

AVIDICUS: Conclusions and Implications

1 Context of the project

EU and domestic legal principle and legislation require equality before the law, irrespective of language.¹

The scale of movement of people between countries is already significant and increasing, as individuals move between countries for work, education and tourism or to escape war or economic hardship. The Demography Report 2010 provides the following figures:

In recent years, immigration has been the main driver behind population growth in most Member States: between 2004 and 2008, 3 to 4 million immigrants settled in the **EU27** each year. In 2010, a breakdown of the population by citizenship showed that there were 32.4 million foreigners living in an **EU27** Member State (6.5% of the total population), of those, 12.3 million were **EU27** nationals living in another Member State and 20.1 million were citizens from a non-**EU27** country.

In 2010, the largest numbers of foreign citizens were recorded in **Germany** (7.1 million persons), **Spain** (5.7 million), the **United Kingdom** (4.4 million), **Italy** (4.2 million) and **France** (3.8 million). Almost 80% of the foreign citizens in the **EU27** lived in these five Member States.

Among the **EU27** Member States, the highest percentage of foreign citizens in the population was observed in **Luxembourg** (43% of the total population), followed by **Latvia** (17%), **Estonia** and **Cyprus** (both 16%), **Spain** (12%) and **Austria** (11%).²

Criminal activity is also increasingly taking place at a transnational level, giving rise to the need for prevention strategies, bringing the guilty to justice and protecting the vulnerable in a multi-lingual situation.

The principle of equality before the law applies where there is insufficient shared knowledge of language for reliable communication in criminal justice systems, such as:

- cases within member states, involving defendants, witnesses and victims who do not speak the language of the country in question;
- individual cases that cross national borders;
- implementation of mutual recognition of legislation;
- judicial co-operation between EU member states e.g. the prevention of terrorism or trafficking of drugs or people.

¹ See, for example, the European Convention on Human Rights, article 6, paragraph 3, available at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B4575C9014916D7A/0/ENG_CONV.pdf

² Demography Report 2010. Latest figures on the demographic challenges in the EU. Eurostat News Release 5/2011, available at http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-01042011BP/EN/3-01042011-BP-EN.PDF

This situation is likely to escalate and, unless dealt with properly, risks damage to the fabric of the criminal justice system in every member state and to a corresponding lack of trust in those justice systems.

The cost of meeting the legal requirement for equality is correspondingly increasing. For example the costs of legal interpreting and translation in the London Metropolitan Police are as follows:

The Metropolitan Police expenditure on interpreters and translators for 2009/10 was £9,598,849, covering approximately 40,000 assignments. During 2010/11, 38,000 assignments were covered at a cost of £8,829,552. These figures represent the full cost of claims for interpreting and translation processed during the period of the report (fees and expenses). Further costs may have been incurred which were processed locally, or outside of requested reporting parameters.

Furthermore, the figures represent fees incurred in respect of interpreting assignments, where interpreters are deployed to facilitate face-to-face communication between officers and speakers of languages other than English, and written translation assignments, which will include official letters requesting the co-operation of judicial authorities in other countries, when officers are required to travel abroad to pursue investigations.³

The skills and structures to meet the demand are lacking, to varying degrees, in all member states (Hertog & van Gucht 2008) and have not kept pace with contemporary life, despite repeated requests over the last twenty years. For example, the level and type of language skills needed, in the languages required as opposed to those traditionally taught, are generally unregulated and sparse. The costs of developing and putting the hitherto neglected but necessary skills and structures in place must therefore be added to operational budgets.

Many member states are pursuing unsatisfactory short-term compromises, which would be disastrous if they became long-term solutions.

Member states are in a position whereby they are obliged to observe EU and domestic legislation in this regard or face censure, while being ill-equipped to do so and reluctant to incur the cost. Meanwhile, the demand continues to rise.

2 Purpose of the project

The advent of new technology, such as videoconference technology for interpreting, is seen as providing a potential cost-effective easy solution. The purpose of the AVIDICUS 1 project has to some extent been to start to find out whether this is really true, why and where.

The short answer is that it can be true in intelligently selected situations but only with the appropriate level of skills, technology and structures. The use of video-mediated interpreting would not be appropriate in circumstances such as very sensitive police investigations, breaking bad news to families or complex court hearings. In many other circumstances it has the potential to provide accurate communication across languages and accommodate relevant legal processes.

³ The figures do not include the operating costs of Language & Cultural Services, the MPS department which manages interpreting and translation provision across the MPS.

