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**APPLYING FUNCTIONALISM
TO DOMAIN-SPECIFIC TRANSLATIONS
THE CASE OF LEGAL TEXTS**

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Abstract

The functionalist theory to translations is the result of the reorientation of mainstream translation practice towards the business environment. Globalization has led to the rise of multinational corporations which function efficiently only when communication and cultural barriers are aided. Translation scholars (Christiane Nord, Hans Vermeer, Katharina Reiss) as well as translation practitioners (Justa Holz-Mänttari) have identified the need to re-label the translator as an 'intercultural expert' who facilitates the exchange of information in view of an operative/ lucrative result.

As many of the above-mentioned corporations are domain-oriented, it follows that the texts for translation are often domain-specific. In this study, we intend to verify whether the functionalist theory has applicability for domain-specific translations and to what extent the functionalist model may be used. For this purpose, we will examine functionalist concepts (i.e. client collaboration, translation brief, the translation-oriented-ST-analysis, potential functional deviation etc.) by applying a domain-specific filter. After considerable exemplification –especially from the legal domain – we find that the functionalist model is usable and may be extremely helpful for the translator, if s/he knows how to apply the general framework differentially for domain-specific individualized tasks.

Introduction

The functionalist theory of translation developed as an imminent consequence of the Skopos theory (Hans Vermeer, 1996¹). The Skopos theory stipulates that the function the target text (TT) is intended to fulfill in the target culture (TC) is at the basis of the translation process. Vermeer considers that, on client demand, the function of the TT may differ from that of the source text, in which case the ST becomes a mere 'offer of information' for the translator (Vermeer and Reiss quoted in Nord 1997: 25), a starting point for the translation process. The ST, being deprived of its traditional role, no longer imposes as translation methodology the method of strict duplication. Thus, the traditional method of translation, predominantly linguistic in orientation, focusing on the transfer of minimal linguistic units (i.e. the word, the idiomatic/collocative phrase) is considerably challenged by this new trend that actually incorporates the former.

Note, however, that the functionalist approach to translation is wrongly understood as a system that excludes functional equivalence between the ST and the TT or one that considers the optimal transfer method that of adaptation of text production to target culture standards. Functionalism is better viewed as a general, global approach in translation, where the acceptability of the TT is determined by the client's brief, i.e. by the reactions the client intends to determine in the addressees of the communication.

According to text-genre and domain-specificity, the translator may opt for a macrotextual transfer approach focused on the source culture reality or on the reality of the target culture, or even a mixed approach with macrotextual and microtextual features being transferred either as source culture-oriented or target culture-oriented. The functionalist theory becomes, thus, a translation instrument enabling the translator to act

freely within the decision-making process and to choose those translation solutions that best fit the client's demands. Needless to say, this freedom gained is conditioned only by the translator's competence and by the level of experience s/he possesses.

1. Functionalism – An Overview

Translation theory proper starts out in the 1960s. The first attempts to systemize translation practice into theory are deeply rooted in language-based approaches viewing translation as a mere code-switching process based on linguistic transposition from the source language into the target language (Catford 1965: 20). The concept frequently employed to render the translation reality is the 'equivalence' of semantic units. However, the linguistic approach 'denounced' itself as one that could not properly account for cultural and pragmatic issues in translation if it maintained the idea of unit equivalence. The equivalences established as part of lists intended to facilitate the work of the translator proved cumbersome to use. Devoid of contexts, the equivalences seemed useful, however, in different textual contexts they could prove unusable, even confusing (Vinay and Darbelnet in Venuti 2000: 93). The conclusion drawn was that translation is all about language in context, equivalences established between decontextualized elements would be – most often than not – misleading. Consequently, translation theory could not use – except for general guiding principles – the methods linguistics had developed for language analysis. Translation theory had to develop in a direction that could comfortably accommodate translation practice.

A step in this direction was made within the textlinguistic approach by such scholars as A. Neubert and G. Shreve (1992), K. Reiss (2000a,b) etc. This theoretical approach is based on the transfer of the unit 'text'. The full-size text – complying with textuality features – becomes the subject of the transfer. Pre-translational analysis will focus on the following factors: the function of the text, the profile of the recipients, the situationality of reception, conventional text-genre² production characteristics etc. Due consideration of these factors will most certainly result in the production of a target text acceptable for reception conditions and one to produce the envisaged reaction in the targeted audience.

Justly expressing appreciation for the innovative value of this theoretical approach that advocates target-culture orientation as a potential method of translation, we still have to observe an insufficient consideration for current translation market trends. Starting with the 1980s and continuing into the 1990 (and exploding today) the translation market has suffered a shift in offer and demand from predominantly-literary translations to translations performed for business purposes. International businesses required experts in SL-TL communication and translators took to specializing in different domains thus extending their limited language profile³. In this new context, we can safely say that semantic equivalence and contextual duplication of the ST by means of a linguistic transposition can no longer function to fulfill the translation demands of the multinational business environment.

Increasingly so, translation tasks are meant to have a long-term objective by helping to initiate or consolidate business relations by the exchange of information they facilitate. The client has in mind a clear reception context when s/he commissions the cross-cultural communication. The recipients are known to the client and so are the client's business needs. The target text production is guided by the communicative and/or lucrative intentions of the client. If the reception of the text is to succeed, the translator and the client must work together. A (business-wise) efficient TT will result from clear and precise instructions, on the part of the client, and a competent translational approach, on the part of the translator. This shift, characteristic of day-to-day translation practice, alerted the

attention of translation scholars, who reoriented translation theory to accommodate this particular reality. We find the business-oriented approach to translation first depicted in the Skopos theory and later developed within the functionalist framework.

In developing the Skopos theory for translation, Hans Vermeer (1996) draws on action theory. Stipulating that any action is intentional, Vermeer rethinks translation as a purposeful action in itself, breaking away from the intention that underlies the action of ST production. Consequently, according to Vermeer, TT production being an individual act, the TT will have a function (not necessarily, but potentially) different from that of the ST, if this is in the benefit of the client. The translation strategy and the TT production criteria will be determined by the translator after s/he analyzes the ST and TT features (as provided in the translation brief) with a view to identifying existing differences. The client – with specific demands for intercultural communication – becomes the central figure in the translation process. The strategy generally accepted by translation professionals (Holz-Mänttari) and translation trainers (Nord, Reiss, Vermeer) alike is client-oriented. The translator will decide on strategies of textual transfer according to the information s/he receives. The recommended method for establishing transfer solutions will consider the use of parallel, comparative and background texts for contrastive textual analysis (Nord 1991: 155), and it will also consider identification of textual conventionality and anticipation of the potential receptive reaction on the basis of model target texts.

To exemplify the extreme poles of functional variation, we can mention the advertising domain which is illustrative of total adaptation to target cultural realities as opposed to the literary domain which is the example for fidelity to the ST's macrotextual and microtextual elements perceived as the unalterable expression of authorial intent. The transfer of advertisements or advertising brochures often involves total adaptation (referred to as customization, localization), i.e. a full rewriting of the ST by formal modifications (additions, structural reorganizing, examples etc.), modifications of register (forms of address etc.), content modifications (explanations, reductions etc.). All these modifications are made by giving attentive consideration to the profile and to the anticipated textual experience of the recipient. At the opposite end, we have literary texts where the translator is granted little liberty to work with the text; s/he is expected to faithfully reproduce the author's message, by carefully selecting words and constructions with (ideally) equivalent talent to that of the original author.

The functionalist theory accommodates both approaches, i.e. adaptation to TC realities and duplication of the ST, as long as the translator evaluates them as adequate for the translation skopos. Both the subtle intervention in the literary text (by opting for a synonymous construction rather than an identical one) and the total rewriting (even in the absence of a ST) are viewed as valid translation strategies. However, not all translation tasks are subject to extreme treatment; some only require minimal adaptation at a microtextual level (lexical, syntactic) to ensure appropriate textual reception. The translation is efficient as long as the client's (feasible) brief is fulfilled.

The functionalist approach to translations seems to applaud and justify any translation strategy if this is within the realm of competent text production. As a natural consequence, we ask ourselves if this framework is valid for domain-specific translations, as well. In what follows, we intend to verify if major functionalist concepts/strategies can be applied to specialized translations and to what extent they are relevant for such strict domains like the law.

