In the contemporary business world, partners belonging to different nations and hence different cultures establish business contacts and conduct business operations. As a rule, such business operations are conducted in either the language of one of the parties involved or in a third, neutral language, serving as lingua franca. Thus, language skills, which are an essential component of the communicative competence in a business environment, imply a certain extent of implicit or explicit translating and interpreting. The functionalist approaches in translation science and most of all the Skopos theory by the German scholar J. H. Vermeer view translation as an intercultural transfer, which inevitably entails taking into account intercultural differences. In intercultural business communication, communicative situations are directly affected by the legal system as an essential element of the source and target culture. The parties involved thus need to be acquainted with the legal and economic systems of the source and target culture. This is especially the case with English, as the Anglo-American legal system, based essentially on common law, differs substantially from the continental law, to which most of the European countries belong. The non-equivalence of many legal concepts and terms pertaining to these two systems thus has to be taken into consideration. In this paper, cases of non-equivalence regarding legal terms which are very often used in business communication will be illustrated with examples from company law.

Key words: Translation, lingua franca, Skopos, cultural embeddedness.

1 Translation in Business Communication – the Functionalist Approach
Within intercultural business communication translating is viewed as a communicative activity occurring between a source and a target language/culture by using verbal (texts) and non-verbal signs. The purpose of this activity is to enable communication across culture and language barriers and it thus has to take into account cultural differences.

Translation science, especially the so-called functionalist approaches, place special emphasis on purpose, i.e. function and cultural embeddedness as essential features of the source/target texts, and thus seem to provide an adequate theoretical basis for translation in a business environment.

By taking up concepts from communication and action theory the functionalist approaches in translation science define translation as a purpose-driven communicative action (Holz–Mänttäri 1984, 7ff) involving not only the traditional functions of sender and receiver but also a series of other roles and players:

- the initiator: the company or individual who needs the translation,
- the commissioner: the individual who contacts the translator,
- the source-text producer: the individual who composes the source-text,
- the target text producer: the translator,
- the target text user: the person(s) who use(s) the target-text,
- the target text receiver(s): the final recipient(s) of the target-text.

In certain situations, some of these roles may overlap, e.g. the source-text producer may at the same time be the initiator and/or commissioner or even the translator, etc.

2 The Skopos Theory – Translation as Intercultural Transfer

Translation as a communicative activity pursues a certain purpose or goal which the German scholar H. Vermeer terms skopos (Greek for aim or purpose). This purpose determines the translation method and strategies to be used in order to produce a functionally adequate translation. Moreover, translation takes place in concrete, definable situations which are limited in time and space and involve members of different cultures. These situations can be said to be embedded in given cultures, which, in turn, condition the situations (Reiß and Vermeer 1984). Within a cultural community the situations of sender
and receiver generally overlap enough for communication to take place, whereas in cases when they belong to different cultures, an intermediary, i.e. a translator, might be needed to enable communication. In some situations, the sender will act as translator as well. Translation is thus an intercultural transfer within which communicative verbal and non-verbal signs are transferred from one language into another. In order to enable this kind of transfer, especially with relation to its non-verbal aspects, a good knowledge of the source and target culture is needed and the translator, i.e. participant in intercultural communication, has to act as an intercultural expert. According to Christiane Nord,” translating means comparing cultures (Nord 1997, 34), i.e. interpreting source-culture phenomena in the light of one’s own knowledge of that culture, from either inside or outside, depending on whether one translates from or into one’s native language and culture.

Language is thus an essential means of communication, but it has to be used in the context of the corresponding culture. In Translation Studies Bassnett illustrates the interrelatedness and essential interdependence of language and culture by means of the following metaphor:

“No language can exist unless it is steeped in the context of culture; and no culture can exist which does not have at its center, the structure of natural language.

Language, then, is the heart within the body of culture, and it is the interaction between the two that results in the continuation of life-energy. In the same way that the surgeon, operating on the heart, cannot neglect the body that surrounds it, so the translator treats the text in isolation from the culture at his peril.” (Bassnett 1991, 14)

Besides a good command of the language, participants in intercultural business communication therefore need to have a thorough knowledge of other aspects of the cultures involved, which have to be taken into consideration in order to prevent communication problems or even communication breakdowns.