The project recommendations (see following chapter) describe under which conditions video-mediated interpreting can be used effectively and how it should (and should not) be used. The recommendations are based upon the project findings that emerge from a range of careful, inter-disciplinary assessments in different circumstances, locations, languages and approaches (see the other contributions in this volume). They focus on training, in-service training, familiarisation and co-operation between the stakeholders to expand upon these points, such as:

- the criteria for using video-mediated interpreting;
- the skills needed by legal services, legal interpreters and translators (LITs), administrators and policy makers;
- monitoring and evaluation of processes.

3 Participants in the project

The core project participants were carefully chosen to reflect:

- the main groups of professionals involved: interpreters and translators, applied linguists, police officers, jurists, lawyers, IT specialists and administrators/policy makers;
- the regional spread of member states;
- different types of European legal system – inquisitorial and adversarial.

Consultations took place within the wider groups of interested parties, such as interpreters and legal professionals (see Braun & Taylor’s report on the two AVIDICUS surveys in this volume).

4 Methodology

The project methodology was designed in view of the fact that it had to:

- retain its clarity of logic and approach in a multi-faceted and complex subject area;
- observe the interests and processes of justice on an informed basis;
- accommodate the varying needs and perceptions of the different professions involved;
- be sufficiently rigorous to withstand challenges;
- be understandable to a range of interested parties not necessarily acquainted with academic research of this nature, on the basis of common sense;
- be as complete and rounded as possible within the time-frame;
- provide a solid foundation for further research, investigation and evaluation;
- produce feasible recommendations, which:
 - are directed towards the long term aims;
 - recognise the inevitable short-term incremental objectives;
 - manage expectations e.g. IT as the panacea;
 - manage time-frames e.g. it may take at least five years to produce a sound EU wide system;
 - balance cost and quality.

5 Implications

The AVIDICUS investigation and the increasing use of video-mediated interpreting reveal the strengths and weaknesses of existing arrangements. The use of technology in criminal justice contexts can only be of best value if the elements involved can be consistently relied upon. The chain of communication is only as strong as its weakest link. The chain includes the legal service interlocutors, the interpreters or translators and the technology. Failure by any one of them risks the integrity of the whole. If, for example, the interpreting is inaccurate, the IT equipment is inadequate or the legal services do not perform correctly, justice is jeopardised.

By way of a small example, if the right procedures are not in place, employing seemingly useful technology can produce errors like the one below, even when intentions are positive and legislation is in place.



Welsh is an official language in the UK. It follows therefore that road signs in Wales have to be in Welsh and English. In this instance, the authorities e-mailed the translation agency and diligently placed the reply they received on the road sign. Unfortunately, the Welsh text says, "I am not in the office at the moment. Send any work to be translated".

The need for overall competence is self-evident. But let us look at what is needed to achieve reliability across the board and, just as importantly, who is going to make this happen.

6 What is needed

There can be variables relating to context or content, which cannot always be controlled. Therefore every element or link in the chain that it is possible to influence needs to be underpinned and to dove-tail with one another to achieve the integrity of the whole and provide a safety net for the variables. There is a need for a reliable consistency for the following main players involved:

- interpreters
- translators
- IT specialists and the equipment they produce and maintain
- interlocutors in varying degrees, i.e. the legal staff can be fully trained, whereas the witnesses, defendants and victims can probably be no more than familiarised with how to communicate through video-mediated interpreting
- administrators and policy makers.

Consistency is required in terms of the level and type of:

- standards of skills
- procedures and processes
- codes of ethics and good practice e.g. confidentiality
- administrative frameworks – “back office” and budgets
- accountability – to the justice system, to the public and colleagues
- professional frameworks.

This reliability and consistency, for the five main groups of players, can only be achieved through the usual routes of nationally consistent professional systems and structures (such as for lawyers) for:

- selection of suitable individuals
- training, in-service training and education to enable the exercise of informed judgements e.g. when to use video-mediated interpreting and, where there is a choice, which form should be used
- objective assessment
- independent accreditation
- deployment
- employment
- support and supervision
- continuing professional development to keep them up-to-date.

It follows that such systems and structures should be:

- of equivalent type and standard, which does not necessarily mean exactly the same but of sufficient similarity to promote a recognisable and acceptable consistency
- negotiated, compatible and agreed
 - between disciplines, so that, for example, the level and type of language skills are set against a proper analysis of what is truly needed in the workplace; the training given to the legal service interlocutors enables them to accommodate the interpreting and translation processes and the bi-cultural nature of the situation; the IT specialist provides and maintains equipment that is entirely appropriate to the situation; and the administrators enable them all to succeed in their tasks
 - nationally, so that there is a coherent and solid body of skills and systems which can promote and maintain the agreed standards; liaise internally and externally; and remain agile in response to change
 - internationally, to accommodate the need to function reliably across national borders.

