Babeș-Bolyai University, Cluj-Napoca

Faculty of Letters

Doctoral School of Linguistic and Literary Studies

Scientific Doctorate in the Field of Philology

INVESTIGATING THE TRANSLATABILITY OF LEGAL TEXTS:

Designing Effective Transfer Strategies
for Legal Translations

ABSTRACT

Doctoral Supervisor

Prof. univ. dr. habil. Anca-Luminița Greere

Doctoral Candidate

Andreea-Maria Sărmașiu

Cluj-Napoca

2022

Table of contents

Numerous scholars (Nord, 1991; Šarčević, 1997; Decaudin and Popineau, 2019) state that legal texts are translated for a purpose or for legal specific needs depending on the context, personal or professional. Under these circumstances, the translator should possess the ability of understanding the legal context of the source text in order to identify the problems and the strategies for the translation. In other words, the translator should find the answers to the questions *why, for whom and for what purpose* the legal source text is translated to be able to determine the level of translatability of the legal text.

Our doctoral research is focused on the achievement of optimal translatability of legal texts which depends on specific components of the legal translation process. Legal translation requires general and specialized knowledge and competences, involves the correct identification and appropriation of traditions, methods and language aspects, and supposes the development of an interdisciplinary approach. We propose to demonstrate the possibility and the need of achieving optimal translatability of legal texts through two models of analysis, a theoretical and a practical model, both based on the specificity of legal translation as a context-dependent activity.

As many researchers and scholars have mentioned (Gemar, 1979; Nord, 1991; Cao, 2007; Haigh, 2009; Pizzuto, 2014), legal translations will invariably pose numerous problems, both when tackled for academic or professional purposes. The main objective of this study is to investigate the translatability of legal texts by merging theoretical and practical approaches into a workable model to be efficiently applied for professional and academic contexts, alike. The current research proposes to identify the specific aspects influencing the translatability of legal texts through the use of the theoretical apparatus and textual and extratextual demonstrations, and to further analyse them from an interdisciplinary perspective. Following the identification of problems which need to be tackled in legal translation, our aim is to validate their presence and determined key strategies and competences applicable when engaged with the process of legal translation. Moreover, the intention to apply a present-day lens onto what is otherwise a long tradition in translation studies and practice represents another strong reason to be involved in this challenging journey of discovering legal translation and the implications for its translatability as presented through different legal systems, different linguistic systems, different terminologies and cultures.

The present study aims to investigate the translatability of legal texts from the perspective of two particular contexts: translation as process-oriented approach and translation as product-oriented approach, by analysing some essential components during our demonstration.

From a methodological point of view, in order to develop this investigation, we first conducted a literature review and reported on the main aspects to be retained for the study, then we classified and applied the theoretical components towards a demonstration of practical applicability, and finally we used a combined approach (textual and extratextual analysis) for gathering views and validating the application model proposed. We selected from relevant literature of scholars who established or continued important theories a foundation of concepts to represent the starting point for our demonstration regarding the translatability of legal texts. In order to move from the theoretical to the practical approach, we used two types of analysis, a textual analysis and an extratextual analysis. The textual analysis involved the creation of a corpus of 100 texts relevant in identifying problems and establishing effective translation strategies. The extratextual analysis involved the organisation of two different activities, a workshop and a questionnaire, the results obtained and analysed from a qualitative and quantitative point of view adding to this combined perspective. Thus, we identified the relevant literature and made a selection of theories leading us to achieve our objectives. And, we used content analysis and observations for the textual analysis, but also experiments accompanied by descriptive statistics and surveys in order to support our demonstration.

During the study, we divided the research into two main approaches enabling us to design effective strategies: a theoretical approach (legal, linguistic and terminological distinctiveness) and a practical approach (the academics and professionals co-working). These approaches are presented under 3 chapters:

Chapter 1 - **Situating Legal Translations within Translation Studies** – is dedicated to the analysis of translation and legal translation through an interdisciplinary approach based on the interaction between Translation Studies and other disciplines, interaction analysed by scholars as Bassnett (2002), Williams and Chesterman (2002), Hatim and Munday (2004). A categorization of translation based on academic and professional perspectives is set out and this categorization is extended to legal translations.