2. Functionalism in Domain-specific Translations

Generally speaking, the translation of specialized texts embraces the linguistic method of translation, adopting the strategy of ST macrotextual and microtextual duplication. The attention of the translator falls on the problematic transfer of terminological elements, with little concern for macrotextual enhancements. This is, of course, a commonsensical attitude as there are few specialized translation situations where the brief results in substantial changes of ST-TT extratextual and intratextual features. Most often the client's request is of duplication and s/he will be satisfied with a correct linguistic transfer. The client rarely realizes that the text can be subject to additional transfer strategies that may enhance reception.

For the analysis of domain-specific texts we may anticipate conventional extratextual and intratextual elements that are to be associated with specialized text production. Thus, a general inquiry into domain-specific textual conventionality will result in the following assertions: *The function*⁴ of domain specific texts (e.g. conference presentations, articles in specialized journals, medical leaflets, graduation diplomas etc.) is usually to be identified as an informative function, sometimes also involving an operative-persuasive intent. Most often during the transfer, this initial informative function is maintained by the translation brief. *The author* of specialized texts is most frequently familiarized with the domain, if not a specialist in the domain himself. The author is well-aware of text-genre conventions applicable in specialized text production and will employ them accurately to address the targeted public. *The public* may well be a specialized audience or a lay-audience. The author will consider the knowledge and/or experience of the addressees in the given domain the text pertains to and s/he will use adequate structures, appropriate vocabulary for the text to be compatible on reception with the level of comprehension of the addressees. In a domain-specific translation situation, the addressees' profile is generally duplicated in the target culture situationality. If the text addresses a specialized audience then it follows that *the subject-matter* is (partially, if not fully) familiar, *the terminology* is well-known and easily decodable (with the exception of those texts presenting new developments of the domain reality, such as discoveries or inventions⁵), standard text-genre production conventions are frequently international (with the exception of partially-internationalized domains⁶). The text addressing a lay-public will contain more explanations, exemplifications, definitions etc. In what regards textual *status*⁷ (Greere 2003: 190-191), domain-specific texts may be independent, i.e. self-sustaining content-wise or dependent, i.e. the text is part of a larger body of texts or it contains reference to other texts. The identification of status will be relevant for the initial text production. If the author knows the text will be received as part of a corpus, s/he may then use this information to encode presuppositions decodable with use of the larger textual environment; however, if the text is independent, the author will provide in-text prompts for decoding purposes. During the translation process, if a change in status occurs, this will have implications on the production of the TT. The most frequent change of status that may be requested in translation is from dependant to independent (i.e. the ST is taken out of its larger textual context and will be transferred as a unique element, received in the TC as an independent unit). When this happens the translator has to connect the ST to its textual framework and s/he will adequately provide for referencing, pre-defined vocabulary, chapter links etc. in the TT. Even when this is the case, these translation strategies are usually restricted to the word-level, rarely involving macrotextual restructuring, although sometimes macrotextual restructuring would prove to be appropriate and could ensure a more communicative reception.

The client's expectancy of the TT production strategy is duplication. The situationality of the TT does not affect the domain-content and the profile of the ST recipients is generally the same to that of TT recipients. Given the similarity between ST and potential TT features – as observed from the domain-related reality evaluation – it seems that such functional elements (e.g. an imminent change in recipient profile, the negotiation of the translation brief with the client on aspects of feasibility and the design of transfer methodology on adaptation) are irrelevant for the translation process of specialized texts and, consequently, the translator need not bother to use the functionalist framework with transfer strategies that derive from the theory presented.

In what follows, we intend to prove the contrary. Functionalist principles are not just the alternative that many translators prefer to ignore – or of which they are unaware – but these can be successfully applied to specialized translations. Translation being a communicative act, the focus of the translator when designing the TT production should be directed towards enhanced reception of the ST. (For example, in the case of status change from dependent (ST) to independent (TT) we find indispensable a transfer strategy that adds in the TT such elements that are part of the larger textual framework of the ST and without which comprehension would be difficult. (These additions can be made within the text or as notes to the text.) Such strategies will be applied when the translator is aware of the theory that underlies the practice and when s/he is consciously willing to put in the time and the effort necessary to accomplish an efficient, well-researched translation.

3. Functionalism in legal translation

In order to illustrate how the functionalist theory may be applied to domain-specific translations we have decided to use the legal domain as our point of discussion. The choice for this domain is not random; it actually derives from the complexity that legal translation exhibits. This specialized domain is comparable with other domains in terms of translation issues that they generate, but it also reveals elements of contrast. Regarding the potential of extratextual and intratextual elements to change in the translation, we can state that changes are limited and quite rare: *the author* is always a domain-specialist (a legislator, a lawyer, a Notary public etc.), *the recipients* are either specialists or are assisted by specialists who offer legal consultancy (lawyers, Notaries public, judges, or parties to a contract, parties to a legal dispute etc. who generally seek consultancy/representation with specialized legal entities), *the function* is informative-operative (Sarcevici 1997: 11), i.e. texts with legal content and legal value trigger a reaction in the recipients on the basis of information obtained (laws, contracts, sentences etc.), *the status* is independent-dependant: legal text-genres are the result of – and usually contain reference to – legislative texts, *the subject-matter* is juridical, *the vocabulary* is legal jargon, *the sentence structure* is specific to legalese. However, we define this domain as a partially-internationalized domain and one that raises problems of compatibilizing SC-TC legal realities, especially, the compatibilization of text-production conventions specific to different legal text-genres.

Legal translations are not only dependant on the competent terminological transfer of the translator. The content is not merely meant for information purposes, for communication, but it also bears a well-defined legal purpose. If, during the translation of an advertisement, the translator may take the liberty to rethink textual structures for the new target culture context, during the translation of legal texts, the translator is often tempted to opt for the method of precise content and form duplication applying strictly the necessary linguistic code-switching procedure. Duplication, as a method, apparently excludes potential legal mistakes, is quite convenient from the point of view of research, is often in tune with cultural expectations regarding the act of translation, and is supported by

the anticipated similarity between ST extratextual elements and those presented in the translation brief. These arguments alone represent sufficient reason why some should think that duplication is the optimal method of transfer, without having to test for functional relevance.

Our intent is to verify this argumentation by giving answers to the following questions:

- Is the method of duplication a transfer procedure imposed or merely preferred for legal translations?
- Can reception be negatively affected by the method of duplication used for the translation of legal texts?
- What are the limits of textual adaptation for legal text-genres?

Before we proceed with the exemplification, we have to note that the examples and arguments in favor of functionalism are rooted in a comparison of Romanian and British legal text-genres for translation⁸ and the solutions proposed are valid for this culture-pair; however, the procedure of analysis has universal applicability and can be easily extended to any culture-pairs. For this reason, we consider that the findings we have reached have a broad application and can be used world-wide by translation professionals. The conclusions drawn break away from the Romanian-English translation situation, to form irrefutable generalizations.

3.1. Duplication: the imposed or preferred method of legal translations?

Current legal translation practice in Romania is bent on ST duplication, i.e. the linguistic approach of transferring word-for-word is employed without due consideration of potential structural changes, be they even minimal, that might facilitate the act of reception in the TC.

Of course, there are reasons that seem to undoubtedly sustain this approach or even to impose it on the authorized translator⁹:

(1) Translation expectancy and textual acceptability of the client clearly indicate 'translation by duplication' as the transfer method. The Romanian client briefs for, and afterwards, expects duplication of the ST as the method of TT production. This is the method traditionally accepted by the Romanian culture in what regards the translation procedure. By convention, in Romania, the act of translation is understood as an act of linguistic transfer by means of content and form duplication. In this case, the translator who often opts for duplication as the translation method is satisfying the client's expectations without having to resort to the time-consuming and sometimes cumbersome act of negotiation. When duplication is the translator's first choice, the client seems to be an ally. In short, the translator's preference is the client's request.