Some of these aspects can be deduced from the following definition of culture by Vermeer: culture is “the entire setting of norms and conventions an individual as a member of his society must know in order to be “like everybody” – or to be able to be different from everybody.” (Vermeer 1987, 28)
Reiß more specifically points out that norms have a stronger prescriptive character (indicating what the members of a society have to do or are not allowed to do) and are as such obligatory, whereas the term convention indicates that a rule of behaviour has gradually been established by general consensus and thus indicates the recommended, expected forms of behaviour in a society (cf. Reiß and Vermeer 1984, 178).

In his work “Le sfide di Babele – Insegnare lingue nelle società complesse” Paolo Balboni describes these rules as “grammars” which regulate other spheres of communication, apart from the verbal one (Balboni 2002, 62 ff.).

According to Balboni, the intercultural communicative competence consists of linguistic and extralinguistic competences. Among the latter he lists the following as the most significant:

- *la competenza cinesica* - the kinesic competence regarding gestures, body languages, mimics;
- *la competenza prossemica* - the proxemic competence regarding distance and/or contact between communication partners (which indirectly determines the choice of language register, i.e. formal – informal);
- *la competenza vestemica* – the competence regarding the mastering of the rules referring to clothing, uniform, fashion, etc. (based on the semiotic structure of fashion according to Barthes);
- *la competenza oggettuale* - the competence regarding the use of objects as instruments, by means of which the social status, function and role of a person are communicated (the furnishing and decoration of an office, car, presents and objects as status symbols).

Similarly, Hofstede (1991) speaks of “softwares of the mind”, which are typical of individual cultures (or even individual organisations), in that they condition the different aspects of communicative competence (through concepts of time, power, hierarchy, etc.) and need to be taken into account in communicative situations involving participants from different cultural environments.

Norms, on the other hand, are not merely recommended rules, but have a binding character. Namely, if we compare the concept of culture as specified by Vermeer and Reiß with the definition of law as it is found in the Collins dictionary, i.e. “a rule or set of rules,
enforceable by the courts...regulating... the relationship or conduct of subjects towards each other.” (HarperCollins 2000, 877), the norms (i.e. what members of a society have to do or are not allowed to do) can easily be seen as reflected in the legal system of a society.

In international business communication, norms affecting communicative situations certainly include the legal system. In order to avoid communication problems participants in this communication necessitate a good knowledge of the legal systems of both the source and the target culture.

2.1 The Legal System as Communication Framework in Intercultural Business Communication

In international business communication the legal systems of the parties involved directly affect communicative situations through the legal provisions and regulations applying to concrete business transactions and business relations in general. Accordingly, participants have to agree which legal system will be adopted as the communication framework. Within this communication framework legal concepts have to be translated (culturally transferred) from one language/culture/legal system into another.

Gérard-René de Groot (Professor of Comparative and Private International Law at Maastricht University, the Netherlands) points out that the crucial issue to be taken into consideration when translating legal concepts is the fact that “The language of the law is very much a system-bound language, i.e. a language related to a specific legal system. Translators of legal terminology are obliged therefore to practice comparative law.” (de Groot 1998, 21 ff.). Legal systems differ from one state to another and so far no standardized international legal terminology has come into existence. Every state (sometimes even regions within a state) has developed independent legal terminologies, whereas a multilingual international legal terminology is only being created gradually within supranational legal systems, such as the law of the European Union, and is being introduced in single areas of the European law as they undergo harmonisation.

When translating from one legal system into another the differences existing between them have to be considered. Sandrini points out that in essence the translatability of legal
texts depends directly on the relatedness of the legal systems involved in the translation (cf. Sandrini 1999, 17). Legal systems exist independently from the legal languages they use and are created through social and political circumstances. There is no direct correlation between legal language and legal systems. One legal system may use different legal languages (Canada, Switzerland, bilingual areas in Slovenia, Austria, Italy, Belgium, etc.), while one language area may be divided in different legal systems, as it is the case in the United Kingdom or in the USA.

