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Common Contexts of Meaning in the European Legal Setting: Opening Pandora's box?

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Abstract
The way comparative law methodology is handled by the variety of experiences of normative complexity around the world is, in itself, a stimulating and promising field of research. In particular, the "hybrid" character of the European Union legislation, being juridical and linguistic at the same time, remains the core of comparative law studies, but the dynamic relationship between law and language is constantly producing ever-changing scenarios, calling for combined scientific approaches. Along with comparative law, semiotics in particular has ensured the proper reading of the complex juridical and linguistic interconnections between the EU legislation and the national courts interpreting and applying them, thanks to its implicit dynamicity and ability to favor the visualization of the real normative semantic flow. By means of a case study, the opening of this "Pandora's box" will demonstrate that, despite the lack of correspondence among EU categorical and conceptual structure, legal language, court enforcement and spirit of the people (social group), shared contexts of meanings within the EU and the national contexts are already flourishing and become visible when approached from a specifically comparative and semiotics point of view, that's to say as legal *formants* and as *signs* and *meta-concepts.*

Keyword Comparative law · EU legal language interpretation · Formants · Semiotics · Social semantic contract · Case study

1 Introduction

At the beginning of the last century, comparative law scholars moved their first steps in a positivistic environment, investigating mainly legislations, in search of similarities among enacted norms.

Nowadays comparative law science is increasingly experiencing a shift towards fields of research that embrace normative plurality and interdisciplinarity. The

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involvement of comparatists in more and more research fields—EU or national projects, study commissions, institutions—is on the ascendancy too, also as the consequence of a common understanding about the capacity of comparative law to combine its nature of legal science, searching for similarities and differences, with that of decodifying diversities in the new contexts in which the legal phenomenon manifests itself. In this regard, many expectations are placed on comparative law: as observed by Vivian Grosswald Curran "the more reconfigurations law undergoes in its dynamic interaction with a world in transition, the more comparative law is supposed to become a process of decoding legal presences" [11: 6].

This never-ending mission, explicitly or implicitly assigned to comparative law, is somehow part of its nature. The process of comparison always implies differences, as, even when the outcomes of a research suggest similarities, the environment in which these data are gathered is of diversity. Thus, measuring similarities and differences always presumes an encounter with contexts that are always "differently different". In this regard, the foreignness in which comparative law scholars are immersed may greatly vary, dealing with data originated in formerly German pandectist environments, as well as with traditional African non-verbalized legal systems, whose norms connotations change as soon as they begin to acquire meaning.

Thus, also due to its nature, comparative law is nowadays perceived as the main "decoder" of the law in complex and dynamic legal environments: "mute law", "global law", "soft law", and "multilingual law" are only a few examples of the new territories of comparative law analysis.

One of the consequences of the natural attitude of comparative law scholars of being attracted to and of investigating new contexts is that the playing field of the debate on the present and future of comparative law [5] is once more focusing on methodology [Recently see: 1, 10, 27, 39]. Differently from the past heated discussions, in the last fifteen years attention has not been placed on the experimental and unsystematic use of the comparative law method [5], but on the need to define the methodological agenda of a science that if, on the one side, has definitely consolidated its aims and connotations, on the other side is increasingly pushed to its limits. At the two sides of this debate there is the idea that comparative law is by now definitely characterized by methodological pluralism [15][1] and, on the opposite, that there is no comparative law method at all.[2] Between the two, we have the idea that it

[1] "Methodological pluralism manifests itself in two forms: first, as an issue that concerns the substance; second, as an issue concerning the nature of the methodology of comparative law. Consequently, it is important to speak of comparative law methods in the plural, since there simply is no single comparative law method" [15].

[2] Even more extreme are the positions of methodological skepticism: "There are comparative lawyers who see comparative law as a science with its own separate sphere. Others call comparative law merely a method of study and research or even a technique. Some regard it both as a comparative method and a comparative science of law, or see in comparative law more than one of these aspects. It is immediately obvious that those who see comparative law as a method only do not tell us what that method is, leaving this issue unanswered or very vaguely covered, and those who think or feel that comparative law must be more than a mere method do not seem to agree on what this subject-matter is [28: 61].

is the aim of the research and the research questions that determine the method [22: 152 ff. See: 43].[3]

Needless to underline that the tensions regarding the methodological debate are positive signs of the vitality of a science. But at the same time, the current tendency to scrutinize the method should not be developed further alongside the idea that comparative law is flexible by nature, as if every time it is applied to a new context it becomes something new. Taking such a direction would lead comparative law into a state of disorientation, confusing its conceptual "apparatus" with its own identity as a legal science, turning the methodological perspective of the scientific efforts of comparative law into a search for legitimization.

In this contribution, one of the author's suggestions is that the scientific identity of comparative law as an "intellectual activity with law as its object and comparison as its process" [45: 2] is still the anchor point of comparative law research, around which different methodological instruments can be implemented. This does not mean that comparative law studies can be carried out regardless of the cultural system under analysis, as law necessarily includes non-legal data. Unless care is given to identifying properly the object of a comparative law inquiry – uncovering and acquiring knowledge about the law in its cultural setting – in *any* comparative law inquiry, comparative law faces the danger of being reduced to a mere method of juxtaposition of data (norms), at worst even non-legal data (non-norms).

Within the scientific community, the interrelatedness between law and culture is a shared profile of comparative law investigation, as clearly observed by Eberle [8.: 452- 453].