(2) In the Romanian system, most legal texts submitted for translation will also undergo a legalization¹⁰ procedure afterwards, i.e. a notarization. The affixation of the Notary public's seal¹¹ is an additional procedure to the standard certification applied by the translator. The client frequently views the notarization as a procedure of re-validation of the translation, namely a supra-certification; so, it is advisable for the translator to have the translations s/he produces legalized. The Romanian Notary Public Law 36/1995 does not indicate that the Notary public has to verify whether the translator has acted according to Romanian translation legislation in force. S/he will only affix the legalization to certify that

the signature on the translation is indeed the translator's, hence confirming the capacity in which the signatory has acted (i.e. a Romanian state-authorized translator). However, in practice, the translator is often exposed to a ST-TT fidelity check performed by the Notary public or by an assistant. Lack of sufficient language competence will oblige the Notary public to limit the evaluation of the translation to such formal elements that are visible and consequently comparable between the two texts. The translator is left with the impression that if the Notary public does not find the TT to be a mirror-image of the ST, the latter will refuse to affix the legalization. The grounds for such a refusal would be textual modification, misconsideration of ST features or incompliance with ST features, even though the legal content of the ST has remained intact. It is our strong belief that legal validity cannot be tested form-wise, but rather content-related and, if there is no language competence with which to test the content, such grounds are unfounded.

Considering this dependency of the translator on the Notary public, the translator may just as well justify the duplicative transfer method as a notarial requirement, which s/he has to abide by if s/he does not want to risk refusal of the legalization. Note must be made of the fact that refusal on these grounds is also legally unfounded¹². The Law stipulates that a Notary public may refuse legalization but only if the content of the document is immoral or illegal, or if inaccuracies of transfer are spotted (regarding numbers, names etc.), if the notarial formal features¹³ have not been added to the TT or if the certification formulation is defective (see appendix). However, to the translator, legalization still represents a good excuse for the choice of the duplication method.

(3) Any text marked 'translation' will be received with a higher degree of tolerance. As the translation stems from a text that is part of a different culture, the target recipient will expect elements contrasting with the target culture and s/he will readily accept them, even if such elements, when encountered in TC original texts, would be labeled unconventional or incorrect, from the point of view of domain-specific text production and might result in the recipient's rejection of the text. This means to say that the translator is at an advantage (in comparison to a TC author) as s/he is protected from any complaints by the general lenient attitude that the recipient has concerning translated texts. In these circumstances, if the duplication method results in a dysfunctional TT, the recipient will still attempt to find some elements to cling to just to save communication. The recipient's attitude is a collaborative one.

(4) Translations of documents can produce legal effects in court. When the parties to a legal dispute are citizens of different countries and speak different languages, their legal dispute is to be solved by courts where only one language is known; generally it is the language the authentic document was drafted in. Any imperfections will result in legal consequences that may be imputed on the translator. Similarly, if the translation stands basis for the closing of a business, a deficient, insufficiently-researched translation can be objected to and may itself be the subject of dispute.

However, we should keep in mind the fact that the functionalist approach appeared to theoretically accommodate such translation situations that serve a given purpose (including a business purpose), be that of initiation or consolidation of a communicative and/or business relationship. It follows that any contract or other legal document will be translated for business purposes when the information contained in the text assists the client in obtaining a much-desired result.

Functionalism attributes importance to the analysis of transfer procedures in view of an optimum reception. Thus, according to the functionalist approach, it is unacceptable for a translator to treat all texts pertaining to a given domain identically, without subscribing

the transfer method through a validation procedure, especially when the motives the translator invokes prove to be unfounded.

Let us, then, re-view the motives pinpointed above and counter-argue their validity from a functional point of view. Our replies to the above motives are as follows:

(1) As a translation professional, the translator must know that the client can and must be educated to accept the can's and cannot's of the profession. The translator should not expect adequate transfer solutions from the client. The client approaches the translator for intercultural consultancy; s/he seeks to receive a professional service on intercultural/international communication matters. This includes consultancy on transfer issues, text production feasibility and the consequences that different communicational alternatives might have. The translator is expected to make argued recommendations by consideration of the client's communicative and/or business purpose. The client, after having been informed as to the appropriateness of different procedures, will decide on a translation brief that best suits his/her needs. If the client is not offered any alternatives, the method of duplication will seem the only reasonable choice, and one s/he is familiarized with from translation tradition. However, this is not sufficient reason to say that translation through duplication represents the client's unalterable demand and that the translator must – without any possibility of amendment – employ this procedure.

When there is potential for improvement, procedures must be negotiated with the client. However, identifying viable transfer alternatives (through extensive research), presenting, justifying and negotiating them with the client presuppose the admittance of additional effort and time-consumption. Both the translator and the client might not be keen on assuming or accepting the additional involvement – not necessarily viewed in terms of financial implications. Sometimes, the client will not negotiate. Still, the translator must try, if only to ensure that a deficient reception is no longer his/her full responsibility. If the translator recommends against the method insisted on by the client, partial task responsibility is to be attributed to the client (Greene 2003: 155).

(2) The legalization does not, in fact, represent a constraint for the translator. The translator is not advised to avoid the legalization procedure just so that s/he may use a less duplicative approach; the solution resides in establishing a collaborative relationship with the Notary public. To fundament this opinion, we will further analyze the role of legalization for end-reception, the editing instructions valid for legalization and legislative stipulations on the role of the Notary public.

It is true that in many countries translations are certified by the translator alone without an ulterior legalization procedure. This being the case, the translator may think that on reception target culture recipients in a foreign country might expect the certification formula to be the only legal marker affixed to a translation from Romanian into a foreign language. This is not sufficient justification to renounce the legalization procedure. Romanian legislation indicates that translations from/into a foreign language must have the legalization affixed. Being a legal requirement, the client and possibly the foreign recipient – if s/he is somewhat familiar with the Romanian reality – will expect the legalization to be part of the translation and will view its existence as an additional indicator of legality. Therefore, with the affixation of the legalization the validity of the translation increases, i.e. the translation grows in credibility. The status of the translator being confirmed by a Notary public makes the translator seem more of a professional. So, to skip this stage in the translation and submit the translation to the client directly, without having the Notary public's sign of approval can have a negative impact on end-reception.

The translation of legal texts is regulated by Romanian legislation. Though, the specifications are restricted in number, i.e. they do not cover the full extent of problems arising from legal transfers, the translator must abide by all the transfer instructions and edit the TT accordingly with such additional elements as provided by law, or else face legal consequences, i.e. expect the Notary public to reject the legalization of the translation. According to the Romanian Notary Public Law 36/1995 (art.101, art. 102, annex 1) the translation must start with the structure 'Translation from ...' and must end with the certification of a public-translator authorized by the Romanian Ministry of Justice and the Notary public's legalization authenticating the signature of the translator¹⁴ (find illustration in the appendix). Additionally, non-verbal elements – contributing to the authenticity of the ST – such as photographs, coat of arms, logos, seals, stamps and signatures must be verbalized in the TT by indicating the exact position they occupy in the original. The elements referred to are an indicator of the fact that the source document represents an original, authentic document, i.e. signed and sealed. These instructions that must be followed prior to the legalization do not intervene in any way with a functional reception; on the contrary, they are a sign of professionalism. For this reason, it is advisable for the translator to utilize them in the transfer whenever s/he is preparing a TT¹⁵ whether in view of legalization or not.

In order to indicate translation procedures to be applied by the translator, we may quote legislation in force: 'The translator shall accurately provide the meaning of the document being translated. Grammatical structures and means of expression specific to the source language shall be replaced with structures and expressions characteristic of the target language' (Romanian Notary Public Law 36/1995, Annex 1 (9) –my translation). The Notary public's obligations vis-à-vis the translation process are summed up in the following stipulation: 'the Notary public must check the content of the translated document' to see whether 'it contravenes the laws or the norms of morality', in which case s/he is forced to refuse to authenticate the signature of the translator by affixing a legalization. (Romanian Notary Public Law 36/1995, Annex 1(19) –my translation). Two aspects must be drawn attention to: the law stipulates the transfer of 'meaning', not microtextual and macrotextual duplication, and it also stipulates the fact that the Notary public's obligation to check the text does not involve the evaluation of transfer strategies or the assertion of transfer accurateness; it refers to the legal content of the text being translated.

As a conclusion, we can say that formal duplication is not a strict requirement; it probably stems from the expectancy pool of the Notary public regarding translational acts. The role of the Notary public is to certify that the signatory is indeed an authorized translator, to collaborate with the translator when the latter notes some juridical discrepancies in the ST, and to offer legal guidance to the translator so that s/he might produce an adequate TT – not just legally-adequate, but also functional from a business perspective.