If the legal systems are analyzed as to their sources, their historical background, the extent of codification and the specific legal institutes applied within them, some legal families show a greater relatedness than others. The legal systems pertaining to the so-called civil (i.e. continental) law, which includes the Romanic, the German and the Nordic legal systems, are relatively related. They have common foundations in the Roman legal tradition and are characterized by codification – the most important rules and regulations are set out in written sources of law. In the case of the continental legal systems, a considerable closeness with respect to the legal concepts applied can be expected. On the other hand, the legal systems of other countries and cultures, derived from different traditions, are difficult to compare – such as the Far-Eastern, the Islamic, the Hindu and finally, the so-called Anglo-American legal family, based on common law, equity and statute law. Within the Anglo-American legal family common law is the legal system in force in England, Wales and with some differences in the USA, whereas Scotland and Ireland have substantially different legal systems related to the continental law, similarly to the legal system of Louisiana, which has its foundations in the French law.

These differences certainly affect the translatability of terms from/into different legal languages, as there is no complete equivalence between the legal concepts. According to de Groot, the first stage in translating legal concepts involves studying the meaning of the source-language legal term to be translated. Then, after having compared the legal systems involved, a term with the same content must be sought in the target-language legal system, i.e. equivalents for the source-language legal terms have to be found in the target legal language. If no acceptable equivalents can be found due to non-relatedness of the legal systems, one of the following subsidiary solutions can be applied: using the source-
language term in its original or transcribed version, using a paraphrase or creating a neologism, i.e. using a term in the target-language that does not form part of the existing target-language terminology, if necessary with an explanatory footnote (cf. de Groot 1998, 25).

The level of equivalence of the terms depends on the extent of relatedness of the legal systems (and not of the languages) involved. The relatedness of languages may, in same cases, even cause the creation of so-called false friends, such as the German Direktor versus the English director. When deciding on the solution to be used the context of the translation, its purpose (skopos) and the character of the text play an important role. A wide range of skopoi is possible - from a mere information on the source text for a receiver who does not speak the target language to a translation which will have the status of an authentic text parallel to the source–text (as it is the case with international contracts made in two or even more equivalent language versions).

These different purposes of translation are reflected in the type of translation to be produced. Nord classifies translation in two basic types: a documentary translation, i.e. a document in the target language of (certain aspects of) a communicative interaction in which a source-culture sender communicates with a source-culture audience via the source-text under source-culture conditions; or an instrumental translation which aims to produce in the target language an instrument for a new communicative interaction between the source culture sender and the target language audience by using (certain aspects of) the source text as a model (Nord 1997, 47).

According to the Skopos theory, the translation brief, i.e. commission can contribute considerably to the quality and functionality of the translation by providing the translator with explicit or implicit information about the intended target-text functions, addressees, the prospective time, place and motive of production and reception of the text (Nord 1997, 137). In the case of legal translation this information should also indicate the legal system to be observed as communication framework.

3 English as Lingua franca in International Business Communication
Participants in international business communication often choose English as the language of communication. In order to avoid communication problems the principle of the cultural embeddedness of a language, i.e. adapting the language to the corresponding culture, has to be applied very carefully. Using the English language by consistently linking it to the Anglo-American legal system in communicative situations, in which participants originating from cultures/legal systems belonging to continental law interact, can cause communication problems or even communication break-downs, as the legal systems of the participants and the legal system underlying the lingua franca used for communication are not equivalent and thus there is not sufficient equivalence of the linguistic signs. Consequently, viewing the legal system as a fundamental feature of the source and target cultures and choosing English as target language in such situations leads to a discrepancy between the culture as translation basis and the cultures, i.e. legal systems of the sender and/or receiver. English as lingua franca is especially problematic as the Anglo-American legal system, which is based predominantly on common law, differs considerably from the so-called continental (or civil) law. Unfortunately, not many dictionaries provide sufficient information to make the user aware of these potential problems/traps.

3.1 The Difference Between Continental and Common Law

In comparative law, the dichotomy civil (i.e. continental) versus common law (case-law), which is not based on written, codified legal sources, is widely discussed.

