	**0.95**	**0.57**	**0.38**	**0.28**	**0.26**	**0.24**	**0.22**	**0.14**	**0.02**	*0.18*	

Table 7: *Draft reports and draft opinions relating to procedures from Tables 4-6 according to the language they were drafted in*

(COD)	EN	DE	FR	ES	IT	CS	*x*	(COD)	EN	(COD)	EN	FR	IT	*x*
02/2018								**03/2018**		**04/2018**				
2017/0128 LIBE	-	-	-	-	-	5	-	**2017/0225 BUDG**	6	**2016/0411 TRAN**	3	-	-	-
2017/0228 ITRE	23	-	-	-	-		-	**2017/0087 IMCO**	55	**2017/0309 REGI**	22	-	-	-
2017/0122 TRAN	42	-	-	-	-		-	**2017/0158 CULT**	53	**2017/0228 IMCO**	40	-	-	-
2017/0113 TRAN	14	-	-	-	-		-	**2017/0309 BUDG**	9	**2017/0085 FEMM**	29	-	-	-
2017/0114 TRAN	3	-	71	-	-		*4*	**2017/0220 CULT**	12	**2017/0085 EMPL**	18	-	-	-
2017/0123 TRAN	40	-	-	-	-		-	**2012/0060 INTA**	65	**2017/0226 LIBE**	28	-	-	-
2017/0121 TRAN	40	-	-	-	-		-	**2017/0326 ECON**	4	**2017/0309 ENVI**	-	-	22	-
2017/0128 TRAN	-	-	-	-	14		-	**2017/0225 IMCO**	52	**2017/0224 INTA**	-	73	-	-
2017/0328 AFCO	2	-	-	-	-		-	**2017/0336 ENVI**	9	**2017/0290 ENVI**	-	21	-	*19*
2017/0326 AFCO	2	-	-	-	-		-	**2017/0220 PETI**	7	**2017/0136 ECON**	106	-	-	-
2017/0224 AFET	12	-	-	-	-		-	**2017/0090 ECON**	32	**2018/0058 AFET**	3	-	-	-
2016/0402 EMPL	16	-	-	-	-		-	**2017/0043 PECH**	57	**2017/0347 ITRE**	-	-	-	-
2016/0403 EMPL	15	-	-	-	-		-	**2017/0224 ITRE**	58	**2018/0058 INTA**	-	-	-	-
2017/0035 ITRE	19	-	-	-	-		-	**2016/0397 PETI**	32	**2017/0225 ITRE**	92	-	-	-
2017/0225 LIBE	19	-	-	-	-		-			**2017/0143 ECON**	175	-	-	-
2017/0224 ECON	28	-	-	-	-		-			**2017/0237 TRAN**	55	-	-	-
2017/0114 ENVI	51	-	-	-	-		-			**2017/0237 IMCO**	29	-	-	-
2016/0360A ECON	-	179	-	-	-		-							
2017/0121 EMPL	22	-	-	-	-		-							
2017/0122 EMPL	13	-	-	-	-		-							
2016/0361 ECON	13	-	-	-	-		-							
2016/0362 ECON	29	-	-	-	-		-							
2017/0123 EMPL	-	-	-	24	-		-							
Total	403	179	71	24	14	5	*4*	***Total***	451	***Total***	600	94	22	*19*
	1454	**179**	**165**	**24**	**36**	**5**	*23*	**Total AMs in draft reports and opinions**						
	77.09	**9.49**	**8.75**	**1.27**	**1.91**	**0.27**	*1.22*	**%**						

The lack of a clear correlation between MEPs' L1 and the preferred drafting languages suggests that other variables need to be taken into account. For one thing, **not all Member States are represented in each of the parliamentary committees**. There are currently 22 standing committees and one special committee. This means that MEPs from 19 Member States are not represented in all of the committees. Secondly, **some committees seem to be "more" multilingual than others**. For example, TRAN, EMPL, and IMCO members seem to be more willing to table amendments in their national languages than ECON or BUDG members. The former three committees discuss matters that fall into the EU's shared competences such as transport, consumer protection, or social policy. The latter two committees are responsible for sensitive areas, such as the EU budget and the EMU (see section 3.4.3.). Hence, it could be hypothesised that dossiers which the EP has more freedom to amend and which concern matters of greater value for citizens attract more amendments in national languages. Thirdly, MEPs from various Member States may be **more or less eager to engage in drafting activities** depending on their political objectives, access to national experts (see Chapter 5), or even the political culture in their Member State. Fourthly, the number of all tabled amendments usually depends on the "**extensiveness and controversiality of the proposal**" (Lelieveldt and Princen 2015: 86). MEPs are more likely to get involved in amending the Commission's proposal if it touches upon areas important for their voters. This means that statistical data on the large share of amendments tabled in a given language may result from political circumstances, rather than provide proof for multilingual drafting practices. Last but not least, **language policies** implemented at the level of Member States may have an effect on MEPs' proficiency and willingness to use their national languages in an international context.

Draft reports and **draft opinions** consist of amendments proposed by rapporteurs or rapporteurs for opinion. Table 7 looks into languages typically chosen by rapporteurs for the sake of preparing them. Similarly to the data on AM-documents presented in Tables 4-6, **English completely dominates the scene**. Out of 54 draft reports and draft opinions, only 8 were not prepared in English. However, like in the examples analysed above, **no valid generalisations can be made on the use of remaining languages**. In fact, the figures shown in Table 7 can be misleading. French was the language chosen for preparing three drafts discussed in three different parliamentary committees. Still, it comes in third place after German, which accounts for 179 amendments proposed by one rapporteur to a single dossier. What is more, 19 amendments of the French draft presented in ENVI (procedure 2017/0290) are missing a language code.

All in all, **English is the most popular language** chosen for purposes of drafting legislative amendments in the EP. The fact that only 90 out of 751 MEPs speak English as their L1 suggests that a majority of drafters using English are **non-native speakers**. The number of amendments tabled in lesser-used languages largely depends on the dossier or the committee involved. In some cases, an increased number of amendments tabled to a single dossier determines the total number of amendments tabled within a given month, e.g., German, Czech, Portuguese, and Polish amendments in Table 5 or Dutch amendments in Table 6. Therefore, **data on the remaining languages should be analysed critically.** Despite these idiosyncrasies, the EP is clearly not unilingual. At least a third of all amendments are still tabled in languages other than English. Thus, it can be hypothesised that drafters use different languages for different purposes. The following section looks into the possible reasons why drafters of legislative amendments sometimes choose English over their national languages, and vice versa.

6.3.3. What do the results say about the multilingualism policy in the EP?

There seem to be specific reasons why drafters choose English more frequently for the sake of drafting amendments. On the whole, MEPs and APAs prefer to draft amendments in their national languages (Interview 1). They either feel more proficient in their L1 or have received "ready-to-table" amendments from governmental experts. The reasons for tabling amendments in English by non-native speakers are more varied and provide an insight into how the multilingualism policy functions in practice.

