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THE INTRALINGUAL TRANSLATION OF EU DIRECTIVES IN ENGLISH

(Diploma Thesis)

Bc. Kristýna Kubíčková

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I hereby declare that I have written the dissertation thesis on my own and have provided references to all cited or paraphrased sources.

In Olomouc, 2021

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Annotation

Author:	Bc. Kristýna Kubíčková
Department:	Department of English and American Studies, Faculty of Arts, Palacký University Olomouc
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Abstract

The main objective of this diploma thesis is to assess the extent and level of linguistic changes of EU directives in English when they are transposed into the English and Irish legal systems. First, these legal systems are set into a particular legal context concerning the Continental legal system and the legal system of "Common law" countries. The theoretical part deals with the law-making in the European Union and legal framework, more precisely, it focuses on the *acquis communautaire* and the transposition and implementation of the EU directives. In addition, it covers the issue of intralingual translation and the role of English in this context. The practical part then analyses a selected number of EU consumer directives on the various levels of language.

Key words: Contrastive analysis, transposition, implementation, directives, intralingual translation, legal systems, European Union

Abstrakt

Tato diplomová práce se zabývá otázkou, k jakým jazykovým změnám dochází při transpozici směrnic EU v anglickém jazyce do právních řádů v Anglii a Irsku. Tyto právní řády jsou nejprve zasazeny do konkrétního právního kontextu kontinentálního práva a systému práva *common law*. Teoretická část se následně zabývá zákonodárstvím v Evropské unii a právním úpravou *acquis communautaire*, konkrétně se pak zaměřuje na implementací a transpozicí směrnic EU. Další kapitola se pak věnuje problematice intralingválního překladu a roli angličtiny v daném kontextu. Hlavní náplní praktické částí je analýza vybraných směrnic EU na ochranu spotřebitele na všech významných jazykových rovinách.

Klíčová slova: Kontrastivní analýza, transpozice, implementace, směrnice, intralingválni překlad, právní systémy, Evropská unie

LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
CRD	Consumer Rights Directive (2011/83/EU)
EC	European Community
EEA	European Economic Area
EEC	European Economic Community
EP	European Parliament
ESG	English Style Guide
EU	European Union
OJEU	Official Journal of the European Union
PID	Price Indication Directive (98/6)
PTD	Package Travel and Linked Travel Directive (2015/2302)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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1 INTRODUCTION

Over the last decades, the European Union and its institutions have gradually become a place of striving transcultural communication on many different levels: cultural, social, legal, and linguistic. Its supranational character does not merely require shared principles, procedures, and values, but also the need to translate, transpose and implement these rules on the national level of the Member States for them to be enforceable.

The EU has 24 official languages, as a result of its support of multilingualism in all of its institutions (european-union.europa.eu), and legislation and documents of major public significance are produced in all of them. However, among them, the EU distinguishes only three procedural languages – English, German and French, with English being nowadays the most used drafting language used in EU agencies, bodies, and institutions (ec.europa.eu). This special status has not been implemented by any treaty or law. Instead, it has evolved gradually as English became the global lingua franca. In this thesis, I would like to explore this specific nature of English in the European Union in more detail.

It must be mentioned that while a substantial number of interlingual comparative studies dealing with the differences between the EU laws in English and their translations in other official languages have been conducted over the years, intralingual comparative studies are much rarer. It comes hand-in-hand with the peripheral status of intralingual translation in translation studies in general, even after Roman Jakobson famously defined and classified it as one of the three kinds of translation back in 1959 (Zethsen 2009, 795).

The main objective of this diploma thesis is to assess the extent and level of linguistic changes of EU directives in English when they are transposed into the English and Irish legal systems. It is inspired by previous intralingual studies of EU directives: *How do supranational terms transfer into national legal systems?* (Łucja Biel and Agnieszka Doczekalska); *Observing Eurolects: Corpus analysis of linguistic variation in EU law* (Laura Mori and Annalisa Sandrelli); and *The Transposition of EU Directives into British Legislation as Intralingual*

Translation: A Corpus-Based Analysis of the Rewriting Process (Simona Anselmi and Francesca Seracini).

One might wonder how relevant it is to conduct such research after the United Kingdom withdrew from the European Union on 31 January 2020. First, despite the withdrawal, English has not lost its status as one of the official EU languages since it is also one of Ireland's and Malta's official languages. Second, the directives which were transposed over the course of the United Kingdom's membership in the EU since 1 January 1973 are still a part of the of the UK domestic legislation and under the control of the UK's Parliaments and Assemblies (legislation.gov.uk) because the transposed directives were carried over into the UK law as 'retained EU law' as stated in The European Union (Withdrawal) Act 2018 (EUWA).

In the theoretical part of the thesis, the English and Irish legal systems are first set into a particular legal context concerning the Continental legal system and the legal system of 'common law' countries. The theoretical part deals with the law-making in the European Union and legal framework, more precisely, it focuses on the *acquis communautaire* and the transposition and implementation of the EU directives.

The practical part then analyses a selected number of EU consumer directives on various levels of language. The contrastive analysis aims to identify and describe the various linguistic differences and changes between the source text of the directive and its intralingual translations which are the transposing acts.

2 LEGAL SYSTEMS OF THE EUROPEAN UNION

The European Union is a meeting point of two vastly different legal systems: the continental law system and the common law system. This can be a complication because even with the apparent equivalence of terms, they may describe legal institutes that have different meaning and traditions in different legal systems (Bázlík 2011, 8). This chapter aims to briefly characterize the individual systems, their historical development and sources, and create a basic outline of their differences due to the important role they play in the practical part of this thesis.

2.1 Anglo-American System of Law (Common Law)

Osina states that this system emerged in England and was originally called the *common law system* but does not consider this designation to be accurate because common law consists only one part of the Anglo-American system of law. As a result of colonization during the era of British Empire, this system then spread to other countries, and today we can find it in various forms in the USA, Ireland, Canada, Australia, India, South Africa, New Zealand, Cyprus, or Malta. It affects about 1/3 of the human population (Osina 2013, 170)[1].

2.1.1 English and Irish Law

The United Kingdom does not have a uniform legal system. As English law, we therefore refer to the system of law that has been applied in England and Wales (since 1830). The terms ‘UK legal system’ and ‘English legal system’ will be used interchangeably in this thesis, meaning the system in England and Wales. Due to the similarities with the English law caused by the 753 years of British rule of Ireland, the Irish law (the law of Republic of Ireland) is a common law system, virtually indistinguishable on many important subjects from the English law, therefore the information contained in this sub-chapter will also apply to the Irish law (Knapp 1996, 165). There are several types of legal sources in this area which Knapp classifies into four categories: judge-made law (*case law*), legislation (*Statute law, enacted law*), legal customs and legal writings. As the most important among these, he considered the judge-made law which has evolved from the common law and law of equity (1996, 165).

[1] The Czech sources were translated into English by the author of this thesis.

The foundations of common law were laid by the Normans after the Battle of Hastings in 1066. Until then, each area of England had its own legal system. William the Conqueror unified these fragmented systems and created one legal system common to the whole country. From that, the whole legal system got its name "*common law*". It is a system based on court decisions or precedents, not on laws passed by Parliament. For this reason, the unwritten law (*lex non scripta*) prevails (Wood 1999, 4).

However, Wood further elaborates that in the Middle Ages, there was a situation where common law courts were unable to provide redress. The injured parties thus asked the king for an extraordinary remedy. As a result, he set up an equity court *(Court of Chancery*). The laws applied by this court became, over time, part of the English system of law, and so the law of equity was born, the most important part of which was the law of trusts. It originated in England in the 12th and 13th centuries during the Crusades. At that time, land ownership was based on a feudal system, and when a landowner wanted to go to fight in the Holy Land, he needed someone to manage his property and collect fiefs (feudal fees) during his absence. For this purpose, he transferred ownership of the land to the person on the condition that it would be returned to him when he came back from the Crusade. However, it often happened that the new owners did not want to return the property to the returning crusaders, and the common law did not give such a person the opportunity to regain the land in any way. The point was that, from the courts' point of view, the original owner had no legal claim to the land, because by law it now belonged to the trustee. The victim in such cases lodged a complaint with the King, who forwarded it to his Lord Chancellor. He then had the power to decide fairly and according to his conscience. In this way, the principle of equity was created (Wood 1999, 6).

This dual judicial system functioned until 1875, when the old common law courts and the court of equity were abolished under the Judicature Act 1873 and replaced by a system of courts that had jurisdiction to apply both common law and equity. This law stipulated that in the event of a conflict, the right to equity should prevail between the two rights (Wood 1999, 7).

Osina states that this method of creating precedents has prevailed due to the principle of *stare decisis (lat. to stand by things decided)* which states that the

precedent binds the court that issued it to maintain the same legal opinion in the future, and binds all lower courts, as well (2007, 190). As a rule, the judgement as a whole is not binding. It binds only the parties in the dispute and corresponds to the continental concept of *res iudicata*. The judgement contains further commentary of the judge, and this commentary often goes well beyond the scope of the whole case. Only the part of the reasoning which contains the actual rule of conduct is binding and affects everyone. It is called the *ratio decidendi* (*rationale for the decision*). In addition, the decision may also include non-binding commentary by a judge, called the *obiter dictum* (*other things said*). Unlike the judges in the civil law system, the common law judges do not merely discover the law, they also create it (Osina 2007, 192).

As Knapp adds, statute law ("written law") is not considered a normal form of law, the precondition for its integration into the legal system is its interpretation by the court and it is often understood only as the basis of judicial law-making (Knapp 1996, 95). Even though legislation takes precedence over a court decision, if it was not applied by courts in their decisions, it is considered only declaratory. It is made perfect by a court decision which even in the case of statute law plays a more relevant role in practice than written law. As a result, the principle of stare decisis also applies to the application of statute law. After the application of the statute by the court, the decision becomes a source of law – a precedent has been created which interprets the law and the original statute is followed by the courts in future cases as a precedent (Osina 2007, 193).

2.2 Civil Law (Continental Law)

The term Civil Law is used in the common law culture for the legal system of continental Europe and serves as a reference to the origins of this system in Roman law (*ius civile*) from which the continental legal system gradually evolved (Knapp, 1996, 92). It is based on the oldest codification of Roman law from the 5th century BC, the Laws of the Twelve Tablets. It gradually spread through continental Europe, and today it can be found, mainly due to the colonization that took place in the 19th century, in Latin America, Japan and some countries in Africa and the Middle East (Osina 2013, 170).

The primary source of law is a legal rule or legislation, in more general terms. It is so-called written law (lex scripta) and lawyers seek solutions to legal problems and cases in texts published by the legislative authority (Osina 2013, 171).

Osina classifies legal rules into several categories: primary legislation (constitutional laws, statutes and legal measures of the Senate) and subordinate legislation (government decrees, ministry regulations, regional and municipal bylaws, municipal ordinances,…) Another typical feature of this system is that codifications often occur when laws are grouped into larger units – legal codes (Osina 2013, 21).