The first subchapter - *An Outline of Theoretical Descriptions of Translation* - describes translation from the academic perspective (scholar's activity), the reader's perspective (means of encouraging and helping TL reader) and the translator's perspective (means of offering a pragmatic choice). Therefore, translation is described as a discipline-based and language-oriented research in connection with traditions, methods and priorities, as a communicative action with a communicative purpose and as a professional practice. The second subchapter - *Translation versus Legal Translation. Specificities of Legal Translations* - continues the ideas developed during the first subchapter, also proposing three perspectives of describing translation, this time legal translation (Biel and Engberg, 2013; Nord, 1991; Prieto Ramos, 2014). The first perspective outlines two dimensions of translation, translation as discipline-based and as language-oriented research. The second perspective emphasizes the development of translation in a particular context, as communicative action, with communicative purpose, being able to reproduce the same relationship between translation as process and translation as product. The third perspective highlights the study of legal translation as a professional practice governed by specialized methodologies and competence, quality control, training and sociological aspects. The first chapter establishes some very important directions for our study regarding the categorization of (legal) translation and the main perspective applied in its analysis. The first direction emphasizes that translation in general, but also legal translation, is described as a process and as a product if we apply Translation Studies approaches, but similarly if we apply interdisciplinary approaches. The second direction illustrates that the performance of (legal) translation is made in a context, a context described by methodologies, interests, connections, which means (legal) translation is a context-dependent activity that leads to a context-dependent product.