English occupies a leading role in much of EP politics. Most importantly, **all documents are first translated into English**. Only then do remaining language departments start translating the texts into their target languages (Interviews 1 and 2). As a consequence, the English versions appear on the EP's website before the remaining 23 language versions. The rapporteur and the shadow rapporteurs may ask the committee secretariat to send them all amendments tabled in the original languages before the English translation is uploaded. This allows them to get an overview of the various positions that will have to be reconciled during shadow meetings (Interview 1). Amendments tabled in English or languages known to the MEPs and APAs will be analysed first and the meaning of amendments tabled in lesser-used languages will only be presumed on the basis of keywords or linguistic similarities to other languages (Interview 2). Therefore, tabling amendments in English may prove convenient for MEPs who wish to **engage in lobbying activities as soon as possible**. As shown in section 6.3.1., drafting amendments in English also allows MEPs to find cosignatories among

colleagues from other Member States. Secondly, MEPs are sometimes **required to table amendments in English** due to time pressure. Data presented in the previous section supports this claim. Within the analysed time period, there were procedures to which only amendments in English were tabled, e.g., procedures 2017/0328 and 2017/0326 in AFCO, 2016/0361 in ECON (Table 4), or 2017/0225 and 2017/0309 in BUDG (Table 5). The requirement to table amendments in English is usually announced by the Committee Chair if the Council has already adopted its general approach or if the Member State holding the Council presidency wishes to complete on-going procedures before the end of its presidency (Interview 1). Negotiations can begin as soon as the deadline for tabling amendments has expired and the MEPs can focus entirely on the substance of tabled amendments without waiting for official translations. Furthermore, **interest groups and lobbyists based in Brussels prepare most of their amendments in English**. It is easier to use or slightly modify amendments in English than translate them into national languages, especially if the amendments introduce new terminology and definitions (Interviews 1 and 2). Lastly, **high-profile negotiations are also based on the English versions of texts**. As already discussed in Chapter 5, the English "base text" is the subject of legal-linguistic finalisation, while all remaining language versions are reviewed by individual lawyer-linguists with the support of national experts. Shadow meetings attended by rapporteurs and shadow rapporteurs are also conducted in English and the MEPs who attend them work on English versions of drafts (Interview 1).

Despite the overwhelming dominance of English, **translation and interpreting services for the EP are still indispensable**. Translations allow MEPs and APAs to draft amendments with greater confidence in their national languages. Some MEPs and APAs may even review translations of their amendments into English to check if their objectives were correctly rendered (Interview 1). Translations into national languages are also useful for APAs and MEPs. They account for any new terminology introduced in the amendments and harmonise linguistic use in target languages (Interview 2). This allows APAs and MEPs to report on their activities using established equivalents. Furthermore, MEPs have the right to address the chamber in their national languages and seem particularly keen on retaining this right. Possible explanations for this could be the will of MEPs to preserve the multilingual character of parliamentary sessions, to mark the presence of their national language in the EP, to speak more fluently and convincingly, or to use their recorded speeches for purposes of political communication.

6.4. Q2: Terminological consistency

EU legislative instruments only serve their purpose if terminology is used consistently and if the definitions of terms are unambiguous. **Terminological consistency** is the most important quality criterion of EU legal translation. As already mentioned in Chapter 1, terminological consistency concerns both multilingual concordance between 24 languages versions and consistency between primary legislation, basic acts, and implementing acts. Owing to the small number of universally accepted terms in international law, one of the most effective ways of ensuring a uniform interpretation and application of international legal instruments is the use of **legal definitions** (Šarčević 1997: 158). In EU legislation, definitions occupy a major role and are inserted at the beginning of the enacting terms (see section 4.3.). In essence, consistent terminology and precise definitions are fundamental requirements of EU legislation.

The lengthy and multistage decision-making process in the EU poses a risk to the terminological consistency of EU legislation. What makes drafting EU legislation unique is the complexity and length of the drafting process, which spans **three institutions with varying political objectives**. As the institution initiating the legislative procedure, the Commission revises existing legislation (*ex-post evaluation*) to identify whether its objectives had been met and whether it had produced any unintended effects. The Commission's legislative proposals are also based on impact assessments of various policy options and on stakeholder consultations. Therefore, any new definitions or terminological choices used consistently throughout the proposals are "purposeful choices" that cannot be explained by chance or by the individual preferences of the drafters (Koskinen 2008: 122). Nonetheless, legislative work in the EP varies considerably from work carried out in the Commission. As mentioned in Chapter 5, rapporteurs, shadow rapporteurs, and individual MEPs have neither the time nor the resources to analyse all policy options. As a result, they prioritise their political objectives and rely on resources delivered by stakeholders. For the reasons mentioned in section 6.3.3, MEPs and APAs often draft their amendments in English, even if this has a negative impact on their quality. In the view of the above, any modifications to legal terms or definitions introduced by MEPs seem particularly risky. Not only can they result in the lack of consistency at the level of single terms, but they can also undermine the consistency of an entire legislative act. This is why the following comparative analysis focuses primarily on terminology as the backbone of all legislative acts and investigates whether the amendments adopted in procedure 2017/0237(COD) result in a terminologically consistent legislative text.

6.4.1. Legal terms added to the DEPLR

Introducing completely new terms to a recast proposal is very limited in scope. As mentioned in section 6.2.2., amendments to recast proposals are admissible as long as they relate to the passages previously modified by the Commission or if they are directly linked to other admissible amendments. In spite of these restrictions, MEPs introduced seven terms to Article 3 of the DEPLR which were not included in the Commission's recast proposal (see Table 8). Two of these terms were included in the Regulation prior to the recast proposal, i.e., they were deleted by the Commission and reintroduced to the act by MEPs. The remaining five were completely new terms that were neither included in the original act nor the recast proposal. It should be emphasised that, despite their law-making function, **legal definitions do not impose obligations or grant rights** (Šarčević 1997: 154). For these terms to produce legal effects, other substantial amendments that make use of the defined legal terms should be added elsewhere in the text. This makes investigating new terms added by MEPs particularly interesting.

Table 8: *Amendments to Article 3 (Definitions)*

European Commission's recast proposal	**DEPLR**
'**railway undertaking**' means a railway undertaking as defined in Article 3(1) of Directive 2012/34/EU *Article 3(1) of Directive 2012/34/EU* means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only	
'**infrastructure manager**' means an infrastructure manager as defined in Article 3 of Directive-2012/34/EU *Article 3(2) of Directive 2012/34/EU* means any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or firms	
'**station manager**' means an organisational entity in a Member State, which has been made responsible for the management of a railway station and which may be the infrastructure manager	
The term *carrier* was deleted from the Regulation recasted by the Commission.	***'carrier' means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract***
The term *substitute carrier* was deleted from the Regulation recasted by the Commission.	***'substitute carrier' means a railway undertaking, which has not concluded a transport contract with the passenger, but to which the railway undertaking party to the contract has entrusted, in whole or in part, the performance of the transport by rail***