The continental legal system differs from the Anglo-American system in legal terminology, the division of law into public and private law (Gerloch, 2013, p. 106), the facts that judges do not discover law, but find it, and court decisions are binding only *inter partes* (between the parties). This means that these decisions are merely individual legal acts and acts of applied law. The only exception is the negative law-making of constitutional courts which may annul legal rules in their decision. In such case, this decision affects everyone (*erga omnes*) (Osina 2013, 41).

2.2.1 European Union Law

As Stehlík notes, the nature of the European Union Law is inevitably linked to the supranational character of the European integration. Achieving autonomous objectives of its entities requires an autonomous, effective, and uniform legal system. It was the Court of Justice of the European Union which defined the EU law as an autonomous and independent legal system valid within the territory of all Member States (2017, 74).

This new legal system is called *community law* (*droit communautaire*) which changed the legal bipartite (coexistence of international and national law) into the tripartite of international, national and community law (Stehlík 2017, 75). It will be explored in more detail in the following chapter of this thesis.

CJEU ruled that EU law is directly applicable without the need of its reception in the national legal system, irrespective whether coming from primary of secondary legislation, and its internal effects work independent from principle

of legal systems of Member States. This is considered *the principle of direct applicability of the EU law* (Hamuľák 2013, 69-70).

Furthermore, the *precedence principle* (principle of supremacy or primacy of EU law) ensures that European law is superior to the national laws of Member States. Thus, be it lawmakers or judges, they may not apply a national law, including constitutions of the Member States which contradicts European law, with EU law being the prevailing legal system in case of collision with the text or meaning of the national legislation, and citizens become uniformly protected by a European law in every country of the EU. While the principle does not specifically emanate from the Treaties or the secondary law, it had been enshrined by the CJEU, which defined it in the Costa v Enel case in 1964, ruling that the laws issued by European institutions should be integrated into the legal system of Member States which are legally obliged to comply with them. However, it does not rescind nor repeal the national law, its binding force is merely suspended (Chromá 2011, 320).

According to Article 5(1) TEU, the limits of EU competence are governed by *the principle of conferral* while its use is governed by *the principles of subsidiarity and proportionality*. The conferral principle signifies that "*the Union may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competence not conferred upon the Union in the Treaties remain with the Member States*" (Article 5(2) TEU). Moreover, "*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scele or effects of the proposed action, be better achieved at Union level*" (Article 5(3) TEU).

The competence of the EU is therefore by no means absolute. Woods says to support the principle of subsidiarity, TFEU divides the EU competence into three categories in Article 2 (2020, 61):

- ***exclusive competence*** – areas in which the EU alone has the competence to adopt binding acts. EU countries are able to do so only if empowered by the EU to implement these acts (Woods 2020, 61). The areas include

custom union, monetary policy, the establishing of competition rules necessary for the functioning of the internal market, common commercial policy, conclusion of international agreements under certain conditions and conservation of marine biological resources under the common fisheries policy (Article 3 TFEU).

- ***shared competence*** – the EU and Member States may adopt legally binding acts. The EU countries exercise their competence where the EU does not or has decided not to exercise its own competence (Woods 2020, 61). It applies in the following areas: internal market; social policy; economic, social and territorial cohesion; agriculture and fisheries; environment; consumer protection, transport, trans-European networks; energy; areas of freedom, security and justice; shared safety concerns in public health matters; research, technological development, space; development cooperation and humanitarian aid (Article 4 TFEU). This competence is the most relevant to the scope of this thesis as it includes the section of consumer protection and the harmonisation of EU and Member States laws.
- ***supporting competence*** – the EU can only intervene to support, coordinate, or complement the action of the Member States (Woods 2020, 61). It relates to the following policy areas: protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation (Article 6 TFEU).

3 SOURCES OF EUROPEAN UNION LAW AND THEIR HIERARCHY

The European Union law is an independent legal system governing activities and objectives of European integration structures. It is possible to distinguish two basic branches, i.e., the so-called Constitutional law of the European Union and the Substantive law of the European Union (Stehlík 2017, 80). The body of common rights and obligations that are binding on all EU countries, as EU Members is called *acquis communautaire* and keeps constantly evolving.

According to Stehlík, **the Constitutional law of the European Union** consists of fundamental rules and principles that define the European Union together with content and scope of its activities. The subject matter of the Constitutional law is to determine the character of the European Union, to establish its objectives and relation with the Member States, to define its internal organisational structure, to determine competences of specific institutions and to define instruments and the ways of their adoption and implementation to achieve objectives (Stehlík 2017, 80).

The Substantive law of the European Union is used to fulfil specific objectives of the European Union. The sources of this Substantive law regulate, for example, the functioning of the common internal market, establish competition rules, determine a cooperation between Member States within the establishing of the so-called Area of Freedom, Security and Justice (common immigration policy, judicial cooperation, police and customs cooperation) regulate internal policies of the European Union. The legal rules of Substantive law can be found in all types of sources of EU law. The most essential source is primary law; however, a vast number of legal rules are also included in international treaties concluded by the European Union and in sources of secondary law (Stehlík 2017, 80).

All the legal acts issued by the European Union are part of a hierarchy of EU law in which those lower down the hierarchy are subject to legal acts of a higher status.

3.1 Primary law

Primary law is represented by treaties concluded between the States. It has the highest legal value. According to Hamuľák (2013, 60-61), legal instruments which constitute the primary law are:

- **The founding Treaties of the European Communities:** The Treaty of Paris (ECSC – the European Coal and Steel Treaty, 1951) and the Treaties of Rome (EEC – the European Economic Treaty) and Euroatom – the European Atomic Energy Treaty, 1957)
- **The amending Treaties:** The Convention on certain common institutions of the EC (1957), The Merger Treaty (the Treaty establishing a single Council and a single Commission to the European Communities, 1965), The Single European Act (1986), The Treaty of Maastricht (The Treaty of European Union, 1992), The Treaty of Amsterdam (1997), The Treaty of Nice (2001) and The Treaty of Lisbon amending the Treaty of European Union and the Treaty establishing the European Community (2007)
- **Accession Treaties of New Member States:** Denmark, Ireland and the United Kingdom (1972); Greece (1979); Portugal and Spain (1985); Austria, Finland, Sweden (1994); the Czech Republic, Estonia, Cyprus, Lithuania, Latvia, Hungary, Malta, Poland, Slovakia and Slovenia (2003); and Croatia (2011)
- **The Charter of Fundamental Rights of the European Union** which came into force in 2009 together with the Treaty of Lisbon

3.2 Secondary Law

Secondary law is a body of law containing the largest number of legal rules in the EU legal system. The legality of these instruments comes from the principles and objectives established in the Treaties and they include general EU legislation, that is, acts issued by the EU institutions: regulations, directives, decisions, recommendations, and opinions (Woods 2020, 67). Article 288 TFEU divides these acts into following categories:

- ***Regulations*** have general application and are binding in its entirety in all Member States (Article 288 TFEU). Craig mentioneds they are often likened to legislation passed by the Member States. The phrase “directly

applicable" means that regulations are part of national legal systems, without the need for transformation or adoption by national legal measures. Otherwise, if each of the thousands regulations enacted by the European Union had to be separately transposed into every national legal system before it could be legally effective, the EU would fall apart. However, it does not mean Member States are not required to change their laws in order for them to be in compliance with the regulation (Craig 2015, 107). The objective of regulations is to create legal rules uniformly applicable in all Member States. The subjects of matter of the regulations are rights and obligations of all subjects of the EU law: the Union, the Member States, natural and legal persons (Hamuľák 2013, 63).

- Due to their importance and relevance to the topic of this work, the thesis deals with ***directives*** in more detail in Chapter 2 which is dedicated to them and their specific nature.
- ***Decisions*** are binding in its entirety. A decision which specifies those to whom it is addressed is binding only on the addressees (Woods 2020, 68).
- ***Recommendations and opinions*** have no binding force. The fact that they are non-binding suggests that they do not establish rights and obligations for any subjects. Yet, when courts apply the EU law, they should consider these instruments in cases where they may serve as guidelines for interpretation of other legal acts of the EU or the national law of the Member States (Stehlík 2017, 86-87).

These acts apply in all areas excluding the Common Foreign and Security Policy. Within the hierarchy of the sources of European Union law, secondary law is subordinated to primary law and must comply with the requirements set out in the Treaties, including the Charter of Fundamental Rights of the European Union, general principles of law and international treaties. Any conflict between a secondary law and primary law is a reason for a possible declaration of invalidity of such an act in annulment proceedings before the CJEU (Stehlík 2017, 84).

Stehlík claims that the plural nature of the EU secondary law requires rules deciding which category of the secondary legislation will be used for a specific purpose as every category serves different purposes. Regulations serve as an instrument of the unification of law within the EU, directives are used for

harmonisation of the EU law and national law, and decisions solve specific situations. The EU institutions are obliged to respect the Treaties and to select the form which is mentioned in the relevant article of the Treaties (Stehlík 2017, 93). According to Article 296 TFEU, when the provision of the Treaties leaves the choice up to the institutions, they should always take into consideration the proportionality principle while making their decision. CJEU ruled in its judgement 147/83 *Binderer* v Commission that "the choice of form cannot alter the nature of a measure, it must nevertheless be ascertained whether the content of a measure is wholly consistent with the form attributed to it" (Case C-322/88).

The aforementioned categorization of secondary laws is based on the criterium of their legal form; nevertheless, since the Treaty of Lisbon went into effect, a new categorization of these acts has been used and it is according to the way they are adopted (Stehlík 2017, 87).

- ***Legislative Acts*** are legal acts adopted by legislative procedure as stated by Article 289(3) TFEU. Article 289 TFEU further specifies that "*the ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure."* This means that any legal act, whether in the form of a regulation, directive, or decision, which is enacted in accordance with the ordinary or special legislative procedure is by definition a legislative act (Craig 2015, 114).
- ***Non-legislative acts of general application (delegated acts)*** may be adopted by the Commission, based on Article 290 TFEU, if a legislative act delegates to the Commission "*the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.*" In the hierarchy, they are subjected to legislative acts and can be adopted in any form of legally bindings acts (regulation, directive, decision) (Stehlík 2017, 87).

- ***Implementing acts*** is a category defined in Article 291 TFEU: "*Member States shall adopt all measures of national law necessary to implement legally binding acts. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided in Articles 24 and 26 if the Treaty on European Union, on the Council.*"

3.2.1 The Process of Adoption of the Secondary Law of the European Union

A wide range of EU institutions take part on the law-making and the adopting of acts of the secondary legislation as Hamuľák claims (2013, 65). The three most important institutions in this process are the Commission, the Council and the European Parliament. In some instance, the European Central Bank and consultative institutions such as the Economic and Social Committee and the Committee of Regions may be involved in the legislative process, as well. On the other hand, the national parliaments of the Member States oversee the application of requirements of the principle of subsidiarity within the framework of the secondary law adoption (Hamuľák 2013, 65).

The Commission holds a dominant position in the legislative initiative since EU legislative acts can be adopted only after a Commission's proposal, unless Treaties provide otherwise, as stated in Article 17(2) TEU. Often described as an "engine of the integration", it wields the power to define the content of the EU law and manage the development of the EU itself (Stehlík 2017, 93).

