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## **Title**

Gender representation in French Eurolect: an open dialogue between supranational and national legal varieties

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## **Gender representation in French Eurolect: an open dialogue between supranational and national legal varieties<sup>1</sup>**

### **Abstract**

The issue of gender-fair language remains rather controversial in France. Although some recent changes have taken place at institutional level, forms associated with inclusive writing are still discouraged in numerous legal settings. Inspired by the broader research framework of the Eurolect Observatory Project<sup>2</sup>, which focuses on the cross-language contact that derives from the multilingual drafting and translation of EU legislation, this paper investigates the possible dialogue between supranational and national legal varieties and the way(s) in which the topical issue of gender is addressed in French legal provisions. Based on qualitative and quantitative analysis of a corpus consisting of (i) EU directives, (ii) their implementing measures in the French national legal system, and (iii) French national laws, the study investigates different linguistic strategies for expressing gender, which can be categorised under the tripartite division of masculine, binary, or neutral forms. This contribution joins an existing body of recent literature on the discursive articulation of gender in legislative languages (Cavagnoli and Mori 2018) and narrows down the focus to gender-related provisions in the French language. The analysis is guided by the following research questions: Can a potential intralinguistic dialogue be observed between supranational and national varieties in French legal discourse? And if so, can such a potential dialogue be said to be moving towards (more) gender-fair representation in the law?

### **Keywords**

Legal discourse, French Eurolect, gender, gender-fair language, intralinguistic dialogue, pragmatic indeterminacy

## **1. Introduction and aims**

This study observes how gender is represented in French legal discourse, with specific reference to the dialogue between three legal varieties<sup>3</sup>: (i) EU directives in French (the supranational level); (ii) national provisions incorporating EU directives into French law, and (iii) French national laws (both national levels). In so doing, this study is part of the broader framework of the Eurolect Observatory Project (EOP)<sup>4</sup>, an EU-wide research collaboration led by the University of International Studies in Rome. The EOP aims to examine how cross-language contact, deriving from the process of EU multilingual law-making and associated

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<sup>1</sup> The authors discussed and conceived this article together. Giuditta Caliendo is responsible for sections 1, 2, 2.1, 3.2, 4.1, 4.4, 5; Océane Foubert is responsible for sections 2.2, 3.1, 3.2, 4, 4.2, 4.3.

<sup>2</sup> <https://www.unint.eu/en/research/research-projects/33-page/490-eurolect-observatory-project.html> (Last accessed: March 4, 2022).

<sup>3</sup> The term “legal variety” is used throughout this paper to refer to the genre of EU directives and their comparable national legislative texts: national measures implementing EU provisions and French law. This designating term was selected and consistently used in the paper as it is in line with the term used in scholarly studies conducted within the Eurolect Observatory Project (Mori and Szmrecsanyi 2020) on the different official languages of EU Member States.

<sup>4</sup> See footnote 2.

translation, has resulted in the emergence and dissemination of Eurolects, which are EU legal varieties of EU languages characterised by standardised lexical variants, morphosyntactic patterns and structural features (Mori 2018a; Mori and Szmrecsanyi 2020). Whereas previous studies have revealed the existence of two legal varieties in EU Member States – a national one and an EU one (see Catenaccio 2008 for the UK; Piehl 2006 for Finland; Reinhardt 2003 and Schade 2009 for Germany; Sosoni 2004 for Greece; Nystedt 1998, Mori 2003 and 2005, Cortelazzo 2013 for Italy; Mori 2011 for Malta; Biel 2014 for Poland; and Bednárová-Gibová 2016 for Slovakia), the EOP aims to develop a common research framework to identify differences between these two varieties, and to describe specific Eurolectal features that “emerge as a result of the drafting-translating-revision process that produces EU law” (Mori 2018a: 11).

The EOP was initially launched in 2013 and scrutinised 11 languages: Netherlandic Dutch (De Sutter and De Bock 2018), English (Sandrelli 2018), Finnish (Mikhailov and Piehl 2018), French (Patin and Megale 2018), German (Proia 2018), Greek (Sosoni *et al.* 2018), Italian (Mori 2018b), Latvian (Dilāns 2018), Maltese (Portelli and Caruana 2018), Polish (Biel 2018), and Spanish (Blini 2018). One of the main findings of the EOP has been the existence of terminological variation (alongside variations in structural features and textual patterns) across legal varieties in EU official languages. In 2017, the new phase of the EOP started to involve more languages and to encourage a sociolinguistic approach to Eurolects, also addressing issues such as the representation of gender. Most of the studies carried out on this specific topic have been collected in an edited volume (Cavagnoli and Mori 2019) investigating the ways in which gender is represented in legal discourse and highlighting the presence or absence of gender-neutral language in EU and national laws. By way of example, Bracchi (2019) revealed that French implementing measures on labour law remain largely male biased: the most frequent form of job titles is the masculine form used to refer to both women and men (even when a feminine form exists) or when the gender of the referent is unknown. This means that masculine generics such as “*serveur*” (*waiter*) outnumber the alternatives such as binary forms (e.g. “*serveur et serveuse*” (*waiter and waitress*)), or neutral forms (e.g. the nominalised form “*service*” (*service*) or the neutral locution “*personnes assurant le service*” (*persons serving*)).

