1. Introduction

In the course of 2013, two major developments took place which have had an impact on the situation of legal interpreting in Germany: firstly, the transposition of Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings into German law; and secondly, the updating of the Act on the Compensation of Judicial Experts, Interpreters, Translators, Members of the Jury, Witnesses and Third Persons (JVEG).

Besides these latest developments, one has to bear in mind that the German legal system shows some peculiarities that also have an impact on legal interpreting in general, and on the conditions for interpreter accreditation and recruitment in particular.

2. The legal system in Germany

2.1 Structure of the German legal system

In Germany, the federal system with the Bundesbehörden (authorities at federal level, i.e. the Federal Republic of Germany) and the authorities of the
16 Bundesländer (federal states) results in a complicated structure of powers and responsibilities. In some fields, the responsibilities of federal and state authorities overlap and have to be coordinated. Thus, the federal structure has an impact on the judicial organisation in Germany: on the one hand, there are the Federal Ministry of the Interior (BMI) and the Federal Ministry of Justice and Consumer Protection (BMJ) as well as Courts at federal level, such as the Federal Constitutional Court in Karlsruhe, the Federal Court of Justice and four specialised Federal Courts for the Administration, Labour, Finance and Social Affairs. On the other hand, the Bundesländer have specific and far-reaching competences when it comes to justice and internal affairs: every Land has its own Ministry of Justice and Ministry of the Interior, which means that civil and criminal courts belong to the domain of the Bundesländer. As a consequence, every Land has its own constitutional court as well as courts for specialised jurisdiction (for the administration, labour, finance and social affairs, similar to the courts at national level). And of course, the Länder have courts for ordinary jurisdiction, i.e. for civil and criminal cases. These are organised in a hierarchical structure, with the Local Courts (Amtsgerichte) on the lowest level, then the Regional Courts (Landgerichte) and the Higher Regional Courts (Oberlandesgerichte). According to the type of crime, cases are presented directly to one of the regional or higher courts. The courts of the higher levels as well as the specialised courts are the instances for legal remedies, such as appeals on fact and/or law. Generally, cases can only be presented to the respective panels of the federal courts at national level by means of appeal or complaint on points of law.

This intertwined legal structure, in which cases are forwarded to higher instances including the federal courts, is reflected in the diagram in the annex (see last page of this article). Since there are 16 Bundesländer, it has to be taken into consideration that the levels of the local, regional and higher regional courts plus the specialised judicial bodies of the Länder must be multiplied by 16 in order to have the full picture of the German legal system!

2.2 Factors of influence

As has already been stated in section 2.1, the overlapping responsibilities between the national authorities and those of the Länder require efficient coordination. Laws and acts concerning the work of the courts, such as the German Constitution (GG), the German Criminal Code (StGB), the Civil Code (BGB), the German Courts Constitution Act (GVG) etc., are adopted by the national bodies (e.g. Parliament) and have immediate effect in all 16 Länder without any further implementation.
or transposition into laws of the Bundesländer. This structure guarantees equal laws and rights for everybody independently of the Bundesland s/he lives in.

In addition to the national regulations, the Bundesländer can lay down their own acts or guidelines in certain fields concerning the operation of the courts, e.g. for the accreditation and recruitment of legal interpreters and translators (see section 4 of this article).

Another important factor is European Law, as codified by the European Union and its institutions. Twenty per cent of national laws are introduced or updated due to EU influence (cf. Lang/Bijman 2012). According to Art. 288 TFEU (formerly Art. 249 TEC), different legislative acts have different effects on the Member States: either immediate because they are self-executing (EU Regulations) or by transposition into national legislation by national implementation measures (EU Directives).


One of the aims of the European Union is the creation of a European Area of Justice. This affects the cooperation of Member States in the case of criminal investigations. In order to improve operations in this field, several legal instruments have been adopted, such as the European Arrest Warrant (cf. European Council 2002).

