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TRANSLATING STRONG OBLIGATION IN SLOVENE AND ENGLISH LEGAL TEXTS: A BIDIRECTIONAL STUDY

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Abstract

Normative legal texts prescribe the manner of conduct – they impose obligations, permissions or prohibitions. As law has a great impact on reality, linguistic expressions of strong obligation and their use are a valuable topic. The goal of this research was to analyse how the use of two modals, i.e., morati and must, differs in the source and target texts of Slovene and EU legislation. To do so, a bidirectional bilingual corpus containing almost 600,000 words was compiled. The corpus consisted of the subcorpus of Slovene legislation in Slovene (source) and English (target), and the subcorpus of EU legislation in English and Slovene. The analysis has shown some differences in the use of the two modals: morati is more frequently used than must in both subcorpora; there is an important difference in the use of both modals between Slovene and EU legislation. Some shifts in the degree of strength of obligation were also found, however some proved to be successful translations nonetheless.

Keywords: deontic modality, corpus analysis, Slovene, English, normative legal texts, Slovene legislation, EU legislation

1. Introduction

Translation of legal texts, especially normative, is a specific branch of translation. Legal texts differ greatly from most other genres. Moreover, there are differences between subcategories of legal texts; perhaps the most obvious difference is the one between normative and informative legal texts (Gruntar Jermol 2013: 165). Differences can also be observed within the same category, e.g., normative texts, depending on the text type, e.g., the constitution, a code, or a law (ibid.).

This is one of the many reasons why translating normative legal texts is complicated. In addition, the most important challenge involves ensuring equivalence (Paolucci 2011: 74). Certainly, the translation strategy depends on the nature of the translated legal act – whether it is normative, as is the case in translating EU legislation, or has an informative status and does not have a legal effect, such as translations of Slovene laws into English. If the text has a normative status, the translation must have the same legal effect as the original (Paolucci 2011: 79). This criterium, called *legal equivalence*, is mostly relevant for normative legal texts that are considered to be authentic texts (ibid.). The content of the legal text must remain the same as that of the source text and must also have the same effect. Furthermore, it must preserve its purpose and be structured appropriately (ibid.).

However, legal equivalence is mainly relevant in the field of legal translation where both the source and the target text are binding. If the purpose of the text is changed, it may lead to a change in translation strategy. If the translation is not normative, but informative, as is the case with the translations of Slovene acts into English, the translator may add explanations, paraphrases, simplifications etc. may occur, to make the target text as useful and appropriate to the purpose (ibid.).

In this paper, I focus on the translation of normative legal texts. Normative legal texts prescribe the manner of conduct – they establish what is obligatory, prohibited or allowed. Given that obligation and prohibition are an essential feature of law, analysing expressions used to communicate them is relevant. Although expressions of obligation and deontic modality in various languages have already

been studied (cf. Biel 2014¹ for Polish, Koskinen 2000 for Finnish), no such study has been done for Slovene and English by comparing two translation directions. The aim of this study is to investigate how obligation and prohibition are expressed in Slovene and English, and how they differ in Slovene national legislation and EU law.

Specifically, I focus on two modals, namely *morati* and *must*, which are the most obvious representatives of modals used to express strong obligation in everyday Slovene and English, respectively. Although the verb *shall* has a long tradition of being the primary means of expressing strong obligations in legal texts (Šarčević 2000: 138), which continues to this day, its regulative role is established and well-defined and the verb is, as a rule, used deontically. In contrast, there are many occurrences of the verb *must*, both in the translations of Slovene acts into English as well as in European law, and these instances may potentially have more than one possible interpretation; i.e. the verb can either be used deontically or non-deontically. In its deontic sense, the verb *must* in legal texts is by rule used for requirements that express the existence of an obligation that is usually procedural (Šarčević 2000: 183). Therefore, rather than focusing on the expected correspondence (*morati* – *shall*), I will look into the relationship between *morati* and *must*, taking the following into account: i) expressions of obligation and prohibition² in legal language have a high impact on reality, ii) EU guidelines for expressing strong obligation differ substantially from those of Slovene national legislation, and iii) previous research has shown discrepancies precisely in the use of *must* and a corresponding modal verb in other languages in national legislation (Biel 2014: 342).

This study is bidirectional, and is based on a corpus analysis of Slovene acts and their English translations and European legal acts in English and their Slovene translations³. The goal is to answer the following research questions:

¹ In her study, Biel found some interesting differences in the use of the closest equivalent to *must* in Polish, *musi*, in translations of EU legislation in comparison to Polish national law (Biel 2014: 342).

² Prohibition in this sense is a lot like obligation – it is obliging someone *not* to do something.

³ This study is based on a broader study of deontic modality (Jelovšek 2021), which included an interview with the Translation and Interpretation Division of the Secretariat-General of the Government of the Republic of Slovenia.

1. Are *must* and *morati* used to express strong obligation in source and target normative legal texts in Slovene and English?
2. Is the use of the two modals different in the subcorpus of original texts and the subcorpus of translations in the same language?
3. Is strong obligation, expressed by *morati* and *must* in the originals, retained in translation?

2. Strong obligation and deontic modality

Strong obligation can be expressed through deontic modality. The term deontic modality as used in this paper is one of the three types of modality in a model outlined by Palmer (1990)⁴. Palmer's model distinguishes epistemic modality, which expresses the speaker's belief or opinion on a matter, dynamic modality, which typically conveys someone's ability, either due to their physical/psychical fitness or circumstances, and deontic modality (Palmer 1990; Collins 2009, etc.)⁵.