Law sits within a culture. Law both drives and is influenced by the culture of the home country. So we must look beneath the law as written formally in text. We need to excavate the underlying structure of law to understand better what the law really is and how it actually functions within a society. To do this, we need to explore the substructural forces that influence law. These can be things like religion, history, geography, morals, custom, philosophy or ideology, among other driving forces. Professor Bernhard Grossfeld and I have referred to these forces as "invisible powers." Rodolfo Sacco terms these underlying influences "legal formants," influences that help drive the formation of law.

Therefore, if assessing the role and methodology of comparative law means looking at *the law*, but also at how the law operates within a specific culture, the importance of looking beyond legal texts also means relying on the methods of other disciplines.

Nowadays there are more and more areas of the law the analysis of which implies going beyond its own strict norms description. A relevant example is the European Union multilingual law. Here, the capability of comparative law analysis to move "on the borders" of the law and to visualize its components under the surface of its concepts and wording is related to the culture-specific nature of EU legal concepts, which depend on the European system of reference, but are made of interrelated linguistic concepts detached from any national culture [25]. Being framed

[3] These positions are collectively denominated "contextual comparative law" by Kischel [22: 152 ff].

and structured by multilingualism and, thus, by *linguistic* elements, EU law is an example of a complex legal system in which the methodological arsenal of comparative law needs to be integrated, in order to visualize the linguistic structure of EU legal discourse.

Needless to say, in this "hybrid" character of EU legislation, being juridical and linguistic at the same time, the law remains the core of comparative law studies, but the dynamic relationship between law and language produces an ever-changing scenario, calling for combined scientific approaches [40. See also: 13].[4] Responding to the above-mentioned research aim has implied the use of further methodological instruments, permitting to visualize the already ongoing process of shared conceptual meanings: along with comparative law, semiotics in particular has ensured a proper reading of the complex interconnections of legal language between the EU legislation and national practices. As we will see, one of the attempts of this article is to show that shared contexts of meanings within the EU and the national contexts become visible when approached from a specifically comparative point of view—as legal *formants*—and from a semiotics point of view—as *signs*.

2 Comparative Law and the EU Legal System

If observed from its origins, Europe is a work in progress, grounding its foundations in the solid tradition of its Member States, but at the same time gradually building its own legal and linguistic architecture [12].

In comparative law terms, the European Union is an interesting and original model, a phenomenon whose social, institutional and constitutional situation is constantly evolving [20]. Thus, the analysis of this dynamic legal system is not new "on the radar" of comparative law [24]. At the time when comparative law scholars were mostly engaged in harmonization and unification enterprises, an example of the contribution that comparative law gave to EU law studies was the search for commonalities among the different legal systems, through different academic projects, some of them financially supported by the EU Commission [See: 23, 18].[5] This sort of contractualized research is frequently transposed into studies qualified as "European private law", and this idea of uncovering or creating common principles of European law still represents an important field of comparative law research on EU studies, at least in private law.

At the same time, comparative law has always been a crucial tool to penetrate the EU architecture, also in public law. As it has been noted, the complexity of the

[4] As noted by Squillini-Cinelli and Husa, "[d]escribing similarities and differences from the viewpoint of legal doctrine is rather about moving beyond the mere description and cataloguing of law(s)–norms–towards a deeper understanding of various legal phenomena and of how societal normativities operate and interact with one another" [40].

[5] See, for example, the project: "Principles of European Contract Law" [23]. Recently also see the "IMOLA projects", regarding the promotion of the interoperability among immovable property registries in Europe: [18: p. 134 ff].

multi-level governance systems in the EU calls for significant efforts in comparative inquiries and interdisciplinary cooperation [4: 104].

Unsurprisingly, in this atmosphere, comparative law has shown the awareness and ability to reflect upon its own method and role [See, for example: 42]. In particular, a frequent query is "whether comparative research can document trends toward convergence or divergence between the European and national (or international/supranational) legal systems, or between two and more national systems within the common European edifice" [4: 100–101]. In this regard, it was affirmed that the interdependence between the system (the EU) and its component parts (the Member States) makes it difficult to rely on the classical methods of comparative law, which have been shaped for the comparison of "discrete and independent municipal law systems" [6].

Resistance in applying traditional comparative law analysis to the European Union is also grounded on the idea that this would imply a legal system and its conceptual structure being the result of the evolution of a legal tradition or of an original overt choice of one or more legal traditions. Needless to point out that the EU is not a country, but an international organization having the completion of the Internal Market through harmonization as its main task. As a consequence, differently from the national taxonomies, EU legal norms and concepts are not the result of a layering of meanings, developed over time by legal traditions and values of reference [9].

Indeed, the tension between the institutional duty of enacting the harmonized legislation in all the official national languages[6] and the technical difficulties of translating the legal concepts and norms has been managed through an autonomous 'dictionary' in which EU law is mainly expressed through the creation of neologisms and calques. When formulating EU legislation, particularly in the area of private law, the EU legislature often creates new words, detached from any national meaning and not rooted in a previous legal culture, but intended to have a "European autonomous meaning" [16].

Thus, the "transplant" of an EU norm wording in the national setting does not automatically entail that this EU specific meaning—or the common meaning underlying national law harmonization—is also transferred.

In this regard, on the one side, studies have analyzed the situations in which multilingualism obscures some of the components of EU citizenship rights, by marginalizing and excluding them from the semantic borders of EU law [17].