Three years ago, Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings was adopted after many years of negotiations and initiatives in this matter. It required to be transposed within three years, i.e. by 27 October 2013.

In 2012, another legal instrument strengthening the rights of the accused in criminal proceedings was adopted: Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, which must be transposed by 2 June 2014.

Germany is among the 8 EU Member States which have transposed the Directive in time (cf. EULITA 2013b). On 2 July 2013, the German Act for strengthening the rights of the accused in criminal proceedings entered into force. It modifies and updates the Code of Criminal Procedure (StPO) in the articles that govern the right to have access to interpretation and/or translation.

2 TEC = Treaty of the European Communities, TFEU = Treaty on the Functioning of the European Union.

3 The German title of the Act reads as follows: Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren vom 2. Juli 2013 (BeVReStG; BGBl. I S. 1938).
In Article 114b (2) 2nd sentence, an addition has been inserted and it now specifies that any accused person who does not understand German sufficiently or is hard-of-hearing has to be informed in a language s/he can understand, and that s/he is entitled to have an interpreter or a translator free of charge at any moment of the criminal proceedings taken against her/him. In this respect, the German law takes on what is explicitly said in Directive 2010/64/EU:

**Article 4: Costs of interpretation and translation**

Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.

The German law, however, does not specify who recruits the interpreter and who finally pays her/him. The German Courts Constitution Act (GVG) also lays down the language of the trial and the right to have an interpreter free of charge (Article 187 (1) GVG). In Article 187 (2), an odd situation is created by saying that an oral translation of (parts of) the documents and the trial can substitute a written translation if this oral translation does not limit or hinder the procedural rights of the accused or prejudice the fairness of the proceedings. In its final sentence, Article 187 (2) says that full safeguard of the rights of the accused can be assumed if s/he has a defence lawyer. *Strictu sensu* this could be taken to mean that the defence lawyer is responsible for translation / interpreting! But as compared to the text of the Directive, the updated version of the German Courts Constitution Act just follows the European wording:

**Article 3: Right to translation of essential documents**

7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6 [of Article 3], an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

4. INTERPRETERS’ ACCREDITATION AND RECRUITMENT IN GERMANY

4.1 LEGAL FOUNDATIONS AND INSTRUMENTS

The right to have an interpreter in legal proceedings is based on different European and national legislative instruments: Art. 5 (II), 6 (III) of the European Convention on Human Rights; Art. 3 of the Constitution of the Federal Republic of Germany (*Grundgesetz der Bundesrepublik Deutschland, GG*); Art. 185-189 of the German Courts Constitution Act (*Gerichtsverfassungsgesetz, GVG*); Art. 259 of the German Code of Criminal Procedure (*Strafprozessordnung, StPO*); Section 181 of
the Guidelines for criminal and fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV).

Art. 189 of the German Courts Constitution Act (GVG) is the legal basis for the recruitment of interpreters by German courts. However, owing to the federal structure in Germany, every Bundesland has its own law on interpreters. In these Interpreters’ Acts, the Länder have introduced regulations that stipulate at least some qualifications for persons who wish to work as sworn interpreters for the judicial bodies and institutions in the respective Land.

4.2 Interpreters’ Acts and Regulations of the Individual Bundesländer

The official procedures for the accreditation and swearing-in of interpreters and translators for the courts are governed by the laws of the individual Länder. They are therefore subject to Land-specific requirements, as described for example in the Interpreters’ Acts of Bavaria (DolmG), Hamburg (HmbgDolmG), Lower Saxony (Nds. AGGGVG), and North Rhine Westphalia (JustG NRW), which will be illustrated in more detail in section 4.3 below; all Interpreters’ Acts and their respective requirements can be found on the Internet.

In response to the EU activities, especially Directive 2010/64/EU on the right to interpreting and translation in criminal proceedings, but also to the older Directive 2006/123/EC of 12 December 2006 on services in the internal market, the federal states have established a database of sworn-in interpreters for the whole of the Federal Republic.