While the Commission proposes acts of secondary legislation, the Council and the European Parliament adopt them in most instances. The majority of legislative acts is adopted in a joint procedure including the EP and the Council which have equal position and, as a result, the act may be adopted only by a consensus. Article 294 TFEU describes it as the ordinary legislative procedure. Acts can be also adopted by a special legislative procedure in cases provided for by Treaties. In such procedure, acts are either adopted by the European Parliament with the participation of the Council, or by the Council with the participation of the EP. There are two types of special legislative procedures: the consent

procedure and the consultation procedure. In the consent procedure neither the EP nor the Council have the right to change the content of the act, but they can prevent the adoption of a proposal by opposing it. On the other hand, the Council decides about the adoption of the act, while the EP plays only an advisory role (Hamuľák 2013, 66).

3.2.2 Formal Requirements of the Secondary Legislation Sources

Stehlík further elaborates that for an act to be perfect it is not enough to merely follow defined procedures, but it also needs to have the required form, it needs to be formally published, and properly reasoned (2017, 96). Article 296 TFEU demands that legal acts state the reasons on which they are based and refer to any proposals, initiatives, recommendations, requests, or opinions required by the Treaties. An obligatory formal requirement is the signature. Under Article 297 TFEU, legislative acts adopted under the ordinary legislative procedure are signed by the President of the European Parliament and by the President of the Council, whereas legislative acts adopted under a special legislative procedure are signed by the President of the institution which adopted them. The acts of secondary law become effective on the day stated in their text or on the twentieth day following their publication in the Official Journal of the European Union, otherwise they could not be enforced (Article 297(1)). The OJEU is published in all the official languages of the EU and it is divided into two series: Series L (legislation) and Series C (information and notices) (EUR-Lex).

3.3 General Principles of Law

General principles of law are unwritten rules of law which are considered as being at the same level as primary law. They are based on the common constitutional traditions of the Member States and general principles of international law. Their purpose is to fill gaps in the EU law. Example of these principles are fundamental rights like rights to a fair trial, protection of property, Green Papers, White papers, etc. (Stehlík 2017, 87-88).

3.4 International Treaties

International treaties concluded between the European Union and other subjects of the international law. They rank between the primary and secondary law in the hierarchy of sources of the EU law (Stehlík 2017, 88).

3.5 Acts Sui Generis

Acts sui generis (atypical acts) include various acts which have special character and are based on the activities of the EU institutions, such as, rules of procedure, interinstitutional agreements, declarations, communications or resolutions. For example, Rules of Procedure of the Court of Justice or the Rules of Procedures of the European Parliament (Stehlík 2017, 88-89).

3.6 Rulings

Rulings on cases brought before the Court of Justice of the European Union since one of the Court's main functions is to interpret the law of the European Union and, as such, its case law plays an important role in the legal system of the EU. However, Hamuľák states that Treaties do not contain the information whether the case law of the Court should be considered a formal source of law (Hamuľák 2013, 55).

4 DIRECTIVES AND THEIR TRANSPOSITION

Article 288 TFEU defines a directive as *„binding in the countries to whom it is addressed (one, several or all of them) as to the result to be achieved, while leaving national authorities the competence as to form and means."*

Craig notes that, unlike regulations, directives do not have to be addressed to all Member States and are binding as to the end to be achieved while leaving certain freedom as to form and method to the Member States. Directives are used to harmonise the laws within a certain area, being one of the main EU harmonisation instruments used to coordinate Member States' laws, or introduce complex legislative change since the discretion is left to the Member States as to how the directive is to be implemented (Craig 2015, 108).

The result to be achieved may be described as a state defined in the directive and which needs to be implemented by Member States both *de jure* and *de facto* (Král 2014, 5).

According to Article 297 TFEU, directives are signed either by the President of the European Parliament and by the President of the Council if they are adopted under the ordinary legislative procedure and as legislative acts.
Article 297 TFEU also states that:

> Directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication. Other directives, and decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification.

4.1 Direct Effect of EU Directives

Stehlík notes that the direct effect, ruled on by the CJEU in the decision 26/62 Van Gen den Loos on 5 February 1963, is in its essence a correlation of direct applicability mentioned in the first chapter of this thesis. The Court noted that rights and obligations established by EU law (direct effect) may be enforced at national level without implementation (direct applicability) and that individuals

have the right to directly invoke EU law before national and European courts. The direct effect of the provisions of EU law is linked to the fulfilment of the criteria referred to in this decision as the *Van Gend en Loos* test (Stehlík 2017, 101). In the case of primary law, direct effect follows these criteria: the provision must be sufficiently clear and precise; unconditional and independent on other provisions; it must confer a specific right upon which a citizen can base a claim; and it should be formally published in the official language of the Member State where the provision will be applied (Craig 2015, 188-190).

Hamuľák explains that the framework of the application of the EU law differentiates three different categories of the direct effect based on the mutual relationship between the holder of rights and obligations. Direct effect applies either vertically or horizontally. The vertical effect concerns provisions of the EU law governing relationship between subjects with an unequal position (between individuals and the Member State) (2013, 75).

- ***Classical vertical effect*** – an individual who is the holder of the subjective right seeks his right against the Member State which holds the obligation. According to the CJEU, directives have only classical vertical direct effect despite academic criticism and numerous opinions given by Advocate General in favour of horizontal direct effect (Craig 2015, 205).
- ***Reverse (downward) vertical direct effect*** – the individual holds the obligation and the State seeks this obligation (Hamuľák 2013, 75-76).
- ***Horizontal direct effect*** – it applies to a relationship between parties which have an equal position. The individual my seek provisions of the EU law in proceedings before national authorities when the other party is also subjected to the private law with an equal position (Hamuľák 2013, 75-76).

However, the direct effect of directives belongs to the most complex issues of the European Union law. Since they require implementation, it may seem that directives cannot have direct effect and, originally, it had been assumed by many. The CJEU changed this perception of directives and ruled that under specific circumstances and meeting of special criteria the directives may have a direct effect. The Court formulated this doctrine in its judgement 41/74 *Van Dyun* on 4 December 1974 as a reaction to the low quality and low efficiency of the

implementation of directives by Member States which tend to fail to implement directives properly or on time (Hamuľák 2013, 80-81). Craig adds that without a CJEU decision dealing with such occurrences, the fundamental goals of the Treaty would be seriously hindered if its could not be enforced on the national level by those affected. Article 288 TFEU provides only for direct applicability of regulations, from which the Court deduced that they had the capacity to be invoked by individuals before national courts and confer rights to them. Moreover, it concluded that, since they were intended to be binding upon addressees, there was no reason why they should not be directly enforced before national court where their provisions were sufficiently clear (Craig 2015, 200). The result of *Van Dyun*, and a subsequent Case 148/78 *Ratti*, is that even if Article 288 TFEU does not declare directives to be directly applicable and they do not automatically become part of national law upon adoption, they may have "similar effects" to regulations after the time limit for their implementation has expired and the Member State has not properly implemented them. The general principle is that the direct effect of a directive operates from the deadline specified for implementation of the directive (Craig 2015, 203).

To conclude, the direct effect of directives is considered their subsidiary attribute and the CJEU created them as a sanction against Member States which failed to comply with their obligations given to them by the TFEU (Stehlík 2017, 109-110). It arises under three conditions: 1) directives were not implemented properly and unconditionally; 2) within the time limit the Member State was given to accommodate their legal system to the demands of the directive; 3) the direct applicability of directives will not impose the obligation stated in the directive upon an individual (Král 2014, 179).

4.2 Indirect Effect

The doctrine of indirect effect was formulated by the CJEU in the case 79/83 *von Colson* and it requires national courts and all authorities of the Member State to fulfil their EU obligations to interpret national law consistently with directives. Even if the EU law is not applied directly, it may still be applied as national law using interpretation. (Woods 2020, 136).

The doctrine of indirect effect is of vital importance to the enforcement of EU rights against individuals (horizontal direct effect). As directives have only vertical direct effect in claims based on directives against individuals, national law may be the only legal basis for a claim. The national courts are required to ensure that national law is interpreted consistently with the EU directive. (Eurofound.europa.eu).

4.3 Classification of Directives

Král introduces various criteria for the classification of directives. For example, one of the criteria is the subject matter (Král 2014, 51). The Directory of Legal Acts, which is part of the EUR-Lex database, distinguishes twenty different content chapters of EU legislation, including directives, showing the diverse nature of the subject matters the EU law covers: 1. General, financial and institutional matters; 2. Customs Union and free movement of goods; 3. Agriculture; 4. Fisheries; 5. Freedom of movement for workers and social policy; 6. Right of establishment and freedom to provide services; 7. Transport policy; 8. Competition policy; 9. Taxation; 10. Economic and monetary policy and free movement of capital; 11. External relations; 12. Energy; 13. Industrial policy and internal market; 14. Regional policy and coordination of structural instruments; ***15. Environment, consumers, and health protection;*** 16. Science, information, education, and culture; 17. Law relating to undertakings; 18. Common Foreign and Security Policy; 19, Area of freedom, security, and justice; 20. People's Europe (EUR-Lex).

Moreover, Král points out that directives can be categorized according to whether they contain only substantive rules, only procedural rules or a combination of both. Another criterion may be the official deadline set for the transposition of the directive or the determination of a uniform moment when the transposition measure comes into force. However, he further elaborates that the criteria for classification which deserve closer attention, because they are increasingly relevant for the purposes of proper interpretation, proper transposition and application of the directive, as well as for the purposes of potential improper transposition and practical application of the directive, are the following (Král 2014, 52-53):

1) the legal form of the directive
2) the type of formulation of the directive
3) the legal basis for the adoption of the directive
4) whether the directive itself allows the Member States to depart from the rules included therein in its transposition into the national law
5) whether the directive allows for reverse discrimination
6) whether the directive does not prevent gold-platting
7) the level of detail of legislation included in the directive
8) the applied method of harmonisation
9) whether the directive seeks to establish the subjective rights of individuals
10) whether the directive is sufficiently precise and unconditional to have direct effect

Some of the aforementioned criteria have already been mentioned in the previous chapters and sub-chapters, including the legal form (legislatives, delegated and implementing acts,) or the level of precision and unconditionality of the directive. The following paragraphs aim to describe the criteria relevant to the topic of this thesis, that is, transposition.

EU law distinguishes four types of formulation of directives: unamended directives, amended directives, codified directives, and recast directives. The EU directives are very often amended. The information about whether the directive has been amended is part of the bibliography list of the directive in question in the EUR-Lex database. Once the directive is amended, it becomes an amended directive. In the second half of the 1990s, the Publications Office of the European Union started to publish an unofficial consolidated (complete) version of the amended directives in the EUR-Lex database. Consolidation of the directive involves the informal integration of the text of the original directive and all its subsequent amendments, or corrections to the language versions of the directive, into a single consolidated text (Král 2014, 57).

