Through the Lens of Language: Uncovering the Collaborative Nature of Advocates General's Opinions

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I. Introduction

This chapter sets out the steps in developing a toolbox of research strategies through which innovative questions relating to the impact of language and multilingualism on the production of jurisprudence by the Court of Justice of the European Union (ECJ) can be examined. Among the European Union's (EU) distinctive characteristics, one that is at the same time lauded and criticised, is its multilingual nature. The EU legal order, with 24 official languages, integrated in 27 Member State legal systems, is linguistically, as well as substantively, unique. It is therefore surprising that, historically, relatively little attention has been paid to what impact language, and multilingualism in particular, may have on the development of this legal order.[1] Language has a significant impact on the development of any legal order, as law is an overwhelmingly linguistic construct: law is created, interpreted, and applied through language.[2] The relatively recent development and expansion of the field of law and language demonstrates that, in the global legal arena at least, there is an increasing acknowledgement of

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[1] Karen McAuliffe, *The Limitations of a Multilingual Legal System*, 26 INT'L J. SEMIOTICS LAW 861 (2013); Karen McAuliffe, *Enlargement at the Court of Justice of the European Communities: Law, Language and Translation*, 14 EUR. L.J., 806 (2008).

[2] Karen McAuliffe, *Translating Ambiguity*, 9 J. COMP. L. 49 (2015).

this among legal scholars.[3] However, the question of language is particularly relevant in the context of the ECJ, which produces case law in up to 24 different languages[4], since it concerns not only abstract issues relating to the relationship between language and culture, and philosophy of language, but also the practical issue of translation. Taking language as the lens through which to study the workings of the ECJ and its jurisprudence can give us a far better understanding of how that court works and of the multi-layered nature of the jurisprudence that it produces. Addressing questions of the impact of language and multilingualism on the development of ECJ jurisprudence, and by extension on the EU legal order more generally, can allow scholars of European Studies and EU law to gain a more holistic understanding of EU law at a meta-level, as well as a fresh perspective on the application of that law across Member States.

This chapter focuses specifically on the significance of language for Advocates General (AGs) at the ECJ, and considers the implications that changes related to the linguistic aspect of their role may have for the construction and consolidation of ECJ jurisprudence, and, by extension, on the general formation and application of EU law.[5] As is the case in the other chapters in the present volume, our aim is not to fully convince the reader of substantive claims made here,[6] the onus for that lies elsewhere.[7] Rather our intention is to demonstrate step by step how the research design set out here has helped us develop original objects of inquiry that speak to broader research questions relating to the impact of language more generally.

Each of the empirical research strategies considered here—semi-structured interviews and corpus linguistics analysis—shines a light on processes within the ECJ which are otherwise

[3] Of course, language cannot be divorced from culture, indeed linguistic theory claims that languages constitute cultures. Legal languages are similarily embedded in specific legal systems. For a discussion on considering law as a culture-specific communicative system see McAuliffe, *supra* note 2, and on the incongruency of legal systems and legal languages see Susan Šarčević, NEW APPROACH TO LEGAL TRANSLATION (1997).

[4] The 24 EU official languages: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish, Swedish.

[5] The methods and data discussed here form part of a larger European Research Council funded project, *Law and Language at the European Court of Justice (The LLECJ Project)*. Project ID: FP7-313353. More information on that project, including publications and other outputs arising from it, can be found at www.llecj.karenmcauliffe.com.

[6] Tommaso Pavone, "*In This Bureaucratic Silence EU Law Dies": Fieldwork and the (Non)-Practice of EU Law in National Courts, in* RESEARCHING THE COURT OF JUSTICE OF THE EUROPEAN UNION (Madsen, Nicola and Vauchez eds., 2021).

[7] *See, e.g,* Karen McAuliffe & Aleksandar Trklja, *Superdiversity and the Relationship between Law, Language and Translation in a Supranational Legal Order*, *in* ROUTLEDGE HANDBOOK ON LANGUAGE AND SUPERDIVERSITY (Malkani, Rock, Creese and Blackledge eds., 2018); Karen McAuliffe, *Hidden Translators: The Invisibility of Translators and the Influence of Lawyer-Linguists on the Case Law of the Court of Justice of the European Union,* 3 LANGUAGE & L./LINGUAGEM E DIREITO, 5 (2016); Aleksandar Trklja and Karen McAuliffe, *Formulaic Metadiscursive Signalling Devices in Judgments of the Court of Justice of the European Union: a new corpus-based model for studying discourse relations of texts,* 26 IN'L J. SPEECH, LANGUAGE & L. 2 (2019).

invisible: while semi-structured interviews are uniquely suited to uncovering otherwise invisible factors that impact the institutional culture of the ECJ;[8] the corpus linguistics analysis attempts to investigate whether those invisible factors can in fact be 'seen' in the output of that institution - its jurisprudence.

These research strategies, taken individually, can provide us with fascinating insights into the ECJ's internal workings and its linguistic output, but they also have their weaknesses. Interview data can be skewed as a result of 'reactivity' on the part of the respondent (i.e. the impact of the researcher on the respondent). Interviewees may have their own agenda, which can colour their responses. Others may feel limited in what they can say because of their position within the hierarchy of the organisation. And making (socio)legal assumptions on the basis of corpus linguistics data alone can be problematic.[9] Indeed, it is often difficult to draw conclusions that can be extrapolated beyond individual fields to address broader research questions on how the institutional practice and culture behind the drafting of Advocates General's opinions are co-produced by language, and comment on the impact of language on the development of ECJ jurisprudence more generally. The real strength of these diverse research strategies is evident when they are brought together in the context of a research design that allows researchers to address those broader questions. In the research discussed in this chapter, interviews allowed us to uncover the collaborative nature of the process of writing an AG opinion, and the different inputs brought to AG opinions from various people involved in the drafting, editing and translation process. Corpus linguistics analysis then allowed us to triangulate that interview data, in particular in relation to language constraints that can be indicated by linguistic markers in the texts of opinions.

II. A Gap in Current Research on the Role of the Advocate General: The Linguistic Aspect

The role of the Advocate General (AG) at the ECJ is an important one in terms of '*droit prospectif*' (indicating the likely directions for the development of EU law), since the development of the Court's case law is shaped and guided by the opinions of AGs. Since AGs work alone and their opinions are not legally binding, they have greater freedom to critique the

[8] Tommaso Pavone, *supra* note 6.
[9] See *infra* p. 21-22.

law than ECJ judges who must find a consensus. This also allows them to 'test' ideas, such as the introduction of a new principle, without risking the reputation of the whole Court.[10] The AG acts as the Court's 'sparring partner' in the sense that a dialogue is created with the Court whereby the latter's case law grows and develops.[11] That 'dialogue' between the Court and its AGs has been significant in the development of some of the most fundamental principles of EU law concerning the nature of that legal order,[12] aspects of substantive law,[13] and the relationship between EU law and national law.[14] Historically, the AG's opinion resembles an academic text in many respects, drawing on various sources of law, earlier decisions of the Court, national jurisprudence and increasingly even academic commentary itself.[15] The 'academic' nature of that opinion highlights the fact that the role of the AG is wider than simply giving an opinion as to how the case in question in a particular instance should be decided—the AG carries out a critical assessment of the case law, identifying trends, pointing out inconsistencies which may exist, and outlining possible future developments.[16] The importance of the AGs' opinions in relation to the evolution of EU law is considerable. AGs can, in their opinions, be speculative in a way that the Court can never be in its judgments. Thus, many of the 'big ideas' or fundamental 'constitutional-type' principles of EU law were first seen in AGs' opinions, although the ECJ has not always followed the opinion in the cases in question.[17] A significant element of the AG's opinion is its individual nature. As their title suggests, opinions are the personal conclusions of the relevant AGs. This individuality is highlighted