In a way similar to that in which the translator guides the client towards a feasible task, s/he should also guide the Notary public into a negotiation on transfer strategies that subscribe to the translation skopos. Any structural adaptations/amendments that enhance final reception – as long as they do not affect the legal value and the legal content of the document – should be considered feasible and should be presented to the Notary public with due argumentation for approval. The translator's relationship with the Notary public should be a collaborative one, with the translator being the specialist in interlingual, intercultural text production and reception and the Notary public being the specialist in legal matters. The fact that the translator and the Notary public are made – by law – to work together should be considered beneficial by the translator and the Notary public alike. The translator gains a legal collaborator, who can offer legal consultancy for translation

purposes and the Notary public gains a language expert enabling him to have foreign clients, as well as national clients.

(3) The fact that the recipient is tolerant with a translation does not absolve the translator from the responsibility to produce a well-researched translation. A professional translator will not rely on the indulgence of the recipient, but s/he should rely on competences s/he holds. These competences should be applied so as to solve the translation commission in the most adequate way possible.

(4) Functionally speaking, irrespective of the legal value of the translation and its relation to the ST, the translator is responsible for the production of an efficient translation for the context of reception. Translation is a means of enhancing communication among individuals speaking different languages but who have a common informational, business-related goal. The translation will thus have a legal impact, and it will also impact on communication and business. The translator will have to find the appropriate balance between legal considerations and business considerations when s/he designs the transfer strategy.

The method of duplication is not compulsory and it is not imposed by any legal constraints. Still, this method is preferred even in those situations where other more adaptational strategies would determine the expected reception reaction. The question is why?

The method of duplication (word-for-word translation), seemingly, implies minimal research (restricted to the use of the bilingual dictionary), seemingly, does not require advanced domain knowledge (it is wrongly believed that the translator can transfer domain-specific texts without having an in-depth understanding of the subject-matter being depicted in the ST) and, seemingly, reduces the responsibility of the translator regarding TT reception (the translator can blame dysfunctionality on the constraints of the duplicative method). In opposition, adaptation¹⁶ requires thorough and broad research that is highly time-consuming (the translator must find parallel, comparative and background research resources, which s/he then has to validate in terms of reliability); it requires advanced domain knowledge (the translator must be familiarized with the reality of the domain in order to recommend an appropriate transfer in terms of its legality and communicativeness), and the responsibility is increased (the translator will assume full responsibility regarding the end effect for the solutions s/he recommends, even if they have been approved of by the client and the Notary public. Nonetheless, the translator should not take onto himself the responsibility of a defective reception when the client or the Notary public have disregarded the recommendation and insisted on unadvisable solutions. (Greere 2003: 153).

These elements of contrast between the two approaches clearly indicate the translator's degree of professionalism or rather lack thereof. A routine/automatic and invariable choice for duplication – even in such contexts where the arguments for duplication fail to be founded – will only indicate more clearly a lack in translation competence raising serious doubts as to the translator's determination to develop professionally and his/her implication in given tasks.

3.2. Can reception be negatively affected by the method of duplication used for the translation of legal texts?

Previously, we have argued that duplication is not imposed by legislation; now, we intend to investigate whether the duplicative method of translation requires validation by

the translator. In other words, we want to see whether a routine choice for duplication can result in negative receptive reactions, i.e. unwanted consequences.

In Romania, a public service translator is authorized to translate from and into a foreign language¹⁷; this means that the recipients of the TT are not always Romanian, but they may just as well be foreigners who collaborate with Romanian companies or Romanian institutions. Translation into the foreign language will raise a lot of problems especially due to the fact that in many (European or international) cultures legal text-genres are well-regulated, they exhibit highly conventionalized text production features, and, as a consequence the expectations of the recipients are very precise; in particular, we refer here to the British legal system and English legalese. In England, the common law system based on the precedence principle and grammatical textual interpretation in court (Greere and Aldea 2001: 13), does not really leave room for the drafter's original touch to the text. Legal drafting is the result of legal text production tested throughout hundreds of years of court practice; legal text-genres are standardized, their informational content, structural content and form being regulated under English law. (Greere and Aldea 2001: 53-54) Such a closed textual system determined standard recipients to express reluctance against anything that is substandard, or anything that represents a difference to the conventionally accepted standards. Their textual expectancies are rooted in their specific legal practice¹⁸ and textual acceptability is a consequence of that. Romanian recipients, on the other hand, are quite open to different legal practices. The Romanian legal context does not have standardized models of text production. Some laws will regulate the (compulsory) content of given text-genres, but they do not offer full-size texts, nor do they indicate the order of information or any (strict) formal requirements. Many Romanian legal text-genres, especially contracts, have their origin in French models or are adopted or adapted versions of other European models¹⁹.

English legal texts being construed on grammatical interpretation, the drafting will leave nothing to chance. Extensive detailing and (seemingly) lexical redundancy are much praised features of English legal text production. Romanian drafting considers the contextual method of interpretation deriving from continental law practices and will be scarce in detail. As a result of Romanian legal text production being predominantly affiliated to the Roman continental system, translation from Romanian into English for British recipients will raise some problems, if the translator is not well-informed as to the expectancies and acceptability of the recipients. The British will expect a lot of detail and fixed structures that the Romanian text will simply not offer.

➤ **Example**

In order to argument our point of view we intent to illustrate functionalism on a legal sub-domain, namely *Business Law*, by analyzing the translation process to be undertaken for the translation into English of the Romanian company formation document called 'Act constitutiv' (see appendix 1).

Romanian company formation is regulated by the Romanian Law no. 31/1990. This law specifically indicates how a company or a partnership can be set up and it gives guidelines of document drafting, in terms of compulsory content and optional content. There are no indicators about the order of information or the layout of the document or about the specific legalese formulations that might be used. There are also no full size model contracts to be found in Schedules. Consequently, Romanian lawyers drafting company formation documents have each developed a specific model reusable with each such document they draft. This means that there is no standardized version in Romanian legal practice but that each drafter is at liberty to choose among existing layout, formatting,

syntactical, collocative variables as long as the compulsory content is accounted for. As a result, the order of information represents the drafter's choice in correlation with legal textual models already starting to take shape. It must be mentioned, though, that the association clause is invariably at the beginning.

Extensive research, prior to the translation process as such (including parallel and background texts (Marsh and Soulsby 1998: 86-88, Slorach and Ellis 1998: 39-58)), will indicate that in England, the situation differs considerably in terms of textual standardization and, hence, recipient expectations and acceptability of company texts are very strict. English legal procedure indicates the fact that in England two documents must be drafted to ensure the formation of a company, i.e. the 'Memorandum of Association' and the 'Articles of Association', each with very well regulated content and form characteristics provided as models in the tables to the English Company Act 1985/1989 (see appendix 2.1, 2.2). Each of these two documents has a particular functionality and content. The 'Memorandum of Association' defines the company and what it can do. It must contain five numbered clauses with specific formulations (company's name, registered office, object's clause, liability clause, capital clause) plus the association clause followed by a table with the details of the subscribers.

Other two clauses may sometimes be necessary within the memorandum. If the company is to be a public limited company, then a clause in its memorandum must expressly state so. If a company does not wish to have its own articles of association, then it must expressly provide in its memorandum that it is adopting Table A²⁰.

[The articles of association] regulate the internal management, and the rights and duties of shareholders vis-à-vis the company and each other.

(Marsh and Soulsby 1998: 87-88)

Considering, these two very different situations, the translation by duplication of the Romanian 'Act constitutiv' will determine the following reception problems/inconveniences:

(1) What in England is received as two distinct documents will be found in the translated text under a single title.

(2) The expected order of clauses regulated by English Acts will not be found in the translated text.

(3) Clause number references usable in the English context are lost as the Romanian text does not maintain either the numbers or the order.

(4) As regards legal phraseology, unless the translator works with parallel texts, s/he will probably find less satisfactory transfer solutions for syntactic and collocational units.

(5) In an attempt to find the name of the subscribers an English recipient will automatically go to the end of the document.

(6) Terminological presuppositions²¹ are part of this text-genre. Transferred by duplication such presuppositions will not offer the TC addressees comprehensive information for decoding purposes.

(7) The English recipient is used to finding given formatting devices indicative of relexicalized content (e.g. initial capitalization). These are not conventional for the ST and will not be found in the TT if the translator opts for duplication.