- accountable and transparent to each profession involved, to colleagues in other professions involved in the same task, to the particular task overall (justice), to the “client” and to the public.

It is worth considering briefly what might happen if what is required is not in place, if there were gaps or an unforeseen matter of significance should suddenly occur without the necessary safety net to deal with it.

These are a few fictitious examples. What would be the situation if:

- the method of collecting evidence in country A were not admissible in a trial in country B?
- a judge did not insist upon lawyers correctly accommodating the interpreting process?
- an interpreter from country A was alleged to have breached confidentiality in country B, which country’s professional body would be responsible for instigating disciplinary codes?
- the IT equipment was not compatible?

7 Who is responsible for what?

Who is to do all that and how are they to do it? A good deal of what is necessary is already in place.

For example, in the public service arena, lawyers, police officers and so forth are already subject to the codes and principles of the statutory professions to which they must belong. These have long-established systems for selection, training, assessment, accreditation and accountability, with growing international recognition. Members of those established professions already have the mechanisms which enable them routinely to up-date their expertise. They need only sufficient additional in-service training, supervision and support systems to enable them to work with interpreters and translators, through technology when required, and across cultures. Recommendations for the work with interpreters through technology are set out in the following chapter.

IT specialists and their equipment are subject to the demands of an increasingly competitive commercial market. They need to be given very clear specifications for the task and be monitored through the usual mechanisms for public spending.

Both regulated formal professions and commercial IT companies should be able to negotiate and monitor the necessary inter-disciplinary and international arrangements in ways which are transparent and accountable – although it might take longer than they anticipate to iron out the details.

Who is responsible for implementing the remaining requirements is less clear. Administrators and policy makers, in some member states, may lag behind the demands of the work place and changing social patterns. They do not always put in place the frameworks and budgets necessary to move forward. Reasons given for this are not always logical. Political will plays a part, for that is where the decision making starts. Lack of funding, time and energy are cited when often all these might be used more effectively by adopting better practices. EULITA (European Legal Interpreters’ and Translators’ Association) has been given funding for an EU project to try to offer regional work-shops to remedy this – and in the hopes that such skills may transfer from the legal to other contexts such as healthcare.

This leaves us with interpreters and translators, where a good start has been made through six other EU projects in addition to AVIDICUS. They began in 1998, are more or less sequential, and are:

- Aequitas – which recommended the equal and adequate standards required⁴
- Aequalitas – which sought to disseminate those standards throughout the EU⁴
- Aequilibrium – which looked at the necessary liaison working arrangements between the language and legal professions⁴
- Status Quaestionis – a survey of developments in legal interpreting and translating in all member states, which showed an uneven patchwork of provision⁴
- EULITA – the establishment of the European Legal Interpreters’ and Translators’ Association, designed to promote EU-wide standards and act as a focus of information exchange⁵
- Building Mutual Trust, which offers a selection of sample teaching and other materials for legal interpreters, translators and legal services and their trainers. They are designed to guide and enable competent and interested university language tutors, or trainers of legal service professions, to offer their own courses. These core materials can be adapted to national systems and particular student needs, while retaining consistency in the level and content.⁶

The basic tools have therefore been developed and made available, although much still needs to be done, in liaison with the other groups. While national and international equivalencies of standards are not as yet always applied, academics have already begun to make a significant and valuable contribution in aspects which concern them, including:

- systems for selection of students
- training and in-service training
- assessment at various levels
- evaluating professional practice
- researching new developments

However, it is not the role of academia but for practising interpreters and translators themselves (some of whom may also be academics) to establish the essential national and international professional structures and systems for:

- accreditation and registration
- accompanying codes of conduct and disciplinary procedures
- deployment – one should have sufficient people with the right skills, in the right languages, in the right places
- employment – 24/7 rapid contact systems, working arrangements, fees & expenses, health & safety and so forth
- supervision, support, monitoring and mentoring

⁴ See <http://www.agisproject.com>

⁵ See <http://www.EULITA.eu>

⁶ See <http://www.lr.mdx.ac.uk/mutual-trust/>

It is here that matters become tricky. The levers for change are various and lacking. On the one hand, progress may be spurred on by the EU Directive (October 2010),⁷ requiring implementation of quality standards and registers of legal interpreters and translators in each member state within 36 months of its approval.

On the other hand, inconsistencies abound over working arrangements. Some authorities will request levels of language skills far below what is recognised for reliable transfer, in order to pay less to the holders of such inadequate skills. It does not appear to occur to them that interpreters, with the post-graduate levels of skills and experience needed for the task, are in demand elsewhere.

