



EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



This Project is funded
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Multilingualism and the cooperation of national jurists for an effective European Legal Language

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This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



International
Association of
Judges

promoting an independent judiciary worldwide

Bulgaria after independence: the models

- New legislations: persons, property, contract, successions

Italian model



- **Commercial Code**

Hungarian model



(German model



)

- **Code of Civil Procedure**

Russian model



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Comparative law terminology

Model

Original model; imposed model: imitated model

Circulation of models

Formant

Legislative formant; case law formant: doctrinal formant (scholarly opinion)

Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, in *The American Journal of Comparative Law*, Vol. 39, No. 1 (Winter, 1991), pp. 1-34.



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«Model»



Institutes
Concepts
Case law decisions
Doctrinal opinions
..entire legal systems



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«Model»

Original models:

«Trust», «Equity» (England)
«Rechtsgeschäft» (Germany)

Circulated models:

«Trust» in the USA, Canada (Trust/Fiducie)
«Rechtsgeschäft» in Italy (negoziio giuridico)



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Composition of the legal systems: **original** models



Legal system are not
composed only by
original (local)
models



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Composition of the legal systems: **circulated** models



Nowadays legal systems
are the outcome
of a huge
circulation of foreign
models too

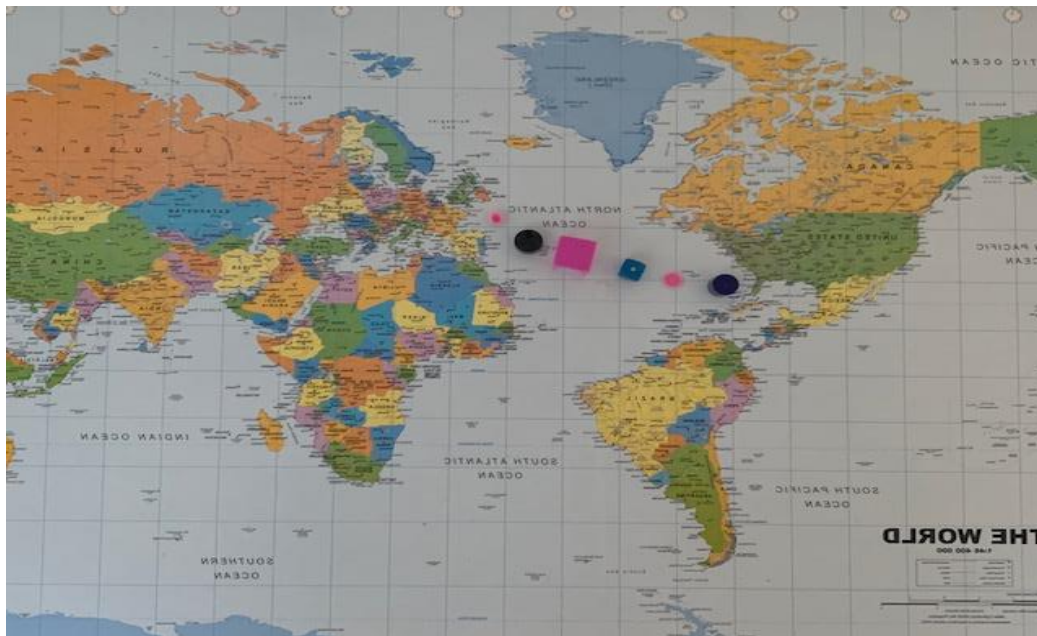


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Circulation of models



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Legal transplants



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A serious game

Player A and Player B are seated back to back to each other and have both in front of them a desk with a series of wooden pieces of different shapes and colors.

Player C is placed between players A and B.

None of the three Players has a chance to see what the other two are doing.

Player A creates a construction with the wooden pieces at his/her disposal.

While he/she builds it, for every time he/she moves a piece he communicates in English his/her move to C.

Player C transfers the same information in English to B, who does the same thing with his/her wooden pieces.

Player B must create an "identical" construction with his/her own pieces.

Once the constructions have been completed the Players compare the two constructions.