When the directive is amended several times, its official codified version is usually adopted as a result. Such codification aims to ensure the clarity and comprehensibility of the directive in question. It also reduces the number of pieces of legislation which consitutes *acquis communautaire*. The official codification of the directive, as opposed to its informal consolidation, entails the

adoption of a new codification directive which fully integrates the text of the codified directives, a single codified text. The codification directive also repeals all codified directives. In cases where a directive is amended several times, its necessary clarity and comprehensibility may not only be ensured by the adoption of its official codified version but also by the adoption of its recast. The recast directive also differs from the codification directive in that it usually sets a transposition deadline (Král 2014, 58-59).

The legal basis for the adoption of directives is crucial for determining whether and under which conditions Member States may derogate from the provisions contained therein when transposing them. Thusly, directives can be divided into two groups. The first group includes: 1. Directives adopted for the functioning of the EU internal market on the basis of Article 114 (1) TFEU; ***2. Consumer protection directives which support, supplement and monitor the policies of the Member States in this field pursuant to Article 169(2)(b) and (3) TFEU;*** 3. Directives adopted on the basis of the following articles of the TFEU, which, however, are not relevant for the purpose of this thesis: 192, 153(2), 168(4)(a), 82 and 83. Member States may derogate from these directives when transposing them, even if the derogation does not arise from the directive itself, since the possibility of a derogation arises directly from the Treaties. The second group includes directives adopted on the basis of any other article of the Treaties, and States may derogate from these directives only in a scope which the directive itself allows (Král 2014, 60-61).

4.4 Structure of Directives

As Král points out, even though, directives are very diverse in terms of their structure and content, it is possible to outline the typical structure of the directive using some generalization. It usually consists of the following parts (2014, 25):
Title of the directive

1) Preamble
2) Enacting terms
3) Miscellaneous provisions
4) Authorized signatures
5) Annexes if necessary

As indicated in the Interinstitutional Agreement between the European Parliament; the Council and the Commission of 22 December 1998 on common guidelines for the quality of drafting of Community legislation the title of an act should give as succinct and the best possible indication of the subject matter which does not mislead the reader as to the content of the enacting terms. Where appropriate, the full title of the act may be followed by a short title (OJEU 1999/C 73/01, 2).

According to the Annex VI of the *Council Decision* 2009/937/*EU* of *1 December 2009 adopting* the *Council's Rules* of *Procedure* (*L* 325/35), the title of the directive always include:

- The word "directive"
- The EU institution which adopted it
- The number of the directive – the year of adoption appears in the first place and the serial number of the directive in a given year after the slash.
- The abbreviation EEC, EC, or EU, depending on when the directive was adopted during which historical phase of the European integration process.
- The date of the adoption
- The title of the directive itself

In some cases, the title may contain some additional data (Král 2014, 25-26):

- it is an implementing directive
- it is a delegated directive
- the designation of directives or other legal acts which are amended or repealed by the directive
- abbreviated proper title of the directive
- it is a revised or codified version of a directive
- it is a framework directive
- an indication that the text is relevant for the states of EEA

To demonstrate the validity of the abovementioned features and their consistent use in the following practical part of my thesis, I include an example of a title of a consumer directive:

> *"Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of*

the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Text with EEA relevance)" (EUR-Lex)

Preambles include citations and recitals. The purpose of citations is to laid down the legal basis of the act and the main steps in the procedure leading to its adoption while the purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms, without reproducing or paraphrasing them. They cannot contain normative provisions or political exhortations (OJEU 1999/C 73/01, 2). This is based on Article 296 TFEU stipulating that, legal acts need to include the reasons on which they are based and refer to any proposals, initiatives, recommendations, requests, or opinions required by the Treaties.

The enacting terms of a binding act must not include provisions of a non-normative nature, such as wishes or political declarations, or those which repeat or paraphrase passages or articles from the Treaties or those which restate legal provisions already in force. Furthermore, acts must not include provisions which enunciate the content of other articles or repeat the title of the act. If appropriate, an article may be featured at the beginning of the enacting terms to define the subject matter and scope of the act. Where the terms used in the act are not unambiguous, they need to be defined together in a single article at the beginning of the act. The definitions must not include autonomous normative provisions. The enacting terms should have a standard structure (subject matter and scope; definitions; rights and obligations; provisions conferring implementing powers; procedural provisions; implementing measures; transitional and final provisions). They must be subdivided into articles and, depending on their length and complexity, titles, chapters, and sections. When an article includes a list, each item on the list should be identified by a number or a letter rather than an indent (OJEU 1999/C 73/01, 2).

Provisions laying down dates, time limits, exceptions, derogations and extensions, transitional provisions, and final provisions (entry into force, deadline for transposition and temporal application of the act) must be formulated in precise terms. Provisions on deadlines for the transposition and application of acts must establish a date expressed as day/month/year. In the case of directives, those deadlines must be conveyed in a way that would allow the Member States an

adequate period for transposition. Obsolete act and provisions must be expressly repealed. The adoption of a new act should end in the express repeal of any act or provision rendered inapplicable or redundant by virtue of the new act. Technical aspects of the act may be included in the annexes, to which individual reference needs to be made in the enacting terms of the act and which must not introduce any new right or obligation not mentioned in the enacting terms (OJEU 1999/C 73/01, 3).

As mentioned previously, directives must be signed by the president of the EU institutions which adopted them (Article 297 TFEU).

As far as the annexes are concerned, The *Joint Practical Guide* of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation contains merely a vague instruction: "*although there are no specific rules governing the presentation of annexes, they must nonetheless have a uniform structure and be subdivided in such a way that the content is as clear as possible, in spite of its technical nature*" (Joint Practical Guide 2015, 74).

4.5 Implementation and Transposition

The abovementioned Article 288 TFEU contains the specific requirement to implement directives. Moreover, the general obligation to implement the EU law arises from Article 291(1) TFEU which states that "*the Member States shall adopt all measures of national law necessary to implement legally binding Union acts,*" and Article 4(3) TEU according to which "*the Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the secondary EU law*."

Tomozsková defines implementation of the EU law as a process aimed at the harmonisation of national legislation with the *acquis communautaire* and the practical application of harmonised legislation in the Member States. As a result, the EU Member States are required to:

- transpose a directive in time into the national law and inform the Commission thereof,
- transpose it completely so that it covers the whole territory of the Member State without fail,

- and apply the transposed norms on all decision-making levels (national, regional, and local), including legislative, executive and judicial institutions.

This process includes three different stages: 1. transposition, 2. application, and 3. enforcement. To achieve full implementation, all the aforementioned stages should be completed. (Tomozsková 2014, 30).

Thus, a successfully transposed directive alone does not ensure a successful implementation. As the CJEU states in the decision C-343/08 Commission v Czech Republic [2010] ECR I-275: "*Both the principle of legal certainty and the need to secure the full implementation of directives in law and not only in fact require that all Member States reproduce the rules of the directive concerned within a clear, precise and transparent framework providing for mandatory legal provisions.*"

4.5.1 Transposition

Transposition can be defined as the first phase of the implementation process, i.e., only the implementation of the directive *de jure* into the national law therefore the term *transposition of directives* has a narrower meaning than the term *implementation of directives*. A successfully transposed directive needs to reflect all the directive requirements into the national transposition measures.

Transposition needs to be proper, that is correct, complete and in time. The case law of CJEU established that the transposition in each Member State must be performed in the form of a binding legislative or regulatory provision to achieve full implementation. However, a Member State can transpose one directive by the means of several pieces of national legislation. Such transposition measures have to cover the entire territory of the Member State to be considered proper. Furthermore, a correct transposition should carry the true meaning of the original directive and its provisions which is not easy with 24 official languages of the EU. Finally, the Member States are required to ensure practical application of the EU law (Tomozsková 2014, 31).

A directive lacking a national transposition measure has only very limited effect in the national legal system. Thus, the directive requires proper

transposition into the national law in order to achieve its full effect (Král 2014, 10).

Methods of the Transposition of EU Directives

1) *Copy out* (Literal transposition)

The transposing act uses the same wording as the EU directive or where it cross-refers to the relevant directive provision. However, the EU legislation does not impose an obligation on its Member States to use a word-by-word rewriting of the directive or apply the same textual structuring during transposition. It merely requires that the transposed act in the national legislation "guarantees the full application of the directive in a sufficiently clear and precise manner," allowing the EU citizens to understand their rights without fail and exercise them through the national judicial system. However, this method limits the drafters from employing the flexibility allowed by the directive, therefore there are some instances when it is better for them to use reformulation not to put the citizens of the Member state in question at a disadvantage (Anselmi 2015, 40-41).

2) Transposition by reference

Transposition by reference is closely related to *copy out*. In such a case, the national drafters include a direct reference to the original EU directive into the transposing act. Nevertheless, legal experts do not recommend this type of transposition due to its negative impact on the legal certainty of the recipients of the act as it creates unwanted ambiguity within the legal system (Král 2014, 82-83).

3) Elaboration (Reformulation)

Elaboration is a transposition technique which "uses language that differs from the wording of the directive in order to clarify its meaning for legal or domestic policy reasons" (Transposition Guidance 2018, 11). The relevant provisions from the EU directive are reformulated during their transposition process to ensure better, especially terminological, coherence of the transposing act. Another reason for reformulation is to make the transposing act more concise or comprehensible and avoid the problems with

interpretation and application in the Member State's legal system (Král 2014, 93).

4) Gold-plating

A non-minimalistic method of permissible transposition which exceeds the minimal requirements set out in an EU directive. For instance, the national drafters may alter the wording to create more stringent conditions for the citizens of the relevant Member State (Anselmi 2015, 41).

5 The Specific Nature of EU Legal English

Legal languages (languages used by legal experts) typically originate within the legal system and culture of a given country. However, the EU legal language differs in that respect because it comes from a culture of the European union, which is a supranational organisation consisting of 27 Member States, resulting in a melting pot of 27 different cultures. Thus, the creation of EU legal language as a "new, ideally neutral language affected by the cultures of the countries that have contributed to creating it" (Seracini 2020, 36). As mentioned in the introduction, English became an unofficial lingua franca of the European Union. Seracini states that in 2013 almost 81% of drafts were written in English and this percentage has been constantly growing. The increase is directly connected to translation since English serves as a pivot language for other official languages of the EU (Seracini 2020, 37). Moreover, 95% of European Commission drafters write on English even if English is not their mother tongue (Sandrelli 2018, 64).

This leads to a clashing situation where legal English originating from a common law legal tradition serves as the primary legal language to convey legal concepts of a civil law legal system. It results in a paradox where the most used legal language in the European Union, which is based on the civil law system, is also the least suitable one. Seracini further notes that the EU legal English can be defined as "a new basic variant of legal English that is in course of development" (Seracini 2020, 37).

Each draft of any EU text is written by both native and non-native drafters. The English Style Guide 2021 produced by the European Commission's Directorate General for Translation, which provides and oversees translations within the European Union, is separated into two parts: "first dealing with linguistic conventions applicable in all contexts and the second with the workings of the European Union – and with how those workings are expressed and reflected in English." This way the Directorate General for Translation acknowledges the specific nature of the drafting process of the EU texts, suggesting there might a distinction between them and texts produced in English-speaking countries, but points out that "it should not be taken to imply that 'EU English' is different from

‘real English’”. It is merely shows that the EU needs to invent a terminology to describe itself due to its specific supranational character (ESG 2021, 4).