[10] Daniel Wincott, *The Role of Law or the Rule of the Court of Justice? An 'institutional' account of judicial politics in the European Community*, 2 J. EUR. PUB. POL'Y 583 (1995).
[11] Laure Clement-Wilz, L'avocat general près la Cour de justice des Communautés européennes (2009) (Ph.D. dissertation, Université Panthéon-Assas Paris); Kamiel Mortelmans, *The Court Under the Influence of its Advocates General: An Analysis of the Case Law on the Functioning of the Internal Market*, 24 Y.B. EUR. L. 127 (2005); ROSA GREAVES & NORA BURROWS, THE ADVOCATE GENERAL AND EC LAW (2007); Takis Tridimas, *The Role of the Advocate General in the Development of Community Law: Some Reflections,* 34 COMMON MKT. L. REV. 1349 (1997).
[12] See, in particular, Case 26/62 *Van Gend en Loos* v *Nederlandse Administratie der Belastingen* [1963] ECR 1; Cas 6/64 *Costa* v *ENEL* [1964] ECR 585; Case 22/70 *Commission* v *Council (ERTA)* [1971] ECR 263.
[13] See, in particular, Case 80/70 *Defrenne* v *Belgium* [1971] ERC 445; Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455; Case 149/77 *Defrenne* v *Sabena* [1978] ECR 1365.
[14] See, in particular, Case 152/84 *Marshall* [1986] ECR 723; Case C-106/89 *Marleasing* [1990] ECR I-4135; Case 14/83 *Von Colson* [1984] ECR 1891; Case 8/81 *Becker* [1982] ECR 53. For a detailed discussion of this 'dialogue' see Martin, J.B. Vranken, *Role of the Advocate General in the Law-Making Process of the European Community*. 25 ANGLO-AM. L. REV. 39 (1996).
[15] In this sense AGs' opinions also resemble common law judgments.
[16] *See* Takis Tridimas, *supra* note 11. Of course, this may depend on the importance or difficulty of the case at hand. J-P Warner, the first British Advocate General (1973-81) famously delivered some of his opinions *ex tempore* immediately after the parties' submissions at hearings, much to the dismay of the interpreters! *Cf.* Anthony Arnull, *The Working Language of the CJEU: Time for a Change?* (Institute of European Law, Working Papers No. 01, 2019).
[17] For example, traces of the Court's approach in *Francovich* (Joined Cases C-6-90 and C-9/90, [1991] ECR I-5357) can be seen in an early AG's opinion in Case 60/70 *Russo* v *AIMA* [1976] ECR 45

across literature on the role of the AG, and is often cited as a key factor in the relative influence or persuasive nature of opinions.[18]

Article 20 of the Statute of the ECJ allows the ECJ to determine cases without an AG's opinion where no new points of law are raised.[19] Commentators in the field of 'rule of law' constitutionalism have criticised that Article, claiming that it undermines the role of AGs.[20] Indeed, Komárek goes as far as to accuse the ECJ, in its willingness to "*cut off an important component of its argumentation for the sake of expeditiousness of its work*", of being more concerned with the quantity rather than the quality of its judicial production.[21] He laments the laconic and dogmatic style of the Court's judgments, which often contain only an abstract discussion of the issues in question, and claims that the introduction of Article 20 significantly undermines the ECJ's role as a 'supreme' or even a 'constitutional' court of the EU.[22] It is generally accepted that AGs' opinions have significant persuasive value both on the ECJ itself and in wider EU law scholarship, for which those opinions can fill in 'gaps' in the Court's reasoning or provide more detailed, nuanced arguments and discussions of the state of EU law. However, the question of what makes those opinions so persuasive, beyond the obvious differences in form (i.e. the fact that the AGs can present their argumentation in any way they please, are not bound to follow any particular structure or pattern and are not constrained to addressing only arguments raised in the case, as well as the fact that the opinion is not, formally, a collegiate document) is rarely considered.

The research strategies considered here aim to bring another, thus-far wholly ignored, factor into that debate - the importance of the *linguistic* aspect of the AGs' role. Prior to 2004, AGs, by convention, drafted their opinions in their mother tongues.[23] This, together with other

[18] Cf. Albertina Albors-Llorens, *Securing trust in the Court of Justice of the EU: the influence of the advocate general*, 14 CAMBRIDGE Y.B. EUR. LEGAL STUD. 515 (2011-2012); Marco Darmon, *The Role of the Advocate General at the Court of Justice of the European Communities in* THE ROLE OF COURTS IN SOCIETY (Shimon Shetreet ed. 1988).

[19] Treaty on the Functioning of the European Union Protocol (No 3) On the Statute of the Court of Justice of the European Union, June 7, 2016, 2016 O.J. (C 202) 210-29.

[20] *See*, MITCHEL DE S.-O. L'E LASSER, JUDICIAL DELIBERATIONS: A COMPARATIVE ANALYSIS OF JUDICIAL TRANSPARENCY AND LEGITIMACY (2004); Joseph H.H. Weiler, *Epilogue: The Judicial Après Nice*, *in* THE EUROPEAN COURT OF JUSTICE (Gráinne de Búrca and Joseph H.H. Weiler eds, 2001); Jan Komárek, *In the court(s) we trust? On the need for hierarchy and differentiation in the preliminary ruling procedure*, 32 E.L. Rev 467-91 (2007).

[21] Jan Komárek, *supra* note 20, at 475.

[22] *Id*.

[23] The personal history of a person's language acquisition is significant, and definitions of the term 'mother tongue' can be contradictory in linguistics and translation studies scholarship. Throughout this chapter, the term 'mother tongue' is used to refer to an individual's first language(s), in contrast with a second language [Istvan Kecskes and Tünde Papp, FOREIGN LANGUAGE AND MOTHER TONGUE (2000)]. Second language speakers have full exposure to the target language system and its framework because it is the dominant or only language of the community (Istven Kecskes and Tünde Papp, at 2). Owing to differences in sociocultural aspects of the language

factors, meant that opinions were not constrained in any way by language or a formulaic style of drafting and could be a free-flowing, academic-style document - a far cry, linguistically speaking, from the stilted 'Lego-like' judgments of the Court.[24] However, since 2004, the Court has requested that a number of AGs draft their opinions not in their own language but in one of the Court's 'pivot languages' (since 2004: French, English, German, Spanish, and Italian—and now including Polish). These "pivot" languages were introduced at the ECJ as a result of the 2004 EU enlargement in order to reduce the number of possible translation combinations and thus to reduce the workload of translation units. The 'new' system uses direct translation (i.e. from one EU official language to another EU official language) whenever possible but also provides for "indirect" translation (i.e. from a pivot language into another EU official language) where, for instance, the translation unit does not have a lawyer-linguist who can work in the language of the document to be translated.[25] Given that the discursive, speculative nature of AGs' opinions is due in no small part to the fact that historically those documents have been drafted in the language of the relevant AG,[26] one might wonder whether that change in convention regarding drafting language may affect the style and potentially also the substance of some AG opinions.[27] Interviews and corpus linguistics techniques can be particularly useful to investigate the implications of changes to the linguistic aspect of the role of the AG on the construction and consolidation of ECJ jurisprudence, and by extension on the general formation and application of EU law. Where AGs draft in a language other than their mother tongue, do their opinions become more synthetic in construction, and are their arguments more constrained by language, as a result of drafting in that way? Since AGs' opinions exercise a formative influence on the direction taken by the case law of the ECJ, such constraints may limit the creativity of those opinions—firmly held to be integral to the development of ECJ jurisprudence—and may very well affect the development of that case law.

acquisition process and the linguistic background of the speakers, second language is distinct from foreign language, which is spoken/used only in determined and precise contexts (Istven Kecskes and Tünde Papp, at 2). For a further discussion of first/second language acquisition see L Selinker, *Interlanguage*, 10 INTERNATIONAL REVIEW OF APPLIED LINGUISTICS IN LANGUAGE TEACHING 209 (1972) and S Nisioi, E Rabinovich, L P Dinue and S Wintner, *A Corpus of Native, Non-Native and Translated Texts*, PROCEEDINGS OF THE TENTH INTERNATIONAL CONFERENCE ON LANGUAGE RESOURCES AND EVALUATION 4197 (2016).

[24] Karen McAuliffe, *Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union*, 24 INT'L J. SEMIOTICS LAW 97 (2011).