Chapter 2 - **Determining the Translatability of Legal Texts Through Theoretical Approaches** - is dedicated to the identification of the main components of the legal translation process that can lead us to effective strategies used during the translation process in order to achieve the optimal translatability of legal texts. The first subchapter - *Legal Translation Process – a System of Components Working Together* - presents three main components identified during the theoretical approach. The first component is *comparative law* and the understanding of different legal systems and their correct transfer from the source text to the target one. The second component is text classification through a retrospective of the linguistic and legal conventions. The selection of the specific text types in this particular field implies the identification and the
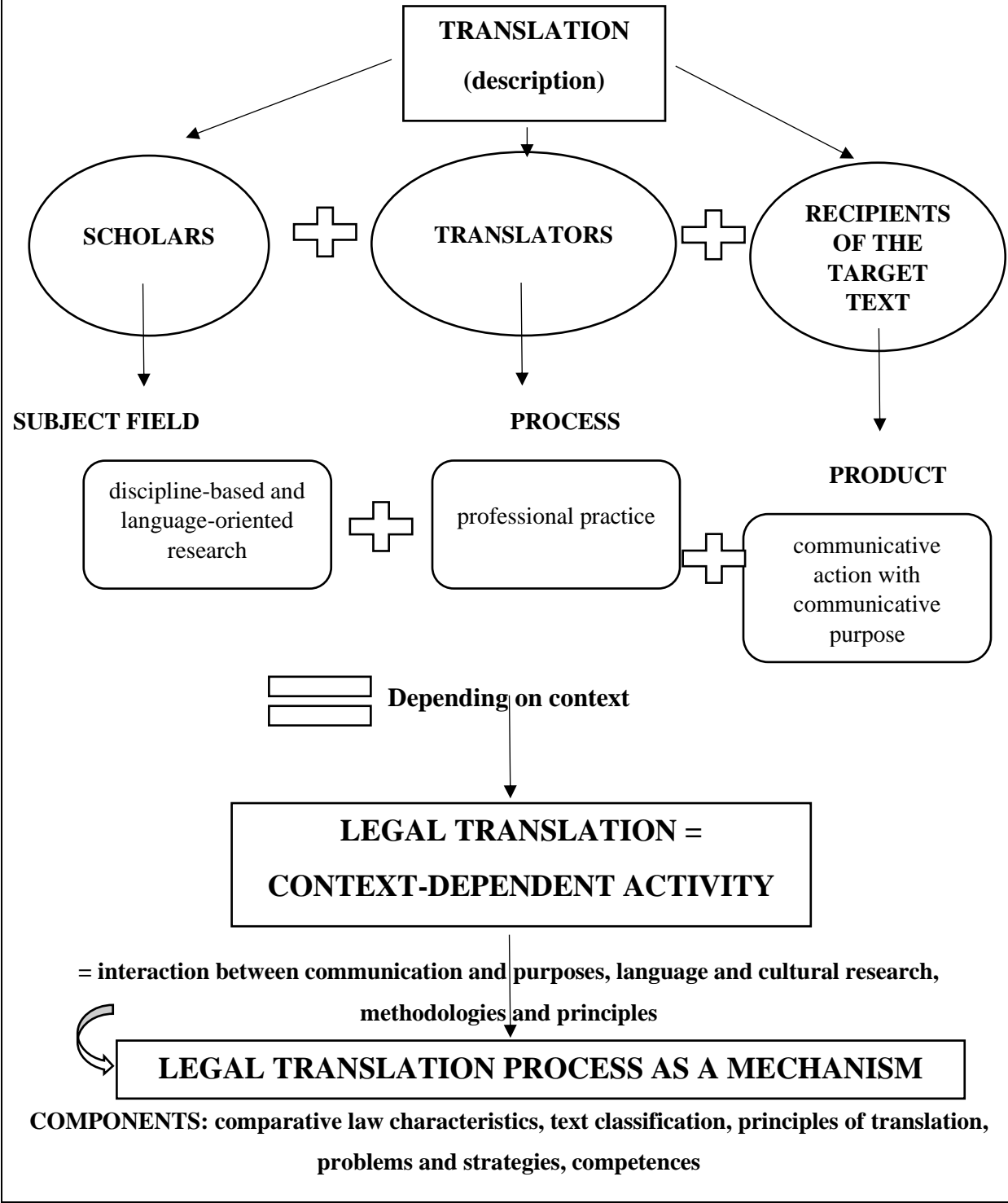
implementation of different legal and linguistic conventions (Reiss, 1971; Newmark, 1981; Šarčević, 1997; Cao, 2007; Varo and Hughes, 2002) in order to prove a good knowledge of the meaning that needs to be rendered in the form of semantic, syntactic or other textual elements, and of the content in the form of cultural or pragmatic aspects that contribute to the preservation and rendering of conventional forms specific to the legal text. The third component is the use of principles of equivalence, conventionality and functionality during a legal translation process. The main features exposed are the aspects that define the equivalence from the source language to the target language (Jakobson, 1959; Catford, 1965; Nida, 1969; Newmark, 1981; Baker, 1992; Vinay and Darbelnet, 1995); the general characteristics of text analysis and the particular elements of the legal texts that offer the conventional aspect of the source text/ target text (de Beaugrande and Dressler, 1981; Šarčević, 1997; Harvey, 2002; Gotti, 2006); the effects that the implemented functional theories can produce in the legal translation (Nord, 1997). The second subchapter - *Specific Problems and Strategies for Legal Translations* - investigates different problems and strategies which are reflected in the double transfer of knowledge and competences, from theory to practice (e.g., the translator should be reliably informed about the specificities of both source and target legal systems) and from practice to theory (e.g., the translator should have the knowledge about the source and target language requirements regarding legal and linguistic aspects of texts formats). This is coupled with continuous professional development initiatives allowing for constant updates of knowledge and practices to ensure that the translator is aware of the directions promoted through theoretical notions and can continuously adapt to the progress and requirements of the market in order to deliver a final quality product for clients. In Translation Studies literature these problems and strategies have been defined and classified over time by various scholars (Nida and Taber, 1982; Newmark, 1988; Nord, 1991; Chesterman, 1997; Pommer, 2006; Haigh, 2009; Kordic, 2020), but the question that arises in this particular context determined by the desire for continuous professional development is: *could these problems and strategies be reclassified according to client/market's requirements and translators' competences*? The last subchapter - *Professional Competences for Tackling Legal Translations* - analyses translation competence as a contextual skill, more exactly a transfer of contextual skills from the knowledge field to the practice and vice versa based on the frameworks proposed by the EMT expert group. This mutuality allows the integration of translation competence in the spectrum of competences, under the possibility of the transferable characteristics from translation field to the

legal translation field, from the academic medium to the professional one, from a formal context to a non-formal one, from discipline to practice.