This unique terminology of lexical Europeisms has been frowned upon and stigmatized over the years, resulting in the emergence of derogatory terms and pejoratives for the EU English variant such as English Eurobabble, Eurospeak, Eurofog, or Europese to describe any typology, text function and author’s aim (Mori 2018, 14).

6 PRACTICAL PART

The practical part analyses four major EU consumer directives listed below their UK and Irish transposing acts (listed in the Appendix) on the various levels of language:

1. Consumer Rights Directive (CRD) (2011/83/EU)
2. Timeshare Directive (2008/122/EC)
3. Package Travel and Linked Travel Directive (PTD) (2015/2302)
4. Price Indication Directive (PID) (98/6)

These directives were chosen because they cover some of the major issues of consumer protection and directly concern almost every citizen of the European Union. Another reason was to select directives which Łucja Biel did not use in her study (2020), except for the Consumer Rights Directive which is the fundamental directive in consumer rights.

6.1 Hypothesis

This thesis works with the hypothesis that the UK transposing acts are going to adhere to the plain language principle in legal writing, which was inspired by the Plain English Movement, (Garner 2002, 5) much more than the original EU directives because while English might be the lingua franca in the EU, this version of the language has very little in common with the Anglo-Saxon tradition of legal drafting (Felici 2013, 42). The Plain English Movement is a name given to the first effective effort to change a centuries-old tendency of lawyers to needlessly complicate legal texts and to create legal documents, especially those meant for consumers, in a way that can be understood, not merely by the legal experts who draft them, but also by the consumers who are bound by their terms (Felsenfeld, 1981, 408).

Furthermore, the Irish transposing acts may showcase similar changes from the directives as the UK transposing acts due to them both being a part of the same legal system of common law.

6.2 Methodology

Unlike the studies mentioned in the introduction which put an emphasis on the quantitative analysis and methods of corpus linguistics, this thesis adopts a qualitative approach of comparative linguistic analysis of selected sections from a relatively small corpora of the aforementioned directives and transposing acts[2]. It aims to pinpoint and describe the various linguistic differences between the source text of the directive and its intralingual translations. This approach was chosen in order to cover as many distinctions as possible and thus show its complexity.

However, there is one part where a quantitative analysis is applied and that is in the case of modal verbs such as *shall*, *should* or *must*. Originally, when I had first begun to work on my thesis, I intended to employ a mixed approach strategy like Łucja Biel in her study (2020) but soon it turned out that such approach was not suitable for the relatively small corpora of four directives because it yielded very little relevant data as the number of relevant phrases and words was too low. The only exception are the modal verbs which I decided to include here to highlight how their usage differs across the three variants.

Each selected section is placed into a table which is divided into three parts: the first part contains the particular section in the EU directives, the second part of the table shows the section in the UK transposing act while the third part contains the section such as it appears in the Irish transposing act. The differences are then highlighted and analysed in detail under the excerpt.

The colors used to highlight the differences between the English variants:

- modal verbs, verbs and verbal phrases
- Pronouns
- Change limiting "termness"
- Adjectives
- Procedural terms
- Change of structure and explicitation
- Subject-object change
- Nouns and noun phrases

[2] The three corpora are added to the diploma thesis in the form of electronic attachments

Analysis

Excerpt 1:

EU *2011/83/EU*	*consumer* shall mean any natural person who buys a product for purposes that do not fall within the sphere of his commercial or professional activity.
UK *SI 2013 No. 3134*	"consumer" means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;
IR *S.I. No. 484/2013*	"consumer" means a natural person who is acting for purposes which are outside the person's trade, business, craft or profession;

A significant number of EU consumer protection terms are imported into transposing acts and there are many cases where "an EU term is accompanied by the transfer of an EU concept" (Biel, 2020, 204). Irish transposing acts even explicitly mention that "a word or expression used in these Regulations that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive" (IR S.I. No. 484/2013 Part 1 (2)). This is the case of the term *consumer* in Excerpt 1. However, direct transfer does not occur every time as there are different types of linguistic modifications which can be occur. While IR S.I. No. 484/2013 imports the term *natural person* from EU 2011/83/EU, UK SI 2013 No. 3134 employs a full substitution, opting for the term *individual* instead.

Unlike EU 2011/83/EU, both UK SI 2013 No. 3134 and IR S.I. No. 484/2013 do not use the verb *buy* in present simple tense and replace it with a more general term *act* either as a verb in present continuous tense (IR S.I. No. 484/2013) or, in the UK act, as a present participle which functions as a semi-clausal complement relating to the subject. This way the UK instrument employs the complex condensation phenomenon which was conceived by Matthesius as the introduction into a sentence of a nominal element or phrase enabling the said sentence to do without a subordinate clause the use of which would otherwise by indispensable (Hladký 1961, 114).

Furthermore, the term *sphere* from the EU directive can be rather vague or fuzzy and one might ask how what exactly it is and where are the limits of its meaning (Garner 2002, 31). The phraseme *within the sphere of* is one of such "fancy" words which can be found in the EU legislation quite frequently. The UK and Irish drafters chose a much more common and precise term *outside* to avoid any confusion on the part of the consumer. For writing in plain English, Garner recommends "to strike out" and replace fancy words, which are either unfamiliar or of foreign origin, with an ordinary one which comes immediately to mind (2002, 30).

EU 2011/83/EU employs the masculine possessive pronoun *his* as a generic pronoun to include masculine, feminine, and other entities. According to Garner, masculine generic pronouns can be avoided and the writer should try to try different solutions to do so, but admits that sometimes there might be no other choice but to use *she* or *he*. Still, he discourages from replacing them with plural forms *they/theirs*. Instead, he suggests using nouns or terms in the singular like *nobody*, *everybody*, or *anyone* (Garner 2002, 44). The UK and Irish drafters avoid using *his* as a generic pronoun by putting a noun in a possessive form, *individual's/person's*, in its place.

The EU directive contains the collocation *commercial or professional activity*. UK SI 2013 No. 3134 and IR S.I. No. 484/2013 elaborate on the collocation, using a list – *trade, business, craft or profession* – to specify its meaning in the transposing acts. Interestingly, both acts use the exact same list, including the exact same order of its components. Král calls this way of transposing directives a (transposition by) elaboration (Král 2014, 97).

Bázlík states that modal verbs appear frequently in legal texts as one of their typical features (2009, 62). Modal verbs express either deontic or epistemic modality and we can distinguish two types of their meaning: deontic (those which include an intrinsic human control over the events – the meanings of permission, volition, obligation), and epistemic (those which include human judgement of the likelihood of the occurrence of an event – prediction, possibility, necessity) (Bázlík 2009, 64-65).

The modal *shall* occurs with the highest frequency. He further explains that it is dominant not only in American English but also in UK legal usage

(Bázlík, 2009, 65); however, as Sandrelli points out, it has been criticized by the proponents of the Plain Language Movement for "causing ambiguity in the interpretation of texts, since it is used to carry out both a deontic and a performative function" (2018, 79). This has led to gradual drop in the use of *shall* in the UK (Garzone, 2013, 69). On the other hand, The English Style Guide 2021 not only demands that EU drafters employ modals, it specifically tells them to use *shall* when imposing an obligation or a requirement in 10.24 (ESG 2021, 56) and *shall not* when imposing a prohibition in 10.25 (2021, 56).

In Excerpt 1, both the UK and Irish acts leave *shall* out and instead use a 3rd person singular present perfect form of the verb *mean* whereas the EU directive retains the modal *shall*, even though it is a declarative provision. However, ESG 2021 notes that "EU legislation uses the simple present for definitions and where the provision constitutes direct implementation" in 10.28, as does ESG 2015 and ESG 2014. This discrepancy might be explained by the fact that the Consumer Protection Directive was adopted in 2011, that is, before the new updated versions of the ESG limited the use of *shall* in these instances. This might be also the case in the other three directives which this thesis aims to analyse – they had been adopted before the ESG made these revisions therefore some of the directive provisions might not comply with the ESG.

This assumption is supported by Excerpt 2 where the EU directive 2015/2302 on package travel features the present simple form *means* instead of *shall* in the declarative provision. The directive was adopted in 2015, thus the EU drafters already took the recommendations of the English Style Guide 2014 into account. Excerpt 2 also shows an instance where both the UK and Irish drafters chose a literal transposition, that is, *copy out*, importing the provision into the national legislation word-for-word (Sandrelli 2018, 66).

Excerpt 2:

EU *2015/2302*	'package travel contract' means a contract on the package as a whole or, if the package is provided under separate contracts, all contracts covering travel services included in the package;
UK *SI 2018 No. 634*	"package travel contract" means a contract on a package as a whole or, if the package is provided under separate contracts,

	all contracts covering the travel services included in the package;
IR *S.I. No. 80/2019*	'package travel contract' means a contract on the package as a whole or, if the package is provided under separate contracts, all contracts covering travel services included in the package;

Moreover, there might be another reason for the discrepancy. As Biel mentions, *shall* is one of the most abused modals and the EU drafters do not always comply with the guidelines in this case (Biel 2014, 341).

Excerpt 3:

EU *2011/83/EU*	*trader* shall mean any natural or legal person who sells or offers for sale products which fall within his commercial or professional activity
UK *SI 2013 No. 3134*	"trader" means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.
IR *S.I. No. 484/2013*	"trader" means— *(a)* a natural person, or *(b)* a legal person, whether— (i) privately owned, (ii) publicly owned, or (iii) partly privately owned and partly publicly owned, who is acting for purposes related to the person's trade, business, craft or profession, and includes any person acting in the name, or on behalf, of the trader.

I include Excerpt 3 to illustrate that linguistic differences and features which I found in Excerpt 1 have not been an isolated case and that they appear in other parts of the directive, as well.

Table 1:

	EU	**UK**	**IR**
Shall	351	31	335

For the reasons I mentioned in Methodology, I had decided to include a brief quantitative analysis of modal verbs, including *shall*, since their count in the three corpora consisting of the four directives and their UK and Irish transposing acts is substantial enough to yield relevant data and results.

Table 1 shows the frequency with which *shall* appears in the three corpora. The steep drop of *shall* in the UK corpus as compared to the high frequency in the EU directives is apparent and confirms the first part of the hypothesis of this thesis and the results of previous researches on the decline of *shall* in the UK legal texts. On the other hand, there seems to be a very small difference between the EU directives and Irish transposing acts in the frequency of *shall* which partially refutes the second part of my hypothesis that the Irish transposing acts would exhibit identical or similar changes to the UK transposing acts. Thus, at least in the case of *shall*, the second part of my hypothesis does not stand, because while the Irish drafters seem to use *shall* slightly less than the EU drafters, *shall* still retains in high frequency in the Irish acts, suggesting that the Plain English Movement has not been as widespread in Ireland as it has been in the UK.