Most modal verbs can convey more than one type of modality (Collins 2009; Roeder and Hansen 2007). Modality is context-dependent; in some contexts, a modal can convey more than one type of modality, or can be interpreted in more than one way (Huddleston and Pullum 2002: 178). Deontic modals can express permission, prohibition and obligation (Collins 2009); which can either be strong or weak⁶ (Huddleston and Pullum 2002: 177).

In this paper, I will only focus on the verbs *must* and *must not*, and *morati* and *ne smeti* (the Slovene verb *morati* does not have a morphological negative form).

⁴ Although there are many different classifications of modality, this model seems to be the most common in recent works.

⁵ Both epistemic and dynamic modality are much more complex, but since these two types are only used to differentiate deontic modality from the other types of modality, or to outline cases where the modal expression (possibly) conveys more than one type of modality, these brief definitions should suffice.

⁶ Weak obligation is also called medium strength modality (Huddleston and Pullum 2002: 177).

3. Legal texts in translation: Differences between the two translation directions

When comparing European and national legislation, the relation between them is of great consequence. The legal system of the European Union is *sui generis*; it is a “unique way of integrating European and national legal systems” (Bohinc et al. 2006: 239), and is not comparable to any other legal system – neither to the public international law nor the laws of federations or confederations (ibid.). It is important to note that the EU legal system cannot achieve its objectives on its own but needs the support of the legal systems of its members (Borchardt and Directorate General for Communication 2018: 124). Thus, when analysing Slovene and European legislation, it should be taken into consideration that these are not two separate entities, but rather two coexisting systems that affect each other, and are, to some extent, interdependent (ibid.).

This also impacts the language of EU law. The law of the European union is multilingual and multi-cultural. It is initially drafted in one language (most frequently English), and then translated into other EU languages. Amendments may be proposed in a different language. Finally, a single multilingual text in all official languages of the EU is created. “These circumstances have led EU legal language to develop its own terminology and legislative style as a separate genre” (Robertson 2011: 51).

An important difference between the Slovene legislation in English and the European legislation in Slovene must be emphasized, namely, that Slovene legislation in English is a translation and has an informative status, while European legal acts in Slovene are equivalent and equally authentic as any other EU language version (none of the language versions is considered to be the original or a translation⁷), at least in theory, and have the same normative status; consequently,

⁷ Even though EU legislation in Slovene is not officially a translation and the English version is not officially the source text, I shall, for the purpose of this research, treat them as such. It is possible that English is not the language of the original as this data is not available, however, in 2013, 81% of all legislative proposals were written in English (Fajfar 2017: 34).

the shift in status may lead to a different translation strategy which may therefore affect the results.

Additionally, all European legal acts (that is all language versions) have defined target audiences (e.g., citizens of the European Union, member states, courts of the member states, EU legal practitioners; although others may read it as well, they are not the primary or intended audience), while the target audience of the English translations of Slovene legislation is not defined or known.

Due to the factors mentioned above, the processes of translating EU legislation and Slovene legislation are quite different. The following factors which may ultimately impact the translation strategies used in translation of Slovene legislation into English were identified in a short interview conducted with the Translation and Interpretation Division of the Secretariat-General of the Government of the Republic of Slovenia in July 2020 (Jelovšek 2021):

- If possible, only one person translates an act;
- Sometimes, due to the volume of the text, more than one person translates the act, but not more than three;
- All texts that are translated into a foreign language are proof-read (always by a single person);
- Translation tools are used regularly.

The process of translating EU legislation is quite different. The competent Directorate-General prepares a legislative proposal, which is usually written in English, or, less frequently, in French. Since 2001, the role of lawyer-linguists has been enhanced. Their duty is to make the original text clear, precise, and translatable. The translators in The Directorate-General for Translation of the European Commission then translate the texts into the official languages of the EU. Lawyer-linguists check the language versions again to ensure terminological consistency within the text and with other texts in the same field. Before publication in the Official Journal of the EU, a legal-linguistic revision of the language versions is also made by lawyer-linguists in the Council to ensure that all

language versions are equivalent (Fajfar 2017: 34). Lawyer-linguists from the European Parliament also participate in reviewing changes that were adopted in the parliamentary procedure (Šarčević 2013: 8–9).

The main difference between translating EU legislation and Slovene legislation is that in the former, translation is part of the whole process of creating legislation, and not only its final phase; the text is reviewed, discussed, and subjected to consultation in all languages; the final text is prepared in English, and later all other versions in the remaining languages are finalised (Biel 2014: 336). Once the text is published in the Official Journal, all language versions are considered to be equally authentic, and none of the versions are considered to be originals/translations (Biel 2014: 336).

However, it must be pointed out that there is a difference between texts which are translated in accordance with the above-described procedure and translations which are made in the pre-accession stage when a candidate state has to translate the *acquis communautaire*. Such translations are just translations of the original texts (Biel 2014: 336).

What also needs to be considered is that the structure of EU legal acts is considerably different from that of Slovene legislation. EU legal acts consist of the preamble (which is usually quite extensive), the normative part, and in some cases, an annex. The preamble and annexes are not normative. In this study, all parts were analysed.

4. Corpus and analysis

1.1. Corpus

A bilingual bidirectional corpus of legal texts, consisting of 10 Slovene acts in Slovene and their translation into English, and 10 European legal acts in English and their Slovene translation was used in the study. The corpus comprises 591,361 words.

The Slovene laws were chosen based on the year of their entry into force (the earliest law dates back to 1993, and the most recent was promulgated in 2017; within this period, the laws are evenly distributed by year and content (i.e., the ministry in charge; each act is under the jurisdiction of a single ministry in charge; the chosen acts come from 8 different ministries, which means that two pairs of acts share the competent ministry). Laws pertaining to diverse fields were chosen to ensure that the findings were not linked to specific fields. However, all the laws had to pertain to a field of shared jurisdiction with the European Union. Finally, the selected acts had to have an English translation⁸ as well.