Since the 1990s, numerous guidelines have been published by different institutions suggesting alternative forms that avoid the male bias of masculine generics (Elmiger 2020). These alternatives have been described as “gender-fair” (National Council of Teachers of English 2002), “gender-neutral” (UNESCO 1999), “gender-inclusive” (Council of the European Union 2018), or “non-sexist” (Chancellerie fédérale 2000) language, with these terms often used interchangeably. Alternative forms to masculine generics involve two main strategies: (i) binary forms and (ii) gender-neutral forms (see Sczesny *et al.* 2016 for an overview of these strategies). Binary gender forms are often encouraged when the referent is unknown or when referring to both men and women, as in the case of “*serveur et serveuse*” above. Gender-neutral forms have been described by some recent institutional guidelines (European Institute for Gender Equality 2018) as the optimal form as they move away from the gender polarisation generated by binary gender forms. Since this study deals with both binary and neutral forms, we will from now on use the term “gender-fair” to encompass both strategies.

The general aim of this study is to observe the use of linguistic strategies expressing gender in supranational and national legal varieties, also as a result of their potential intertextual dialogue. Our corpus is thematically specialised as it consists of gender-related legislation, the genre type in which a higher degree of gender-fairness would be most expected. We thus look at gender-related EU provisions, transposing measures and national laws to observe their use of the linguistic forms employed to express gender, which can be

categorised under the tripartite division of masculine, binary, or neutral. Compared to previous studies within the EOP, our investigation also adds a new perspective on the issue of gender representation in legislation, namely a pragmatic one. We draw on lexical pragmatics (Sperber and Wilson 1995; Carston 1997; Clark 2013) to understand how the use of gender-related lexical items (in terms of their explicitness or lack thereof) may vary across supranational and national legal contexts in French legal varieties, with specific reference to the notion of indeterminacy in masculine generics and gender-fair linguistic expressions.

The next section (§2) will present the dialogical framework for analysis and explain its relevance to the investigation of gender-fair language in the legal varieties under scrutiny, highlighting the notions of intertextuality (§2.1) and indeterminacy (§2.2). Section 3 will then illustrate the corpus selection criteria as well as the categorisation of terms denoting gender, which will be followed by our analysis (§4 and relevant subsections), discussion of the findings and some conclusive remarks (§5).

## **2. Dialogic analysis of gender representation in French law-specific domains: a pragmatic perspective**

The overall aim of our study is to observe the extent to which a potential intertextual dialogue between supranational and national legal provisions can be observed when studying the linguistic representation of gender in French. In this section, we first briefly introduce the cross-linguistic contact that originates at EU level, both from an interlinguistic perspective (in the process of multilingual drafting and translation of legislative texts) and from an intralinguistic one (when EU directives are implemented in national legal systems). We then argue that this contact offers a fertile ground for intertextuality, which is discussed in relation to gender-related lexical items in our corpus, with specific reference to the category of masculine generics and their pragmatic indeterminacy.

### ***2.1 EU legislation: fertile ground for dialogism and intertextuality***

In the case of EU legislation, two types of dialogue are called into play: (i) an interlinguistic dialogue and (ii) an intralinguistic one:

(i) Since EU legislation is founded on constant interaction between the 24 official languages of the European Union, the first type of dialogue to be established is unavoidably interlinguistic in nature. EU law differs from other legal systems because of the multilingual environment it originates from, and EU legislation is actually translated rather than co-drafted (Morgan 1982; Gallas 1999; Mattila 2006). This means that EU legal documents are not drawn up simultaneously in different languages, but translated into all the different language versions of the EU (Gallas 1999; Caliendo 2004; Mori 2018a: 6–7). In the overall process of multilingual legal drafting and translating, the constant interaction between EU official languages explains the emergence of Eurolects, which are the subject of study in the EOP in general and in this specific paper with reference to French. Interestingly, although Eurolects are supranational instruments of communication with no specific local affiliation, they are constantly inspired and enriched by different national influences (Cossu 1999). As such, the French language used when drafting national laws will necessarily differ from the French used at EU level, which is in close and constant contact with the other official languages involved in the legislative and decision-making procedures of the Union.