This is where the differences become apparent between conference interpreters, such as those working for the EU, and public service interpreters, such as those working in the legal system. The difference is not in standards of accuracy because that should be the same, but in attitudes towards the interpreters. The skills of conference interpreters and translators are respected. Few, if any, members of the European Parliament (MEPs) would accept a lower standard of interpreting (or translation); or would wish to pay lower fees less than that standard warranted. They may have a proper concern over the significant budget that goes towards interpreting and translation, while also recognising the right of their country's citizens to be able to read, in their own language, what is being done in Brussels on their behalf. Many MEPs acquire fluency in a second, or even third, language to reduce the amount of I&T needed for less crucial interchanges. However, perhaps because of their awareness of the multi-lingual nature of the contemporary world, they do not resent or marginalise either the interpreters or the situation they find themselves in but seek solutions.

This does not yet apply to the public service sector. As their conference interpreter colleagues did before them, public service interpreters are going to have to put in place what is needed to form regulated professions before someone else imposes it upon them, to their detriment. A formally regulated profession is an entity in its own right and independent of others, including government. The professional elements required are the same as those required for other regulated professions such as law. They have been described elsewhere, including in the reports to the Commission of the EU projects on legal interpreting and translation listed above (Corsellis 2005, 2008, and Hertog 2001, 2003).

The elements required include national and independent examinations with related training and education through accredited courses, and assessment standards, based upon a sound collaborative analysis of what is required in the work place. They also include national and independent professional registers based on criteria which include language combinations, qualifications, experience, security vetting and the interpreter's agreement to observe the code of conduct and understanding of the published disciplinary procedure where breaches are alleged. National and independent Membership bodies for those who meet the entrance criteria and Trades Unions, where appropriate, are further requirements.

In order to achieve the four elements above, the following are needed:

⁷ Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings. Available at <http://www.europarl.europa.eu/oeil/file.jsp?id=5840482>.

- time
- organisational skills - plan incremental stages
- less money than one might think
- team work
- commitment
- focus
- conflict resolution skills
- communication
- support from colleagues in the other professions they work with.

8 Employment and deployment of legal interpreters and translators (LITs)

LITs are normally professionals who work on a freelance basis, which helps to accommodate the logistics of an unpredictable demand and, just as importantly, to signify their independent and impartial status.

In practical terms the legal services need to be able to contact LITs when they need them, on a 24/7 basis, and know that LITs have had a prior objective assessment of their skills and good practice and are subject to agreed codes of conduct. They need standard forms of engagement to hand. Most of all, legal services need access to a sufficient number of qualified legal interpreters in the languages required and based in the right places. The time-scales must accommodate the needs of the situation, such as the legal limitations on the number of hours individuals may be detained by police before being charged.

Contact and employment systems are still developing and vary in both competence and effectiveness. They include:

- direct contact with individual LITs
- not-for-profit units which could deal with:
 - contacting the appropriate LIT
 - associated administration
 - record keeping
 - promoting local training and in-service training
 - supporting, mentoring and supervision of LITs
 - liaising with associated professions, local communities and so forth
- commercial, profit making companies which may or may not provide the list of services above according to the tender involved, and may or may not take a top-slice that diminishes the LITs fees below what they find reasonable.
- cooperatives, which are beginning to emerge among LITs.

Given the many exigencies outlined in this paper, it may be argued that video-mediated interpreting has its proper place as an alternative to face-to-face interpreting. However, there are nice balances to be considered, which is why training of, and guidelines for, the legal services to make such judgements is necessary. The AVIDICUS recommendations outlined in the final chapter of this volume respond to this need.

In face-to-face interpreting, the interpreter can see the whole room, and – as the AVIDICUS findings reported in this volume show – physical proximity is likely to allow a finer comprehension of communication and interactions than through video-mediated

interpreting. On the other hand video-mediated interpreting can, once the investment in the equipment is covered, reduce the costs of travel, travel time and subsistence expenses and also speed up the process of accessing interpreting. This is particularly relevant when the parties are separated by some distance, are located in different countries, or are subject to weather conditions such as those experienced during a Nordic winter.

Therefore those involved, from legal and language disciplines, should be in a sufficiently informed position to decide which method of interpreting is to be preferred, on each occasion the matter arises, without compromising the legal process. They should be able to understand and weigh up the various factors and subsequently justify their decision if necessary.

9 Conclusion

There are times when we choose to buy or use a process which is simple because there is “less to go wrong”. This is not an option in this context. Communication alone is complex. Communication through an interpreter is more complex and communication through technology and interpreting more complex than that. Simple it isn't. In addition there are a range of variables, which may or may not be possible to foresee or control. Therefore, every element that can be foreseen has to be carefully considered, prepared, organised and quality controlled for video-mediated interpreting to be effective and adequate.

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