'**tour operator**' means an organiser ***or retailer***, other than a railway undertaking, within the meaning of Article 3, ***points (8) and (9)*** of Directive(EU) 2015/2302 of the European Parliament and of the Council	'**tour operator**' means an organiser, other than a railway undertaking, within the meaning of ***point (8)*** of Article 3 of Directive (EU) 2015/2302 of the European Parliament and of the Council
'**ticket vendor**' means any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway ***undertaking*** or for its own account	'**ticket vendor**' means any retailer of rail transport services concluding transport contracts and selling tickets, ***separate tickets or through-tickets*** on behalf of ***one or more*** railway ***undertakings*** or for its own account
Term not included in the original Regulation or the Commission's recast proposal.	***'distributor' means a retailer of rail transport services selling tickets on behalf of a railway undertaking, and which does not have any obligation in the contract concluded between the passenger and the railway undertaking***
'**transport contract**' means a contract of carriage for reward or free of charge between a railway undertaking ***or a ticket vendor*** and the passenger for the provision of one or more transport services	'**transport contract**' means a contract of carriage for reward or free of charge between a railway undertaking and the passenger for the provision of one or more transport services
'**reservation**' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;	
Term not included in the original Regulation or the Commission's recast proposal.	***'ticket' means a valid evidence that entitles the passenger to rail transport, regardless of its form, paper, e-Ticket, Smartcard, travel card***
Term not included in the original Regulation or the Commission's recast proposal.	***'combined journey' means a ticket or tickets representing more than one transport contract for successive railway services operated by one or more railway undertakings***
'**through-ticket**' means a ticket or tickets representing a single transport contract for successive railway services operated by one or more railway undertakings	**'through-ticket**' means a ticket or ***separate*** tickets representing a single ***or several*** transport ***contracts*** for successive railway services operated by one or more railway undertakings, ***purchased from the same ticket vendor, tour operator or railway undertaking for an end-to-end journey***
'**service**' means a passenger rail transport service that operates between rail stations or stops according to a timetable;	
'**journey**' means the carriage of a passenger between a station of departure and a station of arrival ***under a single transport contract***	'**journey**' means the carriage of a passenger between a station of departure and a station of arrival
'**domestic rail passenger service**' means a rail passenger service which does not cross a border of a Member State;	
'**international rail passenger service**' means international rail passenger service as defined in Article 3(5) of Directive 2012/34/EU;	
'**delay**' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival at the final station of destination;	
Term not included in the original Regulation or the Commission's recast proposal.	***'arrival' means the moment when, at the destination platform, the doors of the train are open and disembarkation is allowed***
'**travel pass**' or '**season ticket**' means a ticket for an unlimited number of journeys which provides the authorised holder with rail travel on a particular route or network during a specified period;	
'**missed connection**' means a situation where a passenger misses one or more services in the course of a journey as	'**missed connection**' means a situation where, ***under a single transport contract***, a passenger misses one or more services

a result of the delay or cancellation of one or more previous services	in the course of a journey as a result of the delay or cancellation of one or more previous services
'**person with disabilities** and '**person with reduced mobility**' means any person who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced ***due to age***	'**person with disabilities**' and '**person with reduced mobility**' means any person who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced
Term not included in the original Regulation or the Commission's recast proposal.	***'extraordinary circumstances' means circumstances beyond the control of the railway undertaking in the normal exercise of its activity and outside the obligations imposed by the relevant safety and security rules to be observed***
'**General Conditions of Carriage**' means the conditions of the railway undertaking in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;	
'**vehicle**' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers;	
'**CIV Uniform Rules'** means the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV), as set out in Appendix A to the Convention concerning International Carriage by Rail (COTIF).	

Deleted from the recast proposal, the terms ***carrier*** and ***substitute carrier*** were reintroduced to the DEPLR. The two terms were deleted from the Regulation by the Commission owing to deep concerns over the consistency of legal terminology used in instruments of international and EU law. Apart from Article 3, the Regulation never uses these terms. Instead, the term *railway undertaking* is used consistently throughout the act. On the other hand, the term *carrier* is used in the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV), which the EU and its Member States are subject to as members of the Intergovernmental Organisation for International Carriage by Rail (OTIF). The CIV Uniform Rules are included in Annex 1 to the Regulation, where the term has a broader meaning and includes, e.g., bus operators or maritime companies. Consequently, the two terms were deleted from the Regulation to prevent difficulties in interpreting and enforcing EU legislation (European Commission 2017b: 25-26). Nonetheless, both terms were reintroduced to the text by the rapporteur (AMs 13-14), who argued that they align the Regulation with legislation on other transport modes. The term *carrier* was used in one other amendment included in the DEPLR on re-routing (Article 16(3)) and was also originally tabled by the rapporteur (AM 30). However, it is worth stressing that the remaining paragraphs of Article 16 use the term *railway undertaking* when referring to the obligation of providing re-routing services to passengers. Although the terms were not systematically used

in amendments tabled by other MEPs, the rapporteur's amendments were accepted without any modifications. With no other passages in the DEPLR that use the terms *carrier* or *substitute-carrier* in a systematic way, it remains doubtful whether reintroducing the terms will have any effect on the rights and obligations mentioned in the Regulation. It may, however, lead to legal uncertainty due to varying definitions of the same terms used in the body of the Regulation and in its annexes.

The term ***distributor*** is another example of a legal term unlikely to result in any rights and obligations. The amendment introducing the term was co-signed by two MEPs from EPP (AM 195) and adopted word for word in the DEPLR. This example is perplexing since the term does not appear in any of the following—the original Regulation, the recast proposal, amendments tabled by the same MEPs, or amendments tabled by other MEPs. Therefore, it only appears once in the entire body of the DEPLR. The term is directly linked to the terms of a *ticket vendor* and *transport contract*, which are analysed in the next section.

Table 9: *Definitions of 'arrival' in the DEPLR*
Article 3—paragraph 1—point 13a (new)

AM 19 tabled by the rapporteur	AM 204 tabled by the shadow rapporteur
(13a) 'arrival' means the moment when, at the destination platform, the doors of the train are opened and disembarkation is allowed;	***(13 a) 'arrival' means the moment when, at the destination platform, the doors of the train are open and disembarkation is allowed;***
The term arrival should be defined in order to protect passengers from disadvantaging interpretation of "arrival" by railway undertakings. E.g. sometimes trains have arrived at the platform but the opening of doors is delayed due to technical default. This amendment is inextricably linked to the definition of "delay", therefore to Articles 16-17 (non-codified).	*It is necessary to define the term arrival in order to protect passengers against a biased interpretation by railway undertakings. This amendment is directly linked to the definition of 'delay' and therefore to Articles 16 and 17 (non-codified part).*

Ticket and ***arrival*** are examples of terms that appear in the body of the Regulation, although they were not included in the *Definitions* section of the original act or the recast proposal. Nevertheless, MEPs decided to insert definitions of these terms to the DEPLR. In both cases, the political objectives were similar—protecting passengers from unfavourable interpretations made by railway undertakings. The definition of *ticket* can be traced to a single amendment co-signed by five MEPs: four from ALDE and one from S&D (AM 197). The definition of *arrival* appears in two amendments: one tabled by the rapporteur (AM 19) and one by the shadow rapporteur from EPP (AM 204). Interestingly, AM 204 was tabled in French, although the wording exactly repeats the definition in AM 19, which was tabled in English. Even the justification echoes that suggested by the rapporteur (see Table 9). Referring to the

section on translating amendments (see section 5.2.4.), it can be presumed that the original amendment was simply copy-pasted by the shadow rapporteur from the French translation of the draft report and tabled without any modifications. The amendment was then pre-translated by Cat4Trad on the basis of the reference (TMX) files retrieved from Euramis. Thus, the term *arrival* can also be traced to a single amendment. Amendments introducing the definitions of *ticket* and *arrival* may be considered as justified because the terms are used consistently throughout the entire act. In contrast to the previous examples, the terms appear in other Articles of the Regulation and are also used to define other terms.

Combined journey is a term that mirrors a very clear political objective. The amendment introducing the term (AM 196) was co-signed by 11 MEPs—ten from S&D and one from GUE/NGL—and adopted word for word in the DEPLR. On the whole, the term *combined journey* was intended to cover successive journeys with more than one railway undertaking and under more than one transport contract. This definition distinguishes *combined journeys* from *through-tickets*, which according to the Commission's proposal involve travelling under a single transport contract. The latter term was also the subject of much debate and was amended in the DEPLR (see section 6.4.2.). Further amendments which use the term *combined journey* were tabled to other passages of the text, including recitals, definitions, and rights and obligations. In these remaining amendments, the drafters tried to grant passengers travelling under more than one transport contract rights similar to those enjoyed by passengers who conclude single transport contracts. These rights were supposed to include, e.g., the possibility of buying combined journeys from a single entity (AMs 103, 192, 283), the right to compensation (AMs 358, 393), the right to re-routing (AMs 212, 457), and the right to information (AM 609). However, none of these "follow-up" amendments were approved by TRAN. Consequently, *combined journey* appears only once in the *Definitions* section of the DEPLR. Considering that the term was related to a far-reaching political objective that was not endorsed by TRAN, its inclusion in the DEPLR seems unintended.