At the end of the theoretical chapters of our research, we concluded that all the descriptions and analyses offered, through the literature review and commentaries based on the theoretical approaches and relevant opinions presented, lead us to a theoretical model of analysing the optimal translatability of legal texts.

The theoretical model is founded upon the description of translation from scholars, translators and recipients of the target text perspectives. These three descriptions (See Chapter I) transfer us to the plane of the translation as a theoretical approach and translation as a practical approach: translation as a process and as a product resulting of the interaction of Translation Studies (subject field) with other disciplines through an interdisciplinary approach. Narrowing our framework to the legal translation field, the three general perspectives can be replicated: (1) legal translation as discipline-based and as language-oriented research; (2) legal translation as communicative action with communicative purpose; (3) legal translation as professional practice. Based on these three new perspectives, legal translation depends on context because the methodology and the interest of scholars and recipients is developed in a context, and also because the demonstration of the validity and efficiency of specialized methodologies, competences and other aspects need to be done in a professional and/ or academic context. Consequently, all the three perspectives can be put under the description of legal translation as a context-dependent activity. We retained this central concept of our research, legal translation as a context-dependent activity which presupposes an interaction between communication and purposes, language and cultural research, methodologies and principles. This interaction was developed as part of a mechanism – legal translation process as a system – using specific components which work together: comparative law characteristics, text classification, principles of translation, problems and strategies, competences. All these components assisted in the demonstration to achieve the optimal translatability of legal texts.

THEORETICAL MODEL FOR THE ANALYSIS OF

OPTIMAL TRANSLATABILITY OF LEGAL TEXTS[1]

TRANSLATION

(description)

SCHOLARS + **TRANSLATORS** + **RECIPIENTS OF THE TARGET TEXT**

SUBJECT FIELD

PROCESS

PRODUCT

discipline-based and language-oriented research + professional practice + communicative action with communicative purpose

Depending on context

LEGAL TRANSLATION =

CONTEXT-DEPENDENT ACTIVITY

= interaction between communication and purposes, language and cultural research, methodologies and principles

LEGAL TRANSLATION PROCESS AS A MECHANISM

COMPONENTS: comparative law characteristics, text classification, principles of translation, problems and strategies, competences

---

[1] **Copyright**: *Visual representation created by the author*

In the course of our study, we highlighted two models of designing effective strategies for legal translators: the theoretical approach through legal, linguistic and terminological distinctiveness and the practice-based approach, an interdisciplinary endeavour applied through academic and professional co-working; thus, linking professional practice with translation training.

The theoretical approach is transferred from the theoretical chapters to Chapter 3 - **Researching Legal Translation Applying Specific Strategies in the Legal Translation Process** through a textual and extratextual analysis in order to validate the theoretical information and the practical experience. The practical approach, the academic and professional co-working, aiming to link translation training with professional practice, has two parts: a textual analysis and an extratextual analysis.