In these acts, the requirements asked for by the individual Länder are defined. Generally, all acts differentiate between interpreting as the oral mode, and translating as the written mode. They refer to personal and professional aptitude, but do not always include explicit references to the working languages involved and/or to translation skills. This lack of explicitness is especially important in the context of Directive 2010/64/EU since its Articles 2 and 5 refer directly to the quality of the interpretation services and the interpreter’s qualification, although in a very generic way:

Article 2: Right to interpretation

[...]
8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. [...]

“Vereidigte” or “beeidigte Dolmetscher”, according to the respective Acts of each Bundesland.

http://www.gerichts-dolmetscher.de/voraussetzungen.jsp;jsessionid=6BD6064A98A-6727B02D887E8901D500A.

Article 5: Quality of the interpretation and translation

1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities. [...] (emphasis added)

Furthermore, the respective Interpreters’ Acts of the Länder define the accreditation procedures and the fees to be sworn-in which vary between EUR 40 and EUR 140 plus a supplement per language.

Another deficit can be detected in the Interpreters’ Acts which is of special importance when it comes to quality monitoring as required by Directive 2010/64/EU (cf. Art. 5 (1)): the relevant regulations do not specify who is responsible for recruiting interpreters (whether the judge, the prosecutor, the defence lawyer, a police officer, a clerk etc.). This very often results in a lack of transparency in the recruitment procedures, also reported by EULITA, the European Legal Interpreters’ and Translators’ Association (cf. EULITA 2013a).

4.2.1 Personal aptitude

All acts of the Bundesländer refer extensively to personal aptitude – which in some cases is described in more detail than professional aptitude. Personal aptitude is required in all Länder and comprises: majority of age, i.e. 18; German nationality, EU or EEA citizenship or permanent residence in Germany; no criminal proceedings pending against the interpreter; orderly economic conditions, i.e., the interpreter must not be bankrupt; reliability; willingness and capacity to work for the judicial bodies, which means that the interpreter’s state of health must allow her/him to work as an interpreter in the required legal settings; availability at short notice.

Personal aptitude also includes the fact that in some Länder (e.g. Saxony-Anhalt) interpreters who are already sworn-in in another Land cannot be appointed in a second Land.

4.2.2 Professional Aptitude

All Interpreters’ Acts refer to professional aptitude; however, what the correspondent entities understand by it is not always clear since requirements

7 European Economic Area.
very often are just defined implicitly in contrast to the explicit description of personal aptitude (see section 4.2.1 above). A comparative analysis of the 16 Interpreters’ Acts shows that language skills in general, working languages, and translation skills fall under the concept of professional aptitude, although not all acts are that explicit about it.

4.2.2.1 Language skills in general

Language skills are clearly considered to be part of the interpreter’s professional aptitude. For a language-related profession this goes without saying, which might be the reason why language skills very often are only required implicitly by reference to interpreter exams at universities or other acknowledged institutions (e.g. state exams in the chamber of commerce), in Germany and abroad.

When it comes to measuring the level of competence in a certain language, problems arise. In order to have a standardized level, some acts refer to the Common European Framework of References for Languages (CEFR) which defines 6 levels of competence (A1 to C2) with C2 being that of highest proficiency: “can understand with ease virtually everything heard or read; can summarise information from different spoken and written sources, reconstructing arguments and accounts in a coherent presentation; can express him/herself spontaneously, very fluently and precisely, differentiating finer shades of meaning even in the most complex situations” (cf. Council of Europe 2011).

Some of the Interpreters’ Acts of the Länder explicitly refer to C2 or even quote the above-mentioned CEFR description of C2. Nevertheless, no fall-back regulations can be found in the respective acts for those cases in which an interpreter does not fulfil this level. According to some acts of the Länder, general language skills also include knowledge of legal terminology.