The last term introduced by MEPs to the DEPLR is ***extraordinary circumstances***. The term is directly linked to the concept of *force majeure* added to the Regulation by the Commission. Prior to the recast, Regulation (EC) No 1371/2007 did not contain any provisions on *force majeure*, although such provisions appear in the CIV Uniform Rules. As an effect, in a case brought to the CJEU by ÖBB-Personenverkehr AG, the CJEU ruled that according to EU law railway undertakings are not exempted from paying compensation due to *force majeure*. The Commission decided to introduce a *force majeure* clause to account for similar provisions found in legislation on air, bus and coach, or waterborne transport.

Table 10: *Shifts relating to provisions on 'force majeure'*

Commission's recast proposal	DEPLR
Recital 21	
However, a railway undertaking should not be obliged to pay compensation if it can prove that the delay was caused by severe weather conditions or major natural disasters endangering the safe operation of the service. Any such event should have the character of an exceptional natural catastrophe, as distinct from normal seasonal weather conditions, such as autumnal storms or regularly occurring urban flooding caused by tides or snowmelt. Railway undertakings should prove that they could neither foresee nor prevent the delay even if all reasonable measures had been taken.	***deleted***
Article 3—paragraph 1—point 19a (new)	
Term not included in the Commission's recast proposal.	***'extraordinary circumstances' means circumstances beyond the control of the railway undertaking in the normal exercise of its activity and outside the obligations imposed by the relevant safety and security rules to be observed.***
Article 17—paragraph 8	
A railway undertaking shall not be obliged to pay compensation if it can prove that the delay was caused by severe weather conditions or major natural disasters endangering the safe operation of the service and could not have been foreseen or prevented even if all reasonable measures had been taken.	***deleted***
Article 17—paragraph 8a (new)	
Provision not included in the Commission's recast proposal.	***Where no proof of the existence of extraordinary circumstances is provided by the railway undertaking in a written form, the compensation referred to in Article 17 (1) shall be paid by the railway undertaking.***

Nevertheless, the Commission opted for a narrow definition of *force majeure* to protect passengers from unfavourable interpretations made by railway undertakings. The Commission's definition of *force majeure* covers unforeseen severe weather conditions and natural disasters (European Commission 2017b: 27-31). The *force majeure* clause was fiercely debated in the EP. Overall, MEPs tabled 7 amendments to Recital 21 and 16 amendments to Article 17(8). The two extreme positions represented by MEPs were either deleting the clause completely or inserting a broad definition of *force majeure*. While most MEPs (representing S&D, GUE/NGL, and Greens/EFA) preferred the former approach, some MEPs from EPP and

S&D tried to further define the concept of *force majeure* to include e.g., terrorist attacks or strikes. Ultimately, Recital 21 and Article 17(8) were deleted from the DEPLR (see Table 10). Nonetheless, the term *extraordinary circumstances* was added to Article 3 and a new paragraph was inserted to Article 17(8). Both of these changes can be traced to two single amendments tabled by an MEP from EPP. The term *extraordinary circumstances* proposed by the MEP was the broadest in scope of all tabled amendments. As a result, **the deletion of the contested *force majeure* clause had the opposite effect than the majority of MEPs had intended**. One French MEP from S&D even commented on the matter during the plenary debate on 14 November 2018: "It's a great pity that in the parliamentary committee [TRAN] some MEPs have manipulated the vote, got through some amendments that actually reintroduced provisions [according to which] railway operators will be exempted from any obligation to reimburse in cases of delays."[32]

To sum up, new terms and definitions added to the recast proposal seem to share certain similarities. Firstly, they **all result from single amendments**. The amendments were all adopted word for word in the DEPLR because no conflicting amendments were tabled alongside them. Secondly, with the exception of *distributor*, **all added terms appear in other admissible amendments** (*carrier, combined journey, extraordinary circumstances*) **or in the body of the Commission's proposal** (*ticket* and *arrival*). The reason for this seems quite clear—legal definitions do not produce legal effects unless they are further spelled out in other parts of the act. Last but not least, it seems that **new legal terms may be overlooked in negotiations**. As the example of *force majeure* above has shown, most attention is devoted to reconciling conflicting amendments. Therefore, single legal terms may be left in the text even if they do not fit into the body of the amended act (e.g., *combined journey*) or if they do not reflect the intentions of the majority of drafters (e.g., *extraordinary circumstances*).

6.4.2. Legal terms amended in the DEPLR

Amending terms which have already been defined and are used consistently throughout a legislative act can be fraught with unforeseen pitfalls. Such terms can appear in all parts of the text and may be used to define other terms. The previous section has shown that completely new terms introduced by MEPs can usually be traced to single amendments. The same generalisation cannot be made about amendments tabled to terms that were already included in

[32] See the Minutes from the plenary debate for the original French speech. Available at: <https://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20181114&secondRef=ITEM-022&language=EN&ring=A8-2018-0340>. DOA: 13 April 2019.

the *Definitions* section. Terms used in the extensively debated provisions on compensation or access to information (e.g., *through-ticket*) drew the attention of many drafters. As a result, more amendments were tabled to existing passages in Article 3 and the various positions had to be reconciled in the following stages of the procedure. This section examines whether the changes adopted to Article 3 in the DEPLR affect the terminological consistency of the act. For this purpose, the following analysis examines terminological discrepancies which result from the amending phase in TRAN.

Table 11: *Article 3(8)(1) and Article 16(1)*

Article 3(8)(1)—Commission's definition of *through-ticket*	
'through-ticket' means a ticket or tickets representing a single transport contract for successive railway services operated by one or several more railway undertakings;	
Article 3(8)(1)—AMs with definitions of *through-ticket*	
AM 198 'through-ticket' means a ticket or tickets representing a single transport contract for successive railway services operated by one or more railway undertakings; ***Several tickets always represent a single contract of carriage if they are part of an actual travel chain.***	AM 199 'through-ticket' means a ticket or tickets ***for*** a single ***journey comprising one or <u>several</u>*** transport ***<u>contracts</u>*** for successive railway services operated by one or more railway undertakings ***whose <u>purchase is carried out via a single transaction</u>;***
AM 200 'through-ticket' means a ticket or tickets, representing ***one or more*** transport ***contracts <u>issued through a single transaction</u>, for a single journey*** comprising successive railway services operated by one or more railway undertakings;	AM 201 'through-ticket' means a ticket or ***<u>separate</u>*** tickets representing a single transport contract for successive railway services operated by one or more railway undertakings***, forming part of <u>an end-to-end journey,</u>***
AM 202 'through-ticket' means a ticket or tickets representing a single transport contract for successive railway services operated by one or more railway undertakings ***forming part of <u>an end-to-end journey;</u>***	AM 203 'through-ticket' means a ticket or tickets for successive railway services operated by one or more railway undertakings, ***forming part of <u>an end-to-end journey;</u>***
Article 3(8)(1)—definition of *through-ticket* in the DEPLR	
'through-ticket' means a ticket or ***<u>separate</u>*** tickets representing a single ***or <u>several</u>*** transport ***<u>contracts</u>*** for successive railway services operated by one or more railway undertakings, ***<u>purchased from the same</u> ticket vendor, tour operator or railway undertaking <u>for an end-to-end journey;</u>***	
Article 16(1)—Commission's proposal	Article 16(1)—DEPLR
Where it is ***reasonably*** to be expected, either at departure or in the event of a missed connection in the course of a journey ***with a through-ticket,*** that arrival at the final destination under the transport contract will be subject to a delay of more than 60 minutes, the passenger shall immediately have the choice between one of the following:	Where it is expected, either at departure or in the event of a missed connection in the course of a journey that arrival at the final destination ***of an end-to-end journey*** under the transport ***contracts*** will be subject to a delay of more than 60 minutes ***or cancelled***, the passenger shall immediately have the choice between one of the following:

journey ↔ missed connection

Journey is a fundamental term used throughout the entire legislative act. It is also used to define other terms, such as *missed connection*. The definition of *journey* did not appear in the original Regulation and was only inserted to the recast proposal, where it covered services provided under single transport contracts. Accordingly, *missed connection* also applied to missed services under single transport contracts. In the DEPLR, the "**single transport contract" criterion was deleted from the term *journey***. This change can be traced to two amendments tabled by the shadow rapporteur from EPP and MEPs from S&D and GUE/NGL. The latter group of MEPs also tried to amend the definition of *missed connection* to account for their proposal of *combined journeys* (see section 6.4.1.). However, as already mentioned in the previous section, all their amendments on *combined journeys* fell in the negotiations. One other amendment was tabled to the definition of *missed connection* by the rapporteur, who added the "single transport contract" criterion to the definition. The rapporteur's amendment was adopted in the DEPLR (see Table 8), given that the only other tabled amendment fell. As a result, ***missed connection* in the DEPLR still apply to single transport contracts only**. The changes made to these two definitions may seem cosmetic, but they have affected another central term used throughout the text—the *through-ticket.*

through-ticket

The term *through-ticket* was amended by many MEPs. In the Commission's proposal, the term *through-ticket* was a type of ticket. Similarly to all journeys, it could be acquired **under a single transport contract**; however, the term accounted for the possibility of travelling with more than one railway undertaking during successive parts of the journey. In the most important provisions on through-tickets—Article 10(1), Article 10(6), and Article 16—*through-ticket* was used alongside the terms *journey* and *missed connection* to describe the rights of passengers' to compensation and re-routing and the obligation of railway undertakings and ticket vendors to offer *through-tickets.* The three terms did not overlap and were not mutually exclusive. Nonetheless, each of the terms was modified in the DEPLR. Six amendments were tabled to Article 3(1)(8) with the definition of the *through-ticket* (see Table 11). Interestingly, the final definition of *through-ticket* in the DEPLR seems to be made of **"recycled" text.** Apart from AM 198, the wording of all remaining amendments is reflected in the final definition accepted by TRAN. The fact that nearly all suggestions were acknowledged in the compromise definition has made it 70% longer than the definition in the Commission's recast proposal. More importantly, the **definition of *through-ticket* in the DEPLR has become broader**, while the

term ***missed connection*** **has been narrowed down to single transport contracts**. As an effect, the introductory provision to an essential part of the act—Article 16(1) on passengers' rights to compensation or re-routing in case of missed connections—is no longer logical (see Table 11).

transport contract ↔ ticket vendor ↔ tour operator

Transport contract is a term used to define many other terms in the legislative act. Most notably, it is used to differentiate between the various groups mentioned in the Regulation—railway undertakings, ticket vendors, and tour operators. In the Commission's recast proposal, transport contracts are concluded by railway undertakings and ticket vendors. The same cannot be said of the DEPLR, in which the changes adopted to *transport contract* and *ticket vendor* mirror completely different political objectives. Only one amendment (AM 17) was tabled to Article 3(1)(6) containing the definition of *transport contract.* It was tabled by the rapporteur who argued that transport contracts are only concluded between *carriers* (see section 6.4.1.) and passengers. The rapporteur amended the definition of *ticket vendor* accordingly (AM 16). Nevertheless, four other amendments (AMs 191-194) were tabled to Article 3(1)(5) on *ticket vendors*, all of which extended the definition to reflect amendments on *through-tickets* and the proposals on *combined* journeys (see section 6.4.1.). All these amendments acknowledged that ticket vendors also conclude transport contracts. Because of this, ***transport contract*** **and** ***ticket vendor*** **as amended in the DEPLR are inconsistent** (see Table 8). Moreover, the amended DEPLR retains the original wording of the Commission's proposal, according to which ticket vendors "offer contract conditions" (Article 5 and Article 7(2)) or "offer transport contracts" (Article 9(1)). On the other hand, *tour operators* as defined in Article 3(1)(4) in the Commission's recast proposal and in the DEPLR do not conclude transport contracts (see Table 8). Nevertheless, they appear alongside ticket vendors and railway undertakings in the amended Article 5, Article 7(2), and Article 9(1) of the DEPLR. Consequently, **the definition of** ***tour operators*** **does not match the amended provisions**. The examples above illustrate the legal uncertainty caused by amending definitions and remaining provisions without looking globally at the entire legislative act. As a result, **the liability of each of the groups is no longer clear**.

To conclude, the terminological discrepancies described above all resulted from the fact that **irreconcilable amendments were adopted to different passages of the text** and had a knock-on effect on other definitions and provisions. The discrepancies seem to result from the **format of legislative documents in the EP**. All draft reports, draft opinions, and AM-documents are merely compilations of amendments. This format facilitates voting but, at the

same time, makes it difficult to maintain internal consistency and logic. What is more, existing terms and definitions may be subject to numerous amendments (e.g. *through-ticket*), which have to be later reconciled by the rapporteurs and the shadow rapporteurs. Compromises over normative provisions seem to be an optimal solution to secure support for the amended dossier. Nonetheless, **compromises over terms and definitions may result in terminological inconsistency**, which is an indispensable quality criterion of EU legislation.

6.4.3. Terminological consistency of the EPLR

The plenary vote is the last chance scenario for MEPs whose points of view were not acknowledged in the committee report to table amendments and to lobby for them. As mentioned in section 3.5.1.5., plenary amendments must be signed by at least 38 MEPs or a political group. The rule prevents political deadlock in the plenary and encourages MEPs to reach key decisions at the level of committees. The committee report relating to procedure 2017/0237(COD) was not accepted by all MEPs from the major political groups. At least three areas of the report were challenged by MEPs from the left-wing (S&D, GUE/NGL, and Greens/EFA) and liberal political groups (ALDE) in the plenary. The contentious issues included Article 2(2) on exemptions, the broad definition of *force majeure* approved by TRAN (see section 6.4.1.), and the right to onward travel in the case of delays and cancellations only under single transport contracts, i.e., the definition of *missed connection* (see section 6.4.2.).

Overall, 19 amendments were put to the vote in the plenary. Nine of these amendments were disputed compromise amendments tabled by TRAN (AMs 5, 12, 20, 36, 37, 54, 69, 81, and 82). The plenary vote largely upheld the decisions made by TRAN with a notable exception. Similarly to TRAN, the EP supported AMs 20 and 81 which deleted the Commissions' *force majeure* clause. However, the EP also rejected AMs 54 and 82 introducing the definition and the provision on *extraordinary circumstances*. Ten plenary amendments (136-145) were tabled on behalf of Greens/EFA, GUE/NGL, and 47 MEPs from S&D. Among the successful plenary amendments were AMs 136 (Recital 6) and 138 (Article 2(2)(a)), which narrowed down the extent of exempted services to urban services only. The three remaining successful plenary amendments were directly linked to the definition of *combined journeys* and the inconsistencies related to the definition of *missed connections* as adopted in the DEPLR (see Table 12).