The textual analysis - *Replicating the theoretical approach towards a practical approach. Textual analysis through specific problems and strategies for legal translations* - is based on the presentation of our corpus (a number of 10 representative texts for 10 different sections – *Separația de bunuri*; *Lichidarea regimului matrimonial*; *Divorțul*; *Tutela*; *Stabilire maternitate*; *Desfacerea sau anularea căsătoriei*; *Desfacerea sau anularea adopției*; *Filiația*; *Înregistrarea tardivă a nașterii*; *Declararea judecătorească a morții* -, obtaining a final corpus of 100 representative texts, namely court orders), followed by the application of two important instruments: guidelines or instructions regarding the translation activity (known as Translation Brief) and a particular source-text analysis (known as T.O.S.T.A). These two components are accompanied by the identification and presentation of specific problems and strategies in a general or particular legal context. For the textual analysis through Translation Brief (TB) and T.O.S.T.A, based on a LEX T.O.S.T.A model, created according to Nord's model (1991), but also Barabino's model (2020), where we incorporated the instructions corresponding to the Translation Brief, but also some conditions concerning specific problems and strategies, we selected 35 texts from our corpus and 26 specialized lexical items (*regim matrimonial al separației de bunuri; separație de bunuri; contract de căsătorie; convenție matrimonială; soți, bunuri mobile/ imobile; lichidarea patrimoniului comun; lichidarea regimului matrimonial; pretenții; tranzacție/ contract de tranzacție; cerere de desfacere a căsătoriei; desfacerea căsătoriei; cerere de divorț; certificat de divorț; Registrului național al regimurilor matrimoniale; Curtea Superioară de Justiție din Toronto; tutela; tutore/ curator; maternitate/ paternitate; Direcția Generală de Asistență Socială și Protecția Copilului;*
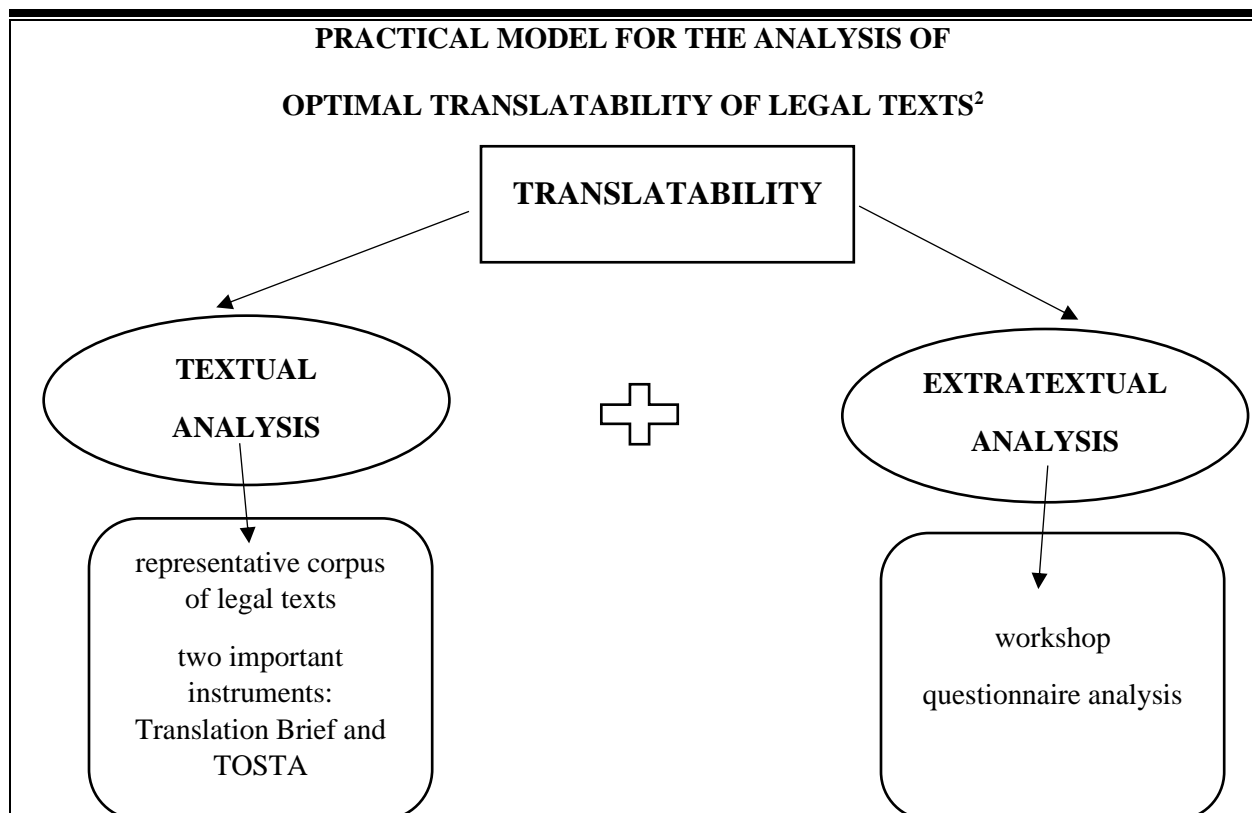
răspundere părintească; încredințare/ drept de vizită; statut de minor; filiație naturală sau adoptivă; stabilire filiație; act de naștere).