European acts were chosen to correspond closely to the Slovene acts with regard to the field of law. The corresponding pairs of Slovene and European acts do not cover completely identical topics, but do stem from the same area of law (for example, labour law). As this was the main factor when choosing EU legislation, it was not possible to ensure equal distribution in time. Different types of EU acts were chosen, that is five regulations, three directives, a decision, and a treaty.

The selected texts were then aligned using LF Aligner⁹, which offered precise alignment and good results. Once the alignments were made, a bilingual corpus was created in Sketch Engine. The main advantage of Sketch Engine is that it offers automatic POS-tagging and lemmatization for many languages, including Slovene (<https://www.sketchengine.eu/>). This makes searching the corpora and results much more precise than manual search for modal expressions.

The final structure of the corpus was as shown in Table 1.

⁸ At the time of this research, about a third of all Slovene laws had been translated by the Translation and Interpretation Department.

⁹ LF Aligner, among other things, offers automatic alignment of EU legislation based on the CELEX number, and additional support for European languages. SDL Trados Studio was also tested, but the alignment was imprecise, and consequently, it would require a lot of time and effort for the corpus to be satisfactory.

Table 1. Size of subcorpora

legislation/status	Original (words)	Translation (words)	Total (words)
Slovene legislation (Slo>Eng)	187,061	240,460	427,521
EU legislation (Eng>Slo)	88,352	75,488	163,840
Total	275,413	315,948	591,361

1.2. Analysis

After the corpus was compiled and aligned, the texts were analysed using Sketch Engine. The corpus was automatically POS-tagged and lemmatized. The verbs *morati*, *must* and *smeti* were searched by lemma. All concordances were extracted into an Excel file and manually evaluated in terms of the following:

1. Type of modality, i.e., whether the expression was used in the *deontic* sense or not.
2. Corresponding expressions in the other language, i.e., either in the original or in the translation.
3. Negation using the English modal *must not* and Slovene *ne smeti*.¹⁰
4. Conditional forms of *morati* and *ne smeti*. In Slovene, the conditional forms convey weak obligation.
5. Section of the act where the expression was used (i.e., preamble, normative part, annex) in the subcorpus of EU legislation.

The results were normalized to their rate of occurrence per 10,000 words.

Many modal verbs can be interpreted deontically, epistemically, or dynamically. If the verb used in the concordance expressed another type of modality in addition to deontic, or if it was not clear from the concordance which type of modality is supposed to be conveyed, but one of the possible interpretations was also deontic, it was, for the purposes of this study, considered deontic, as seen in Example (1).

¹⁰ The Slovene verb *morati* does not have a negative form; the negated verb *ne smeti* is used to express prohibition, therefore, *ne smeti* will also be analysed as the equivalent of *must not*.

Example 1. The limitation referred to in the preceding paragraph shall not apply in cases when a healthcare or allied professional providing healthcare services with a healthcare service provider in the public healthcare network: /.../ is concluding healthcare services for a previously treated patient and the service must not be delayed or interrupted.¹¹

In Example (1), *must not* expresses both strong prohibition as well as strong necessity *not* to do the act in question. On the one hand, the necessity of the action stems from the circumstances (dynamic modality) – if the action were to be delayed or interrupted, the patient may potentially be harmed. On the other hand, the healthcare professional is also obliged by law to help any patient in immediate danger and must not do anything to harm them (deontic modality).

5. Results and discussion

The results are presented in two separate sections: the overall frequency of the two modals in the four subcorpora (section 5.1) and the translation of the two modals (section 5.2).

1.1. Frequency

Table 2 gives an overview of the forms of *morati/ne smeti* and *must/must not* in the subcorpora. The table shows that the analysed modals are overwhelmingly used in the deontic sense. Most cases when the expression was not used in the deontic sense were cases of dynamic modality, while epistemic modality proved to be uncommon, which is not surprising due to the nature of the text, and the cases that were arguably epistemic, seemed to be a consequence of either poor interpretation of the translator or poor wording in the original text. Legal language must be as precise and clear as possible, and legal acts must define exactly which manner of conduct is acceptable and which is not. One would not expect the lawmakers to include in the act what they think will happen, but rather, how one must act when something does happen. The civil law system is based on hypothetical situations,

¹¹ Patients' Rights Act (Slovene legislation).

which means that each of the described situations may possibly occur – epistemic modal expressions are therefore not necessary.

Table 2. Forms of *morati/ne smeti* and *must/must not* in the four subcorpora

	Total no. of occurrences of <i>morati/ne smeti</i> and <i>must/must not</i>		non-deontic cases		weak obligation		strong obligation (<i>morati</i> and <i>must</i>)		Prohibition (negated forms <i>ne smeti</i> and <i>must not</i>)	
	total	per 10,000 words	total	per 10,000 words	total	per 10,000 words	total	per 10,000 words	total	per 10,000 words
<i>must</i> (EU legislation)	19	2.16	1 (5.26%)	0.11	0	0	18 (94.74%)	2.05	0	0
<i>morati</i> (translation of EU legislation)	335	44.67	2 (0.56%)	0.27	250 (74.63%)	33.33	83 (24.78%)	11.07	25	3.33
<i>morati</i> (Slovene legislation)	778	41.60	0	0	8 (1.02%)	0.43	770 (98.97%)	41.18	204	10.91
<i>must</i> (translation of Slovene legislation)	268	11.17	0	0	0	0	262 (97.76%)	10.92	6 (2.23%)	0.25

In the subcorpora of Slovene legislation, all occurrences of both *morati* and *must* in the original texts and the translations were classified as deontic, i.e., expressing obligation¹². The percentage is slightly lower in both subcorpora of EU legislation, with the lowest percentage being 94.74%. An example of non-deontic use of *must* is shown in Example (2).