Table 12: *Amendments to terms and definitions tabled in the plenary and adopted in the EPLR*

AM 20	Recital 21	adopted amendment deleting the Commission's *force majeure* clause
AM 54	Article 3(1)(19a) (new)	rejected amendment tabled in TRAN on *extraordinary circumstances*
AM 81	Article 17(8)	adopted amendment deleting the Commission's *force majeure* clause
AM 82	Article 17(8a) (new)	rejected amendment tabled in TRAN on *extraordinary circumstances*
AM 137	Recital 20a (new)	adopted plenary amendment ***The interpretation of journey or combined journey should include all situations with realistic or applicable minimum connection times when originally booked, taking into account any relevant factors such as the size and location of the respective stations and platforms concerned.***
AM 139	Article 3(1)(15)	adopted plenary amendment 'missed connection' means a situation where, ***whether under a single transport contract or not***, a passenger misses one or more services in the course of a journey or ***combined journey*** as a result of the delay or cancellation of one or more previous services;
AM 140	Article 10(6)	adopted plenary amendment Where a passenger receives separate tickets for a single journey ***or combined journey*** comprising successive railway services operated by one or more railway undertakings, his rights to information, assistance, care and compensation shall be equivalent to those under a through-ticket and cover the whole journey ***or combined journey*** from the departure to the final destination.

The amendments adopted in the plenary seem to have settled three of the consistency issues identified in the previous sections. Firstly, the highly controversial definition of ***extraordinary circumstances***, which *de facto* introduced a very broad *force majeure* clause, was rejected by a vast majority of voting MEPs (409 against and 187 for AM 54; 421 against and 191 for AM 82). The deletion of Recital 21 and Article 17(8) containing the Commission's proposal on *force majeure* was also approved by the plenary. In short, **the EP completely deleted any form of *force majeure* from the EPLR**. Therefore, the EPLR can be seen as an improvement to the DEPLR as it does not introduce definitions or provisions that thwart the ambitions of most MEPs. Secondly, the adopted plenary amendments seem to have resolved the terminological inconsistencies between ***missed connection***, ***through-ticket***, and ***journey*** described in the previous sections. **None of the terms as amended in the EPLR is limited to single transport contracts**. The difference between *combined journey* and *through-tickets* lies in how they are acquired, i.e., separately or in a single transaction, which also means that the terms do not overlap (see Table 8 and Table 12). Therefore, the EPLR no longer contains inconsistencies in provisions on passengers' rights to compensation or re-routing in case of missed connections (see section 6.4.2.) Last but not least, Recital 20a (new) and Amendment

140 have changed the status of ***combined journey*** from a redundant definition to an integral part of the legislative act.

Despite the improvements mentioned above, the **outcome of the EP's first reading is not terminologically consistent**. The EPLR still contains superfluous definitions (*distributor*) and definitions that could potentially lead to diverging legal interpretations (*carrier* and *substitute carrier*). The EPLR also fails to address the fact that the terms *ticket vendor* and *transport contract* are mutually exclusive. What is more, the obligations of *ticket vendors* and *tour operators* are inconsistent with the definitions of these terms specified in Article 3.

The terminological shifts described above did not go unrecognised by the European Commission, which issued a **response to the text adopted in the plenary**[33]. In its response, the European Commission noted that the legislative proposal was based on a balance between the narrow definition of *force majeure* and moderate compensation thresholds for missed connections or delays under through-tickets set out in Article 17 (25% of the ticket prices for delays of 60 to 119 minutes and 50% for delays of 120 minutes or more). The compensation thresholds were not part of the recast proposal and were, therefore, not open for the EP's consideration. Nonetheless, the EP amended both the *force majeure* clause and the compensation thresholds. In the EPLR, **the *force majeure* clause was deleted** and the **compensation thresholds were amended** as follows: 50% of the ticket price for delays of 60 to 90 minutes, 75% for delays of 91 to 120 minutes, and 100% for delays of 121 minutes or more. In addition, the terminological shifts concerning *combined* journeys, *through-tickets*, and *missed connections* ultimately mean that, in the EP's view, **passengers should be re-routed and receive compensations for all types of tickets**, even if they are bought separately and involve concluding several transport contracts. Again, introducing completely new terms and provisions to a recast proposal, such as those referring to *combined journeys*, is not in line with the rules on the admissibility of amendments (see section 6.2.2.).

The amendments adopted to the EPLR are **synonymous with a substantial change of the scope of the legislative act**. For one thing, the terminological shifts affect the economic balance explored by the Commission in its impact assessments. This balance is further upset by deleting exemptions on suburban and regional services (Article 2(2)) and could potentially lead to a dramatic increase in operating costs incurred by stakeholders. On the other hand, the obligation of developing through-ticketing systems has already been acknowledged in Directive (EU) 2016/2370 on the opening of the market for domestic passenger transport

[33]See Document No. SP(2018)838 relating to procedure 2017/0237 on the EP's *Legislative Observatory*. DOA: 13 April 2019.

services by rail and the governance of the railway infrastructure. According to Article 13a of this Directive, the Commission shall monitor the development of such systems and assess whether action at the EU level is needed by December 2022. Moreover, the Member States were guaranteed time until 25 December 2018 to transpose Directive 2016/2370. Therefore, adopting far-reaching changes on through-tickets in the plenary a month ahead of that deadline seems rather inopportune. It also appears unlikely that the Commission and the Council will support the amendments made by the EP. To conclude, the terminological shifts examined in the previous sections can be regarded as substantial amendments, which completely alter the Commission's recast proposal. Given that terminological shifts affect terms used consistently throughout an entire legislative act, they can dramatically change its scope and the legal effects it produces.

6.4.4. Results of the multistage comparative analysis

In summary, the multistage comparative analysis has produced interesting results. Firstly, the findings suggest that the fewer amendments are tabled to a given passage, the more likely it is for a single amendment to be adopted **word for word** in the committee's report. On the other hand, the more amendments are tabled to a given passage, the more likely the rapporteur and shadow rapporteurs are to "**recycle**" the amendments tabled by various MEPs. The technique results in **longer provisions** which acknowledge the input of many drafters. This pattern was observed not only in the amendments tabled to Article 3 but also throughout all AM-documents from Set 2. Secondly, **redundant terms** and **definitions**, i.e., terms and definitions which do not reflect substantial changes made elsewhere in the legislative act, may make their way into texts adopted at committee and plenary level. Thirdly, the **format** of documents used in the EP seems to be a crucial factor that increases the risk of terminological discrepancies. Although the templates created for tabling amendments facilitate voting, they also force drafters to work on numerous drafts. Even the DEPLR and the EPLR are merely compilations of amendments instead of consolidated versions of legislative resolutions adopted by the EP. This makes monitoring internal consistency and logic a difficult task. Fourthly, **political trade-offs are not a viable strategy for resolving conflicting amendments tabled to the *Definitions* section**. The strategy is especially risky if the amended terms are used to define other terms. In such cases, the effects of political compromise may have a negative effect on the terminological consistency of an entire legislative act. Finally, **terminological amendments can radically alter the provisions of a legislative act and its scope**. The legal effects produced by such

amendments may also require carrying out additional impact assessments and consulting stakeholders as they affect fundamental concepts used throughout a given legislative act.

6.4.5. What does the textual evidence say about institutional practices?

The textual evidence examined in the previous sections can be attributed to commonplace institutional practices followed in the EP. This section provides possible explanations for the data collected as part of the multistage comparative analysis.