The fundamental sources of the Anglo-American legal system are common law, equity and statute law. Common law is often described as judge-made law, which is not based on written codes but on precedents, i.e. decisions of judges taken in previous legal cases. Equity, on the other hand, is a term referring to a system of rules which are applied in addition to common-law and have no equivalent in the continental legal system. Finally, the term statute law applies to written law (e.g. the Acts of Parliament), i.e. those legal sources which exist in written form in the Anglo-American legal system.

The discrepancies between common and continental law are reflected in the frequent lack of equivalence between the terms and concepts used in the two legal systems.
The legal representative authorized to act in court, for example, who is called Rechstanwalt in German, avvocato in Italian, odvetnik in Slovene and has a basic role in every continental legal system, has no direct equivalent in the Anglo-Saxon system, as its corresponding translation may either be barrister (authorized to appear in a superior court) or solicitor (who may only appear in an inferior court) in the United Kingdom, or attorney-at-law in the USA.

Within the scope of international business communication the lack of equivalence in the field of company law is especially relevant. The Anglo-American company law does not distinguish between the categories of Kapitalgesellschaften/ società di capitali/ kapitalske družbe and Personengesellschaften/ società di persone/ osebne družbe, but merely between incorporated companies, which have the status of legal persons and unincorporated ones which have no legal personality.

The function of a Prokurist/ procuratore commerciale/ prokurist does not exist in British and American companies and to describe it either the source-language term or a paraphrase is used.

The terms public limited company and limited liability company can be used relatively safely when translating the company forms Aktiengesellschaft/ società per azioni / delniška družba and Gesellschaft mit beschränkter Haftung/ Società a responsabilità limitata/ družba z omejeno odgovornostjo, but there are no equivalent terms in the English legal terminology for company forms such as Offene Handelsgesellschaft/ società in nome collettivo/ družba z neomejeno odgovornostjo or Kommanditgesellschaft/ società in accomandita/ komanditna družba.

Other cases of non-equivalence derive from the fact that two opposite governance systems are applied in public limited companies, the Anglo-Saxon one-tier and the continental European two-tier systems. Namely, the one-tier system only has one governing body, i.e. the board of directors, whereas in the two-tier system there are two governing bodies, i.e. the management board (Vorstand/ consiglio d'amministrazione/ uprava) and the supervisory board (Aufsichtsrat/ collegio sindacale/ nadzorni svet). The terms management board and supervisory board thus do not exist in the Anglo-American legal language and can be classified as neologisms according to de Groot. In practice, the
executive (inside) directors have a function similar to the role of the members of the management board in the continental system and the non-executive directors to that of the members of the supervisory board.

The problems deriving from the discrepancy between common law and continental law are also felt within the European Union where English is very often used as *lingua franca* (cf. Kjaer 1999, 72). Namely, when English is used to describe specific aspects and concepts of the European Law or of national legal systems belonging to the continental legal family within the EU, terms are often used, which are tainted by the meaning attributed to them within the Anglo-American legal system. Such terms tainted by national law often cause problems in interpreting international or supranational legal texts (cf. de Groot 1992, 283).

**Conclusion**

English will certainly remain the most widely used lingua franca in international business communication. Due to the language policy of the European Union, which promotes the importance of the languages of its member states, other languages will certainly gain ground besides English in the future. On the other hand, with the ongoing harmonization of the legal systems of the EU member states, a sort of supranational language, i.e. Euro-English used as lingua franca is created, which lacks any wider cultural dimension and is only linked to the legal and political system of the EU. The consequence of this process is the emergence of an impoverished, deculturized language, which has little in common with the languages of the British, American and other English speaking cultural communities. Nevertheless, as far as legal terminology is concerned, the parties interacting in the international business environment should be aware that, if linked consistently to the Anglo-American legal system, the English language offers no suitable equivalent for many terms and notions existing in legal systems belonging to the so-called continental legal family. The discrepancy between common and continental law requires the parties involved to be acquainted with and consistently observe the legal systems underlying the business relation. The principle of the socio-cultural embeddedness of a language will thus have to
be applied very carefully, while taking into account the potential problems deriving from
the use of English as *lingua franca*.

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