Example 2. According to the Court of Justice, such wastage would be all the more damaging because it is generally recognised that the hospital care sector generates considerable costs and **must** satisfy increasing needs, while the financial resources made available for healthcare are not unlimited, whatever mode of funding is applied.¹³

¹² A distinction can be made between commands and requirements. Requirements indicate the existence of a duty (usually procedural) and are often expressed by the implicit performative *must* or by the present indicative of the principal predicate (Šarčević 2000: 138).

¹³ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (EU legislation).

In the subcorpus of EU legislation all the deontic cases of the verb *must* are used to express strong obligation, while all cases of *must* in the subcorpus of translations of Slovene legislation are used to express either strong obligation (97.76%) or prohibition (2.23%).

The case is considerably different for the verb *morati*. If the conditional of *morati* (*moral bi*) is used, its function changes, as the conditional form conveys weak obligation. The strength of the modal in two different forms can be compared in Examples (3) and (4).

Example 3. Translation: Program **bi se moral** osredotočati [the programme should focus on] na dostopnost sredstev in preglednost upravnih in finančnih postopkov, tudi z uporabo informacijskih in komunikacijskih tehnologij ter digitalizacije.¹⁴

Original: The Programme **should** focus on the accessibility of funding and the transparency of administrative and financial procedures, including through the use of information and communication technologies (ICTs) and digitisation.

Example 4. Translation: Naslednje varovalke so minimalni pogoji, ki jih **morajo** zagotoviti finančni posredniki [which the financial intermediaries must provide], ki hočejo zagotavljati študentska posojila, za katera jamči Jamstvena shema za študentska posojila:¹⁵

Original: The following safeguards are the minimum terms which **must** be provided by financial intermediaries wishing to provide student loans guaranteed by the Student Loan Guarantee Facility:

Table 2 also reveals an interesting discrepancy between the use of *morati* in original and translated Slovene texts. In Slovene legislation (source texts), the verb *morati* is almost exclusively used to express strong obligation (98.97% of the

¹⁴ REGULATION (EU) No 1288/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (EU legislation).

¹⁵ REGULATION (EU) No 1288/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (EU legislation).

cases), but, surprisingly, in EU legislation (translations) *morati* is used substantially more frequently to express weak obligation in the conditional form (74.63% of the cases), as seen in Example (5).

Example 5. Translation: V podporo mobilnosti, enakosti in študijski odličnosti **bi morala** [to support mobility, equality, and study excellence the Union should] Unija kot pilotski projekt uvesti Jamstveno shemo za študentska posojila in tako študentom ne glede na njihovo socialno ozadje omogočiti magistrski študij v neki drugi državi, ki lahko sodeluje v Programu (v nadaljnjem besedilu: država Programa).¹⁶

Original: To support mobility, equity and study excellence, the Union **should** establish, on a pilot basis, a Student Loan Guarantee Facility to enable students, regardless of their social background, to take their Master's degree in another country to which participation in the Programme is open (the 'Programme country').

Most of these cases (98.4% of all cases of *morati* in the conditional form) are found in the preambles. One of the reasons for this is that in EU legislation modal verbs in preambles are not supposed to allow for an interpretation that would make the reader believe that rights or obligations are being given to them, as they are not the deontic source but only forward the obligation from other deontic sources (European Union 2015: 14) (although, in general, it is not necessarily the deontic source that informs the receiver of the obligation (Huddleston and Pullum 2002: 183)). Therefore, expressions of strong obligation are generally only used in the normative parts to separate the normative from the non-normative part of the text.

However, although linguistically speaking such cases are no longer considered cases of strong obligation, in practice, the action in question is still very much under a strong obligation as non-normative parts cannot impose any obligation: "The scope must be respected throughout the act. Rights and obligations must not

¹⁶ REGULATION (EU) No 1288/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (EU legislation).

go beyond what is stated to be covered by the act or extend to other fields” (European Union 2015: 14).

The choice of conditional *moral bi* raises the question of intentionality (de Beaugrande and Dressler 1981: 14) – in Slovene, one is much more inclined to interpret the verb *morati* in the conditional as either epistemic or as a description of an action that should have happened but did not; it is not a standard way of expressing obligation. It seems that the importance of language conventions of Eurospeak outweighs the importance of how readers interpret the text in their own language. This also speaks in favour of what Koskinen calls the symbolic function (Koskinen 2000: 51):

Sometimes the primary function of the translation of a particular official document is simply to be there, to exist. Rather than just conveying a message or providing possibilities for communication, the role of the translation is then to stand as a proof of linguistic equality.

To address the first research question whether *must* and *morati* are used to express strong obligation in source and target normative legal texts in Slovene and English, the frequencies of the two modals and their negative forms were compared. The results are given in Table 3.