4.2.2.2 Working languages

Working languages are described in varying detail. Sound knowledge of German is required, due to the fact that normally German is the language of the court the interpreter works for. In some Länder (Hamburg, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Schleswig-Holstein), the required level of competence for German is also C2 of the CEFR. This special reference has to be seen against the background that not all sworn-in interpreters are of German mother tongue.

For the German language, the Länder of Hamburg, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Schleswig-Holstein require knowledge of legal language and terminology whereas the other Länder do not refer to this explicitly.
When it comes to defining the level of competence for the foreign language(s), the descriptions are less detailed. Only Lower Saxony, North Rhine-Westphalia and Rhineland-Palatinate require C2 of the CEFR, but other Länder are less strict and refer to foreign language skills in a more or less blurred way: “proven otherwise” (Berlin and Brandenburg), “several years” (Hamburg) or just “sufficient language skills” (Schleswig-Holstein).

Five Länder explicitly mention sign language as a possible working language: Brandenburg, Hamburg, Mecklenburg Western-Pomerania, North Rhine-Westphalia and Saxony.

4.2.2.3 Translation skills

Translation skills are required implicitly in all acts since the individual texts of the Bundesländer refer to university degrees or equivalents as a proof of translation competence. The same goes for institutions where exams in translating or interpreting can be taken and which are acknowledged by the Bundesland in question, such as exams at the chamber of commerce. As a third means of proving translation competence, a candidate for becoming a sworn-in interpreter can hand in letters of confirmation in which former clients declare that the person has worked as an interpreter for a certain period of time. The requirements for this type of proof, however, vary considerably, if mentioned at all: Lower Saxony for example asks for “at least four letters of confirmation”, and the minimum period required in Schleswig-Holstein is “at least five years”, but a number of Bundesländer just say “have to be proven otherwise” (e.g. Berlin and Brandenburg).

Three Bundesländer explicitly mention translation skills in their Interpreters’ Acts: Lower Saxony, North Rhine-Westphalia and Rhineland-Palatinate, but this does not necessarily mean that they describe the standards which they apply. Rhineland-Palatinate for example remains rather vague by saying “suitable documents shall also confirm translation skills.”

Hamburg is an exception among the other Bundesländer since it requires a compulsory aptitude test for aspiring sworn-in interpreters organised by the Authority of the Interior of the Hamburg Senate (see section 4.3.2 below).

4.3 Heterogeneity of Interpreters’ Acts: 4 examples

In the following sections, four examples of Interpreters’ Acts of different Bundesländer are described with reference to the general requirements mentioned above in section 4.2; the aim is to illustrate the heterogeneity of the acts.
4.3.1 Bavaria

Although Bavaria’s federal state and its authorities and institutions have a reputation of being very strict, its Interpreters’ Act is surprisingly rather unspecific when it comes to defining precise requirements for sworn-in interpreters.

Sign language is not mentioned as a working language.

The personal aptitude criteria described in section 4.2.1 are listed in detail, but professional aptitude with all related aspects referred to above in section 4.2 is only mentioned briefly by saying that it can be proven by university degrees according to the provisions defined by the Bavarian Ministry of Education or by equivalent exams. Since no further requirements are described, it remains unclear what the judicial authorities do if a candidate cannot provide the required documents in order to prove linguistic and translation skills.

4.3.2 Hamburg

As could already be seen in section 4.2.2.3, the Hamburg Interpreters’ Act is unique because of the requirement of an aptitude test for becoming a sworn-in interpreter for the Hamburg authorities.

The Hamburg Interpreters’ Act mentions sign language as a working language.