The terminological shifts explored in the multistage comparative analysis can be ascribed to **strategies followed in shadow meetings**. The outcome of the committee vote is largely influenced by a handful of MEPs—the rapporteur and the shadow rapporteurs. After the draft report is presented in the committee and the deadline for amendments expires, the rapporteur and the shadow rapporteurs attend shadow meetings and try to reconcile the various amendments tabled by MEPs. Of course, the rapporteur and the shadow rapporteurs all have their own objectives and are likely to support their own amendments or amendments tabled by MEPs from their political groups (Interview 1). Nevertheless, both the rapporteur and the shadow rapporteurs are acutely aware of the fact that they must acknowledge the "**median position**" (Hoff *et al.* 2016: 310) of the committee. What is more, rapporteurs who strongly protect particular interests and disregard other points of view face opposition and conflicting amendments tabled by fellow MEPs (Hoff *et al.* 2016: 310). **Ultimately, the goal of the rapporteur and the shadow rapporteurs is to produce a report that will gain the support of the major political groups in the plenary** (Lelieveldt and Princen 2015: 85, Peers 2017: 55). Hence, a compromise between the largest political groups is usually the prerequisite for securing the adoption of the report in the plenary (Interview 1). This also explains the "recycling" strategy applied to reconcile conflicting amendments. The aim of this strategy is giving MEPs from different political groups the opportunity to influence the outcome of the decision-making process. As section 6.4.2. has shown, the practice may result in inconsistencies since the "recycled" amendments originate from MEPs with various political objectives.

Power struggles are also reflected in the results of the multistage comparative analysis. The default behaviour during the plenary vote is to adopt the committee report without substantial changes. With amendments reconciled during shadow meetings and ultimately approved in the committee vote, the report is usually forwarded to the plenary in a "take-it-or-leave-it form" (Dionigi 2017: 26). However, this was not the case in procedure 2017/0237(COD). The draft report was presented by a rapporteur from S&D. As a social-democratic political group, S&D is generally more likely to safeguard social and public interests

than EPP and ALDE (Kurczewska 2011: 288). Still, the draft report prepared by the rapporteur from S&D was considered industry-friendly. For example, the rapporteur was against removing exemptions for long-distance domestic rail services earlier than in 2024 in accordance with existing legislation. The rapporteur also favoured a broader definition of *force majeure* and deleted provisions that require ticket vendors to provide passengers with continuous travel information. The draft report provoked a backlash from left-wing, green, and liberal MEPs who counteracted the rapporteur's proposals with very progressive, passenger-friendly amendments. Although many of their amendments were later included in the committee report, some key provisions were still contested in the plenary. Overall, it seems that **power struggles were crucial for the outcome of procedure 2017/0237(COD) in the EP**. The shift in power dynamics also illustrates why ideologically inconsistent amendments appear in the body of the DEPLR and the EPLR.

6.5. Conclusions

The findings presented in this chapter show that the **EP is neither fully unilingual nor multilingual**. These observations are in line with those of Wodak *et al.*, who claim that institutional multilingualism in the EU rests on "a continuum of (more or less) multilingual practices that are highly context-dependent and serve a range of manifest and latent functions" (2012: 179). Although MEPs use national languages to address the chamber, they are rather reluctant to use national languages for the sake of drafting reports, opinions, and amendments. In general, English allows MEPs to rally support for their amendments in an international and multilingual setting. 23 remaining language versions of intermediate documents in the EP seem to function as aids for MEPs who, aware of their accountability to national electorates, make **strategic language choices** in their everyday work. The findings on multilingualism in the EP also confirm Šarčević's point that international law is usually drafted in a single language (1997: 159). The multilingualism policy notwithstanding, **EU legislation is mostly drafted in English**. The European Commission works mainly on English drafts and high-profile negotiations in the EP are carried out on English texts. Furthermore, legal-linguistic revision seems to focus on the consistency of the English base text, while all remaining language versions are rather "by-products" of the "co-revision" stage.

As Koskinen observes, the draft versions of EU documents are not "products of one master-mind" (2008: 121). EU legislation is co-drafted simultaneously by many authors and its **final versions are negotiated**. These negotiations take place both within the institutions and between institutions involved in the legislative procedure. The different objectives pursued by

the Commission and the EP have an impact on how each of these institutions carries out legislative work. Two conclusions on how legislative work is performed in the EP can be drawn from the analysis. Firstly, the **texts adopted in committees or in the plenary are not perfect**. They are the outcome of political trade-offs, which as shown in this chapter, are not a viable strategy when it comes to maintaining the terminological consistency and the internal logic of legislative texts. The goal of the rapporteur and the shadow rapporteurs is to arrive at a compromise and guide the dossier through all relevant stages of the procedure. The common consensus in the EP seems to be that even imperfect legislation is better than political deadlock. Secondly, **power struggles are not only an inherent characteristic of politics in the EP but also seem to determine interinstitutional relations between the Commission, the EP, and the Council**. The EP is mainly torn by two irreconcilable positions: representing the interests of all EU citizens and safeguarding national interests. By contrast, the Council rather resists change and represents the interests of Member State governments. Procedure 2017/0237 also shows that the EP is likely to support far-reaching, or even unattainable targets, if they are in the interest of EU citizens. A radically pro-passenger report passed in the plenary puts the EP in a stronger negotiating position vis-à-vis the Council, which is expected to defend the interests of public railway undertakings.

Finally, the considerations above can also be explained by looking into further stages of the OLP. The texts adopted by the EP solely constitute its negotiating mandate and are by no means the final versions published in the *Official Journal*. During trilogues, the compromises reached at the level of the EP may be contested by the Commission and the Council. What is more, superfluous terminology, terminological discrepancies, mutually exclusive provisions, missing recitals to substantial amendments, or any other flaws in the EP's text will inevitably be challenged by lawyer-linguists responsible for legal-linguistic revision (Interview 1). To put it succinctly, texts adopted by the EP are **yet another intermediate** version in the legislative document chain and **do not always satisfy the strict quality criterions of EU legislation**.

Chapter 7

Discussion and conclusions

The aim of this study was to analyse legislative amendments tabled by MEPs as a genre embedded in the OLP. The following chapters followed a top-down approach and proceeded from investigating broader institutional practices to analysing single amendments tabled by MEPs. It was argued that although legislative amendments are an intertextual genre embedded in a hierarchical and chronological institutional genre chain, they can be exploited by members of the discourse community to achieve strategic goals. The dissertation explored the institutional context in which legislative amendments are produced, the meta-genres that define their structure, content, and format, and the discourse community in which they are drafted. Finally, the dissertation included a linguistic case study which provided answers to two research questions on the languages legislative amendments are tabled in and on the terminological consistency of adopted texts at the end of the amending stage in the EP.

As with a majority of studies, the design of this study is subject to limitations. For one thing, it is important to bear in mind the possible bias in observational studies and in the responses obtained from interviews with experts. Furthermore, the statistical data on languages used for the purpose of drafting legislative amendments should be interpreted with caution. The analysed samples may have confirmed the dominant position of English as the most commonly preferred drafting language, but no clear generalisations can be made on the use of remaining EU languages. It also seems uncertain whether a larger sample of amendments—both legislative and non-legislative—would account for the variables that affect the number of amendments tabled in each of the official languages. Finally, the findings may be limited due to the small size of the sample analysed with the use of qualitative methods.