Considering the nature of the discrepancy between the two realities, this may affect – to a larger or smaller extent – the receptive reaction of the TT recipients and implicitly the intent of the client, i.e. the client's business purpose. As the text is marked a translation, the reception attitude is one of tolerance, hence acceptance, but still some reluctance may be felt. The English recipient will have some difficulties in working with the translation, if we consider the English standard s/he is accustomed to. This state of confusion, discontent, maybe, may put to the test the business relationship; in which case, the collaboration of the English party with the Romanian client might be (somewhat) compromised. If the client has in view (strictly) an informative purpose, the duplicative method may serve this purpose; however, if the purpose is to determine a British company to invest in a Romanian one, then it follows that the TT will have to be made easily accessible to enhance the communication between the parties: the less the reception struggle, the better for the overall business situation. If reception is rendered difficult by the major differences between the two legal systems, this may affect the business purpose. For this reason, the translator should carefully consider the recipient's textual expectancy horizon when a choice is made for appropriate transfer strategies.

3.3. What are the limits of textual adaptation for legal text-genres?

As we have seen that duplication can have a negative impact on textual reception, we now intent to establish what alternatives are available and on what grounds should their appropriateness be decided. The question that immediately arises is: To what degree and at what textual level can the translator intervene in the translation process by means of an adaptational method?

We must not forget that legal texts result from legislative regulations in force. The translator is not an expert in the law, consequently s/he cannot decide on any changes that might affect the legal content of the document, even if the client requests this. Any potential changes that s/he cannot evaluate from a juridical point of view must be brought to the attention of the Notary public who the translator collaborates with. On the other hand, if the translator is well-documented as to the TC textual production conventions for given legal text-genres, that means to say s/he can establish the potential reaction of the recipients. A text very different from the one expected, in terms of TC conventionality, even if it is marked 'translation' may distract the attention of the recipient from the context of his/her business and may put the client in difficulty. Therefore, within acceptable legal boundaries, the translator may find solutions to reduce a potential confusing reaction and to enhance reception.

When the translator considers that the procedure of adaptation can be more efficient than the duplicative method for the transfer of given macrotextual or microtextual features, s/he must ensure that some precautions have been taken prior to application of the procedure. Firstly, any adaptation that the translator intends to employ must have a sound justification. One cannot resort to adaptations just for the sake of creativity. Even such unnoticeable modifications (pertaining to language transfer, terminology or phraseology) must be the result of an extensive domain analysis. Secondly, the motive established must be made known to the parties involved, especially in the case of macrotextual adaptations where the change is noticeable even to an untrained eye by a simple formal comparison between the ST and the TT. The translator must make sure that the Notary public and the client are aware of the effect that the recommended modification

produces, otherwise s/he may run the risk of a refusal of the legalization procedure (by the Notary public) or the refusal of the end product (by the client).

With respect to legalization, we must consider the fact that the translation without the legalization will lose in prescribed validity. For someone who is familiarized with Romanian procedures, the lack of the legalization formula will raise serious doubts; needless to say, that an English native will not even observe the lack of the legalization thereof as in England standard procedure involves the affixation of the certification by the translator. This should not represent a reason for the translator to renounce legalization only to ensure that s/he may apply an adaptation strategy free of potential comments from the Notary public, especially if the prospective modifications are not fully justified from a legal and a communicative point of view. Additionally, one must not forget or ignore the fact that the client, too, is a recipient of the TT and one who subscribes to the approach that translation is an act of duplication. Any (visible) change will attract his/her suspicion; therefore the translator should first gain the approval of the Notary public for the modifications that s/he proposes and subsequently s/he should present an argumentation to the client. A change, addition or deletion in the TT must also be approved by the client; after all, it is the client who has the final say once the translator has presented him with proper arguments. This negotiation between the translator and the client concerning transfer strategies in view of TT production will ultimately lead to split responsibility for the end product reception (Greere 2003: 153).

➤ **Example**

Coming back to the example previously described we will now attempt to offer some transfer recommendations that may tone down the potential problems identified above.

Regardless of the degree of standardization in the TC, the translator cannot adopt as transfer methodology a full rewriting of the text according to British macrotextual and microtextual conventions. This would imply a reordering and renumbering of clauses, a rewriting of legalese phraseological constructions and a redrafting of clause content on the English model. Obviously, such a strategy proves to be illegal, first of all, and secondly it is absurd. After all, TT production must facilitate recipient comprehension of the content and the intentionality of the ST and not confuse the recipient. The reception of a Romanian text marked 'translation', that is identical in structure and conventional-content to the English document can only raise a number of question marks²². Still, with the approval of the client and that of the Notary public, the translator may intervene punctually in the text to solve such reception problems that have been previously identified, without affecting the legal content in the least (see appendix 3).

(1) In order for the title of the TT to reveal the fact that the information contained in the ST actually covers the content of both English formation documents, we recommend that the title be translated as: 'Memorandum and Articles of Association', thus comprising the titles of the two documents conventionally drafted in the English system. Additionally, on a macrotextual level, the translator may try to divide the content – if the ST is drafted accordingly – by introducing headings indicative of the two documents expected in England. Thus, the Memorandum-type clauses will be grouped together under the heading 'Memorandum of Association' and the Articles-type clauses will receive a subtitle 'Articles of Association'. This is a viable solution if and only if the ST is designed in terms of information organization as to allow the introduction of the subheadings and implicitly the division of the one Romanian document into two sections without any modification in the order or the number of clauses.

These are changes that do not have any legal relevance; still, a validation of the Notary public is essential, as this strategy results in a textual addition formally visible. Without the Notary public's prior acceptance, the translator might receive a refusal of the legalization procedure on account of obvious changes in the TT. The Notary public – who is biased against adaptation – must be made aware of the communicative reasons that underlie these changes; otherwise, the approval will not be gained.

(2, 3) If the ST does not contain headings for each distinct article to single out content-matter, the translator may want to introduce such titles after each clause number in order to help the recipient find those articles containing the content s/he might be interested in. In order to be efficient signposts, such headings should be formatted underlined or bold. Such titles will only facilitate the search for pieces of information through the highlight they offer making it easier for the recipient to find what s/he is looking for.

This is an addition without any legal implications, but still, this approach must be validated as it is immediately noticeable during a routine comparison of ST and TT, i.e. anyone putting the two texts side-by-side will see the additions.

(4) In order to fulfill the expectancy of the addressees regarding standard phraseology and conventional terminology, i.e. legal jargon, typically used in this text-genre, the translator should – by use of parallel texts – fully duplicate the English standard by copying the English constructions where an identical or similar meaning is identified in the SL text. Once having identified potential fragments in the text where parallel constructions can be employed, the translator must adapt such constructions to the SL content, i.e. the informational requirements of the SL text, by completing TL specific-constructions and differentiating with the elements of the ST. This adaptation will serve to cover the addressees' expectancy pool while still without making any changes – of a legal nature – to the ST-TT informational equivalency.

Therefore, this strategy of adaptation is restricted to the linguistic textual level and poses no threat to the legal validity of the text as it derives no changes of a legal nature. As this change is not formally visible and it involves the adequate transfer of linguistic matter per se, we may observe that this strategy must not, necessarily, be validated with the Notary public or the client.

(5) In spite of the structural difference as to the place where the association clause appears in a typical Romanian text (at the beginning) and a typical English text (at the end), we do not recommend textual adaptation or change in the body of the TT. No changes will be made, because from a legal point of view we cannot alter the ST-TT order of information. Moreover, the justification that would underlie such a change is not strong enough as it counterbalances with the fact that given the direction of translation (Romanian into English), this discrepancy does not result in a paramount reception problem. The company subscribers in the ST are identified at the very beginning of the text; hence, this information is immediately spotted by anyone consulting the text and its translated version.

By offering this argumentation we have practically validated the duplicative approach in what concerns informational organization, i.e. structure, and we may conclude – after considering the arguments for and against – that this approach is most adequate. As our decision for transfer rests with duplication, there is nothing that the Notary public or the client must be made aware of. These addressees anticipate as a matter-of-fact the

duplicative approach; consequently, the transfer we have decided for converges with their expectancy pool.