Personal and professional aptitude are required. As a first step, these can be proven by means of a university degree, but this qualifies candidates only to apply for taking the aptitude test. The test serves as a means to test language skills, knowledge of the legal system and translation skills which comprise different interpreting modes: consecutive, simultaneous, whispering and sight translations, since legal interpreters must be able to work in all these modes (cf. EULITA 2013c). For certain university degrees that confirm a specialisation in Public Service Interpreting (e.g. Magdeburg) or Conference Interpreting (e.g. Cologne or Heidelberg), a waiver for the exam is possible; the respective degrees and universities are listed in the annex of the Hamburg Interpreters’ Act.

In order to prepare candidates for the aptitude test, the vocational training agency of Hamburg University (AAW) offers prep courses that last one year and are concluded by an exam with a certificate. The courses comprise introductory seminars and classes on the German legal system and terminology as well as on the interpreting skills required in legal settings. They have been especially designed by Christiane Driesen in cooperation with the Hamburg Authority of the Interior and Hamburg University as a means of continuous vocational training but also for meeting the demand for interpreters for less frequently spoken languages (cf. Driesen 2012).8

8 Similar courses for improving the professionality of legal interpreters and thus the quality of legal interpreting services can also be found in other countries, e.g. Switzerland (cf. Hofer/General 2012). This shows the growing awareness of what is needed in a highly specialised legal setting.
4.3.3 Lower Saxony

In Lower Saxony, the Interpreters’ Act also reflects a growing awareness for the skills needed in legal interpreting.

Sign language is not mentioned as a working language.

Proficiency at level C2 of the CEFR is required for all working languages, including German. The act does not specify what happens if this level is not proven in case of a language that is urgently needed.

Professional skills that are required include sound knowledge of the legal system in Germany and German legal terminology for civil, criminal and administrative law. This knowledge must be proven by an exam with a mark, meaning that a certificate of attendance of a law course is not considered to be sufficient.

Candidates for becoming a sworn-in interpreter in Lower Saxony are required to have translation skills. This can be shown by corresponding university degrees or exams or by at least four letters of confirmation that the person in question has worked as an interpreter.

4.3.4 North Rhine-Westphalia

The North Rhine-Westphalia Interpreters’ Act is similar to that of Lower Saxony but sign language is mentioned explicitly as a working language.

Also in North Rhine-Westphalia the required level of linguistic skills is C2 according to the CEFR.

Sound knowledge of the German legal system and terminology of civil, criminal and administrative law is required. The act does not specify this further but during the revision of the act in the recent past, the judicial bodies and authorities responsible for the accreditation of legal interpreters in North Rhine-Westphalia cooperated with the translators’ and interpreters’ professional association BDÜ-NRW e.V. as well as with Cologne University of Applied Sciences in order to get a better idea of appropriate training courses that can be accepted by the authorities as a proof of skills (see section 4.4 below). The same goes for translation skills that have to be proven by “suitable documents” – e.g. certificates of successful attendance of acknowledged professional training and summer courses that are co-organised by the above-mentioned training institution and professional association.

In North Rhine-Westphalia, the Interpreters’ Act establishes a public register of sworn-in interpreters maintained by the presidents of the higher regional courts and accessible on the Internet. This is much in line with Directive 2010/64/EU, although recruitment criteria continue to suffer from a lack of transparency, as reported by EULITA.
4.4 Synthesis and evaluation

The Interpreters’ Acts of the 16 Bundesländer in general and the four examples described in section 4.3 in particular show that there is a growing awareness of legal interpreting and the need for certain standards that go beyond mere linguistic skills. In several Bundesländer, the judicial authorities have cooperated with professional associations of (legal) interpreters and translators and continue to do so when it comes to updating the respective acts and regulations. For example, North Rhine-Westphalia’s section of the German Association of Translators and Interpreters BDÜ e.V. (Bundesverband der Dolmetscher und Übersetzer e.V.) organizes seminars on the German legal system and legal terminology and provides vocational training for translators and interpreters who want to become sworn-in interpreters or translators for the regional courts. Attending these courses is now accepted by the judicial authorities responsible for interpreter and translator accreditation for the courts as a means of acquiring translation and linguistic skills.