On the other side, tensions between multilingualism and effective harmonization of EU law in the national contexts seem to coexist with a process of cultural adaptation to EU law by national courts applying EU law and by legislators transposing it. As we will see, the interrelation between EU legislation and the normative forces grounding the practices of law in Europe is slowly producing common contexts as regards the meanings of EU concepts: in Europe, courts interpreting and applying EU concepts and national legislators transposing or translating directives seem to

[6] Art. 290 and 314 of the Treaty establishing the European Community and Regulation no. 1 dated 15 April 1958 establishing the European Economic Community's linguistic system, O.J. no. 17 6 October 1958.

have developed the capacity to assign a common European meaning to EU concepts, regardless of the distance from their own national legal culture [19].

An example of common contexts of meanings of EU legal concepts is the outcome of the research presented in this article, as the result of the application of a traditional comparative methodological approach—the theory of the *legal formants*—to the complex context of the EU private law system. One of the theses addressed is that, notwithstanding all the new challenges, comparative law has not shifted its attention from uncovering the differences and similarities among new legal systems, nor from relying on its original methodology.

In this regard, the EU and its hybrid normative character of law and language is the ideal context in which the potential of traditional comparative law method can reach interesting results. It is thanks to its familiar instruments, developed through the transposition of concepts from and to foreign legal systems, that comparative law remains of crucial importance also to identify EU legal rules (norms) in this new and complex environment.

EU law is precisely one of the fields where comparative law could become the legal science with the greatest potential in the interpretation of legal choices today, because its methodology is flexible by nature, needing to adapt, today as in the past, to new and constantly changing situations [11]: as expressed in each national legal language, EU law is intrinsically destined to become more than the sum of its parts, namely the single linguistic version, and to develop a unique, supranational and authentic meaning of its legal concepts. Here comparative law can definitely be effective in decoding "the" European meaning, allowing for a deeper understanding of the ways in which EU law is expressed beyond the single language version. This is definitely relevant in order to prevent EU legal language from becoming a barrier, rather than a means of interpretation, to the application of harmonized law at the national level [17].

Thus, uncovering "the legal rule" (norm) is one of the targets of comparative law research at the national, European as well as supranational level. However, because of comparative law's implicit connection to language, an indirect effect of the norm decoding process is also the attribution of significance to single EU concepts, which by nature are destined to acquire meanings that go beyond the national borders.

3 EU Legal Language and the Member States: Opening Pandora's Box

In this framework, attention is nowadays given to themes that are relevant, if not crucial, for comparative law studies on the EU legal systems. The legal effectiveness of EU law in the Member States is a research field of especially growing importance, with particular attention on the impact that the wording of EU norms has on the national legal systems, in terms of meanings and effects.

The debate regarding the problems surrounding the meaning of EU concepts in the Member States is rather recent [See: 7, 29, 34, 36, 37, 38, 41] and dates back to the last twenty years. The previous lack of attention was probably caused by the acritical mental attitude of national jurists towards multilingualism, which was

simply perceived as a linguistic regime rather than the normative core of the EU legal system that actually is. What went initially unnoticed is that the formulation of norms and concepts of EU law in all the official languages and the institutional feature of the EU multilingual legal system—grounded on the positivistic structure of a system of norms enacted in Brussels, to be interpreted and applied by national courts and enforced by national legislators—incapsulates the systems of legislative concepts in a sort of vertical hierarchical relationship between the EU and the Member States. This normative and linguistic structure gave rise to a sort of "magic box effect", a widespread attitude among jurists and researchers of taking for granted the established and unquestioned correspondence among EU categorical and conceptual structure, legal language, court enforcement and spirit of the people (social group).

Such correspondence would presume a taxonomy relying on an already defined semantic basis and consequently on an objectivity that, in the case of EU legal language, is not originally present: it is rather clear that the EU legal language comes into existence at the very moment the norm is elaborated by the legislator. Thus, the semantic coordinates necessary to link a legal concept to a specific normative message are previously not there.

In brief, the EU language is the result of an artificial, a priori choice. Given this, the question is: if EU law cannot rely on a semantic substrate, what can it rely on?

It is a common belief that the EU institutional conceptual structure relies on translation. This is true, as long as one admits that EU translation is not only a linguistic transposition activity – that in its real nature is supposed to transfer choices, values and semantic meanings of each national language into a common one – but it is the engine of the mechanism aimed at turning EU law into a new European legal language. This language is artificially constructed at the supranational level and expected to overcome all diversities by incapsulating them into new EU concepts—namely neologisms—in a sort of semantic meaning imposed from above, but common to all Member States [19]. The real result is an objectivization of empty concepts, abstractly created, and legal translation, at the end of the day, which is instrumental to this project, is legitimized by the choice of the multilingual regime provided by Regulation no. 1, 1958.[7]

Thus, multilingualism is an element of legitimation of the EU legal system and not, as it should be, a synonymous of the multicultural transposition of cultures and values into a uniform semantic substrate. In this view, it is the fidelity to the categorical/conceptual structure of positive legal language that should assure the correspondence between the interpretation and implementation of law's provisions and the will of the people, thus implemented in a inexistent semantic social contract [38]. However, at the EU level a semantic social correspondence, implying a stable social and cultural context, does not exist, as the EU Member States are clearly

[7] EEC Council: Regulation No 1, 15 April 1958, determining the languages to be used by the European Economic Community**,** Official Journal 017, 06/10/1958 P. 0385–0386.

characterized by social and cultural richness and by an implicit dynamism, in some cases provoked by the very fact of belonging to the EU.[8]

Furthermore, the implicit ambition of the EU legislator to enact norms capable of regulating everything, as well as the future, is also challenged by the indisputable fact that legal language must necessarily include semantic change. As Mario Ricca has observed, "[w]ords, as well as all symbols, are rather means involved in the unfolding of life. This also implies that the words (or verbal statements) condition of truthfulness should be considered to be constitutively incomplete, pending and in waiting for updates because truth (as Peirce would say) lies in the future, exactly as the meaning of phenomenal *reality*" [30, 31].