Despite its limitations, this study has produced some dependable conclusions, which may facilitate further studies within the field of institutional translation. First of all, the study has concluded that legislative amendments are embedded in an institutional genre chain which includes a variety of genres. Legislative amendments are tabled directly to the Commission's proposal, but they draw on an array of purely legal, semi-legal, and informative genres. These genres include any legislative acts mentioned in the body of the proposal, impact assessments,

contributions from Member States, materials that accompany debates and public hearings, briefings prepared by the EU institutions, draft reports and draft opinions, as well as genres submitted by interest groups. In case of amending acts or recast proposals, the original legislative act also belongs to the institutional genre chain. All these genres are the result of collaborative work and reflect concrete actions taken by policy-makers and stakeholders. Therefore, legislative amendments are **intertextual** and **conventionalised communicative events** that allow their authors to act within the institutional setting.

Secondly, this thesis has demonstrated that drafting amendments requires considerable **organisational knowledge**. This knowledge includes both a profound understanding of the limitations present at each of the stages of the decision-making process in the EP and familiarity with formal drafting requirements. The latter are set out in a number of **meta-genres** published mainly by the European Commission and the Council of the European Union as the institutions historically responsible for drafting and adopting EU legislation. Given the turnover of MEPs and their staff following each election, drafters in the EP seem to be at a disadvantage compared to their counterparts in the remaining institutions. Attempts at bridging the *knowledge gap* in the EP include, e.g., the development of new software (AT4AM), the introduction of the DST service for MEPs, or the publication of joint guidebooks and style guides. Drafters of amendments in the EP are also bound by deadlines announced in committees and in the plenary. These deadlines make it difficult to acquire the necessary background knowledge and make valuable contributions to the policy-making. This leaves drafters heavily reliant on **external expertise**. Since the introduction of the co-decision procedure, which gave the EP considerable power in shaping EU policy, stakeholders have gained detailed know-how which allows them to influence the outcome of legislative procedures. This organisational knowledge is reflected, for example, in their **proficiency in reproducing genres** used in the EP, such as amendments or voting lists.

Thirdly, the study has provided an insight into the process of **collaborative drafting** and **negotiating legislation** in the EP. The linguistic case study has shown that power struggles play a major role in law-making. **Power struggles** seem to encompass three dimensions: struggles within the EP, between the EP and Member States, and between the EP and the remaining EU institutions. On the one hand, the fact that the EP is only involved in the decision-making process once all major research and consultations have been concluded by the Commission, limits its scope of action. On the other hand, it also encourages drafters to exploit legislative amendments as a genre. For example, MEPs may table amendments to parts of a recast proposal that are not open for the EP's consideration or use legislative amendments to

obstruct parliamentary work. In both cases, MEPs appropriate the genre to manifest opposing political views. Political trade-offs largely account for **inconsistencies** in the texts adopted by parliamentary committees or the plenary. The texts that constitute the EP's negotiating mandate seem **unstable** and **recycled**, which may ultimately weaken the EP's bargaining position against the Council and the Commission.

Language is yet another factor that has an impact on the quality of legislation adopted by the EP. MEPs seem to choose the language of drafting amendments strategically depending on the issue at hand. **English** undoubtedly occupies a central role in EP politics due to its potential for rallying support among MEPs from various Member States. Moreover, English is also the language of high-profile negotiations (shadow meetings and trilogues) and the language which most attention is devoted to during legal-linguistic finalisation. The overwhelming dominance of English as a drafting language in the EP results from the fact that it is used mainly by **non-native speakers**. This has an impact on the quality of legislative amendments. In the worst-case scenario, legislative amendments may be incomprehensible, and therefore, ineffective.

All the above-mentioned factors influence the work of **translators**. Despite the unrivalled position of English, the EP is still the most multilingual of all EU institutions. As category A texts, legislative amendments require adherence to stringent quality criteria. However, there seem to be further challenges inherent in the genre that translators working for DG TRAD are faced with. For one thing, MEPs may table inadmissible amendments that only apply to a single language version. The quality of legislative amendments may also vary depending on the proficiency of drafters in the languages they chose for the purpose of drafting amendments. What is more, terminology used by MEPs may be inconsistent with the terminology used in the original act. The fact that translators are isolated from the decision-making process and cope with an increasing workload is to some extent compensated for by the use of customisable software. However, the application chain used in DG TRAD is used only by in-house translators.

As concerns **further study**, there is abundant room for further research into the role of translators and lawyer-linguists in the EU's decision-making process. The question that remains unanswered is to what extent legislative amendments are outsourced for translation and what resources translators working outside of the institution are granted access to. In addition, more studies on the context and reception of translations done at DG TRAD will need to be undertaken to bridge the knowledge gap between what we know about translating for the European Commission and for the European Parliament. Furthermore, very little is known on

the extent to which lawyer-linguists can modify the texts agreed on between the EU institutions for the sake of improving their quality and securing multilingual concordance. Although investigating further stages of the decision-making process may be limited because trilogues attended by lawyer-linguists are neither broadcast nor open to the public, further research into the agency of lawyer-linguists seems particularly promising given the various political objectives pursued by the three EU institutions responsible for adopting EU legislation.

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Summary

This dissertation sets out to conduct a genre analysis of amendments, which allow Members of the European Parliament to shape EU legislation within the ordinary legislative procedure. The theoretical part synthesises the peculiarities of translating EU legal texts and defines the role of amendments within the ordinary legislative procedure. The empirical part analyses the context amendments are produced in with the use of qualitative and quantitative methods. The analysis recognises that translation and legal-linguistic finalisation are essential for legislative work in the EU. The results of the analysis suggest that the quality of amendments, and in turn, the quality of legislative resolutions adopted by the European Parliament, is directly affected by the factors of their production.

Streszczenie

Celem niniejszej pracy jest przeprowadzenie analizy gatunkowej poprawek, które pozwalają posłom do Parlamentu Europejskiego wywierać realny wpływ na kształt prawa unijnego w ramach zwykłej procedury ustawodawczej. Część teoretyczna omawia kwestie związane z przekładem tekstów prawnych UE oraz określa, jakie miejsce poprawki zajmują w toku zwykłej procedury ustawodawczej. Część empiryczna analizuje kontekst produkcji poprawek z wykorzystaniem metod jakościowych i ilościowych. Analiza uwzględnia tłumaczenie i redagowanie prawno-językowe jako nieodzowne elementy prac nad prawodawstwem w UE. Wyniki analizy wskazują, że kontekst, w jakim powstają poprawki ma bezpośredni wpływ na ich jakość, a tym samym na jakość rezolucji ustawodawczych przyjmowanych przez Parlament Europejski.

Zusammenfassung

Das Ziel der vorliegenden Arbeit ist, eine Gattungsanalyse der Änderungsanträge durchzuführen, die es den Mitgliedern des Europäischen Parlaments ermöglichen, die im Rahmen des ordentlichen Gesetzgebungsverfahrens erlassenen EU-Rechtsvorschriften zu gestalten. Der theoretische Teil behandelt die Übersetzung von EU-Rechtstexten und definiert welche Rolle Änderungsanträge im ordentlichen Gesetzgebungsverfahren spielen. Im empirischen Teil wird der Kontext, in dem Änderungsanträge produziert werden, mithilfe von qualitativen und quantitativen Methoden analysiert. Es wird anerkannt, dass Übersetzung und sprachjuristische Überarbeitung ein unerlässlicher Bestandteil der Gesetzgebungsarbeit in der EU sind. Die Ergebnisse der Analyse zeigen, dass die Qualität der Änderungsanträge, und damit auch die Qualität der vom Europäischen Parlament angenommenen legislativen Entschließungen, direkt von den Faktoren ihrer Produktion betroffen werden.