(6) Domain presuppositions and cultural presuppositions may equally affect the reception process in a negative or positive way depending on the transfer strategy the translator decides for. The transfer solution must, of course, facilitate the decoding of these elements by TC recipients; hence, it must consider the domain background of the recipients and the domain specificity the recipients have been recurrently exposed to. An example of domain presupposition is 'Legea 31/1991' (namely Law 31/1990). In Romanian, laws are referred to by a number and the year of entry into force without any indicator as to the content, i.e. the reality being regulated. Romanians are accustomed to this and they will either know what the specific law entails or they will ask. On the contrary, in England acts are made reference to by providing a descriptor and a year, not a number. In transfer, if the translator maintains the number failing to indicate content, the recipient will not know what the law stands for. Additionally, as a result of the linguistic shift, a pragmatic translation problem may be identified (Nord 1997: 65) as the decoding system of reference is lost (namely, the language of the text which exhibits referential value²³), consequently, the country of origin must be verbalized. As a viable translation alternative we may use 'the Romanian Companies and Partnerships Law 31/1990'²⁴.

This transfer must not be validated as it is the result of research undertaken for terminological adequacy and it will affect only the terminological transfer.

(7) The use of English standard formatting specificities – as identified from parallel text analysis – will most probably enhance reception. On the basis of the English model, the translator may decide in favor of the following ST-TT formal changes (these especially support the reception of relexicalised content): rearrangement of the association clause – indicative of the number of shares – into a table format, capitalization of relexicalized elements, usage of specific conventional fonts, if these are standardized in the TC.

These changes are format-related not content-bound. Still, they are noticeable and will have to be justified on request.

As an additional reception enhancer, the translator may advise the client to refer to formation documents in his/her subsequent correspondence (e.g. letters, e-mails) by indicating both the content and the position of the clause in the Romanian text. The recipient who might be inclined to look for a given article in the text where it can be conventionally found in the English document will have been alerted as to the difference. We feel that even if the translator does not intervene explicitly in the production of the TT, s/he may still mediate communication in the form of expert consultancy indicating to the client possible (negative) implications of reception and suggesting solutions for improvement. Such solutions may be focused on the overall situationality of the communication process.

Conclusion:

Can (or should) the translation of legal texts accommodate the functionalist approach?

Although the legal domain is viewed as a strict domain with regards to the transfer of information and function, we have argued that legal texts translated for business purposes may be subject to a functionalist analysis. As long as functionalism in translation is perceived as an attitude of awareness of such translation problems that may appear in

the SC-TC transfer (such problems include: textual standardization at a microtextual level, semantic and syntactic structures conventionalized according to text-genre production instances, different acceptability principles applied by SC-TC recipients etc.) and an attitude of enhancement of the communicative effort with a view to fulfilling the effect envisaged by the client, we may state quite clearly that legal text translation can and should be subordinated to the functionalist model of translation.

In the above example, we have demonstrated that legal translation, too, subscribes to the following functionalist characteristics: negotiation with the client, collaboration with the Notary public, exhaustive research to sustain the production of a TT functional for TC recipients, (structural or terminological) adaptation as a valid transfer method (without affecting the legal value of the text or its legal content), the transfer of cultural-pragmatic problems by means of deletion, exemplification, definition, expansion etc. However, these factors have to be evaluated and applied specifically in correspondence with each singular translation situation and each individual source text.

Obviously, the easiest method for any translator is the duplication of the domain-specific source text, because – as has been stated above – the common belief is that a duplicative approach would absolve the translator of the responsibility of a deficient reception. HOWEVER, we have to clearly state that this is merely a misconception and it does not indicate a professional attitude; moreover, such an approach severely questions the translator's competences. It is a fact that at times – more often than not with legal texts – after a situational analysis and adequate research the most effective method that reveals itself is duplication. Duplication will be the method of transfer when and if the translator has excluded other more efficient transfer methods. Consequently, the decision for duplication is the result of an evaluation and will represent an argued decision taken on the basis of a case study.

The application of the functionalist method increases the translational effort and the responsibility for the decisions made. The translator will have to know how to accurately assess the level of textual conventionality, s/he will have to acknowledge problems stemming from the audience's profile in terms of domain-knowledge gaps or subject-related gaps, and, where necessary to intervene professionally by providing transfer suggestions meant to facilitate the end reception or simply by pointing out potential differences in reaction to the target recipients as compared to the client's expectations, to adopt accurate and usage-based terminology, to identify and deal with deeply enrooted conventions of text-genre production and to cancel out those reception inadequacies that might result from SC-TC differences, as the ones identified above.

In conclusion, we may say that the application of the functionalist method to domain-specific translations does not automatically entail changes on given textual features or adaptation as the only acceptable transfer method or negotiation with the client etc., but it can be summed-up as a professional attitude that the translator decides to adopt in order to cover all domain-related research, to establish microtextual and macrotextual transfer solutions on account of a detailed domain analysis, to anticipate the client's lack of knowledge and experience in the TC and the TC domain-reality and to provide guidance and solutions to minimize this shortcoming. The functional attitude does not translate into extreme TC-oriented transfers, but into an optimal transfer (be it extreme or not). The texts produced range from a duplication of the ST to a full TC conventionality-based rewriting of the ST. The theory has accepted what different situations might call for; consequently, practice must oblige.

Appendix

In what follows we will present an example of a Romanian formation document 'Act Constitutiv', the target culture conventional parallel texts 'Memorandum of Association' and 'Articles of Association' that may be used to evaluate the expectancies of the recipients and the functional target text 'Memorandum and Articles of Association' produced by consideration of the elements discussed in the study above. Note that, while the standard characteristics have been preserved, the names are fictitious.

1. Romanian Formation Document

'Act Constitutiv'



ACT CONSTITUTIV

AL S.C. POPESCU ROMANIA S.R.L.

Subsemnatii: **Popescu Dan** cetatean american, nascut la [date of birth] in Cluj-Napoca, domiciliat in SUA [address] cu pasaport nr [passport number] si **Popescu Cornel**, cetatean roman, nascut la [date of birth] in Cluj-Napoca, domiciliat in Cluj-Napoca [address] cu BI [ID card number], eliberat de Politia Cluj, am hotarat constituirea unei societati comerciale guvernata de legile statului roman.

Art. 1. Denumirea societatii este 'Popescu Romania SRL'.

Art. 2. Societatea comerciala 'Popescu Romania SRL' este persoana juridica romana, avand forma de societate cu raspundere limitata desfasurandu-si activitatea in conformitate cu legile romane.

Art. 3. Durata de functionare este nelimitata, incepand cu data inmatricularii in Registrul Comertului.

Art. 4 Sediul societatii este in Constanta, B-dul Rosu nr.20. El poate fi schimbat in orice loc din tara, societatea putand infiinta sucursale, filiale in tara si strainatate.

Art. 5. Obiectul de activitatea al societatii:

Obiectul principal:

51 comert cu ridicata

Activitatea principala:

5156 comert cu ridicata cu bitum cald plus import-export

Alte activitati:

...

Art. 6. Capitalul social. Capitalul social total este de 2.000.000,00 lei din care 230 dolari USA echivalent a 1.700.000 lei, impartit in 20 parti sociale a cate 100.000 lei fiecare, care apartin fiecarui asociat astfel:

Popescu Dan - detine 1.700.000 lei echivalent a 230 dolari USA in 17 parti sociale
– 85%

Popescu Cornel – detine 300.000 lei in 3 parti sociale – 15%

Art. 7. Majorarea sau reducerea capitalului se face pe baza hotararii asociatilor, cu respectarea prevederilor legale.

Art. 8. Transferul partilor sociale se inregistreaza in Registrul Comertului.

Art. 9. Administrarea societatii:

Societatea va fi administrata de **Popescu Cornel** asociat, pe o perioada de 4 ani.

Administratorul societatii angajeaza...

Art. 10. Adunarea Generala este organul legislativ de conducere...

...

Art. 14. Dizolvarea si lichidarea societatii comerciale se face conform procedurii prevazute de Legea 31/1990.

Art. 15. Litigiile societatii cu persoane fizice sau juridice sunt de competenta instantelor judecatoresti romane.

Redactat in 6 exemplare originale.

ASOCIATI,

POPESCU DAN

POPESCU DAN

POPESCU CORNEL

POPESCU CORNEL



[overleaf]

ROMANIA
BIROUL NOTARULUI PUBLIC
ANA PREDA

INCHEIERE DE AUTENTIFICARE

Data

In fata mea, ANA PREDA, notar public...

...