Here the equivalence between uniform legal language and semantic change risks turning into an oxymoron: it was Rodolfo Sacco, one of the founders of comparative law in Italy, to uncover in his early studies how uniformity and normative pluralism are incompatible, as the margin of elasticity of a norm decreases progressively the more the area within which the norm is supposed to remain identical is extended [32].

4 Common Contexts of Meaning in the European Legal Setting

As already pointed out, recent studies on multilingual EU law are attracting more and more interest to this field of research. Nevertheless, the tendency to keep the focus of attention at the EU level, mainly analyzing the environment of multilingual legislation or the judicial reasoning and case law of the Court of Justice of the European Union [see 19: 312 ff.] has not disclosed the lack of referential correlation between EU legal language and social fact, as well as the self-referentiality of the EU norm. Thus, the role of the national practices in the Member States and their contribution in the effective enforcement of EU law went mostly unremarked.

It is the author's opinion that constructive analysis should be founded on a deep knowledge of this national realities. As we will see, at the national level, the observations of court decisions interpreting and applying EU legislation, as well as legislations transposing or translating EU laws of different legal systems, demonstrates that shared semantic contexts of meaning of EU law legal concepts are already flourishing in the European legal setting, and they might also have a natural tendency to uniformity.

Even such contexts of meaning are not the object of analysis yet, this contribution's aim is to demonstrate that they are real and simply need to be visualized in their dynamicity [14].[9]

This should not be surprising, as even if the EU concepts, norms and texts are of a rather recent composition, the EU area is characterized by a certain homogeneity from a cultural point of view and the jurist's knowledge is often supported, even implicitly [16], by similar conceptions [35: 1].

[8] Paradoxically, we may suppose that nothing would change if all EU Member States used the same national language, as this "top down" uniformization is however based on an alleged, but not existing homogeneous semantic cultural and social context.

[9] Husa noted that tracing how law travels is also part of what comparative law scholarship is about [15].

Paying more attention to the national context is also crucial in order to pursue the very first aim of comparative law research, i.e., knowledge. To avoid getting lost in abstraction, empirical knowledge is an especially relevant part of the analysis, as the data on which this research is based are the legal rules (norms) elaborated in the individual national legal systems by courts and legislators: in other words, the *formants.*

Responding to this research direction implies the use of dynamic methodological instruments that allow to visualize this already ongoing process: semiotics and comparative law, in particular, ensure a proper reading of the complex interconnections of legal language among EU and national *formants*.

The attempt is to show that these contexts of meanings become visible only when approached from a specifically comparative—as legal *formants*—and semiotics point of view—as *signs* and *meta-concepts.* Semiotics and comparative law do ensure a proper reading of the complex legal language interconnection between the EU legislator and the national judges, thanks to their implicit dynamicity, but also their ability to favor the visualization of the real semantic flow.

This phenomenon is worthy of attention as, in its own dynamicity, it might stabilize a genuine process of meaning elaboration on EU concepts, not imposed *top down* at the beginning of the normative process on the basis of a non-existent semantic substratum, but to be found *bottom up* at the end of the normative circle, i.e., at the national level.

5 The Theory of the *Legal Formants*: A Traditional Comparative Law Methodology

As already mentioned, the Founding Fathers of comparative law took their first steps in a world in which they were expected to maintain a scientific posture and investigate legislation from the inside, with no room for pluralism in their agenda.

In the'50 s this panorama was disrupted by one of the methods of comparative law analysis elaborated by Rodolfo Sacco, the "theory of the legal *formants*".

The formants—a term borrowed from phonetics—are the components of a legal system; norms formulated by the legislator, decided by the courts, and elaborated in scholarly works with regard to a specific legal matter [33].

This method moves from the premise that legal systems are not "monolithic", but dynamic and structured by various components—*formants*—often in competition with one another. Unlike the traditional and positivist approach, which identifies legal norms only as a product of the official sources of the law of a given legal system, comparative law presupposes the existence of a plurality of other legal rules (norms) and institutions. Formants are norms, and so active and dynamic components of each legal system, contributing to its actual features. As observed by Sacco, "the comparative method is the opposite of dogmatic. It is founded upon the actual observation of the components at work in a given legal system, after having identified these elements [35: 25]".

The institutional structure of the EU attributes jurisdiction on EU law to national courts, as well as the duty to transpose directives and to draft EU secondary law in

a national version (regulations) to national legislators. Thus, national case law interpreting and applying EU law, legislation transposing EU directives, are components of EU law [see, for example 2: 3], and so *formants*, hence components of the EU legal system. On an institutional basis, this is a natural consequence of the role that the same EU form of government has attributed to national courts, as the interpreters of EU law in the Member States, as well to national legislators, with regard to transposition and translation of Eu law.