Table 3. Frequency of *morati/ne smeti* and *must/must not* expressing strong obligation/prohibition

subcorpus/modal	<i>Morati/ne smeti</i>	<i>Must/must not</i>
Total number of occurrences in the subcorpus of EU legislation (Eng>Slo)	108	18
Number of occurrences per 10,000 words in the subcorpus of EU legislation (Eng>Slo)	14.4	2.05
Number of occurrences in the subcorpus of Slovene legislation (Slo>Eng)	974	268
Total number of occurrences per 10,000 words in the subcorpus of Slovene legislation (Slo>Eng)	52.09	11.17

Two points stand out from Table 3. First, *morati* is used far more frequently than *must* to express strong obligation; in the subcorpus of EU legislation (translated texts), it is approximately 7 times as frequent as *must*, and in the subcorpus of Slovene legislation (original texts) it is 4.7 times as frequent as *must*. It thus seems that *morati* is an important device for expressing (strong) obligation in the Slovene legal texts analysed, both original and translation; *must*, on the other hand, is used very infrequently in the analysed original English texts and relatively infrequently in the analysed translated English texts and seems to have a much less important role in expressing strong obligation/prohibition, which is in line with the known use of *must* in legal language and the use of *shall* as the primary verb to express obligation in normative legal texts.

In Table 3, an answer to the second research question can be found as well, namely: is the use of the two modals different in the subcorpus of original texts and the subcorpus of translations in the same language? There are important differences in both languages. The verb *morati* is 3.6 times as frequent in the subcorpus of original Slovene legislation as in the subcorpus of translation of EU legislation into Slovene and *must* is 5.5 times more frequent in texts translated into English (Slovene legislation) as compared to texts originally written in English (EU legislation).

The difference in the use of *must* in the subcorpus of original EU legislation in English and the subcorpus of translations of Slovene legislation into English may be explained by the English Style Guide (European Union 2020) which stresses that, although “most English-speaking countries now generally use *must* instead of *shall*” (European Union 2020: 85), in EU legislation, *shall* should be used. It is likely that *morati* is used less frequently because its nearest equivalent in English is not as frequently used in the source text.

1.2. Translation

The third research question of whether strong obligation, expressed by using *morati* and *must* in the original, is retained in translation was investigated by comparing

the source and target texts. Tables 4 and 5 present an overview of the ways in which the two modals are translated.

Table 4. Translations of the verb *morati* in the subcorpus of Slovene legislation

	<i>shall</i>	<i>must</i>	<i>should</i>	<i>have to</i>	other expressions of strong obligation
<i>morati</i> in Slovene legislation	489 (26.15 per 10,000; 63.51%)	229 (12.25 per 10,000; 29.74%)	5 (0.27 per 10,000; 0.65%)	0	46 (5.97%)

As can be seen from Table 4, most cases of *morati* (63.51%) are translated with the modal verb *shall*, which seems to be, at least in the translation of Slovene legislation, the most common expression of strong obligation (Jelovšek 2021). This has also been established by several linguists, e.g., Huddleston and Pullum (2002: 194), who emphasize the constitutive/regulative role of *shall*, or Collins (2009: 137), whose large-scale corpus analysis of British, American and Australian English stresses that although *shall* has several deontic uses, the most central is the regulative role. Šarčević (2000: 183) states that the use of legal imperative *shall* for imposing legal duties is a longstanding practice that dates to English translation of Roman law texts.

In almost 30% of the cases *morati* is translated as *must*. There were no cases of translation with *have to*, which is semantically similar, if not equal, to *must* (Collins 2009: 59). A corpus analysis conducted by Collins has shown that in general English, *have to* is used more frequently than *must* in the deontic sense (ibid.). In just under 6 percent of cases, other expressions of strong obligation, such as adjectives (e.g. *required*, *obliged*) or other phrases (e.g. *is to be*), were used in the translation of *morati*.

In Table 4, *should* stands out in terms of the strength of obligation. While the strength of the modal *morati* is retained in translation in most cases, there are five cases when *should*, expressing weak obligation, is used in translation. Example (6) below illustrates this type of shift in the strength of obligation.

Example 6. Original: Najemnik, ki mu je bilo stanovanje dano v najem za določen čas, mora najmanj 30 dni pred potekom tega časa pridobiti od lastnika odobritev podaljšanja najemne pogodbe s sklenitvijo aneksa k najemni pogodbi, sicer **mora** [must] izprazniti stanovanje oseb in stvari v pogodbenem roku, razen če najemna pogodba ne določa drugače.¹⁷

Translation: A tenant, to whom an apartment has been leased for a fixed-term period, shall obtain, at least 30 days before the expiry of this period, the approval of the owner for the extension of the lease agreement by concluding an annex to the lease agreement, otherwise he **should** vacate the apartment of persons and things within the contractual term, unless otherwise provided by the lease agreement.

This shift in strength is unexpected and somewhat problematic because of its inconsistency and could lead the reader to believe that the manners of conduct are *less necessary* (or *recommended* instead of binding) than they are, and also *less necessary* than other cases where modal expressions conveying strong obligation are used, which is not the case. However, as mentioned, the translation of Slovene legislation into English is not normative, therefore, it does not have a legal effect and such instances are not critical.

Table 5. Translations of the verb *must* in the subcorpus of EU legislation

	<i>morati</i>	<i>treba</i>	no modality
<i>must</i> in EU legislation	10 (1.14 per 10,000; 55.56%)	6 (0.68 per 10,000; 33.33%)	2 (0.23 per 10,000; 11.11%)

In the subcorpus of EU legislation, the verb *must* only occurs in the positive form. Although the number of occurrences may not be sufficient to draw any strong conclusions, Table 5 shows that the set of expressions used to translate the verb *must* into Slovene is quite limited – in 55.56% of the cases, the verb is translated with the Slovene equivalent *morati*. An illustration of this is given in Example (7).

¹⁷ Housing Act (Slovene legislation).

Example 7. Original: The penalties provided for **must** be effective, proportionate and dissuasive.¹⁸

Translation: Predpisane kazni **morajo** [must] biti učinkovite, sorazmerne in odvračilne.