NOTAR PUBLIC



[legal stamps affixed]

2. British Conventional Formation Documents

2.1. 'Memorandum of Association'

The Companies Act 1985/1989

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION



of HICOMPUTERS LIMITED

1. The name of the company is HiComputers Ltd. [standard, minimum variation]
2. The registered office of the Company will be situated in England. [standard, minimum variation]
3. The objects for which the company is established are: [standard]
 - (a) To carry on any trade or business whatsoever [standard, 1989 CA]
 - (b) To carry on business as... [+ a detailed enumeration with an amalgam of synonyms]
 - (c) To...
 - (d) [May continue to reach the last letters of the alphabet]

It is hereby expressly declared that each sub-clause of this clause shall be construed independently of the other sub-clauses hereof, and that none of the objects mentioned in any sub-clause shall be deemed to be merely subsidiary to the objects mentioned in any other sub-clause. [Taken from the sample provided by Keenan and Riches 1998:154; it may be drafted differently maintaining the content]

4. The liability of the members is limited. [standard, no variation]
5. The share capital of the company is £...divided into ...shares of £ 1.00 each. [standard, no variation]

WE, the subscribers to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum, and we agree to take the number of shares shown opposite our respective names.

NAMES AND ADDRESSES OF SUBSCRIBERS	NUMBER OF SHARES TAKEN BY EACH SUBSCRIBER
MARY JANE 62 Mayfair Road MARLOW 	ONE
JOHN JANE 62 Mayfair Road MARLOW 	ONE

Dated the 5th of June 2002

Witness to the above signatures:

JOHN GREER
72 Buckingham Street
MARLOW



2.2. 'Articles of Association'

The Companies Act 1985/1989

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of HICOMPUTERS LIMITED

PRELIMINARY [intermediate headings may or may not be provided]

1. Subject as hereinafter provided, the regulations contained or incorporated in Table A of the Companies (Tables A to F) (Amendment) Regulations 1985 (hereinafter referred to as 'Table A'), and made pursuant to the provisions of the Companies Act 1985/1989 (hereinafter referred to as 'The Act') shall apply to the Company.
[standard, minimum variation]
2. Regulations 8, 24, 35, 40, 77 to 81 shall not apply to the Company.

SHARES

3. ...
 - (a)...
 - (b)...

4....

GENERAL MEETINGS

5...

6....

[continues with Directors, etc.]

NAMES AND ADDRESSES OF SUBSCRIBERS

MARY JANE
62 Mayfair Road
MARLOW



JOHN JANE
62 Mayfair Road
MARLOW



Dated the 5th of June 2002

Witness to the above signatures:

JOHN GREER
72 Buckingham Street
MARLOW



Target Text.

We have produced a target text according to the principles discussed above. Note that some elements in the text are imposed by Romanian legislation (marked between square brackets)25.

Translation from Romanian [1]

-----[2]

Stamp of the Notary Public

[6, sometimes the inscription will be described at least once in the text]

MEMORANDUM AND ARTICLES OF ASSOCIATION

of S.C. POPESCU ROMANIA S.R.L. (Ltd.)

We, the undersigned subscribers to this memorandum and articles of association: **Popescu Dan**, US citizen, born on...in Cluj-Napoca, Romania, residing at..., passport no.... and **Popescu Cornel**, Romanian citizen, born on...in Cluj-Napoca, Romania, residing at..., ID BI....issued by ... wish to be formed into a company regulated by Romanian laws. [this text may be placed after the title 'Memorandum of Association' in which case the word 'articles' should be deleted: "We, the undersigned subscribers to this memorandum of association:..."]

MEMORANDUM OF ASSOCIATION

Art. 1. **The name** of the Company is S.C. Popescu Romania SRL (ltd)

Art. 2. **The liability** of the subscribers is limited. 'Popescu Romania SRL' is a Romanian legal entity, organized as a Romanian private company limited by shares (SRL)in compliance with Romanian laws.

[here we have added the first sentence, so as to have the word 'liability' as heading]

Art. 3. **The duration** of the Company is unlimited. The Company's existence begins on the date of incorporation in the Romanian National Trade Register.

Art. 4. **The registered office** of the Company is at 20 Rosu Ave. Constanta, Romania. The company may at any time change the address of its registered office within Romania and may open branches and subsidiaries in Romania and abroad.

Art. 5. **The objects**¹ for which the Company is established are:

Main object:

51 wholesale trade

Main activity:

5156 wholesale, import and export of hot bitumen

Other activities:

51

...

Art. 6. **The total share capital** is 2.000.000 RoL containing 230 USD, i.e. the equivalent of 1.700.000 RoL, divided into 20 shares of 100.000 RoL each, which are owned by the subscribers as follows:

SUBSCRIBER	ROL (RON) paid	shares taken	percentage held
Dan Popescu	1,700,000 (170)	17	85%
Cornel Popescu	300,000 (30)	3	15%

ARTICLES OF ASSOCIATION

Art. 7. An increase or reduction in the share capital...

Art. 8. The transfer of shares shall be registered in the Romanian National Trade Register.

Art. 9. The Company shall be administered by **Popescu Cornel...**

Art. 10. The general meeting...

Art. 11. ...

...

Art. 14. Liquidation and dissolution of the Company will be done in compliance with the Romanian Companies and Partnerships Law no. 31/1990

Art. 15. The lawsuits of the Company with...

Drafted in 6 true copies.

SUBSCRIBERS,

Indecipherable signature/ s.s. [6]

Hand-written name [6]

Popescu Dan

Indecipherable signature/ s.s. [6]

Hand-written name [6]

Popescu Cornel

Overleaf to page 2

ROMANIA
OFFICE OF NOTARY PUBLIC
ANA PREDA

AUTHENTICATION NO. XXX

Dated March 5, 1997

Before me, ANA PREDA, Notary Public...

...

NOTARY PUBLIC _____

Stamp of the Notary Public, indecipherable signature [6]

Three legal stamps have been affixed [6]

-----[2]

¹Note of translator:

The objects are classified according to the Romanian CAEN Code, functionally equivalent to the UK SIC Standard Industrial Classification of Economic Activities and the European Union NACE code.

Legalization overleaf [5]

[overleaf]

Subsemnata, **Maria MOLD**, traducator autorizat cu nr. **1692/1997**, certific exactitatea traducerii cu textul in scrisului autentic in limba romana, care a fost vizat de mine, traducator.

Traducator
Maria MOLD



Autorizatia nr.
1692/1997

***** [3,
certification]

ROMANIA
BIROUL NOTARULUI PUBLIC
CLUJ-NAPOCA

INCHEIERE DE LEGALIZARE A
SEMNATURII TRADUCATORULUI
NR. _____
ANUL:200_LUNA: ____ ZIUA ____

ANA PREDA

,**NOTAR PUBLIC**, in temeiul art.8, lit 'e' }i 'j' din Legea nr. 36/1995, legalizez semnatura de mai sus a lui **Maria MOLD**, traducator autorizat cu nr. 1692/1997 de pe cele ____1__exemplare ale in scrisului.

Taxa timbru.....lei, chitanta CEC nr...../.....

S-a perceput onorariul delei, cu chitanta nr...../.....

S-a aplicat timbru judiciar in valoare de 1500 lei

[to be filled in by the Notary Public]

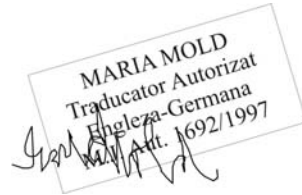
NOTAR PUBLIC



[3, legalization]

I, the undersigned **Maria MOLD**, Romanian state authorized translator, license no. 1692/ 1997 hereby certify the exactness of the English translation with the original text of the Romanian document, signed and sealed by me.

Translator
Maria MOLD



License no. 1692/1996

*****[3, English translation]

ROMANIA
OFFICE OF THE NOTARY PUBLIC
CLUJ-NAPOCA

LEGALIZATION OF THE TRANSLATOR'S SIGNATURE
NO. _____
YEAR:200__MONTH__ DAY__

I, ANA PREDA

NOTARY PUBLIC, on the basis of art.8 (e), (j) Law no.36/1995 legalize the above signature of **Maria MOLD**, authorized translator, license no. 1692/ 1997, on the _1_ copies of the document.

Stamp Duty.....RoL with CEC receipt no...../.....

Notary fee paid in the amount of ____RoL, receipt no. _____

Legal stamp 1500 RoL.

[the translation must also be filled in by the NotaryPublic]

NOTARY PUBLIC

[3, English translation]



[the legal stamps must be affixed and stamped with the Notary Public's seal]

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[English] Companies Act 1985/1989

[English] Limited Partnership Act 1907.