It is precisely the interpretation of the courts or the transposition of EU norms by national legislators that contributes to identifying and determining the development and consolidation of EU concepts, as shared contexts of meanings, common to several national EU legal systems, being the result of a common European culture. Below the surface of the EU legal language there are rules incapsulated into latent linguistic patterns, that are more permanent than visible; uncovering these formants might be the key to understanding more about the nature of EU legal discourse. In this regard, comparative law science is equipped with the ideal tools to disclose these formants, as it is interested in what is real: its traditional method, founded upon analytical reasoning, examines the way in which the law is applied, and measures the distance from the abstract definitions and the operational rules in the different legal systems.

6 Semiotics and the Construction of the *Meta-Concept*

As already noted, suggesting an interdisciplinary approach means relying on methods of sciences other than comparative law–semiotics, in this case–in order to analyze the specific features of EU legal language.

In this regard, a useful observation point to study the relationship between the legal language of the European legislator (EU legislative formant) and the legal language of national courts (national case law formant), as well as that of legislators transposing EU law (national legislative formant), is the semiotic concept of *meta-language*.

Here, the branch of semiotics dealing with the language of the law is an effective instrument to analyze different levels of a law discourse, particularly with regard to the concept of "meta-language", also described as "a (legal) language speaking of another legal language". [21: 179 ff.]

From the semiotic angle, EU law colui be observed as a meta-language, since the norms of the Treaties prescribe part of the content of secondary legislation (directive and regulations in particular) in linguistic semantic terms. Secondary legislation, in turn, prescribes part of the content of last level norms: court decisions or content of the national legislation norms, transposing directives.

Thus, the qualification of EU secondary law as a meta-language is a useful conceptual tool to frame EU norms as a linguistic formulation to be completed by a second level of norms at the national level. This semantic exteriorization of EU legislation highlights the role of the national *formants* in attributing meaning to EU neologisms.

Table 1 The national concept in some EU Member States

Bulgaria	Italy	Germany	Austria	Belgium	France
↓	↓	↓	↓	↓	↓
владение	possesso	Besitz	Besitz	possession	possession

Table 2 The EU meta-concept

Bulgarian	Italian	German	French
↓	↓	↓	↓
X	possesso	Besitz	possession

Table 3 The consolidated EU concept

Bulgaria	Italy	Germany/Austria	France/Belgium
↓	↓	↓	↓
власт	possesso	Besitz	possession

material control *in general* (regardless of *animus domini*

↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑↑

National *formants*

From this point of observation provided by the meta-language conceptual tool, EU directives and regulations are linguistic formulations—composed by meta-norms and meta-concepts—prescribing a specific juridical content that has to be completed by a second level of norms or concepts: those enacted (national legislation transposing EU law) or formulated (national case law) at the national level.

Furthermore, in semiotics, which is the study of signs, EU law is also studied as a signs system and a horizontal meta-juridical law. From this perspective, EU legal terms form a horizontal system of linguistic signs, in which each one formally and ideally bears the same legal concept as containing an inter-lingual synonym. This approach favours an overall and neutral observation of EU legal language, free from the technical details and legal meanings that are inevitably present in each language version. Along with the mental framework produced by the idea of EU law being

composed by interrelated linguistic signs the observation of the outcome of national application, interpretation and transposition of EU law as signs is a semantic exteriorization of EU law highlighting the role of the national *formants* in attributing meaning to EU neologisms.

To avoid getting lost in abstraction, a case study is briefly presented.

7 A Case Study

The following case study is meant to visualize the theory presented above on an abstract level. The suggested empirical analysis focuses on a legal concept of the EU Framework Directive 2008/98 on waste, enacted as part of the EU action towards environment protection. The recent version (2018) of the Framework Directive (hereinafter "Directive on Waste") is particularly worthy of attention since the definition of art. 3, no. 6, deals with the concept of "possession,"[10] an abstract, relevant concept in the private law of the Member States.

The following tables serve as a token outline to assemble and visualize the data of different legal systems with regard to how "possession" is regulated in some national legislations (Table 1) and in art. 3 of the Directive on Waste (Tables 2 and 3).

Table 1 lists the national concepts corresponding to the word "possession" in some EU Member States.

In all these legal systems, with the sole exception of Germany, private law distinguishes between "possession" and "holding/detention".[11] In particular, the concepts of "Besitz" (Austria), "possesso" (Italy), "владение" (Bulgaria), and "possession" (Belgium and France) mean "material control on a good/property with *animus domini*".

Differently, the meaning of the concepts of "Innehabung" (Austria), "detenzione" (Italy), "държане" (Bulgaria), "détention" (Belgium and France) is "material control on the good without *animus domini*".

In Germany, unlike in Austria [32: 11–12], the word "Besitz" does not include the requirement of *animus domini*.[12] Furthermore, German law has not adopted a general distinction between *possession* and *holding/detention*. The wide notion of *Besitz* covers both the situation in which the possessor holds the good for himself

[10] Please note that in this case study the English version of the Directive on Waste is used, but not the concept of "possession" of the English legal systems: due to the consequences of Brexit and the fact that the United Kingdom is not part of the European Union anymore, the English legal system is not included in this exercise. As a consequence, the word "possession" is meant to be intended as A) the word present in the Directive on Waste, art. 3: definition, point 6; B) the word in the language of this article referring to the other definitions.

[11] The distinction is regulated in the civil codes of Austria, Belgium, France, and Italy; in legislation in Bulgaria: Ownership Act, 1951 and amendments (Last amendments: February 2020).

[12] § 854 BGB Acquisition of Possession. (1) *Possession of a thing is acquired by obtaining actual control over the thing.*

(Eigenbesitz) and the situation in which a person holds a good (property) for another *(Fremdbesitz)* [26: 45],[13] hence regardless of the *animus domini* requirement.