A serious game

Two series of wooden pieces



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A serious game

The two constructions are not identical



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A serious game

Some pieces had the same **SHAPE** but different **COLORS**



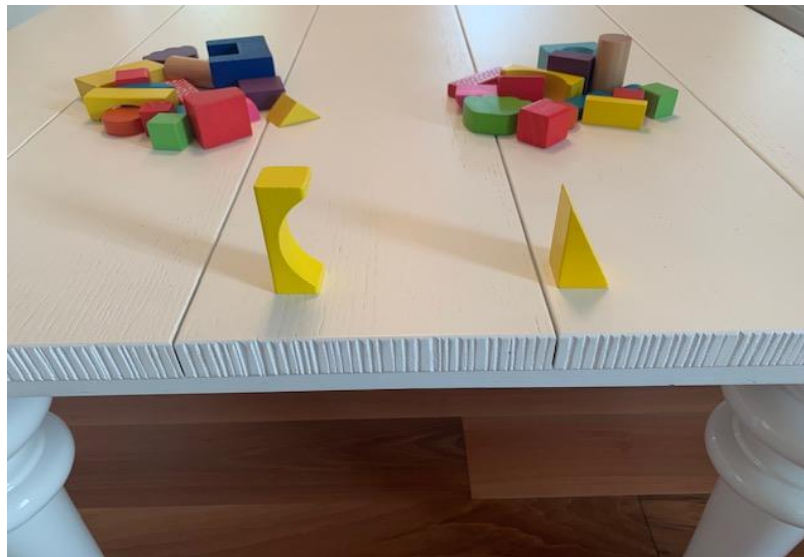
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A serious game

Some pieces had the same **COLOR** but different **SHAPES**



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A serious game

Some pieces had different **SHAPES** and **COLORS**



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Legal transplants

The **COLOR** represents the language in which a **legal concept (model)** is expressed.

The **SHAPE** represents how a **legal concept (model)** is composed.



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Example I

The language

Divorce (USA) and **Divorzio (Divorce)** (Italy, before the reform Law 2015, n. 55).

How the legal concept is composed

Divorce (USA) and **Marriage dissolution** (Italy, after the reform: Law 2015, n. 55).



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Example II Bulgaria

владение
държане

Ownership Act. Chapter seven. POSSESSION. Art. 68.

Владение

Possession is the exercise of *de facto power over a property* which the possessor holds, either personally or through another, *as his own*.

Държане

Holding means *exercising de facto power over a property* which the person *does not hold as his own*.



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Example II ITALY

Possesso

Detenzione

Possesso Possession is the exercise of *de facto power over a property* which the possessor holds, either personally or through another, *as his own (with animus domini)*

Detenzione Holding means *exercising de facto power over a property* which the person *does not hold as his own (without animus domini)*



Example II Switzerland

Possesso

Possesso Possession is the exercise of *de facto* power over a *property* which the possessor holds *in general* ...

...and so also including those situations (with no *animus domini*) which are usually refer to as “**detenzione**/holding”».



Example II Austria, Germany and Switzerland

AUSTRIA:

Besitz Possession: *de facto* power over a property with *animus domini*.

Innehabung Holding: *de facto* power over a property without *animus domini*.

GERMANY and SWITZERLAND:

Besitz Possession and Holding: *de facto* power over a property, also including those situations (with no *animus domini*) which are usually refer to as **holding**.



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The difficulties of transplants: the (legal) language

The language of the law and legal translation

The very first difficulty that a jurist encounters in legal translation is that **legal concepts cannot be translated literally** from one language to another one, by simply relying on the words of the ordinary languages.

Most of the time, **concepts (legal language)** and **words (natural language)** do not coincide.

Eg. “Contrat” (F), “Contratto” (I), “Simple contract” (GB)... .



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EULawInEN Project and the serious game: some brief observations

- Culture;
- legal education/previous knowledge;
- profession;
- reactions;
- collaboration;
- role.



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The European Union



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The European Union



The European Union has given
rise to a huge
phenomenon of
models circulation



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The European Union

Regulations (UE) no. 650/12 on cross-border successions, on matrimonial property regimes (1103/16) and on property consequences of registered partnerships (1104/16)

New models

E.g. “Succession”



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The Multilingualism

Article 342

Treaty on the Functioning of the European Union (TFEU)

(ex Article 290 TEC)

The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.



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Regulation N° 1, 15 April 1958

Article 1

The official languages and the working languages of the institutions of the Community shall be Dutch, French, German and Italian...

...Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish...



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Art. 4 Regulation 1/1958

Regulations and other documents of general application shall be drafted in all the official **languages**.