[25] Karen McAuliffe , *Behind the Scenes at the Court of Justice: A Story of Process and People*, *in* EU LAW STORIES (Bill Davies & Fernanda Nicola eds., 2017).

[26] Borgsmidt, *The Advocate General at the European Court of Justice: A Comparative Study?*, 3 EUR. L. REV. 106 (1988).

[27] It must be noted that the change in convention regarding drafting language affects only some AGs. Many (both permanent and non-permanent) AGs continue to draft opinions in their mother tongue.

III. Using Interview Data to Fill the Gaps

It is well established, in anthropology literature, that language, culture, and other internal dynamics within an institution, such as the ECJ, shape the culture of that institution, which in turn shapes its 'output' (in the case of the ECJ, its jurisprudence).[28] It follows, therefore, that to understand and analyze the Court's institutional culture, one must understand the priorities and preoccupations of those who work there. The most appropriate way to develop such understanding is through interviews and observation.

Interview data is relevant, in particular, to establish a deep understanding of how the process works between *référendaires* who produce first/second/final drafts of opinions, the AG him/herself, and lawyer-linguists who have taken on a new role of 'linguistic assistance', which can range from a brief language check to extensive editing of the wording to ensure that it is coherent and 'fluent'. With regard to observing the impact of such processes on 'output' (i.e. opinions), corpus linguistics methods allow the language itself to be analysed - comparing language use pre- and post-2004, and comparing pre- and post-2004 opinions with the judgments already analysed in the LLECJ project,[29] as well as identifying any linguistic differences between opinions of AGs drafting in their mother tongues and those drafting in non-mother tongue languages.

[28] MARC ABELES, IRENE BELLIER AND MARYON MCDONALD, APPROCHE ANTHROPOLOGIQUE DE LA COMMISSION EUROPEENNE (1993); Marc Abélès and Irène Bellier, *La Commission Européenne: du compromis culturel à la culture politique du compromis*, REVUE FRANÇAISE DE SCIENCE POLITIQUE 431 (1996); Marc Abélès, *La fonction politique européenne: acteurs et enjeux*, *in* POLITIQUES PUBLIQUES EN EUROPE, (Yves Mény, Pierre Muller and Jean-Louis Quermonne, eds, 1995); Irène Bellier, *Une culture de la Commission européenne? De la rencontre des cultures et du multilinguisme des fonctionnaires*, *in* POLITIQUES PUBLIQUES EN EUROPE, (Yves Mény, Pierre Muller and Jean-Louis Quermonne, eds, 1995); Irène Bellier, *A Europeanized Elite? An Anthropology of European Commission Officials*, 14 Y.B. EUR. STUD. 135 (2000); Irène Bellier, *Spelling Out Unity and Living in Diversity: the EU administrative culture at a crossroads*, *in* EUI WORKING PAPER SPS NO 2005/4: ORGANISATIONAL CULTURE IN THE INSTITUTIONS OF THE EUROPEAN UNION (Magali Gravier and Vassiliki Triga, eds, 2005); Irène Bellier and Thomas M Wilson, *Building, Imagining and Experiencing Europe: Institutions and Identities in the European Union*, *in* AN ANTHROPOLOGY OF THE EUROPEAN UNION: BUILDING, IMAGINING AND EXPERIENCING THE NEW EUROPE, (Irène Bellier and Thomas M Wilson, eds, Berg, 2000).

[29] Aleksandar Trklja, *A Corpus Investigation of Formulaicity and Hybridity in Legal Language: A Case of EU Case Law Texts*, *in* PHRASEOLOGY IN LEGAL AND INSTITUTIONAL SETTINGS: A CORPUS-BASED INTERDISCIPLINARY PERSPECTIVE, (Stanislaw Goźdź-Roszkowski, and Gianluca Pontrandolfo, eds, 2018); Aleksandar Trklja, *A Corpus Investigation of Translation Generated Diversity in EU Case-Law*, *in* INSTITUTIONAL TRANSLATION FOR INTERNATIONAL GOVERNANCE: ENHANCING QUALITY IN MULTILINGUAL LEGAL COMMUNICATION, (Fernando Prieto Ramos ed., 2018).

Qualitative interviews carried out for the purposes of this Chapter included interviews with 27 respondents: 3 AGs and 15 *référendaires*, all of whom (at the time of interview) draft opinions in a language other than their mother tongue, and 6 of whom also have experience in drafting opinions in their mother tongue; as well as 9 lawyer-linguists whose role includes providing 'linguistic assistance' to certain AGs (see *infra* p. 13). All interviews were conducted in Luxembourg, in person, and anonymously in accordance with Chatham House Rules[30] to encourage participants to be more open and to share relevant information. The majority of the respondents agreed to an audio recording of the interview and they were provided with transcripts of the interviews. They were free to edit those transcripts as they saw fit, before the researcher proceeded with coding (in NVivo) and analysis of the data.

In terms of added value, interviews offer two specific advantages. First, interview data can highlight differences between perceptions and reality in a way that even actors involved in the processes being analysed may not be able to see. Second, Interview data can shine a light on the processes and institutional culture within the ECJ, which are otherwise invisible, and which have a significant impact on the 'output' (in this case, AG opinions) produced by that Court.

A. Highlighting differences between perception and reality in drafting the AG Opinions

A preliminary analysis of the data gathered from qualitative interviews shows that language 'policy' changes at the ECJ in 2004 (i.e. the introduction of 'pivot' languages for translation and the convention that AGs would draft their opinions in pivot languages) were not perceived by AG cabinets as either difficult or even particularly relevant for their work. When asked to reflect on the impact of those changes on their work, both AGs and their référendaires tended to fall into one of two camps:

a. Those who describe such changes in terms of logistics and do not feel that there has been any impact on their work at all:

Interviewer: *Has it affected in any way your work […]?*
Respondent: *No, I haven't seen any.*
Interviewer: *You haven't seen?*

[30] When a meeting is held under the Chatham House Rule, participants are free to use the information received, but the identity of participants may not be revealed.

Respondent: *No, I haven't seen from our point of view, we haven't seen it. No. No.* (Interview with AG's référendaire)

When asked to describe their working methods and to reflect on any changes in processes, these respondents tended not to mention anything about language, demonstrating that, in their day-to-day work, they are not preoccupied by languages other than the one in which they normally work.

b. Those who acknowledge that it is (theoretically) easier to draft in one's mother tongue and that writing in a non-mother tongue naturally constrains one's writing somewhat:

> *If you can draft in your own language, you are much more efficient and you master the language more thoroughly. I mean, in [mother tongue] I would be able to give every small nuance, every slight difference of meaning that would use the precise words. In English, I hope I draft rather well but still I'm not native, so yeah, I'm a bit less efficient and the result is, I hope, good, but would have been better in [mother tongue]. But hey, that's our job, that's how things work here.* (Interview with AG's référendaire)

However, these respondents remain convinced that the substance of their work is unaffected by such theoretical constraints:

> *Yeah, for me it's inevitable that the language you use shapes a little bit the way you think. I think it's inevitable, the concept, the words. But after all, I mean, we are doing cases. It's not that I would ever imagine that by using another language you would get to a different result. […]if you ask me to draft an opinion in Italian, in English or in French, I could do the three, I will always come to the same result and the arguments would be the same – well, you could have a small difference here and there, but the reasoning and the substance would be the same.* (Interview with AG's référendaire)

On the other hand, there is an acknowledgement on some level that interpretation of EU law can differ across legal cultures (and languages), although the link between language and culture is not usually made:

> *But that doesn't mean that my French colleague will get the same result, because she will come with different categories in her mind . . . .* (Interview with AG's référendaire)

> *The language just reflects the way I am reasoning, and that comes from where I have been educated and trained in the law* (Interview with AG's référendaire)

> *Would I argue in a different way in my mother tongue? Possibly . . . probably . . . but at the end it's not my argument, it's the opinion of the Advocate General. I don't think we have to worry about language . . . it wouldn't be helpful for the quality . . . the substance of what we write to be scrutinised because of discrepancies between languages* (Interview with AG's référendaire)

In addition, some référendaires (many of whom have previously worked as lawyer-linguists within the ECJ's Translation Directorate) make a conscious choice to use more simplified language because they are aware of all the layers that are added through linguistic assistance, and especially through translation:

> *The concepts we are writing about are complicated, but I try to use very simple language to discuss* [those concepts]. *This is helpful for translation I think. For speed but also for keeping the meaning.* (Interview with AG's référendaire)

> *It's important to use the most simple language you can when writing because when* [a text] *is translated, maybe many times or through a pivot* [language], *meaning can easily become confused*. (Interview with AG's référendaire)

With regard to the AGs themselves, none of those interviewed perceive their work to be in any way constrained by language, regardless of the language in which they draft. This can be explained to a degree by the fact that those AGs do not actually write the first draft of their

opinions themselves. The AG's contribution to the draft is generally made after a first draft is submitted to them by their référendaire(s). It is usually at this stage that the AG intervenes to check the substance of the opinion and, where he/she considers it to be necessary, to align the writing style with his/her own. Furthermore, even where AGs admit that in theory their opinions may be constrained by language, insofar as the phrases used can be more or less concise depending on the drafting language, they ultimately reiterate their confidence that there is very little difference in style and that their own 'voice' comes through more or less in the same way as it would in their own language:

> [*I*]*f you do English and you've got prose then I mean you can be slightly more, how shall I put it, concise, snappy, the language wants shorter sentences, easier structure of the paragraphs and of the statements. You do more of individual propositions and do more full stops than everywhere else and so forth with certain drafting. . . . in French of course it might be slightly different yet again when I do that I rarely try to be shorter and comprehensible. . . . yeah. I don't think there would be a huge difference, no*. (Interview with AG)

At the same time, however, there appears to be an unspoken acknowledgement of the potential impact of language on their work, evidenced by how AGs view the importance of language competence, and language flexibility, when it comes to recruitment:

> *Next to expertise in EU law, it is important for my référendaires to be excellent in the drafting language* (Interview with AG)

> *[A] good general competence in EU law is of course important, but that is something that can be learned. The language skills are, I feel, more difficult to* [achieve]. *So when recruiting, language expertise and flexibility with* [languages] *is very important for me . . . .* (Interview with AG)

It is very clear from the interview data that those working in AGs' cabinets do not usually give much thought to language issues beyond situations where a mistranslation may be brought to their attention. Language and substance appear to be distinct and separate things. For référendaires, it is simply a 'given' that they have to draft in a particular language, usually not their mother tongue, and, owing to their ever-increasing workload, there is no time to dwell too much on questions of language and drafting style. They are mainly preoccupied with their own

substantive work, which provides a more than sufficient workload (and one which they are likely to consider more interesting), and do not venture into considerations of what impact language may have on the form or indeed the substance of that work. In general, they consider that the form and substance of an AG's opinion is somehow separate from the language in which it is expressed—that it has an inherent normative quality which is conditioned by the proficiency and "quality" of the AG and his/her référendaires. Issues relating to ambiguity in language, approximations in translation or indeed discrepancies between different language versions of the same opinion tend not to appear on their radar. Conversely, however, they also seem aware of the importance of working collaboratively to ensure opinions avoid unclear or untranslatable language, as evidenced by the importance of language skills in recruitment priorities, and conscious choices to use simplified language to ensure 'better' translation. However, any overt acknowledgement of the impact of language on their work seems to be seen as undermining the quality of that work. [31]

i. Teasing out different perceptions between Référendaires and Lawyer-Linguists

In contrast to those who work in AGs' cabinets,[32] the Court's lawyer-linguists are much more attuned to the impact that the 2004 language regime changes have had on the way they work. This is, of course, to be expected since it is lawyer-linguists who were most immediately affected by the introduction of the pivot languages/pivot translation.[33] From a practical point of view (i.e. for the purpose of reducing translation units' workload), lawyer-linguists can see the necessity of introducing a pivot translation system, as it reduces the number of possible translation combinations (from 552 if direct translation were to be used, to 144 in the pivot system):

[31] Interestingly, this interview data contrasts with data from interviews with judges' référendaires, in the context of other sub-projects of the LLECJ project (*see, supra* note 5). That data indicates that judges' référendaires do feel constrained to a certain extent by the fact that they draft in a language that is generally not their mother tongue and that the working language ('Court French') shapes what they write to a considerable degree. Cf: Karen McAuliffe, *The Limitations of a Multilingual Legal System*, 26 INT'L J. SEMIOTICS LAW 861 (2013).

[32] This Chapter focuses specifically on AGs and their cabinets. For some analyses of differences in perceptions between lawyer-linguists and *judges* cabinet see, Karen McAuliffe, *Language and the Institutional Dynamics of the Court of Justice of the European Communities: Lawyer-Linguists and the Production of a Multilingual Jurisprudence, in* HOW GLOBALISING PROFESSIONS DEAL WITH NATIONAL LANGUAGES: STUDIES IN CULTURAL CONFLICT AND COOPERATION (Michel Gueldry ed., 2010); Karen McAuliffe, *Enlargement at the Court of Justice of the European Communities: Law, Language and Translation, supra* note 1; Karen McAuliffe, *Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union*, *supra* note 24.

[33] Karen McAuliffe, *Hidden Translators: The Invisibility of Translators and the Influence of Lawyer-Linguists on the Case Law of the Court of Justice of the European Union*, 3 LANGUAGE & L./LINGUAGEM E DIREITO 5 (2016).

> *The pivot language* [system] *was a necessity with 22 or 23 languages, yeah. It was not technically possible to produce that many combinations of language.* (Interview with lawyer-linguist)

However, lawyer-linguists admit that it can also complicate their work when errors are transmitted from one document to another. Such errors are not always easy to pick up and subsequently follow through to every language version. In addition, it is not always possible to consult the original version of a document being translated through a pivot language, since one may not have the relevant linguistic expertise:

> *I'm not very keen on it. I mean, I can see why we have to have it because there are so many language combinations and you're not going to get 30 or even 40 translators to cover all the possible combinations, so we have to do it. But it is really second best because, you know, . . . it's another layer. And if you have no inkling of what's in the original . . . . And so it's a necessary evil, I think, doing pivot languages. We have to have it, but it's not ideal. And I think it was just accepted because people could see it had to be done. I suppose it's made things easier even if it hasn't necessarily made them better.* (Interview with lawyer-linguist)

Contrasting with the AGs and référendaires interviewed, lawyer-linguists who provide linguistic assistance overwhelmingly believe that opinions drafted in a non-mother tongue lack a 'natural flow' of language, that their quality is affected by repetitions and redundancies and that the drafters in question are naturally constrained by not being able to draft in their mother tongue*:*

> *Even if you didn't know that you were reading* [an opinion drafted in a non-mother tongue] *it would be obvious. The flow is different, there is more repetition, use of redundant language . . . all that makes it more difficult to craft an argument* (Interview with lawyer-linguist)

They maintain that, while some référendaires (and AGs) are very skilled in the relevant pivot language, it is clear that language acts as a constraint on many référendaires drafting those documents, similar to the constraints experienced by judges' référendaires in the drafting of judgments:[34]

[34] Karen McAuliffe, *The Limitations of a Multilingual Legal System*, *supra* note 31; Karen McAuliffe, *Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union*, *supra* note

> *Many* [référendaires] *are really excellent in* [the relevant pivot language], *and craft very convincing and beautifully written arguments . . . many others lose the power of their argument because they simply don't have the level of language skill required . . . .* (Interview with lawyer-linguist)

> *[O]pinions are becoming just like another judgment. The language feels the same . . . repetition, cutting and pasting, building up the Lego blocks . . . it just feels the same* (Interview with lawyer-linguist)

Interview data thus allows us to take a step back and view the realities of internal processes at the ECJ in a holistic manner. Divergences in perceptions of those processes can help us understand how language impacts on the work of actors within the court, even where they themselves are not explicitly aware of that impact. This data could simply not be discovered through more traditional research methods, which focus on analysing the substance of opinions.