In another 33.33% of the cases, the expression *treba* is used, which has the same function (strong obligation). In two cases (11.11%) no modal expression is used. While this may seem to decrease the strength of obligation, the guidelines given in *Nomotehnične smernice (Služba Vlade Republike Slovenije za zakonodajo 2018)* show that such usage is in accordance with the norms of (Slovene) legal language; an unmodalized statement in the present tense may be used to impose an obligation (*Služba Vlade Republike Slovenije za zakonodajo 2018: 76*). One of the two cases is presented in Example (8).

Example 8. Original: /.../ which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who **must** ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope; /.../¹⁹

Translation: /.../ ki so v skladu s pravom držav članic sklenjene v sodelovanju z javnim uslužbencem, ki ga pravo zavezuje k neodvisnosti in nepristranskosti ter ki z izčrpnimi pravnimi informacijami **zagotovi** [ensures], da potrošnik pogodbo sklene le na podlagi temeljitega premisleka o pravnih posledicah in ob seznanjenosti z njenim pravnim obsegom; /.../

¹⁸ 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 (EU legislation).

¹⁹ 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 (EU legislation).

In Example (8), strong obligation expressed with *must* in the original is still conveyed in the translation, although no modal expression is used. Thus, depending on the context, declarative unmodalized sentence in the present tense can have the same legal effect, although strong obligation is less explicitly conveyed.

Finally, to shed light on how translation impacts expressions of strong obligation, the occurrences of *morati/ne smeti* and *must/must not* in both translated versions are also compared with their corresponding originals. The results are given in Tables 6 and 7.

Table 6. The verb *must* in the translations of Slovene legislation and modal expressions in the source text

	<i>morati</i>	<i>treba</i>	<i>ne smeti</i>	no modality	other expressions of strong obligation
<i>must</i> in the translations of Slovene legislation	229 (9.54 per 10,000; 87.40%)	11 (0.46 per 10,000; 4.22%) ²⁰	5 (0.21 per 10,000; 1.9%) ²¹	7 (0.29 per 10,000; 0.76%)	16 (0.67 per 10,000; 8.02%)

A vast majority of occurrences of *must* in the English translations of Slovene legislation correspond to the verb *morati* (87.4%). This is an interesting observation, since it means that most occurrences of the verb *must* are translations of *morati*, but *morati* is not predominantly translated as *must* (29.74%, see Table 4).

In 11 cases, *must* is a translation of the expression *treba* (3.7%), which also expresses strong obligation. In 8.1% of cases, *must* is a translation of various other modal expressions (e.g., *dolžen, se zahteva*) which also convey strong obligation. Two of the cases are translated from the modal expression *lahko* (*can*), which conveys permission, as seen in Example (9):

²⁰ One of the cases is translated with negated *must*.

²¹ All cases of translated with negated *must*.

Example 9. Original: Prvo zahtevo zaradi domnevno neustreznega odnosa zdravstvenih delavcev oziroma zdravstvenih sodelavcev **lahko** [can] pacient vložiti najpozneje v 15 dneh od domnevne kršitve.²²

Translation: A patient **must** file a first request within 30 days of the end of medical treatment for allegedly inappropriate behaviour of healthcare or allied professionals during medical treatment.

Although the two modals convey different degrees of obligation (permission/no obligation in the original, and strong obligation in the translation), the meaning is not drastically changed in this specific context. It goes without saying that not every patient is *obliged* to file a request for allegedly inappropriate behaviour – therefore, if one chooses to do so, they *may only*, or *must* do so within a certain period of time if further actions are to take place. Despite the difference in the strength of the modal, this can nevertheless be considered a successful translation.

Finally, in 0.7% of the cases, the modal is added where no modal is used in the original (as mentioned, no modality is an acceptable way of expressing obligation in Slovene law (Služba Vlade Republike Slovenije za zakonodajo 2018: 75)), as in Example (10):

Example 10. Original: Za operativne ali druge medicinske posege, povezane z večjim tveganjem ali večjo obremenitvijo, **se** zavrnitev **dokumentira** [the refusal is noted] na obrazcu iz 27. člena tega zakona.²³

Translation: For surgery or any other medical procedure related to increased risk or strain, the refusal **must** be noted on the form referred to in Article 27 of this Act.

In Example (10) it can be observed that in the original, no modal is used and the obligation is imposed by simply stating the obligation as a fact. The modal is added in the translation. Still, both sentences convey strong obligation, and also have the same legal effect.

²² Patients' Rights Act (Slovene legislation).

²³ Patients' Rights Act (Slovene legislation).

Although infrequent, six cases of negated *must* were found in the translations of Slovene legislation. Five of them were translations of *ne smeti*, which is the negated counterpart of *morati*.

In one concordance (Example (11)), negated *must* was a translation of non-negated *treba*, but the sentence nevertheless conveys the same message:

Example 11. Original: /.../ zaključuje zdravstveno storitev predhodno obravnavanega pacienta, ki jo je **treba** izvesti brez nepotrebne odlašanja ali prekinitve [which must be done without unnecessary delays of interruptions].²⁴

Translation: /.../ is concluding healthcare services for a previously treated patient and the service **must not** be delayed or interrupted.