The analysis calls for an exploration of the key notion of "possession" in the Directive on Waste.

Let us therefore discuss the key concept of "possession" in art. 3, no. 6. That concept is necessary since it is used in the definition of "waste holder." Here is the English version: "Art. 3 Definition, no. 6. 'waste holder' means the waste producer or the natural or legal person who is in ***possession*** of the waste."

Languages take different approaches. For example, French relies on the word "possession",[14] German on the word "Besitz",[15] while Italian relies on the word "possesso".[16] Only Bulgarian goes in a different direction,[17] as we will see below.

All the official language versions of the Member States under analysis have chosen to rely on the same word used in their national systems to qualify the key concept of "possession", with the only exception of Bulgarian.

The EU meta-concept returns to the main stage at this point. Notwithstanding almost all of the language versions, when qualifying the key concept on the national word in the Directive on Waste, rely on the word "possession" it is important to remember that these words are, at the same time, EU meta-concepts and neologisms, which bear an autonomous European meaning. It is well known that norms are not always strictly linked to their language expression, as different operative rules can be found in the formants, regardless of whether the formal definitions are similar.

In the case under analysis, it was up to the national formants to uncover the autonomous European meaning.

In Italy, the decision of an Administrative court[18](2018), ruling on the meaning of the key concept of "possesso" in the Italian version of the Directive on Waste, established as follows: "The Italian notion of 'possesso' and 'animus possidendi' is not applicable since the cost of waste provided in the EU directive is not grounded on the intention of the holder/possessor to behave as an owner (with *animus possidendi*), but on the duty of care owed by him."[19] According to the Italian courts, the European concept of "possesso," differently from the Italian synonym, does not

[13] Furthermore, the distinction between *Innehabung* and *Bezits* in German Law may be derived from a comparison of § 872 with § 854. § 872 provides that a person is called a proprietary possessor *(Eigenbesitzer)* if he possesses the thing as belonging to him, therefore with an *animus rem sibi habendi.* From this provision it can be inferred that the intention with which a person holds physical control is of significance. Case law contends for a very general *animus possidendi,* which as a rule needs not be further specified and will be presumed to exist and the majority of the legal doctrine demands an indication of the intention to acquire possession *(Besitzbegründungswillen).* [26: 45, 46].

[14] «détenteur de déchets»: le producteur des déchets ou la personne physique ou morale qui a les déchets en sa ***possession***.

[15] „Abfallbesitzer " den Erzeuger der Abfälle oder die natürliche oder juristische Person, in deren ***Besitz*** sich die Abfälle befinden.

[16] «detentore di rifiuti» il produttore dei rifiuti o la persona fisica o giuridica che ne è in ***possesso.***

[17] „притежател на отпадъци " е причинителят на отпадъци или физическото или юридическото лице, което има фактическа власт върху отпадъците.

[18] Tribunale Amministrativo Regionale Brescia (Regional Administrative Court, Brescia), 29/01/2018.

[19] *Idem.*

require the presence of the *animus domini*, but simply a material control on the good (waste).

Let us try to add other *formants* to the same exercise.

In Belgium, the national decree transposing the Directive on Waste provides that "the possessor is also the person who has not the physical possession of the waste" (qui n'ont pas la *possession* physique des *déchets*).

In Bulgaria the same norm of the Directive on Waste was formulated in a way that excluded the *animus possidendi* requirement to be qualified as a "waste holder": "waste holder" means the producer of the waste or the natural or legal person having *actual power* over the waste.[20]

The results of this exercise invite for further reflection. As noted above, the Italian decision, the Belgian legislation transposing the Directive on Waste and the Bulgarian version of that directive attribute a meaning to the word "possession" that is different from the one given to the same word at the national level. In particular, in these versions the concept of "possession" does not presume the *animus domini* in the intention of the person having material control on the waste. Furthermore, in this example, the Belgian decree as well as the Bulgarian version confirm the same EU meaning as the Italian case law formant.

As noted above, national case law seems to be more than active in EU meaning construction. Yet, something more should be highlighted: this exercise demonstrates (Table 3) that EU meta-concepts acquire meaning once they are included into the judicial, hermeneutical process, and turn into final, consolidated concepts after being interpreted, applied, and qualified by court decisions. Other national formants (e.g., national legislation transposing EU law) also contribute to this process of consolidation. For instance, the Belgian decree transposing the Directive on Waste leads to the same results. The fact that the Bulgarian version of the Directive adopted the phrase "material control in general" from the very beginning, regardless of other language versions, is another aspect worthy of attention.

This example shows that the qualification of the concept of "possession" in the Directive on Waste as an "EU meta – concept" and the interpretation according to the EU legislative intent by the national formants lead to qualify the EU "possession" as a "material control on the good regardless of *animus domini*". As a consequence, the consolidated EU concept of "possesso, possessions, Besitz" in the Directive on Waste means "material control on the good *in general*".

Further research is required[21] but, in the author's opinion, the observation of the national formants might contribute to the meaning of EU meta-concepts and to their consolidation as EU autonomous concepts.

[20] Emphasis added. Unofficial translation. The official text reads in Bulgarian: „притежател на отпадъци "е причинителят на отпадъци или физическото или юридическото лице, което има фактическа власт върху отпадъците.