Excerpt 4:

EU *2008/122/EC* *Pre-contractual information*	In good time before the consumer is bound by any contract or offer, the trader shall provide the consumer, in a clear and comprehensible manner, with accurate and sufficient information, as follows: (a)in the case of a timeshare contract: by means of the standard information form as set out in Annex I and information as listed in Part 3 of that form; (b)in the case of a long-term holiday product contract: by means of the standard information form as set out in Annex II and information as listed in Part 3 of that form; (c)in the case of a resale contract: by means of the standard

	information form as set out in Annex III and information as listed in Part 3 of that form; (d)in the case of an exchange contract: by means of the standard information form as set out in Annex IV and information as listed in Part 3 of that form.
UK *SI 2010 No. 2960* *Pre-contractual information*	12. (1) Before entering into a regulated contract, the trader must— (a)give the consumer the key information in relation to the contract, and (b)ensure that the information meets the requirements of this regulation. (2) The trader must comply with paragraph (1) in good time before entering into the contract. (3) The "key information" in relation to a contract means— (a)the information required by Part 1 of the standard information form (see regulation 13(2)), (b)the information set out in Part 2 of that form, and (c)any additional information required by Part 3 of that form. 4) The information must be— (a)clear, comprehensible and accurate, and (b)sufficient to enable the consumer to make an informed decision about whether or not to enter into the contract. **Completing the standard information form** 13. (2) The "standard information form" means the form set out in— (a)Schedule 1, in the case of a timeshare contract; (b)Schedule 2, in the case of a long-term holiday product contract; (c)Schedule 3, in the case of a resale contract; and (d)Schedule 4, in the case of an exchange contract.
IR	In good time before a consumer is bound by any contract or

S.I.No. 73/2011 *Pre-contractual information*	offer, the trader shall provide the consumer, in a clear and comprehensible manner, with the following: (*a*) in the case of a timeshare contract, the information in the form specified in Schedule 1; (*b*) in the case of a long-term holiday product contract, the information in the form specified in Schedule 2; (*c*) in the case of a resale contract, the information in the form specified in Schedule 3; (*d*) in the case of an exchange contract, the information in the form specified in Schedule 4.

Unlike in Excerpt 1, where the modal *shall* had a declarative meaning, *shall* featured in the EU timeshare directive 2008/122/EC, in a combination with the infinitive *provide*, serves as a positive imperative and imposes an obligation or a requirement according to ESG 2021 issued by the Directorate-General for Translation (ESG 2021, 56). The Irish S.I. No. 73/2011 keeps this imperative *shall* while the UK instrument, on the other hand, replaces it with another modal verb – *must*. Even the ESG 2021 acknowledges that most English-speaking countries generally use *must* instead of *shall* nowadays and even allows translators translating non-EU legislation to include it if they do it consistently. The same applies *to must not* as a replacement for *shall not*. However, *shall* remains the prescribed choice for drafters of EU legislation (ESG 2021, 56). With the exception of non-enacting terms and the annexes of the law where the guidelines specifically require that *must* – or other expressions such as *has/have to*, *it/is require to* – are used in place of *shall* (ESG 2021, 57). This is based on the section 2.3.1 of the Joint Practical Guide which explains that "the choice of verb and tense between different types of act and different languages, and also between the recitals and the enacting term" (2015, 12).

Bázlík points out that *must* is a verb expressing obligation, similarly to *shall*, and the third most frequent modal verb in the legal texts he had examined (2009, 69). The Plain English supporters have been deterring legal writers from using *shall* and recommending cutting it altogether while replacing it with *must* instead, resulting in the decline in the use of *shall* in the last couple of decades (Garner 2002, 140). Prior to the changes in legal language resulting from the

efforts of the Plain Language Movement, *must* did not appear frequently in legal language (Seracini 2020, 68).

Garzone describes *must* as the modal which has undergone the most substantial change in regard to frequency, as legislative drafters have consistently used it in the place of *shall*, and which is "clearest and most concise current alternative available to impose obligation and clearer, more modern and consistent with Plain English drafting than *shall*" (Garzone 2013, 75).

Table 2:

	EU	**UK**	**IR**
Must	8	207	12

The quantitative analysis of *must* in Table 2 highlights the significantly higher frequency of its usage in the UK legislation compared to the EU directives, where *must* appears very scarcely. Furthermore, the analysis once again illustrates the similarity in the low frequency of *must* between the EU and Irish corpora. The Irish drafters do not follow the recommendations of Plain English Movement to drop *shall* as much as possible and thus use the modal verb *must* as scarcely as do the drafters in the EU. The lack of *must* in the EU an Irish corpus can be explained by the analysis in Table 1 and Excerpt 1 which shows a clear preference for shall in places where the UK drafters prefer must, suggesting a direct correlation between the relatively low frequency of shall and the high frequency of must in the UK transposing acts.

In addition, the UK drafters do not merely replace the *shall* which appears in EU 2008/122/EC and IR S.I.No. 73/2011 by *must* in UK SI 2010 No. 2960, instead, they add two additional *musts* in the provision which is, unlike the EU directive, separated into shorter and simpler sentences to make the provision as easy to understand as possible for the consumer. Garner often argues in favour of opting for these simple and shorter sentences over complex sentences (Garner 2002, 58). Moreover, the repetition of *must* in the UK provision puts an emphasis on its obligatory nature, making it more evident and persuasive to the consumer (Budnaya 2021, 263).

Where the EU directive and Irish act use the term *provide*, the UK act opts for the simpler term *give*, with the aim to make it easier for the consumer to understand his right arising from the provision. This is another instance of the UK

drafters finding a more commonly used and precise term, instead of keeping the original EU term (Garner 2002, 30-31).

In contrast to EU 2008/122/EC, UK SI 2010 No. 2960 does not use the passive structure before the phrase *a consumer is bound by* and replaces it instead with a present participle structure *before entering into* which functions as a semi-clausal complement relating to the subject. A similar occurrence appears in Excerpt 1, as well, illustrating that condensation is a recurring and regularly used strategy while transposing the EU directive into the UK national legal system, whereas the Irish statutory instrument retains the wording of the EU source text.

In addition to containing the description and enumeration of the information pursuant to the provision of the original EU directive *in a clear and comprehensible manner, with accurate and sufficient information*, UK SI 2010 No. 2960 introduces an umbrella term *key information*, which does not appear in the EU source text nor in IR S.I.No. 73/2011. By doing so, the UK act highlights that the importance of the quality of the information to the recipients of the provision. Moreover, the UK act divides the provision into more paragraphs to increase its clarity. Even Garner notes that when a single paragraph contains two major points, it should be divided into separate parts. It does not matter whether it is long or short as long as the separation increases the clarity of the text (2002, 62).

The UK drafters' propensity to alter the structure of the EU directive is made even more apparent on this particular provision where they took out the whole list made of subparagraphs enumerating all the types of information and information forms pursuant to the provision and created a completely new paragraph specifically for this purpose – to highlight the list and make the structure as clear as possible so its recipients, the consumers, can better understand the instrument. Whereas the EU directive painstakingly repeats the phrase *by means of the standard information form as set out in Annex and information as listed in Part 3 of that form* in each of the four subparagraphs, the UK act disposes of this redundant repetition which needlessly clogs the legal text. Thus, it follows the Plain English Movement argument for brevity and clarity which proposes for the legal writing to be taut, to eliminate recurrent phrases and make every word tell (Garner 2002, 53). To achieve maximum clarity, the UK

drafters do not merely create a separate paragraph but a whole new section which deals with information forms. They make use of information structure, as it was defined by Halliday, putting the collocation *standard information form* in the initial position as the *theme (topic)* of the sentence and the known information from the previous context, while the types of forms serve as *rhemes* – the new information (Lambrecht 1996, 7). The Irish instrument imports the directive with minimal changes, keeping the structure of the provision intact while reducing and simplifying the clauses in the subparagraphs. At this point in the diploma thesis, it has become increasingly obvious that the Irish legislators, unlike their counterparts in the UK, prefer to use *copy out* as much as possible and that they do not adhere to the demands of plain English writing. However, here, the Irish legislators do modify and deconstruct the original collocation *standard information form* into the phrase *the information in the form*, completely leaving out the term *standard*. Biel calls this kind of modification *determinologisation* through replacement of the term with a definition or explanation and considers it a technique which imports an EU concept without a term or any reference to the term itself (2020, 203). Thus, the way in which the term *standard information form* was transposed into the Irish legislation is an example where an EU concept is transferred without a term.

On the other hand, what UK SI 2010 No. 2960 and IR S.I. No. 73/2011 have in common is that they do not use the term *annex* featured in the EU directive which becomes *schedule* in both national legislations. Biel explains that this phenomenon occurs because the terms which are connected with the legislative style are usually domesticated in line with national drafting traditions (2020, 195).

It might seem that the UK transposing act does not transpose the part of the EU directive which mentions the *offer* which occurs prior to entering a contract; however, the UK drafter merely uses (transposition by) reformulation (Král 2014, 93). The offer is implicitly expressed in the final part of the provision *decision about whether to enter into the contract or not*, which implies that an offer was already made if the consumer contemplates whether to enter into the contract or not. In comparison to the EU directive and Irish transposing act, UK SI

2010 No. 2960 also specifies the type of contract – *a regulated contract* – which is pursuant to the provision, using (transposition by) elaboration (Král 2014, 97).

Excerpt 4 further demonstrates that most of the differences (and similarities in the case of the EU directives and Irish transposing instruments) between the three English variants identified and analysed in Excerpt 1 are recurring, with the Irish transposing acts tending to directly import substantial parts from the EU directives through *copy out* and a relatively small number of changes, unlike the UK transposing instruments. Thus, the second part of my hypothesis that the Irish drafters would follow the UK transposing conventions has been disproven so far.

Excerpt 5:

EU *2011/83/EU*	Exceptions from the right of withdrawal *Member States* shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following: (c) the supply of goods made to the consumer's specifications or clearly personalised
UK *SI 2013 No. 3134*	**Part 3 Right to cancel** Limits of application: circumstances excluding cancellation 27.—(1) This Part applies to distance and off-premises contracts between a trader and a consumer, subject to paragraphs (2) and (3) and regulations 6 and 28. 28.—(1) This Part does not apply as regards the following— (b)the supply of goods that are made to the consumer's specifications or are clearly personalised;
IR *S.I. No. 484/2013*	Right to Cancel Distance Contracts and Off-Premises Contracts 13. (1) Subject to paragraphs (2) and (3) and Regulation 3, this Part applies to each of the following distance contracts and off-premises contracts concluded between a trader and a consumer:

	(e) contracts for the supply of goods that are clearly personalised;

The clause *Member States shall not provide for the right of withdrawal* included in the Consumer Rights Directive is missing from the transposing acts because it constitutes the part of the provision which imposes a prohibition on the Member States (ESG 2021, 56), which are in this case the United Kingdom and Ireland. As a result, both national instruments do not contain the collocation *Member States*. CRD employs the negative imperative modal *shall not* to impose the prohibition as demanded by the English Style Guide 2021 which also warns against using *may not* for prohibition, "despite the many occurrences that can be found, since it could be interpreted as expressing possibility" (ESG 2021, 56).