[English] Partnership Act 1890.

Legea nr. 36/1995 privind notarii publici si activitatea notariala [Romanian Notary Public Law]

Legea nr. 178/1997 pentru autorizarea si plata interpretilor si traducatorilor folositi de organele de urmarire penala, de instantele judecatoresti, de birourile notarilor publici, de avocati și de Ministerul Justitiei. [Romanian Law on the authorization and payment of public interpreters and translators working for courts of law, Notary public offices. lawyers or the Romanian Ministry of Justice]

Legea nr. 31/1990 privind societatile comerciale. [Romanian Companies and Partnerships Law]

¹ The bibliography consulted is in English, hence the year quoted. The original works of Katharina Reiss and Hans Vermeer were published in Germany between 1970 and 1980.

² We use the term 'text-genre' as employed by Nord to refer to what Reiss (2000a: 165) calls 'text-variety or kind of text' and Newmark (1998: 39) calls 'text-category'

³ We refer here to 'limited' competence because translation competence is much more than linguistic-cultural competence. It also includes domain-competence, among others: textual competence, communication competence, managerial competence, research competence etc. (Greere 2003: 131)

⁴ K. Reiss (2000b: 25-27) classifies texts according to their function into the following categories: (1) informative texts, (2) operative texts, (3) expressive texts and (4) audiomedial (2000b: 27). Reiss is of the opinion that each text has a predominant function even if more functions are exhibited.

⁵ However, in such cases the source text production will introduce the new terminology by offering definitions, explanations and examples that make use of known terminology. As a result, in transfer, the translator does not run the risk of having to intervene in the text to make it comprehensible. This will happen if the subject-matter has a different degree of topicality in the two cultures. For example, some sort of IT device might be thought of as common-knowledge in the source culture by the time it reaches the target culture (in the case of translation from English into Romania, for example).

⁶ We define the partially internationalized domain as the domain that has an international coverage but maintains a close tie to the reality of a given culture (e.g. the law, education etc.). Such domains occupy a middle position on a scale representing textual conventionality. The ends of the scale are represented by international domains (e.g. mathematics, physics, IT etc.), that are independent of the reality of a given country and by cultural domains (ex. history, ethnography etc.) that are strictly bound to cultural realities. (Greere 2004: 14-15).

⁷ 'Status' as defined by Greere (2003:175) is 'the position [dependant or independent] of the text towards other texts'.

⁸ I draw examples from my experience as a Romanian state-authorized translator.

⁹ The translation authorization issued by the Romanian Ministry of Justice allows translators to assist Notaries public or legal institutions with international communication. This authorization allows one to translate from and into the foreign language (even translations from and into two foreign languages are legislatively acceptable (Romanian Notary Public Law 36/1995-Annex (8)). The translated text of legal documents will contain a certification by the translator and a legalization by a Notary public.

¹⁰ The definition of 'legalization' as provided by the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents is: '[L]egalization means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears (art. 2)' If we were to adapt this definition to the Romanian context of translation legalization, we would say: 'Legalization means only the formality by which the notaries public of Romania certify the authenticity of the signature and the capacity in which the person signing the translation has acted, i.e. a state-authorized translator'.

¹¹ Romanian legislation stipulates that legal documents that are translated must be notarized as a means of certification of the status of the translator, i.e. the notarization indicates that the translator, whose signature appears on the translation indeed holds a translation authorization issued by the Romanian Ministry of Justice.

¹² The translator certifies the exactness of the translation with the original (Romanian Notary Public Law, Annex (15)) and not the Notary public. As a result, the responsibility of content transfer lies with the translator and not the Notary public. Additionally, a formal evaluation of the transfer may be very misleading if this is used instead of a content evaluation. For example, the Notary public, who is not proficient in the foreign language, may just as well legalize a translation where the translator has intervened content-wise - mistakenly or fraudulently - but the form has been duplicated. On the other hand, a functional translation, even if it does exhibit noticeable changes, will not affect the legal content and it should not encounter difficulties on legalization.

¹³ The Romanian Notary Public Law 36/1995, Annex (6), indicates that the translation must start with ‘Translated from [the source language]’ and all non-verbal features, such as stamps, signatures, photos etc. must be verbalized in the TT (see appendix).

¹⁴ The Romanian Notary Public Law 36/1995 also regulates the translation of excerpts, the translation of plurilingual texts, the translation of texts containing corrections or erasures etc. (Annex (6)) and the translation of names or geographical designations (Annex (10,11)).

¹⁵ We are of the opinion that the legislative instructions relating to the translational transfer should be applied to any translation of similar text-genres even if legalization is not required. A translator who uses all the elements stipulated will gain in credibility as a result of his/her acute awareness and professionalism in text production.

¹⁶ ‘Adaptation’ – as used in this study – is the translation method considering and adopting target culture conventionality for the sake of a functional reception.

¹⁷ The Romanian Law also admits translation from a foreign language into another foreign language – when the translator is authorized for both – as long as a text in Romanian is handed in at the Notary public’s office for the Notary public to be able to perform his/her legal obligations.

¹⁸ Note must be made of the fact that the British system is becoming a bit more lax as a result of its contact with European Law. European legislation adopted in Britain is predominantly continental in nature, i.e. it uses textual construction/interpretation rather than legal precedence.

¹⁹ After communism fell, Romanian law found itself lacking text-genres that were so necessary for a private business-oriented society. So, as Italian and French investors/collaborators came to Romania, they brought with them models established in their cultures. The Romanians were quick in adopting them and adapting them to the Romanian reality. Even now, after almost 20 years from the Anti-communist Revolution (December 1989), contracts are still being imported from Germany, even England and the United States of America.

²⁰ ‘Tabel A’ is a ‘model set of articles in regulations made under the [English] Companies Act 1985’ (Marsh and Soulsby 1998: 88).

²¹ Christiane Nord (1991: 96) defines presuppositions as follows: ‘presuppositions comprise all the information that the sender expects (=presupposes) to be part of the recipient’s “horizon” of a social, political, cultural or domain-specific nature which ‘the recipient will be able to reconstruct’ during the decoding. Hence, there is no need to explicitate such implicit information.

²² This transfer situation does not resemble that of translating business correspondence, for example, in which case total adaptation to target culture text-genre conventions is advisable. In the case presented, the ST has legal value and it is governed and construed in accordance with Romanian legislation in force.

²³ We define language as a cultural deictic component for textual decoding. A change in language will automatically attract a referential loss. Consequently, the link to a given reality initially accomplished by the language of textual production. (e.g. a Romanian text generally will refer to the Romanian reality and presuppositions should be decodable by applying cultural and domain-specific Romanian background knowledge) must be pinpointed through textual verbalization. (Greere 2000: 100).

²⁴ This particular Romanian law regulates both the functioning of companies and partnerships as business organizations. In order to avoid expectations that there might be distinct laws regulating these business types (as is the case in England: Companies Act 1985/1989, Partnership Act 1890, Limited Partnership Act 1907) we have decided to name the business organizations while providing the reference to this particular law. Other solutions are viable depending on textual situationality.

²⁵ [1] ‘Translation from...’ The text must be identifiable as a translation by a distinct statement on the top of the TT. [2] Delimitation of ST content. The content of the ST must be separated by graphic elements from legally imposed content (as is the statement of translation - at the beginning - and the certification or legalization formulas - at the end). [3] Certification + Legalization. After the TT has been printed, it requires the certification of the translator and the legalization of the translator’s signature by the Notary Public, which are usually on the same page, overleaf to the last page of the TT. These must be signed and completed in both Romanian and English when the translation is being done from Romanian into English, so that English recipients may also take notice of these legal procedures. [4] Delimitation of ST pages. Another requirement which leads to the addition of information to the ST content provides that if the pages of the TT do not coincide with those of the ST, the translator must include a note in the TT specifying where the next page of the ST would start. [5] ‘Legalization overleaf.’ At the end of the ST content, after the separation mark, it is customary to note ‘legalization overleaf’. [6] Non-verbal features. The text is also affected in terms of order of information by the transformation of visual/non-verbal features (which in the ST reiterate its authenticity: e.g. signatures, stamps, etc) into verbal elements, i.e. written text explaining the nature of the visual feature which cannot be reduplicated in the TT without an accusation of forgery.