[21] The Austrian and the German legal systems are of particular interest. As already noted, with regard to the regulation of "Besitz," from a linguistic point of view the term is the same as the Austrian one. However, as the BGB does not prescribe the *animus domini,* the legislative formant is different, but case law and scholarly opinions are aligned to the Austrian solution. As the EU legal language of Germany is the same as that of Austria in the Directive on Waste (i.e., "Besitz"), research will be carried out in order to verify how that meta-concept is turned into a consolidated German and Austrian EU concept.

8 Conclusion

With regards to multilingualism, the European Union is an iconic legal system and, in comparative law terms, a model.

Visualizing and cultivating a deep understanding of the process which stands beyond its formal and declamatory multilingual conceptual structure is a step towards the consolidation of the EU as a legal system. This is particularly important, also because of the recent international vicissitudes that are making the European Union central and visible in the construction of a globalized legal order. A critical exploration of the prevailing meanings underlying the EU formal legal discourse might demonstrate how EU law is – as it should be – more than the law of the European Union. All across Europe, different national cultures seem to have developed their own interpretation of EU concepts, which, at least in the case of the harmonized concept of "possession", proved to be common.

This critical analysis presumes a conception of EU law as hybrid in nature, both juridical and linguistic, thus requiring the use of methodologies of different disciplines in a research that goes beyond the strictly juridical substance of EU law. When EU terminology is qualified as composed by "meta-concepts", multilingualism may reveal itself – beyond a formal linguistic regime – as a catalyst of the various cultural instances, which survive at the national level, notwithstanding the presence of a homogeneous taxonomy imposed at the supranational one.

In this mission, national jurists have proved to be the forces from which the genuine semantic and juridical coordinates of a common and shared EU law could gradually emerge: this is proved by the fact that national courts and legislators seem to have developed the right awareness, the flexibility and the capacity not only to qualify EU concepts as autonomous, regardless of the distance from their own national legal culture, but also to interpret them knowing they are contributing to ascribing a meaning to EU law and thus, indirectly, to a global conceptual setting.

As observed by Brandt [3:19 ff], there are human categories that identify their members as global citizens or global artists on the basis of what they do and not who they are, since a sign capable of identifying these qualities does not yet exist. Similarly, the "global jurist" is often identified in a naïve, market-oriented way, as a professional able to practice law in different countries.

After this research, the author is convinced that global jurists, even if they act locally, are those able to remain hermeneutically and cognitively open to semantic plasticity and to a pluralistically responsive understanding of dynamic categories with an attitude to change.

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References

1. Adams, Maurice, and Mark Van Hoecke. 2021. *Comparative Methods in Law, Humanities and Social Sciences*. Cheltenham: Edward Elgar Publishing.
2. Bell, John and Ibbetson David. 2014. *European Legal Development. The case of Tort*. Comparative studies in the Development of the Law of Tort in Europe Cambridge: Cambridge University Press.
3. Brandt, Peer Aage. 2020. What is a global citizen? A contribution from cognitive semiotics. In *Critical Global Semiotics. Understanding sustainable transformational citizens*, ed. Maureen Ellis, 19–31. New York, London: Routledge.
4. Bakardjieva Engelbrekt, Antonina. 2015. Comparative Law and European Law: the End of an Era, a New Beginning, or Time to Face the Methodological Challenges? In: Comparative Law, eds. Laura Carlson and Peter Wahlgren, 87-104. Scandinavian Studies in Law.
5. Boele Woelki, Katharina, and Diego P. Fernàndez Arroyo. 2018. *The Past, Present and Future of Comparative Law - Le passé, le présent et le futur du droit compare*. Cham: Springer International Publishing AG.
6. Dehousse, Renaud. 1994. Comparing national law and EC Law: The problem of the level of analysis. *American Journal of Comparative Law* 42 (4): 761–781.
7. Derlén, Mattias. 2009. *Multilingual Interpretation of European Community Law*. New York: Kluwer Law International.
8. Eberle, Edward J. 2009. The method and role of comparative law. *Washington University Global Studies Law Review* 8 (3): 451–486.
9. Gambaro, Antonio. 2007. Interpretation of Multilingual Legislative Texts. *Electronic Journal of Comparative law* 11 (3): 1–20.
10. Glanert, Simone, Alexandra Mercescu, and Samuel Geoffrey. 2021. *Rethinking Comparative Law*. Rethinking Law series, Cheltenham: Edward Elgar Publishing.
11. Grosswald-Curran, Vivian. 2005. Comparative law and language. *University of Pittsburgh School of Law Working Paper Series*. Working Paper 27. (Italian version translated by Ioriatti, Elena. 2016. Diritto Comparato e Lingua. *Annuario di Diritto Comparato e di Studi Legislativi)*. Later published in Reimann M. and Zimmermann R. 2019. The Oxford Handbook of Comparative Law. Oxford: 2019.
12. Hanf, Dominik, Klaus Malacek, and Muir Élise. 2010. *Langues et construction européenne*. Bruxelles: Vol. 10, Series Cahiers du Collège d'Europe/College of Europe Studies.
13. Husa, Jaakko. 2015. A new introduction to comparative law. Hart Pub Ltd.
14. Husa, Jaakko. 2021. Comparative law, literature and imagination: Transplanting law into works of fiction. *Maastricht Journal of European and Comparative Law* 28 (3): 371–389.
15. Jaakko, Husa. 2021. Merging international law and comparative law: Balancing between normative and non-normative. *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 85 (4): 745–774.
16. Ioriatti, Elena. 2016. Formulation of rights and European legal discourse: Any theory behind it? *International Journal of Legal Discourse* 1 (2): 375–400.
17. Ioriatti, Elena. 2018. Language barriers and EU citizenship. In: *EU citizens' economic rights in action. Rethinking legal and factual barriers in the Internal market*, eds. Sybe de Vries, Elena Ioriatti, Paolo Guarda, and Elisabetta Pulice, 188–204. London: Edward Elgar Publishing.
18. Ioriatti, Elena, and Sara Giacomini. 2019. Imola II and comparative law: the way forward. In: *The European Land Register Document (ELRD): A common Semantic Model for Land Registers Interconnection*, eds. Anabel Fraga, Elena Ioriatti, and Sjef van Erp, 134–156. Bruxelles, EU Commission.
19. Ioriatti, Elena. 2021. EU legal language and comparative law. Towards a European Restatement? *Global Jurist* 21 (2): 305–340.