B. Shining a light on the processes and institutional culture within the ECJ

Qualitative interviews also reveal the involvement of lawyer-linguists in the process of producing and translating AGs' opinions. In addition to extra layers of translation, the introduction of pivot languages at the ECJ, as previously noted, created a new role for lawyer-linguists: providing 'linguistic assistance' to those AGs who choose to draft in a pivot language which is not their mother tongue. Qualitative interviews reveal this otherwise invisible involvement of lawyer-linguists in the process of producing AGs' opinions. This role is particularly interesting to explore since its scope varies widely depending on the language competence of the référendaire in question, and on the personalities of the référendaires/AGs involved. Sometimes 'linguistic assistance' can mean a simple proofreading service, to check for grammatical errors. In other instances, rephrasing of parts of the text is suggested to an AG's cabinet to ensure coherence, both linguistically and legally:

> *We edit them, send them back. They can comment on your changes, "You've changed this but I actually meant this," and you can have some dialogue there.* (Interview with lawyer-linguist)

24.

> *Sometimes it reads very well and I hardly change anything and the same person a month later, I might have to change a lot because they've been in a hurry. And it's very difficult to write in a foreign language and I mean you can speak it, you understand it, but to write correctly when you're under pressure is very difficult.* (Interview with lawyer-linguist)

While linguistic assistance may be satisfying for some, as it provides diversity in their work activities, this role can also be a source of stress to lawyer-linguists since the vast disparity in the work that may be required from one opinion to the next may cause them difficulties in terms of time management, productivity monitoring, and balancing their responsibilities as lawyers and responsibilities as translators:[35]

> *It's fine when we are actually just providing generally superficial linguistic assistance . . . making sure the opinion reads well, coherently . . . minor tweaks in language that make the arguments make more sense . . . but sometimes I have to practically re-write the whole* [document] *because the language is so bad. It would be easier to be translating it* (Interview with lawyer-linguist)

> *I was interested to do the linguistic assistance in the beginning. But it is difficult to predict just how much assistance will be needed from one* [opinion] *to the next . . . then it is stressful because you get the same allocation for each one, no extension of deadline* [to complete the work] *if you end up with one that needs a lot more work . . . .* (Interview with lawyer-linguist)

The interviews carried out with lawyer-linguists also revealed that their role in providing linguistic assistance may be crucial in avoiding misunderstandings and mistakes in AGs' opinions before they are made public. Lawyer-linguists can often act as a critical eye or, as one respondent put it as "*detectives*" who look for the slightest imperfections in the text and legal arguments. It is difficult to see how this aspect of the production of AGs' opinions could be discovered, let alone analysed, other than by qualitative interviews.

Interviews also revealed further aspects of the relationship between AGs' cabinets and lawyer-linguists, which may affect the 'output' (i.e. opinions): for instance, the hierarchical culture

[35] Karen McAuliffe, *Language and the Institutional Dynamics of the Court of Justice of the European Communities: Lawyer-Linguists and the Production of a Multilingual Jurisprudence*, *supra* note 32.

within individual cabinets and within the ECJ itself. AGs and référendaires tend to view those lawyer-linguists who provide linguistic assistance as "proof-readers" detached from the drafting process. Theoretically, although lawyer-linguists may give suggestions on the substance of the case and practically, their contribution is a mix of substantive and stylistic observations, any suggestions that would encroach on the competency and role of référendaires and AGs would most likely be frowned upon:

> *I had once, twice, not more, discussions on the substance of a case and I had once, specially I remember one case where a lawyer-linguist said, 'Well, I don't agree with what you're saying, and here, this is another argument', and I said, 'Well, of course, that's the opinion of the Advocate General, so your work is to translate. If you don't agree that, we can discuss it over a beer if you want, but there is nothing you can do'.* (Interview with AG's référendaire)

This appears to be the case, even where the référendaires in question have previously worked as lawyer-linguists:

> *Of course I will listen to legal points from the lawyer-linguist, I was a lawyer-linguist myself . . . we all are lawyers. But in the end they have a different job to do . . . it's not about the legal argumentation for them when they give linguistic assistance . . . and there is also not the time for such legal discussions, even if they are interesting . . . the Advocate General has decided*. (Interview with AG's référendaire)

Lawyer-linguists, on the whole, find this frustrating, but have to accept that restraint and discretion seems to be paramount in providing linguistic assistance:

> *It's exasperating because we are all lawyers at the end of the day . . . yes I'm providing linguistic assistance but I'm also a fresh set of eyes on the legal argument* (Interview with lawyer-linguist)

> *If they wanted just proofreading, then why not give the task to the proofreaders?* (Interview with lawyer-linguist)

> *So you have to accept that the author is the author, so you should be modest in your interventions. So what is in the document is not necessarily what you would like, you would have wanted to write, but what the advocate general will*

> *eventually sign. So you have to be modest and say, 'Okay, it's his opinion, her opinion', and you have to accept it. You have to accept that you possibly disagree with the legal reasoning and that it's not your job now to put everything into question.* (Interview with lawyer-linguist)

The interviews thus suggest that there is a hierarchy within the ECJ and that, if lawyer-linguists cannot be sufficiently discreet in this way, they may not be given the 'opportunity' to provide linguistic assistance on an AG's opinion.

Thus, the role and contribution of the lawyer-linguists are more clearly brought to light by qualitative interviews than by any other research method. Their interaction with AGs and référendaires might have remained unnoticed if qualitative interviews had not been used. Once again, this is a matter which no literature review, case analysis or linguistic analysis could have uncovered.

IV. Adding Value through Corpus Linguistics Analysis

In recent years, increasing use has been made of corpus linguistics analysis in legal research. A relatively 'new' method in the legal field, it can be seductive for legal researchers keen to engage with quantitative analysis, to back up or 'prove' their theories based on more qualitative research methods. However, corpus linguistics in legal research has also begun to come under some criticism. While it can be a powerful tool in legal interpretation there are cases in which corpus data fails to yield any useful insights. More serious, however, are those cases where the data seems useful but on closer examination is in fact misleading.[36] It is therefore extremely important to think carefully, at the research design stage, about whether corpus linguistics is an appropriate method to address the particular research questions at hand.[37] This chapter does not aim to present detailed corpus linguistics analysis of either ECJ judgments or AGs' opinions, that is more appropriately covered elsewhere.[38] Suffice it to say,

[36] Neal Goldfarb, Corpus Linguistics in Legal Interpretation: When is it (In)appropriate?, presented at the Fourth Annual Law and Corpus Linguistics Conference, BYU Law School (Feb. 6-8, 2019) at 2.
[37] Lawrence Solan, *Corpus Linguistics as a Method of Legal Interpretation: Some Progress, Some Questions*, 33 INT'L J. SEMIOTICS L. 283 (2020).
[38] *See, e.g.*, Karen McAuliffe & Aleksandar Trklja, *Superdiversity and the Relationship between Law, Language and Translation in a Supranational Legal Order*, *supra* note 7; Aleksandar Trklja, *A Corpus Investigation of Formulaicity and Hybridity in Legal Language: A Case of EU Case Law Texts*, *supra* note 29; Aleksandar Trklja,

in relation to ECJ *judgments*: CL analysis has demonstrated that they (a) are written in a new, hybrid legal language (that happens to exist in 24 linguistic forms) and (b) tend to be built up like 'lego building blocks' insofar as their creation involves layers of drafting using formulaic language and hidden translation.[39] Furthermore, the final version of the judgment is agreed in secret deliberations, so there is no visibility on decisions regarding the choice of one particular phrase over another. Finally, the judgments go through many permutations of translation before being delivered to the wider EU in 24 languages. AGs' opinions, on the other hand, have historically been very different kinds of texts.[40]

In the context of AGs' opinions, corpus linguistics can be particularly useful in a comparative sense: comparing opinions with judgments, as well as comparing opinions (amongst themselves and with judgments) by reference to temporal context. The starting hypotheses for such comparative analysis were as follows:

1. Judgments are stylistically simpler and less 'fluent' than opinions
2. After the 2004 linguistic reform, opinions drafted in non-mother tongue languages become more similar (linguistically) to judgments
3. Opinions drafted after 2004 by AGs drafting in a language other than their mother tongue are stylistically simpler and less 'fluent' than the ones drafted by AGs (drafting in their mother tongues) prior to 2004.