The national instruments have different terms by which they call their respective sections – they use *paragraphs* as opposed to *articles* in the EU directive. It further proves that the conclusion that terms connected to the legislative style are often domesticated in line with national drafting tradition (Biel 2020, 195).

The Irish and UK variants replace the EU collocation *right to withdrawal* for *right to cancel* or *cancellation*, employing substitution in the transposition and performing localisation of the term into the national instruments (Biel 2020, 203).

EU 2011/83/EU features the term *distance and off-premises contracts*. Both concepts are defined in Article 2:

> 'distance contract' means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;
>
> 'off-premises contract' means any contract between the trader and the consumer: (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader; (b) for which an offer was made by the consumer in the same circumstances as referred to in point (a); (c) …; (d) …;

The UK instrument and Irish instrument specify the original term by adding the phrase *between a trader and a consumer*. In this way, the drafters elaborate on the EU term to specify its meaning in the transposing acts. In another words, they employ the translation technique of explicitation, first indirectly mentioned by Vinay and Darbelnet in 1958, later explored by Nida in his research on additions, and defined in Routledge Encyclopedia of Translation Studies as "the technique of making explicit in the target text information that is implicit in the source text" (Baker 2009, 80-81), in intralingual translation. When dictionaries define the term explicit, they describe "the visibility, comprehensibility or accessibility of something that has already been expressed" (Murtisari 2016, 65). Blum-Kulka developed an explicitation hypothesis, claiming a target text always exhibits a higher degree of explicitness than the source text (Dósa 2009, 25). Furthermore, Kinga Klaudy introduced in her 1993's paper a typology for explicitation (and implicitation), expanding the original understanding of the concept and distinguishing between language specific and non-language specific phenomena (Edina 2014, 2). She proposed four different categories of explicitation/additions (Klaudy 1993) (Edina 2014, 2-3):

1) Obligatory – if the explicitation is not employed, the translated sentences may end up being ungrammatical. The main motivation behind these additions lies in the structural differences between languages;
2) Optional – the lack of them will not make the target text ungrammatical; however, it may become clumsy and unnatural. It may, for instance, be adding connective elements to improve the cohesion links or emphasizers to increase topic-comment relations in the middle of the sentence;
3) Pragmatic – caused by the differences between cultures or generally shared (cultural, historical, and geographical) knowledge of different cultural communities. Without them the members of the communities may fail to notice specific cultural meanings of the original;
4) Translation-inherent – resulting from the nature of the translation process itself and motivated by the "necessity to formulate ideas in the target language that were originally conceived in the source language" (Klaudy 1993; Baker 2009, 83).

The addition of *between a trader and a consumer* in the UK and Irish transpositions is an example of pragmatic explicitation of implicit cultural information motivated by distinctions between cultures because not everyone in the target language culture does necessarily have the same general knowledge about the source language culture which leads the translators – the drafters – to add explanations to the target text (Baker 2009, 83). In the case of the transposing instruments in Excerpt 5, the drafters opt for the pragmatic explicitation not only due to the cultural and drafting tradition differences but also due to the fact that the recipients of the instruments are the consumers therefore the legal writers try make the acts as precise as possible. Biel confirms that these changes "adapt terms to national usage and/or refer to a concept more precisely" (Biel 2020, 202). Due to this specific quality where the translator aims to meet the target audience's expectations (Seruya 2015, 93), explicitation belongs to the domesticating techniques (Lefevere 1977, 74).

However, this is not the only instance of explicitation in Expert 6. The two transposed provisions alter the clause of the original EU *text the supply of goods* ***made to*** *the consumer's specifications* to *the supply of goods* ***that are*** *made to the consumer's specification*, featuring grammatical explicitation "to limit the 'termness" of the term" (Biel 2020, 202). Nonetheless, it cannot by considered an obligatory explicitation since the transposed sentence would still remain grammatical even without it, meaning the change is not motivated by distinctions "in the syntactic and semantic structure of languages" (Baker 2009, 82-83). Instead, the explicitation happens to be optional (Klaudy 1993). Since the denominations remain intact, Biel assumes explicitation to be a relatively safe technique in transposing the EU directives into the national legal systems (Biel 2020, 202).

Excerpt 7:

EU *98/6/EC*	(9) Whereas the obligation to indicate the unit price may entail an excessive burden for certain small retail businesses under certain circumstances; whereas Member States should therefore be allowed to refrain from applying this obligation during an appropriate transitional period;
EU *2015/2302*	(24) In relation to packages, retailers should be responsible together with the organiser for the provision of pre-contractual information. In order to facilitate communication, in particular in cross-border cases, travellers should be able to contact the organiser also via the retailer through which they purchased the package.
EU *2008/122/EC*	(10) Consumers should have the right, which should not be refused by traders, to be provided with pre-contractual information and the contract in a language, of their choice, with which they are familiar. In addition, in order to facilitate the execution and the enforcement of the contract, Member States should be allowed to determine that further language versions of the contract should be provided to consumers.

Excerpt 7 differs from all the previous excerpts since it does not feature provisions from the three different variants of English, but only includes provisions from three EU directives. The aim of featuring this particular excerpt in the thesis is to illustrate the use of the modal verb *should* in the EU legislations and, in the combination with Table 3, the lack thereof in the UK and Irish transposing acts. The quantitative analysis in Table 3 reveals that the two national corpora do not feature *should* at all.

Table 3:

	EU	**UK**	**IR**
Should	296	0	0

In legal texts, *should* expresses deontic modality (obligation or necessity). Christopher Williams describes it and the level of strength of the obligation it produces as "a medium-strength modal which concedes a degree of leeway to the realisation of the obligation expressed" (Seracini 2020, 71). Seracini further points

out its strong dependency on the context which is crucial in determining how strong or weak the deontic connotation of *should* really is. Moreover, legal writers use *should* to convey "condition in the protasis of a conditional clause, forming the *should* + SUBJECT + VERB structure" (2020, 71). The provisions of the original EU directive use it to impose a general obligation on the Member States, providing a general scope and framework which needs to be transposed by the Member States therefore the two transposed provisions contain only the already specified obligation and not the general one. This is one of the two reasons for the lack of *should* in the UK and Irish transposing instrument. The second reason is explained in detail in the qualitative analysis of Excerpt 8.

Excerpt 8:

EU *98/6/EC*	(7) Whereas, therefore, there should be a general obligation to indicate both the selling price and the unit price for all products except for products sold in bulk, where the selling price cannot be determined until the consumer indicates how much of the product is required;
UK *SI 2004 No. 102*	Obligation to indicate selling price 4.— (1) Subject to paragraph (2) and articles 9 and 10, where a trader indicates that any product is or may be for sale to a consumer, he shall indicate the selling price of that product in accordance with the provisions of this Order. (2) The requirement in paragraph (1) above shall not apply in respect of: (a)products sold from bulk; Obligation to indicate unit price 5.— (1) Subject to paragraph (2), (3) and (4) and article 9, where a trader indicates that any product is or may be for sale to a consumer, he shall indicate the unit price of that product in accordance with the provisions of this Order.
IR *S.I. No. 639/2002*	4. (1) Subject to paragraph (2), where a trader indicates that a product is or may be for sale to a consumer, he or she shall indicate the selling price of that product in accordance with

	these Regulations. (2) Paragraph (1) does not apply in respect of – (a) products sold in bulk, 5. (1) Subject to paragraphs (2) and (3) and (4), where a trader indicates that a product is or may be for sale to a consumer, he or she shall indicate the unit price of the product in accordance with these Regulations.

Similarly, to the EU provisions in Excerpt 7, the Price Indication Directive 98/6/EC imposes a general obligation on the Member States. The UK and Irish provisions therefore only include the already specified obligation since the recipients of the directive are the Member States while the recipients of the transposing instruments are the Member States' citizens. Thus, it would be illogical if a Member State imposed the same general obligation on itself.

Should once again serves as the modal verb of the general obligation in the EU directive. Interestingly, both the UK and Irish provisions substitute *should + indicate* with *shall + indicate* which does not correspond with the way how the UK drafters opted to avoid the modal verb *shall* and choose *must* to impose obligation, following the recommendations of the Plain English Movement, as was illustrated in the previous excerpts. To explain this seeming discrepancy, it is important to realize that out of all the four EU directives featured in the contrastive analysis, the EU PID had been adopted in the previous century, back in 1998, and, as a result, is the oldest of them just as its UK transposing act SI 2004 No.102, the Price Marking Order 2004, is the oldest of the featured UK transposing instruments. Table 4, featuring a quantitative analysis of the frequency of *shall* in the four UK transposing acts, suggests that the frequency of *shall* in the UK legislation has been decreasing gradually over the years as the UK drafters keep following the rules of Plain English more strictly and consistently. It also proves that the Irish drafters use *shall* consistently when imposing obligation in the national transposing acts, as shown in the qualitative analysis of previous excerpts and the quantitative analysis in Table 2.

Table 4:

	shall
SI 2004 No. 102	22
SI 2010 No. 2960	9
SI 2013 No. 3134	1
SI 2018 No. 634	0

EU directive does not include any personal pronouns. On the other hand, the UK provision features the personal masculine pronoun *he* as a generic pronoun to include masculine, feminine, and other entities. The Irish drafters try to avoid the use of generic *he* by using the combination of both masculine and feminine pronouns – *he or she*. According to Garner, masculine generic pronouns can be avoided and the writer should try to use different solutions to do so, but admits that sometimes there might be no other choice but to use *she* or *he*. He discourages from replacing them with plural forms *they/theirs*. Instead, he suggests using nouns or terms in the singular like *nobody*, *everybody*, or *anyone* (Garner 2002, 44).

Moreover, Excerpt 8 features a similar terminological distinction which appeared in Excerpt 4 regarding the terms which are connected with the legislative style and are usually domesticated in line with national drafting traditions (Biel 2020, 195). The Irish provision mentions the legal term *Regulation* while the UK provision uses the term *Order* instead. As Seracini notes, the EU variant of English features "a number of terms that do not exist in common law English and many terms that exist in common-law English but that are used with a more or less distinct continental meaning" (2020, 37). In the EU legal system the term *regulation* means a type of law adopted by the European Union which is in more detail described in the theoretical part of this diploma thesis. However, in the *common law* legal tradition it refers to a type of national law (Seracini 2020, 37). As a result, the terms *regulation* and *order* are used to denote the type of national law – the Irish *S.I. No. 639/2002 - European Communities (Requirements To Indicate Product Prices) Regulation 2002* and the UK *SI 2004 No. 102: The Price Marking Order 2004*.

Excerpt 9:

EU *2015/2302*	The traveller shall be entitled to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Compensation shall be made without undue delay.
UK *SI 2018 No. 634*	Price reduction and compensation for damages 16. (3) The organiser must offer the traveller, without undue delay, appropriate compensation for any damage which the traveller sustains as a result of any lack of conformity.
IR *S.I. No. 80/2019*	Price reduction and compensation for damages (2) Subject to subsection (3), a traveller shall be entitled to receive, without undue delay, appropriate compensation from an organiser for any damage which the traveller sustains as a result of any lack of conformity.