The same goes for universities and institutions involved in interpreter and translator training: they also cooperate with professional associations and with the judicial authorities in the process of updating and revising Interpreters’ Acts in the different Bundesländer.

There is also a growing awareness and acceptance of sign language interpreting and the right to it, not only as a right derived from the German Social Code. In this respect, using sign language interpreting in TV news channels like Phoenix has helped a lot (cf. Phoenix 2013).

Public registers of sworn-in interpreters are becoming a common means of finding legal interpreters. Some Bundesländer have set them up as a requirement of their respective Interpreters’ Acts, but a country-wide database for the whole of Germany has been established due to Directive 2006/123/EC on services in the internal market.

5. Conclusion

The German legal system is marked by a two-fold influence: the federal structure of the Federal Republic of Germany and its 16 Bundesländer on the one hand, and the above-mentioned European Directives on the other, which have resulted in a modification of German legislation, in websites such as the e-Justice portal of the German authorities at federal and Länder levels as well as the founding of EULITA and activities by professional associations of interpreters and translators, such as the BDÜ e.V. (see BDÜ 2012; EULITA 2013a; Federal Republic of Germany 2013c, among others). For the transposition of European legislation, the Federal Ministries in Berlin apply the principle of subsidiarity since justice and home affairs are competences of the Bundesländer, which have to report back to the
Federal Ministries about the implementation process. This attitude at the Federal level is quite understandable against the background of Germany’s federal structure, but raises the question if homogeneous, national regulations for the accreditation of legal interpreters would not be a better means of improving standards and equality in a crucial area as the judiciary.

Cooperation with professional associations of translators and interpreters as well as with those of the legal professions is starting to bear fruits. Very often, interpreters or universities take the initiative and propose useful measures, such as the cooperative training modules for the police and interpreters shown in the videos on best practices that were produced during the ImPLI project (cf. ImPLI 2012). This also takes another aspect of Article 6 of Directive 2010/64/EU into consideration: continuous vocational training is needed not only for legal interpreters and translators but also for the legal profession and the staff of judicial authorities so as to promote knowledge about situations in which communication sees the involvement of an interpreter.

Interpreting for the police should become an integral part of the improvements achieved so far in legal interpreting. One of the latest improvements was the revision of Articles 8-14 JVEG, i.e. the Act on the Compensation of Judicial Experts, Interpreters, Translators, Members of the Jury, Witnesses and Third Persons, that governs the payment and fees for interpreters, experts etc. (cf. Federal Republic of Germany 2013b). The revised version of this act entered into force on 1 August 2013. The hourly rate for court interpreters was raised to 70 EUR per hour, up to 75 EUR in the case of an explicit pre-assignment for simultaneous interpreting. Article 9 (3) stipulates that the mode of interpreting has to be defined prior to the assignment and that a compensation of a maximum of 2 hours is paid in case the assignment is cancelled. Sign language interpreters hope that these hourly fees will also be applied to them since they usually work in the simultaneous mode. In the case of interpreters who work for the courts and/or for the police, assignment via agencies, which keep a considerable profit margin, continues to be a problem, and so is the fact that the police often hire on the basis of tenders with price dumping (cf. ImPLI 2012).

In general, the situation in Germany has improved in the last few years thanks to the activities of professional associations and different institutions involved in interpreter training. As compared to other European countries, e.g. Italy, the picture is not all negative but a lot still remains to be done in order to fully implement the right to professional interpretation and translation not only in criminal proceedings, but also in other areas.

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9 ImPLI – Improving Police and Legal Interpreting was a research project funded by the European Commission in 2011-12. The leading partner was ISIT in Paris; the other five partners were: Charles University Prague; Heriot-Watt University Edinburgh; Lessius University College, Antwerp; Bologna University, Forlì; and Cologne University of Applied Sciences. The six videos on best practices can be found together with the final report on the ImPLI homepage (cf. ImPLI 2012).