In terms of interrogation of the data, we wanted to:

1. Determine the stylistic complexity and 'fluency' of judgments and opinions before and after the 2004 linguistic reform
2. Compare the results:
    - Between judgments and opinions
    - Between opinions drafted before and after 2004

A Corpus Investigation of Translation Generated Diversity in EU Case-Law, *supra* note 29; Aleksandar Trklja & Karen McAuliffe, *Formulaic Metadiscursive Signalling Devices in Judgments of the Court of Justice of the European Union: a new corpus-based model for studying discourse relations of texts*, *supra* note 7.

[39] Karen McAuliffe & Aleksandar Trklja, *Superdiversity and the Relationship between Law, Language and Translation in a Supranational Legal Order*, *supra* note 7; Aleksandar Trklja and Karen McAuliffe, *Formulaic Metadiscursive Signalling Devices in Judgments of the Court of Justice of the European Union: a new corpus-based model for studying discourse relations of texts, supra* note 7; Karen McAuliffe, *Translating Ambiguity*, *supra* note 2.

[40] See *supra* p. 4-5.

As mentioned in note 23 *supra*, the term 'mother tongue' is used here to refer to an individual's first language(s), in contrast with a second language (as defined by Kecskes and Papp).[41] In this Corpus Linguistics study we considered only the language(s) of the relevant AG(s). For reasons of resource, timeframe, and access, it was impossible to consider the language(s) of all individuals involved in the production of AG Opinions. This must be noted as a limitation of the study – interestingly one which only fully comes to light as a result of the analysis of interview data, which uncover the collaborative nature of those Opinions (see Reflections and Conclusions, *infra*).

In order to (linguistically) compare the two types of documents, we built two corpora - one made up of English language versions of judgments and opinions and the other made up of French language versions.[42] Each corpus contained 4 subcorpora[43] representing:

- The judgments drafted in the 27 years considered in the study (1988 – 2015).[44]
- The mother-tongue opinions drafted between 1988 and 2003
- The non-mother tongue opinions drafted between 2005 and 2015
- The mother-tongue opinions drafted between 2005 and 2015

Our methodology was divided into three separate steps:

1. Determining what features define 'fluency' and stylistic simplicity/complexity;
2. Searching for those features in each sub-corpus;
3. Comparing the results across languages.

[41] Istavan Kecskes and Tünde Papp, *supra* note 23.

[42] French is the working language of the ECJ, and the language in which all judgments are drafted, before being translated into the other EU official languages. English was chosen because (a) it is the pivot language most commonly chosen as a drafting language for opinions and (b) it was the most appropriate language of analysis given the linguistic skills of the research team.

[43] Opinions and judgments were analysed in two periods: pre-2004 (1988 – 2003) and post-2004 (2005 – 2015). We initially compiled corpora of opinions spanning 10 years either side of 2004, i.e. 1993 – 2015. However, we discovered that the quantity of text in opinions delivered between 1993 and 2003 was much less than that between 2005 and 2015, and so not comparable using corpus linguistics methods. The reasons for that discrepancy are unsurprising: since we were analysing only French and English language opinions, there were simply fewer AGs writing in French and English before 2004, hence fewer opinions to analyse. In order to compile two corpora (pre- and post-2004), which were comparable in terms of quantity of words, we added 5 years to the pre-2004 sample period. We did not include opinions drafted in the 2004 transition period.

[44] ECJ judgments are always drafted in French, but usually by non-mother tongue French speakers. That together with a number of other factors, results in documents written in a hybrid, Lego-like language (see *supra*, note 39), and in which translation universals markers are evident (see *infra* p. 20-21). The English language judgments contained in our corpora include another layer of translation, since they are translated from the French originals.

The defining features of 'fluency' were determined according to established linguistic theories, primarily from Xiao & Yue, and Tai.[45] Our determination of features of stylistic simplicity/complexity was based on Baker's hypothesis of Translation Universals,[46] a key element discussed in translation studies. According to that hypothesis, translated texts present some intrinsic and distinctive features that characterise and distinguish them from original texts written in the same language. One such feature is simplification. This hypothesis maintains that translated texts are simpler than originals from any linguistic perspective,[47] whether lexical, syntactic or stylistic, and that this can be proved by using various criteria to measure the degree of simplification of translated and original texts from each of those three perspectives. Since writing in a second language implies a cognitive effort similar to the one needed to translate,[48] we based our analysis on those same criteria, from lexical, syntactic and stylistic perspectives.

Table 1 shows the values of the four criteria considered in assessing fluency and stylistic simplicity in each subcorpus. Each row in the table represents a linguistic feature related to text simplicity, whereas the columns represent the various subcorpora analysed. In layman's terms, the lower the value of the examined linguistic feature, the simpler the language of a particular subcorpus relative to the other subcorpora for that feature. *Lexical variety* measures the quantity of different words used within texts. *Lexical density* relates to the concentration of meaning in sentences, and is calculated by measuring how many words in a text present a lexical meaning (e.g. a noun or an adjective) relative to words that have only a grammatical function (e.g. articles, prepositions etc.). Shorter *mean sentence length* is also an indicator of linguistic simplicity. The final indicator of linguistic complexity considered is the measurement for *hypotactic structures (subordinate clauses)*, in particular *relative clauses*:[49] the higher the measurement, the greater the complexity.

Considering these four criteria, and taking account of the statistical significance of the results for hypotactic structures presented in Table 1 (the effective difference between the results considering the size of the sample),[50] we can see that, in terms of lexical density, there

[45] Hsuan-YuTai, *Writing Development in syntactic complexity, accuracy and fluency in a content and language integrated learning class*, 2 INT'L J. LANGUAGE & LINGUISTICS 149 (2015); Richard Xiao & Ming Yue, (2009) *Using Corpora in Translation Studies: The State of the Art*, *in* CONTEMPORARY CORPUS LINGUISTICS (Paul Baker ed., 2009).

[46] Mona Baker, *Corpus Lingusitics and Translation Studies – Implications and Applications*, *in* TEXT AND TECHNOLOGY: IN HONOUR OF JOHN SINCLAIR (Mona Baker, Gil Francis & Elena Tognini-Bonelli eds, 1993).

[47] Richard Xiao & Ming Yue, *Using Corpora in Translation Studies: The State of the Art*, *supra* note 45, at 250.

[48] Federico Gaspari & Silvia Bernardini, *Comparing Non-native and Translated Language: Monolingual Comparable Corpora with a Twist*, *in* USING CORPORA IN CONTRASTIVE AND TRANSLATION STUDIES (Richard Xiao ed., 2010).

[49] Relative clauses are a particular type of subordinate clause/hypotactic structure.

[50] Statistical significance exists only in comparison, so cannot be usefully included in Table 1 here. Instead, it is

is little difference presented between judgments and opinions, in either language, pre-or post-2004. This leaves three features on which to base the corpus linguistics analysis. We can observe that, overall, there are various ways in which judgments appear to be less fluent and syntactically simpler than opinions across those three features: they demonstrate a lower lexical variety in the English language corpus, shorter sentences after 2004 in both languages and fewer subordinate clauses in the French language corpus pre- and post-2004 (pre-2004 LL: 552.44; post-2004 LL: 141.78), arguably supporting the first of our starting hypotheses.

Table 1

Examined linguistic feature	English corpus					French corpus				
	Pre-2004		Post-2004			Pre-2004		Post-2004		
	Judgments	Opinions	Judgments	Opinions mother tongue	Opinions non-mother tongue	Judgments	Opinions	Judgments	Opinions mother tongue	Opinions non-mother tongue
Lexical variety	31.34	31.87	28.85	30.04	29.23	34.16	32.96	31.0	32.11	31.66
Lexical density	0.52	0.48	0.52	0.50	0.51	0.50	0.49	0.50	0.49	0.49
Mean sentence length	36.22	33.63	45.01	55.67	52.01	36.09	33.92	46.24	64.13	57.32
Hypotactic structures	64,669	56,767	285,368	67,835	83,025	12,159	17,951	59,724	21,429	19,315
of which relative clauses	21,618	17,720	88,503	22,550	24,425	3,943	5,485	19,205	6,771	5,172

The results set out in Table 1 also demonstrate that opinions drafted post-2004 in non-mother tongue languages demonstrate a lower lexical variety, shorter sentences, and fewer hypotactic structures in French, than opinions drafted in the AG's mother tongue (English LL: 176.18; French LL: 95.72), and in particular fewer relative conjunctions (French LL: 203.91), which indicates a lower use of relative clauses. As explained above, the value of these features is directly proportional to the complexity of the texts. Thus, subcorpora presenting lower values comprise texts which are linguistically simpler. Similarly, since post-2004 non-mother tongue opinions present lower values than pre-2004 mother tongue opinions, in two of the four analysed criteria (lower lexical variety and less hypotaxis – English LL: 978.25; French LL:

indicated in parentheses for each single comparison. The statistical significance was calculated using log likelihood (LL) values for each comparison, which indicates overuse in one corpus relative to another.