20. Jacobs, Francis. 2019. Comparative law and European union law. In: *The Oxford Handbook of Comparative Law (2 ed.)*, eds. Mathias Reimann and Reinhard Zimmermann. Oxford: Oxford University Press.
21. Jori, Mario, and Pintore Anna. 2014. *Filosofia del diritto*. Torino: Giappichelli.
22. Kischel, Uwe. 2019. *Comparative Law*. Oxford: Oxford University Press.
23. Lando, Ole. 1992. Principles of European contract law: An alternative or a precursor of European legislation. *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*: 261–273.
24. Lenaerts, Koen, and Kathleen Gutman. 2016. The comparative law method and the European Court of justice: Echoes Across the Atlantic. *The American Journal of Comparative Law* 64 (4): 841–864.
25. Mattila, Heikki. 2006. *Comparative legal linguistics*. Aldershot: Ashgate.
26. McGuire, Mary-Rose. 2011. National Report on Germany. In: *National Reports on the Transfer of Movables in Europe,* eds. Wolfgang Faber & Brigitta Lurger, 1–192. Vol 3, Munich: Sellier.
27. Monateri, Pier Giuseppe. 2021. *Advanced introduction to comparative legal methods*. Cheltenham: Edward Elgar Publishing.
28. Örücü, Ersin. 2007. Developing Comparative Law*,* in *Comparative Law*. In *A Handbook*, ed. E. Örücü and D. Nelken. London: Hart Publishing.
29. Robertson, Collin D. 2016. *Multilingual Law*. Abingdon, Routledge: A Framework for Analysis and Understanding.
30. Ricca, Mario. 2020. Planning facts through law: Legal reasonableness as creative indexicality and trans-categorical re-configuration. *International Journal for the Semiotics of Law* 33 (1): 1089–1123.
31. Ricca, Mario. 2022. Perpetually Astride Eden's Boundaries: The Limits to the 'Limits of Law' and the Semiotic Inconsistency of 'Legal Enclosures'. *International Journal for the Semiotics of Law*.
32. Sacco Rodolfo. 1980. *Introduzione al diritto comparato*, Turin: Utet (latest version: Sacco, Rodolfo and Rossi, Piercarlo. 2019. *Introduzione al diritto comparato*, Turin: Utet).
33. Sacco, Rodolfo. 1991. Legal Formants: A dynamic approach to comparative Law. *The American Journal of Comparative Law*, XXXIX: 1–34 and 343–402.
34. Sacco, Rodolfo, and Luca Castellani. 1999. *Les multiples langues du droit européen uniforme*. Turin: Harmattan.
35. Sacco, Rodolfo. 2000. Language and Law. In *Übersetzung im Recht/Translation in Law (Ars interpretandi)*, ed. G. Zaccaria, 117–134. Münster: Lit Verlag.
36. Sacco, Rodolfo. 2003. *L'interprétation des textes juridiques rédigés dans plus d'une langue*. Turin: Harmattan.
37. Šarčević, Susan. 2016. *Language and Culture in EU Law: Multidisciplinary Perspectives*. Abingdon: Routledge.
38. Schübel-Pfister, Isabel. 2004. *Sprache und Gemeinschaftsrecht – Die Auslegung der Mehrsprachig verbindlichen Rechtstexte durch del Europäischen Gerichtshof*. Berlin: Duncker & Humblot.
39. Siems, Mathias. 2022. *Comparative Law*. Cambridge: Cambridge University Press.
40. Siliquini-Cinelli, Luca, and Jaakko Husa. 2021. Introduction: The Philosophies of Comparative Law. *Critical Analysis of Law.* 8: 1–8.
41. Van Der Jeught, Stefaan. 2015. *EU Language and Law*. Groningen: Europa Law Publishing.
42. Van Gestel, Rob, and Hans-Wolfgang. Micklitz. 2014. Why methods matter in European Legal Scholarship. *European Law Journal* 20 (3): 292–316.
43. Van Hoecke, Mark. 2015. Methodology of comparative law research. *Boom Juridische Uitgevers*: 1–35, https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2015/12.
44. Wagner, Anne, King Kui Sin, and Le Cheng. 2014. Cultural transfer and Conceptualization in Legal Discourse. In: The Ashgate Handbook on legal translation*,* eds. Le Cheng, King Kui Sin and Anne Wagner, 27–42. Abingdon, Routledge.
45. Zweigert, Konrad, and Hein Kötz. 1998 *An Introduction to Comparative Law*, (translated by Tony Weir). Oxford: Oxford University Press, (original version *Einführung in die Rechtsvergleichung*, 3e éd. Tübingen, J.C.B. Mohr 1996).