Table 7. The verb *morati* in the translations of EU legislation and modal expressions in the source text

	<i>shall</i>	<i>must</i>	<i>should</i>	<i>have to</i>	other expressions of strong obligation
<i>morati</i> in the translations of EU legislation	30 (4 per 10,000; 36.14%)	10 (1.34 per 10,000; 12.05%)	15 (2 per 10,000; 18.07%)	6 (0.8 per 10,000; 7.3%)	22 (2.93 per 10,000; 26.51%)

In Slovene translations of EU legislation, most occurrences of *morati* are translations of the verb *shall* (36.14%), which is also used to convey strong obligation (Huddleston and Pullum 2002: 194) and is the primary modal verb for expressing strong obligation in legal texts. The second most common category, comprising 26.51% of all occurrences are translations of various other expressions of obligation, such as necessary, required, need to, etc., all of which also convey strong obligation. Interestingly, only 12% of occurrences of *morati* are translations of *must*; once again, we observe that although *must* is mainly translated using *morati* (55.56%, see Table 5), *morati* is mostly a translation of *shall*. Finally, six occurrences or 7.3% cases of *morati* were translations of *have to* (4 occurrences in

²⁴ Patients' Rights Act (Slovene legislation).

the normative part and 2 in preambles), which is semantically close to the verb *must*.

The results in Table 7 also identify shifts in the strength of obligation. There are several cases where weak obligation (*should*) in the English original is translated into strong obligation (*morati*); however, most of the cases (12 out of 15) are found in the same legal act²⁵. Although these cases imply a shift in strength and are not in accordance with the guidelines, these sentences actually seem more natural and are very clear cases of deontic modality, as in Example (12):

Example 12. Original: The situation of night and shift workers requires that the level of safety and health protection should be adapted to the nature of their work and that the organisation and functioning of protection and prevention services and resources **should** be efficient.²⁶

Translation: Položaj delavcev, ki delajo ponoči in delavcev, ki delajo v izmenah, zahteva, da je raven varnosti in varovanja zdravja prilagojena naravi njihovega dela in da **mora** [must] biti organizacija in delovanje varnostnih in preventivnih služb ter virov za zaščito in preventivo učinkovito.

6. Conclusion

The present study has shown that while both *morati* and *must* are used to express strong obligation, their frequencies differ considerably. While *morati* is used for this purpose very frequently in both originals and translations, this is not the case with *must*, which is used much more sparingly. An overview of translations furthermore highlights this point: *morati* in the original Slovene legislation is generally translated with *shall*. A parallel can be observed in the opposite translation direction: most cases of *morati* in the Slovene translations of EU legislation are

²⁵ Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (EU legislation).

²⁶ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time (EU legislation).

translations of *shall* and other expressions of strong obligation in English originals, as there are only a few cases of *must* in the originals.

A difference in the use of the two modals in the subcorpora of originals and translations has been detected as well. *Morati* in the sense of strong obligation is used more than 3.5 times as frequently in the subcorpus of original Slovene legislation in comparison to the subcorpus of Slovene translation of EU legislation. The difference in the frequency of *must* in the two subcorpora is even higher – it is almost 5.5 times more frequent in the subcorpus of English translations of Slovene legislation in comparison to EU legislation in English. The English Style Guide for writing EU texts in English acknowledges that most English-speaking countries use *must* to express strong obligation (European Union 2020: 56), however, it stresses that “[t]o impose an obligation or a requirement, EU legislation uses shall” (ibid.). This probably explains the difference in the representation of *must* in the two subcorpora, which may also lead to a difference in the use of *morati*.

The analysis has also shown some interesting results concerning shifts in the strength of the two modals in translation. Whereas the degree of obligation expressed by *morati* and *must* in the originals is largely retained in the translations, some occurrences of shift in the degree of obligation were found. In Slovene legislation, in 0.65% of occurrences of *morati*, the verb was translated using *should*, which expresses weak obligation. This is somewhat problematic because it implies that the action in question is *not as binding* as it actually is. Similarly, occurrences where *morati* was translated from *should* (weak obligation) were found; these instances represent 18.07% of the total occurrences of *morati* in the translations. From a linguistic perspective, these instances do not seem problematic as they represent clear cases of deontic modality.

Although the subcorpora of EU legislation seem to be sufficient in size for the purposes of this analysis, two limitations of this study should be mentioned. At present, the EU subcorpus comprises preambles, annexes and normative parts, but as the conventions and guidelines for the different parts differ (European Union 2020: 56–58), a focus on normative parts only might offer a better comparison. For this purpose, a larger corpus of EU legislation would have to be used because of

the infrequent use of *must*. The second limitation concerns the fact that parts of the *acquis* as well as acts translated after Slovenia's accession were used in the analysis. This may be significant because the translation process is considerably different when translating new legislation where translation undergoes a number of stages from translating the *acquis* that was drafted before the accession, and where the original version of an act is translated into the language of the acceding country in a much simpler procedure (Biel 2014: 336).

Nevertheless, the results of the present study have identified important differences between the two translation directions, revealing that expressions of obligation and deontic modality present a specific challenge in translation of legal texts. Future research, going beyond the linguistic perspective, might focus on obligation and prohibition from a contextual perspective, i.e., investigate whether the use of expressions of obligation changes if it involves a natural person or a legal entity, an institution, or even a state. Additionally, comparing expressions of strong obligation between different types of EU acts would undoubtedly show some interesting results. In this analysis, different types were analysed, and some differences have in fact emerged, however, the corpus was not compiled with that intent and is therefore not suitable for such comparison. Finally, a contrastive analysis of expressions of strong obligation and prohibition in EU legislation and national legislation in other languages is another way to take this research forward.

References

- Biel, Lucja. 2014. "The textual fit of translated EU law: a corpus-based study of deontic modality". *The Translator* 20(3): 332–355.
- Bohinc, Rado, Miro Cerar and Rajgelj, Barbara. 2006. *Temelji prava in pravne ureditve za nepravnike*. Ljubljana: GV Založba.
- Borchardt, Klaus-Dieter and Directorate-General for Communication (European Commission). 2018. *Osnove prava Evropske unije*. European Union.
- Collins, Peter. 2009. *Modals and Quasi-Modals in English*. Amsterdam, New York: Rodopi.