848.32), then the former can be said to be linguistically simpler than the latter. These results could therefore corroborate the third hypothesis.

Taken together, both of those sets of results could be interpreted as demonstrating the second hypothesis (after the 2004 linguistic reform, opinions become more similar (linguistically) to judgments). If judgments are stylistically simpler and less fluent than opinions and opinions are becoming gradually stylistically simpler and less fluent, then one could argue that they are becoming more similar (linguistically) to judgments. This finding is in line with interview data discussed above, which highlights that référendaires often make a conscious choice to use more simplified language because they are aware of all of the layers that are added through linguistic assistance and especially through translation.

However, the corpus linguistics data could also be interpreted as contradicting the first hypothesis: a higher value for lexical variety in the French language corpus in pre-2004 judgments as compared with pre-2004 'mother tongue' opinions, more subordinate clauses in the English language corpus in judgments than in opinions (pre- and post-2004), and longer mean sentence length for pre-2004 judgments as compared to pre-2004 mother tongue opinions could indicate greater linguistic complexity in pre-2004 judgments than pre-2004 mother tongue opinions. In addition, the lower lexical variety and changes in sentence length observed in judgments in both the English and French language corpora post-2004 demonstrate that judgments also undergo a diachronic change before and after 2004, even though the methods of drafting judgments remain the same. It is thus easy to see how corpus linguistics analysis can, as Goldfarb states "prove on closer examination to be misleading".[51]

In addition, while these results are interesting in and of themselves, there remain many factors that corpus linguistics analysis simply cannot take into account. For example, our analysis compared the language of opinions based on the mother tongues of the AGs in question. However, as we have seen from the interview data, the process of producing a final opinion is more collaborative than it would appear at face value. It is very difficult to establish the mother tongue of the relevant référendaire(s) who produced drafts of each opinion, or the extent of linguistic assistance that may have been provided in each case. Tempting as it may be, therefore, there is a real danger of ascribing an import to this corpus linguistics data that is simply not appropriate. For the corpus linguistics analysis to have any real value beyond the field of corpus linguistics itself, we need to move beyond observing lexical items in the texts.

[51] Neal Goldfarb, *Corpus Linguistics in Legal Interpretation: When is it (In)appropriate?*, *supra*, note 36.

V. Extrapolating the findings beyond individual fields

In order to move beyond observations on the basis of corpus linguistics analysis and analysis of interview data, to comment more generally on the impact of language on the production of ECJ jurisprudence, we can first use the two research strategies to triangulate the data obtained in each case, as well as assumptions made in the literature.[52] The next step in extrapolating the findings more broadly involves examining the role of AGs and the purpose of the opinion.

Literature on the role of AGs at the ECJ informs us that the value of AGs' opinions lies in their *persuasiveness* (either in terms of persuading the Court itself, and/or the parties/other institutions in a particular case, or in terms of persuading wider EU scholarship, including Member States and the general public)[53] and that the general consensus is that language is a fundamental part of the ability to persuade.[54] The literature also tends to make much of the fact that an AG's opinion constitutes the work of a single person, and emphasises that the discursive, speculative nature of AGs' opinions is due in no small part to the fact that historically those opinions have been drafted in the language of the relevant AG.[55]

The interview data discussed here shows, among other things, that opinions are multi-layered and multi-authored texts, and that at all stages of production of those texts there are layers of translation that often reflect tensions between law, language and translation. At the same time, those involved in drafting opinions claim that there has been no impact on the language and style of opinions since the 2004 language regime change. It is therefore possible to say that the CL analysis demonstrates that *in spite of what those involved in drafting opinions*

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[52] Triangulation is used here as "*a strategy for justifying and underpinning knowledge by gaining additional knowledge.*" Uwe Flick, *Triangulation in Qualitative Research, in* A COMPANION TO QUALITATIVE RESEARCH 179 (Uwe Flick, Ernst von Kardoff & Ines Steinke eds, 2004).

[53] *Cf.* Albertina Albors-Llorens, *Securing trust in the Court of Justice of the EU: the influence of the advocate general*, 14 CAMBRIDGE Y.B. EUR. LEGAL STUD. 515 (2011-2012); Rosa Greaves, *A Commentary on Selected Opinions of Advocate General Jacobs*, 29 FORDHAM INT'L L.J. 715 (2005); Alicia Hinarejos, *Social Legitimacy and the Court of Justice of the EU: Some Reflections on the Role of the Advocate General*, 14 CAMBRIDGE Y.B. EUR. LEGAL STUD. 631, (2012); Laure Clement-Wilz, *Les conclusions de l'avocate general: quelle utilité pour la Cour de justice?*, 22 REVUE EUROPEENNE DE DROIT PUBLIC 756 (2010). [accents ?]

[54] *Cf:* Laure Clement-Wilz, *The Advocate General: A Key Actor of the Court of Justice of the European Union*, 14 CAMBRIDGE Y.B. EUR. LEGAL STUD. 587 (2012); Cyril Ritter, *A New Look at the Role and Impact of Advocates-General - Collectively and Individually*, 12 COLUM. J. EUR. L.. 767 (2006); Niall Fennelly, *Reflections of an Irish Advocate General*, 5 IRISH J. EUR. L. 18 (1996).

[55] *Cf:* Rosa Greaves & Nora Burrows, THE ADVOCATE GENERAL AND EC LAW (2007); Alicia Hinarejos, *Social Legitimacy and the Court of Justice of the EU: Some Reflections on the Role of the Advocate General*, *supra* note 53; Kirsten Borgsmidt, *The Advocate General at the European Court of Justice: A Comparative Study*, 3 EUR. L. REV. 106 (1988).

might think, there has been a measurable impact on the language and style of opinions as a result of the 2004 language regime change at the ECJ. From that assertion, we can begin to consider to what extent that language reform may also have had an impact on the substance of those opinions, or, more likely, on their 'persuasiveness'.

This, in turn, leads us to considerations relating to the purpose of AGs' opinions.[56] If we assume that the principal purpose of opinions is, as seems to emerge from Article 252 TFEU,[57] to persuade the ECJ to take a particular direction in a specific case, or to convince the ECJ to (re)evaluate certain aspects of EU law more widely, we could argue that changes in language and style are potentially beneficial: if AGs' opinions are becoming linguistically more like ECJ judgments, then 'the Court' and the AGs are effectively speaking the same institutional language, thereby making the process clearer and more efficient internally. It is, however, generally accepted that opinions also exist as a type of additional resource for interested parties, or dissenting judgment, to compensate for the lack of transparency in the process of producing ECJ judgments.[58] In that case, one could argue that the historic, discursive language style is important and that changes to that style are therefore also important to understand. If the purpose of AG opinions is also to provide persons and entities subject to EU law with a better understanding of the way in which a particular aspect of the law may develop – the importance of *droit prospectif* as noted in the literature – and to provide context for those teaching and practising EU law, then arguably it is important to retain the discursive, academic style of opinions. Thus, questions as to the purpose and value of AG opinions need to be addressed before we can begin to consider broader questions of what impact language, multilingualism and changes in the ECJ's internal linguistic regime may have on the development of EU law.