The term package, as included in the EU provision, is a legal concept regulated in Article 3 of the EU directive 2015/2302 as:

> 'package' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if: (a) those services are combined by one trader, including at the request of or in accordance with the selection of the traveller, before a single contract on all services is concluded; or (b) irrespective of whether separate contracts are concluded with individual travel service providers.

Linked travel arrangement, on the other hand, can be defined as travel services which are sold by different traders in separate contracts but are linked. They are considered linked when „one trader facilitates the booking of the subsequent service(s), and they are purchased for the purpose of the same trip or holiday" (europa.eu).

Excerpt 9 illustrates the typical and consistent changes regarding the way *shall* in the EU provision becomes *must* in the UK instrument while undergoing no change in the Irish transposing act.

A major change can be observed in the category of voice in the UK transposing act. The passive voice structure *shall be entitled to receive* in the EU

provision contrasts with the active voice structure *must offer* in the UK instrument. In comparison, the Irish provision retains the passive voice structure *shall be entitled to receive*. Bázlík states that the passive voice appears very frequently in legal English, regardless whether in finite and non-finite clauses (2009, 72). Its frequency is even higher in prescriptive legal texts. The main reason for its popularity among legal writers is its quality to increase the objectivity and authoritativeness of the provision and to "depersonalise discourse and place emphasis on the effect of an action rather than on the actor originating it" (Anselmi 2015, 45-46). Over the years, the overuse of the passive has been criticized by the plain English supporters who argue that the readers of legal texts written in English should receive a proper "sequence in actor, action, and recipient" instead of an inverted sequence unless it would be more beneficial to the meaning of the sentence. The active voice reduces the number of words and allows for a better understanding of the meaning (Garner 2002, 40-41). On the other hand, as Anselmi points out, the disadvantages of the passive voice are possible ambiguity and imprecision because it makes it more difficult for the reader to recognize who is the actor, reducing the precision of the meaning (2015, 46).

Another notable difference between the UK and Irish provision closely related to the predicate and category of voice is in the subject: while IR S.I. No. 80/2019 has the same subject as the EU directive – *traveller* – except in for the category of number, focusing on the role of the *traveller* as a recipient of a right derived from the provision, the drafters of UK SI 2018 No. 634 shift the focus to the *organiser* as an agent with an obligation towards the *traveller*. This way the subject from the EU directive becomes an object in the UK instrument and vice versa.

6.2.1 Summary of the differences and changes found in the analysis

This part of the thesis aims to summarize the changes which were distinguished during the analysis of the nine excerpts which assessed changes between the three corpora on various linguistic levels.

First, it is relevant to note that the majority of distinctions occur between the EU directives and UK legal instruments because the Irish transposing acts

feature minimal number changes while rendering the original EU provisions almost word-for-word, using the copy out transposition technique.

The most notable and frequent among the changes occurring in the analysed excerpts include the level of verb morphology and the modal verbs shall, must and should. The modal *shall* occurs with the highest frequency in the EU and Irish provisions as a modal verb imposing an obligation. However, in the UK provisions, due to the tendency of the national drafters to follow the requirements of the Plain English Movement to ensure as much clarity of meaning as possible, they replace *shall* with another modal verb *must*. A quantitative analysis of the frequency of *shall* and *must* in the three corpora confirms the conclusions drawn from the qualitative analysis of the excerpts.

Another change concerns the modal verb *should*. While the EU directives feature a high frequency of *should* (296 instances), the quantitative analysis in Table 3 revealed that the two national corpora do not feature *should* at all. The provisions of the EU directive use it to impose a general obligation on the Member States, providing a general scope and framework which needs to be transposed by the Member States therefore the two transposed provisions only contain the already specified obligation and not the general one. The UK instruments replace it with the modal *must* while the Irish transposing acts substitute it with *shall*.

A major change can be observed in the category of voice in the UK transposing acts. The passive voice structure *shall be entitled to receive* in the EU provision contrasts with the active voice structure *must offer* in the UK instrument. In comparison, the Irish provision retains the passive voice structure *shall be entitled to receive*. The UK drafters opt for an active voice as much as possible, as can be seen on another example: the passive voice structure *before a consumer is bound by any contract (EU, IR) is replaced by* a present participle structure *before entering into a regulated contract*.

There is also a category of changes which are terminological. Even though, there is a substantial number of EU terms which were imported into the UK national legislation – *consumer, seller, trader, travel package, linked travel arrangement,…* – there are instances of full substitution in the UK provisions:

from *any natural person* (EU) to *an individual*. Here, the UK drafter conducts localisation while replacing the EU term with a term from the national legislation. The UK provisions often elaborate the EU directives by including terms which are supposed to help the UK consumers better understand the directive, like introducing an umbrella term key information or expanding the collocation *commercial or professional activity* in the EU directive into a list *trade, business, craft or profession* to specify its meaning in the transposing acts. Another example of such elaboration can be seen on how the UK provisions used explicitation: a contract (EU) to a regulated contract (UK).

What the UK and Irish provisions have in common, though, is that they do not import the terms which are connected with the legislative style. That's why they do not use the term *annex* featured in the EU directive which becomes *schedule* in both national legislations. The Irish provision mentions the legal term *Regulation* while the UK provision uses the term *Order* instead. In the EU legal system the term *regulation* means a type of law adopted by the European Union; however, in the *common law* legal tradition the terms *regulation* and *order* are used to denote the type of national law.

The national instruments have different terms by which they call their respective sections – they use *paragraphs* as opposed to *articles* in the EU directive.

To make the national provision as clear and precise as possible, the UK drafters tend to alter the structure of the EU directive by dividing the original EU provisions into smaller and shorter units and simple sentence, even going as far as to create new separate subparagraphs for each.

EU directives either do not include any pronouns or use the personal and possessive masculine pronouns as generic pronouns. On the other hand, the UK provisions try to replace it with other options that include using a noun or its possessive form, such as *individual's/person's*. The Irish drafters try to avoid the use of generic *he* by using the combination of both masculine and feminine pronouns – *he or she*.

7 CONCLUSION

Legal languages originate within the legal system and culture of a given country. However, the EU legal language differs in that respect because it comes from a culture of the European union, which is a supranational organisation where legal English originating from a common law legal tradition enjoys a special, even if unofficial, status of a primary legal language which conveys legal concepts of a civil law legal system. This paradox and the fact of English being the *de facto* lingua franca of European Union create major differences between the legal English used in the European Union by its legal drafters and the legal English used in the UK national legislation.

The aim of this diploma thesis was to find, analyse, and determine the extent and level of linguistic changes of EU directives when they were transposed into the UK and Irish national legislations. To achieve this objective, the thesis mainly applied a qualitative approach of contrastive linguistic analysis of nine excerpts, eight of them consisting of three parts – an EU directive provision and its counterparts from the UK and Irish transposing acts. The differences were then highlighted and described in detail under the relevant excerpt. In addition, the qualitative analysis was supplemented with a quantitative analysis in the case of modal verbs *shall, should* and *must*. The analysis of the excerpts exhibited various differences between the variants of legal English on the level of terminology, syntax, structure and verb morphology. The results of the analysis are summarized at the end of the practical part.

The thesis worked with the hypothesis that the UK transposing acts were going to adhere to the plain language principle in legal writing much more than the EU directives and that the Irish transposing acts would show similar distinctions, as well, due to them being a part of the same legal system of common law as had been explained in the theoretical part of the thesis. However, while the analysis confirmed the first part of the hypothesis, it disapproved the second part about the Irish corpus. While the UK corpus included multiple distinctions between the UK provisions and the EU directives, the provisions in the Irish transposing acts showed very few changes because the Irish legislation drafters preferred the *copy out* technique of transposition, that is, a word-for-word

rendering to ensure maximum harmonisation. On the other hand, the UK drafters much more often employed transposition by elaboration (reformulation) to adapt the directives to the national drafting tradition and clarify its meaning as much as possible for legal and domestic policy reasons (Transposition Guidance 2018,11). Even though, the UK Transposition Guidance 2018 recommended the *copy out* technique to avoid gold plating, the drafters were much more open to using reformulation, that is, intralingual translation and explicitation, than their Irish counterparts.

The analysis may serve as starting point for future research on intralingual translation in the European Union.

SHRNUTÍ

Právní jazyky vycházejí z právního systému a kultury dané země. Právní jazyk EU se však v tomto ohledu liší, protože pochází z kultury Evropské unie, která má supranacionální povahu. Právnická angličtina pocházející původně z tradice práva *common law* má v EU zvláštní, i když neoficiální, postavení hlavního jazyka právních textů, který zprostředkovává právní pojmy kontinentálního právního systému EU. Tento paradox a skutečnost, že angličtina funguje jako *de facto* lingua franca Evropské unie, vytváří velké rozdíly mezi právnickou angličtinou používanou v Evropské unii tamními odborníky na právo a právnickou angličtinou používanou ve vnitrostátních právních předpisech Spojeného království.

Hlavním cílem této diplomové práce je posoudit rozsah a úroveň jazykových změn směrnic EU v angličtině při jejich transpozici do anglického a irského právního řádu. Inspiruje se předchozími intralingválními studiemi směrnic EU: *How do supranational terms transfer into national legal systems?* (Łucja Biel a Agnieszka Doczekalska); *Observing Eurolects: Corpus analysis of linguistic variation in EU law* (Laura Mori a Annalisa Sandrelli); a *The Transposition of EU Directives into British Legislation as Intralingual Translation: A Corpus-Based Analysis of the Rewriting Process* (Simona Anselmi a Francesca Seracini).

Někdo by se mohl podivovat, jaký má význam provádět takový výzkum poté, co Spojené království 31. ledna 2020 vystoupilo z Evropské unie. Za prvé, navzdory vystoupení neztratila angličtina status jednoho z úředních jazyků EU, protože je také jedním z úředních jazyků Irska a Malty. Za druhé, směrnice, které byly transponovány v průběhu členství Spojeného království v EU trvajícího od 1. ledna 1973, jsou stále součástí vnitrostátních právních předpisů Spojeného království a pod kontrolou parlamentů a shromáždění Spojeného království (legislation.gov.uk), neboť transponované směrnice byly přeneseny do práva Spojeného království jako tzv. „zachované právo EU“, jak je uvedeno v zákoně o Evropské unii (a vystoupení z ní) z roku 2018.

V teoretické části práce je nejprve zasazen anglický a irský právní systém do konkrétního právního kontextu týkajícího se kontinentálního právního systému a systému práva common law. Teoretická část se zabývá vznikem práva v

Evropské unii a právním rámcem, přesněji se zaměřuje na acquis communautaire and transpozici a implementaci směrnic EU.

Praktická část pak analyzuje čtyři spotřebitelské směrnice EU na různých úrovních jazyka. Kontrastivní analýza si klade za cíl identifikovat a popsat různé jazykové rozdíly a změny mezi zdrojovým textem směrnic a jejich vnitrojazykovými překlady ve vnitrostátních předpisech, které prošly procesem transpozice.

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