- de Beaugrande Robert, and Dressler, Wolfgang U. 1981. *Introduction to Text Linguistics*. London: Longman.
- European Union. 2015. *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*. Luxembourg: Publications Office of the European Union.
- European Union. 2020. *English Style Guide*. European Union.
- Fajfar, Tanja. 2017. *Terminologija v Evropski uniji*. Ljubljana: Založba ZRC, ZRC SAZU.
- Gruntar Jermol, Ada. 2013. "Značilnosti informativnih in normativnih pravnih besedil". *Simpozij Obdobja 32*: 165–171.
- Huddleston, Rodney and Pullum, Geoffrey K. 2002. *The Cambridge Grammar of the English Language*. Cambridge: Cambridge University Press.
- Jelovšek, Tjaša. 2021. *Primerjava deontične modalnosti v vzporednih slovenskih in angleških normativnih pravnih besedilih*. Unpublished MA thesis. Ljubljana: University of Ljubljana. <https://repozitorij.uni-lj.si/IzpisGradiva.php?lang=slv&id=124445>. Accessed on: 9 January 2021.
- Koskinen, Kaisa. 2000. "Institutional Illusions: Translating in the EU Commission". *The Translator* 6:49–65. <https://doi.org/10.1080/13556509.2000.10799055>
- Palmer, Frank Robert. 1990. *Modality and the English Modals, Second Edition*. London, New York: Longman Group UK Limited.
- Paolucci, Sandro. 2011. "The problem of equivalence in translating legal texts". *Lebende Sprachen* 56(1): 73–85. <https://doi.org/10.1515/les.2011.006>.
- Robertson, Collin. 2011. "Multilingual Legislation in The European Union. Eu And National Legislative-Language Styles and Terminology". *Research in Language* 9(1): 51–67. <https://doi.org/10.2478/v10015-011-0011-3>.
- Roeder, Carolin F. and Hansen, Björn. 2007. "Modals in Contemporary Slovene". *Wiener Slawistisches Jahrbuch* 52:153–170.
- Služba Vlade Republike Slovenije za zakonodajo. 2018. *Nomotehnične smernice*. Ljubljana: Narodna in univerzitetna knjižnica.
- Šarčević, Susan. 2000. *New Approach to Legal Translation*. London, Boston: Kluwer Law International.

Šarčević, Susan. 2013. "Multilingual Lawmaking and Legal (Un)Certainty in the European Union". *International Journal of Law, Language & Discourse* 3 (1): 1–29

PREVAJANJE IZRAZOV MOČNE OBVEZNOSTI V SLOVENSКИH IN ANGLEŠKIH PRAVNIH BESEDILIH: DVOSMERNА KORPUSNA ŠTUDIJA

Izvleček

Normativna pravna besedila predpisujejo ravnanje – zapovedujejo, dovoljujejo in prepovedujejo. Ker ima pravo velik vpliv na realnost, so jezikovni izrazi močne obligacije in njihova raba pomembna tema. Cilj raziskave je bil analizirati, kako se razlikuje raba dveh modalnih izrazov, in sicer morati in must, v izvornih in ciljnih besedilih slovenske in evropske zakonodaje. V ta namen je bil zgrajen dvojezični korpus, ki vsebuje skoraj 600.000 besed. Korpus je bil sestavljen iz podkorpusa slovenske zakonodaje v slovenščini (izvirni jezik) in angleščini (ciljni jezik) ter podkorpusa zakonodaje EU v angleščini in slovenščini. Analiza je pokazala razlike v rabi obeh modalnih glagolov: morati je v obeh podkorpusih rabljen pogosteje kot must; pomembna razlika v rabi obeh modalnih glagolov je tudi med slovensko zakonodajo in zakonodajo EU. Zasedili smo tudi nekaj sprememb v stopnji moči modalnega glagola, vendar je v nekaterih od teh primerov kljub temu šlo za uspešen prevod.

Ključne besede: deontična modalnost, korpusna analiza, slovenščina, angleščina, normativna pravna besedila, slovenska zakonodaja, zakonodaja EU

PREVOĐENJE JAKE OBAVEZE U SLOVENSKIM I ENGLISKIM PRAVNIM TEKSTOVIMA: ANALIZA DVOSMJERNOG KORPUSA

Sažetak

Normativnim se tekstovima u pravu propisuju načini postupanja – utvrđuju se obaveze, dopuštenja ili zabrane. S obzirom na velik utjecaj prava na svakodnevni život, načini izražavanja jake obaveze tema su vrijedna istraživanja. Cilj je ovog rada istražiti kako se korištenje dvaju modalnih glagola, morati i must, razlikuje u izvornim i ciljnim tekstovima u slovenskim pravnim tekstovima i pravnim tekstovima Europske unije. Za potrebe istraživanja sastavljen je dvosmjerni dvojezični korpus od gotovo 600.000 riječi. Korpus se sastoji od potkorpusa slovenskih pravnih tekstova na slovenskom (izvornik) i engleskom (ciljni jezik) te potkorpusa europskih propisa na engleskom i slovenskom. Analiza je pokazala da postoje razlike u upotrebi dvaju modala: morati se koristi češće nego must u oba potkorpusa, a javljaju se i važne razlike u njihovoj upotrebi u slovenskim tekstovima i pravnim tekstovima Europske unije. U nekim su se slučajevima javile razlike u snazi obveze, što međutim nije uvijek ugrozilo uspješnost prijevoda.

Ključne riječi: deontička modalnost, korpusna analiza, slovenski, engleski, normativni tekstovi, slovensko zakonodavstvo, zakonodavstvo Europske unije