It can, therefore, be seen that the real strength of the diverse research methods set out in this paper lies in how they can frame our analysis when brought together in the context of research design that seeks to address broad research questions and build a cumulative understanding of how the ECJ functions. By elucidating and refining aspects of the process

[56] Tridimas identifies four distinct roles of the AG: assisting the ECJ in the preparation of a case; proposing a solution in a specific case; providing legal grounds to justify that solution; and expressing an opinion on various points of law, including a critical assessment of the existing case law on the topic. Takis Tridimas, *The Role of the Advocate General in the Development of Community Law: Some Reflections*, *supra* note 11, at 1358.

[57] Article 252 TFEU states that the duty of the AG is, "acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement." Treaty on the Functioning of the European Union Protocol (No 3) On the Statute of the Court of Justice of the European Union, June 7, 2016, 2016 O.J. (C 202) at 158.

[58] This was most certainly one of the original functions of the office of Advocate General – *Cf:* Maurice C Lagrange, *La Cour de Justice des Communautés Européennes du plan Schuman à l'Union Européenne*, 14 REV TRIM DR. EUR. 1, 5 (1978).

behind the creation of the ECJ's multilingual jurisprudence and the effects that changes to the language regime have had, those research methods allow us to develop a deeper and more nuanced understanding of the creation of that jurisprudence. Ultimately, they also contribute to bringing language to the fore, which is crucial when studying an institution which functions within a unique linguistic context.

VI. Reflections and Conclusions

This Chapter enjoys the benefit of hindsight. Indeed, in writing, we have gained clearer perspective on how we could have improved the research and gone even deeper into the topic. Any research process inevitably leads to the uncovering of further aspects that merit consideration or that provide preliminary material for future research endeavours. It is our hope that this Chapter not only introduces our approaches to students and scholars of EU law, but also provides those with an interest in law and language studies, or empirical and socio-legal studies of EU law, with the tools to carry out similar studies and continue to push the frontiers of research in this area.

The interviews discussed here were primarily concerned with uncovering the culture surrounding the AGs' opinions and the different inputs that are brought to these opinions from people involved in the drafting, editing and translation process. The aim of the interviews was to identify those factors, mostly internal to the ECJ, that affect AGs' opinions and to ascertain to what extent language and translation can have an impact on those opinions and more generally on the case law produced by the ECJ. They have proven to be an invaluable source of information. At the same time, they have also revealed aspects which might have remained unexplored.

The interviews that were carried out with AGs, référendaires and lawyer-linguists also gave an indication of further actors whose perspective might be relevant for the purpose of determining the influence of language on AGs' opinions. Judges, the direct stakeholders who use AGs' opinions in their work as a source of inspiration and assistance in deciding cases, might have also provided valuable insights into how these tools have evolved and developed since pivot languages were put into effect at the ECJ. Interviews with judges at the ECJ, which focus on how they engage with AGs' opinions, could be a starting point towards exploring the issue of power and persuasiveness at the ECJ. Such investigations could also provide the opportunity to go beyond analysis of the impact of languages on the extent to which judges

follow the solutions provided by AGs, to consider other situational and cultural factors that impact AGs' opinions.

The benefit of hindsight also allows a better evaluation of the methods that were not included or integrated in the interviews, but which might usefully be deployed in future research by scholars embarking on law and language research on the ECJ. Such methods include providing questionnaires with specific closed answers or asking référendaires to draft an opinion in different mother tongue versus non-mother tongue languages and then comparing how this change affects the final output. Référendaires, lawyer-linguists, or indeed AGs themselves, could be asked to analyse different language versions of these opinions and discuss their reaction to the findings. However, in the present context, such methods remained purely aspirational, given time constraints and workload of respondents.

The findings described above demonstrate that the methodological innovation of using qualitative interviews and corpus linguistics analysis together brings something new to the study of the ECJ and its jurisprudence, even though the two research strategies may have certain limitations. Interviews are a particularly effective qualitative method for obtaining insights into the respondents' personal feelings, opinions and experiences, as well as how they interpret and order the world in which they interact.[59] Corpus linguistics, while perhaps not appropriate to use as the sole method upon which to base conclusions about the impact of multilingualism on the ECJ's 'output', can usefully triangulate or test analysis carried out on the basis of those qualitative interviews. The interview data discussed here indicates that the AGs themselves do not perceive writing in a language that is not their mother tongue as a challenge. Similarly, référendaires do not consider that they are constrained by language, regardless of whether they are drafting in their own or another tongue. However, although they make that claim, it is clear from the interview data that those *référendaires* go on to discuss particular, or potential, constraints arising as a result of drafting in a non-mother tongue language. Thus. the interview data can shine a light on important aspects of the hitherto relatively unknown process of producing opinions - which may not necessarily be visible on a *prima facie* reading of that data, or indeed be known to the respondents themselves. Corpus linguistics analysis then allows us to interrogate the texts of opinions and search for markers, such as translation universals, which may indicate those (language) constraints.

[59] TOM WENGRAF, QUALITATIVE RESEARCH INTERVIEWING: BIOGRAPHIC NARRATIVES AND SEMI-STRUCTURED METHODS (2001).

Perhaps the most interesting result, emerging from the analysis of rich descriptions in the interview data, is the collective or collaborative nature of the process of writing an AG opinion. It is well-established, even outside the interdisciplinary research on the topic, that the judgments of the ECJ are collaborative, 'compromise' documents, since they are the result of collegiate deliberations. However, the general understanding of the nature of AGs' opinions is that they are, as their title suggests, personal conclusions of the relevant AGs. It is clear, from the preliminary analysis of the qualitative interviews set out in this paper, that the process of producing an AG opinion is, in fact, far more collaborative than that. Depending on the language in which an opinion is written and the practices of particular cabinets (and of individuals within those cabinets), there may be a number of contributors to and collaborators on an 'original language version' of an AG's opinion. That is not to say that the opinion does not accurately reflect the 'voice' of the relevant AG, rather that the impact of various collaborators on the final document should not be ignored.

If, as the literature suggests, the discursive nature of AGs' opinions is important in terms of their impact on the development of ECJ case law, then an understanding of the collaborative process that feeds into those documents should condition our perception of their role in the development of that case law. AGs' opinions feed into the multi-layered process by which the ECJ's case law is produced.[60] More than that, however, they also *reflect* that multi-layered process in their own construction.

There is an inherent added value in corpus linguistics analysis insofar as it allows the researcher to interrogate elements of the text of opinions in a novel manner, removed from legal analysis or politico-legal considerations of what is being said, focusing instead on how it is being said. However, as discussed above, it is important to acknowledge the limitations of this method. The real value of the corpus linguistics analysis discussed here is twofold:

First, it demonstrates that the opinions analysed in the corpora created for this study have changed in terms of language and style since 2004. While this cannot of itself allow us to draw conclusions about the reasons for such change, it is consistent with interview data that identifies AG cabinets who make a conscious choice to use more simplified language than they otherwise would in an effort to reduce discrepancies and approximations being introduced through translation.

[60] Karen McAuliffe & Aleksandar Trklja, *Superdiversity and the Relationship between Law, Language and Translation in a Supranational Legal Order, supra* note 7.

Second, corpus linguistics data can also act as a starting point for further research in the field: demonstrating a measurable difference in language use in AGs' opinions paves the way for exploring the factors behind such changes in more depth. Tempting as it may be, we cannot assume that those changes are in whole or even in part caused by changes to the ECJ's language regime. However, the analysis set out here could prove a useful basis for scholars interested in using the ECJ as a case study to develop work in the field of legal linguistics.

Developing rich understandings of the process of producing opinions is significant insofar as the 'output' of AGs' cabinets—i.e. the opinions—is necessarily shaped by that process. When one considers the impact and influence that AGs' opinions have on the development of the ECJ's case law, and therefore on the development of EU law more generally, that type of holistic understanding becomes even more important. In order to speak to broader questions of the relationship between law and language, any law and language study on the ECJ should aim to develop an appreciation of the subtle shades of meaning in that Court's jurisprudence and in-depth understanding of the many layers that come together to produce it. While each of the research methods discussed here has its own specific strengths and merits, such nuanced and considered understanding can best be achieved by bringing those methods together in genuinely interdisciplinary scholarship.