For the transfer of the terminology from the source language to the target language, described as a linguistic problem (Nord, 1991), we extracted 50 specialized terms and phrases from our corpus (*cheltuieli de judecată; a formula un apel; pentru aceste motive; obiectul prezentei cause; a dispune; a înștiința; temei juridic; capăt de cerere; din oficiu; executare silită; părți litigante; (a) contesta; (a) hotărî; (a) amâna; grefier; intimat; pârât; recurs; reclamant; sesizare a Curții; soluționare cauză; cale de atac; pronunțarea hotărârii; litigiu; cerere de chemare în judecată; litispendență; a depune o întâmpinare; material probator; cauză civilă; obligat solidar; competență de soluționare; taxă judiciară de timbru; a rămâne în pronunțare; instanța de fond; martor; cerere reconvențională; împuternicire avocațială; a cita; ședință publică; petent; prezumție; cu titlu preliminar; pe cale de consecință; părți semnatare; probațiune; mandatar; exequator; sub sancțiunea nulității; contract de donație; termen de judecată).* Even if the terms were chosen at random, the frequency of their use in all the sections of our corpus can be considered a filter. For all these specialized lexical items, we offered a possible transfer from Romanian into English in a sample form which included details about the source text, the possible equivalent chosen and possible strategies or sources for looking for those strategies in specific lexical and legal context selected, namely EU English and EU legal background.

The extratextual analysis is divided into a workshop (*Converting the Theoretical Approach towards a Practical Approach. A Reclassification of Specific Problems and Strategies via a Legal Virtual Workshop*) and a questionnaire analysis (*Maintaining and developing competences. Longitudinal approaches for Continuous Professional Development*), presented to demonstrate that both, language and culture research are valuable in a translation process. Between January and February 2021, in collaboration with the Applied Modern Languages Department in Cluj-Napoca, two legal translation workshops were organized via Zoom. The topic of the workshops was the investigation and validation of the translatability of legal texts from Romanian into English through the establishment of some contextual aspects (intratextual and extratextual elements) and the identification and reclassification of specific problems and strategies for particular situations (legal texts related to individuals or familial relationships) in order to reach a common conclusion about a legal translation activity. During the workshop, which reunited 40 participants (BA, MA, PhD students, professors, translators, specialists in law and a notary public) we explored the

challenges encountered by students in Translation Studies, but also by translators (specialist, legal, authorised), in translating legal texts relating to Civil Law (Family Law) as a direct result of investigating specific problems and strategies. Through this legal translation workshop, we were able to demonstrate the reciprocity that exists between theory and practice, academics and professionals, Translation Studies and other disciplines within interdisciplinarity. This workshop represented the basis of a practical approach necessary in order to analyse and demonstrate the translatability of legal texts. Moreover, as part of the same extratextual analysis, a PhD questionnaire survey was designed, the aim being to emphasize the need and the desire of translators to improve their skills through combined theoretical and practical approaches.

Aiming to replicate our theoretical approach into a practical approach, we developed a practical model for the analysis of the translatability of legal texts in order to demonstrate the conversion of theoretical notions into specific and effective transfer strategies from a source language to a target language during a legal translation process.

PRACTICAL MODEL FOR THE ANALYSIS OF

OPTIMAL TRANSLATABILITY OF LEGAL TEXTS[2]

TRANSLATABILITY

TEXTUAL ANALYSIS

EXTRATEXTUAL ANALYSIS

representative corpus of legal texts

two important instruments: Translation Brief and TOSTA

workshop

questionnaire analysis

The objectives set for our research, the theoretical and practical analysis, the findings obtained at the end of the current research - all these aspects highlight the importance of reciprocity and mutuality regarding the study of the components which form the legal translation process. All these characteristics lead to effective strategies in order to achieve optimal translatability of legal texts. Moreover, this complex analysis brings to our attention a possible discussion of interest on how perceptibility, comprehensibility, acceptability or real settings of legal interaction will set new horizons in the research of these comprehensive legal translation preoccupations.

Consequently, here are three categories of professional addressees who would benefit from our research: those who have undergone specialized university studies and have to maintain and further develop their competencies; those who add the legal field as a new field to their portfolio of practice; those who come to the translation field from other fields and reprofessionalize, re-skilling and upskilling. Additionally, due to its multiple references to the training environment, we advocate impact and usability of the current study by translation educators, researchers and students, working within an academic context.

Keywords: *legal translation, context-dependent activity, optimal translatability of legal texts, theoretical model, practical model, effective transfer strategies*