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Neologisms: ordinary (natural) language

Globalization

Globalisierung

Globalizzazione

globalización

globalização

Глобализация

globalizatsiya

mondialisation



Neologisms: legal (technical) language

владение

Possesso

Besitz

Possession

Bezit

Possession



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Neologisms and the EU legal language

Directives and Regulations introduce **new norms** and **new concepts** in the Member States and give rise to a new **legal language** of the **European Union**.



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The Court of Justice of the European Union

Criteria for interpretation and application of EU concepts by national jurists.

- The need for a uniform application of European Union law and the principle of equality require that the terms of a provision of European Union law must normally be given an independent and uniform interpretation throughout the European Union.
- Different language versions are all equally authentic.
- An interpretation of a provision of EU law involves a comparison of the different linguistic versions.

Case C-467/08 Padawan SL v Sociedad General de Autores y Editores de España (SGAE) ; case 283/81 - Srl CILFIT and Lanificio di Gavardo (SpA) v Ministry of Health and others.



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The national jurists

Jurists

notaries and judges in particular

can give an
important

CONTRIBUTION

in **interpreting, applying** but also

consolidating EU concepts

Neologisms



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The national jurists

Research

prof. Elena Ioriatti



The instrument “PAROLE”

«Principles and Rules Over Language in Europe»



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The national jurists

Collaboration

EULawInEN project as
a benchmark!



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PAROLE instrument: an exercise

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste

«possession»



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PAROLE instrument: an exercise

Art. 3 Definitions:

«waste holder» means the waste producer or the natural or legal person who is in **possession** of the waste.



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Possession

BG	UK	IT	DE	B	NL
↓	↓	↓	↓	↓	↓
владение	possession	Possesso	Besitz	Possession	Bezit

Possesso (ITA), владение (BG), possession (B)...material control on the good with animus domini.

Detenzione (ITA), държане (BG), detention (B)...material control on the good without animus domini.



«Possession» in Directive 2008/98/EC

Italy

Decision of the *Tribunale Amministrativo Regionale* (29/01/2018)

“The Italian notion of “**possesso**” and “animus possidendi” is not applicable as the cost of waste provided in the EU directive is not grounded on the intention of the holder/possessor to behave as an owner (with animus possidendi), but on the **duty of care** owed by him”.



«**Possession**» in Directive 2008/98/EC

Belgium

Décret 23/12/2011 relatif à la gestion durable de cycles de matériaux et de déchets (transposition de la Directive 2008/98/CE du Parlement européen et du Conseil du 19 novembre 2008).

“The possessor is also the person who has not the physical possession of the waste” (qui n'ont pas la **possession** physique des *déchets*).



«Possession» in Directive 2008/98/EC

Bulgaria

Art. 3, Definitions:

„притежател на отпадъци“ е причинителят на отпадъци или физическото или юридическото лице, което има фактическа власт върху отпадъците;

(«Waste holder» means the producer of the waste or the natural or legal person having actual **power** over the waste: unofficial translation)



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«Possession» in Directive 2008/98/EC

BG

IT

B



владение

Possesso

Possession

possession: material control without *animus domini*



National formants clarify and consolidate the EU concept

Neologism



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PAROLE: Principles and Rules Over Language in Europe

The application of the instrument PAROLE:

- Consolidated the meta-concept (neologism) into a final EU concept.
- Made evident that national jurists (formants) have an active and decisive role in favouring the uniform interpretation of EU law and concepts.
- Made evident Projects like EuLawInEnglish favour cooperation and consolidation of EU law terminology.

Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, in *The American Journal of Comparative Law*, Vol. 39, No. 1 (Winter, 1991), pp. 1-34.

PAROLE in EU law harmonization

The terms of directives and regulations of European Union law are European autonomous concepts and must be given an independent and uniform interpretation throughout the European Union.



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PAROLE in Private International EU Law

EU measures relating to judicial cooperation in civil matters having cross-border implications and so no direct harmonization.

EU define a general category (e.g. «Succession») and a connecting criteria. (e.g. «Habitual residence»)

Because of the need to interpret the general category PAROLE instrument might be useful too.



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PAROLE in practice

- Legal education and training of EU national jurists.
- A European Restatement on EU terminology.



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Training and cooperation!

You might remember these images at the beginning of our Project (Webinar):
cooperation is now a reality!



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