(ii) Our study focuses on the second type of dialogue mentioned above, which is an intralinguistic dialogue, as it looks at the possible interaction between French national legal varieties and EU secondary legislation in the same language. For EU legislation, the genres constituting our corpus are EU directives, one of the instruments of EU secondary legislation

(which also includes regulations, decisions, recommendations, and opinions). Directives are legally binding but have no direct effect (Sacco and Castellani 1999: 12): in order to make them applicable, Member States need to transpose directives into their legal system by enforcing national legal instruments (such as *décrets* or *ordonnances* in the French legal system). The implementation of these EU provisions at the national level is a key point of contact between EU and national law, since EU directives must be adjusted to the target national legal system and its language. National implementing laws are therefore at the intersection between EU directives and national legislation. The highly intralinguistic dialogue that derives from the national implementation of EU legislation makes this process fertile ground for intertextuality, the notion about “the factors which make the utilization of one text dependent upon knowledge of one or more previously encountered texts” (de Beaugrande and Dressler 1981: 10). In our hypothesis, this aspect is particularly relevant when studying the linguistic representation of gender, because intertextuality can be conducive to changes in text types in general and, more specifically (for the purpose of our study), in the way gender-related terms are used. As suggested by de Beaugrande and Dressler (1981: 10), intertextuality is responsible for the evolution of text types that have typical patterns of characteristics. Our contrastive investigation will therefore observe whether patterns in the use of gender-related expressions undergo convergence or discrepancy in the three genres scrutinised as a result of intertextuality.

Due to the conservative nature of legal discourse, the legal varieties under scrutiny are not expected to be particularly innovative, especially in terms of gender-fair linguistic practices. Nonetheless, our study seeks to investigate if, and to what extent, a potential intralinguistic dialogue is at play between the three legal varieties under scrutiny, in such a way that the gender-fair strategies already in place in one of them can be observed – or not – to be intertextually adopted in others.

The tension between the discursive practices of an institution and the potential creativity of texts has already been addressed by Fairclough’s (1995) framework of critical discourse analysis, drawing upon the notions of hegemony and intertextuality. On the one hand, the Gramscian theory of hegemony is used in his framework to analyse discursive events and more specifically to see “how a particular relatively stabilized configuration of discourse practices (‘order of discourse’) constitutes one domain of hegemony” (Fairclough 1995: 2). With specific reference to our study, the law can be seen as one domain of hegemony resisting a more widespread use of gender-fair expressions such as neutral forms in place of masculine generics. On the other hand, the Bakhtinian theory of genre, and more specifically the notion of intertextuality, is used to highlight “the productivity and creativity of discourse practice and its realization in texts which are heterogeneous in their forms and meanings, the heterogeneity emanating from their intertextuality; texts are constituted from other already produced texts and from potentially diverse text types (genres, discourses)” (1995: 2).

In our study, intertextuality is seen as the possible result of intralinguistic contact between the French legal varieties observed. For the purpose of our analysis, a possible dialogue involving the three genres under scrutiny is hypothesised to observe a more widespread use of gender-fair lexical items to replace masculine generic forms. Special attention will be devoted to the latter as they prove particularly problematic in the law due to their inherent indeterminacy, as illustrated in 2.2.

## ***2.2 Masculine forms in the law as a case of indeterminacy***

Studies on the representation of gender in legal settings have suggested that this is more than just a linguistic problem (Martyna 1980; Guentherodt 1984). It is argued that the use of

masculine forms in legal texts has further implications that cannot not be overlooked. In French, masculine forms can have two meanings: (i) a specific form which is used to refer to a man or to men only, and (ii) a generic one which is supposed to encompass men and women, and is therefore neutral. However, studies have found that the supposed neutrality attached to masculine generics may in actual fact lead to indeterminacy in their interpretation and, at worst, to gender inequality, since one cannot simply assume that masculine generics include female subjects. An interesting study in this respect is Guentherodt's (1984: 243) investigation on the androcentric nature of language in Swiss legal texts, where the use of masculine forms is exploited to discriminate against women. This investigation shows that masculine generics can lead to different legal interpretations since the meaning of masculine forms can be inferred as either generic or specific (see Allott and Shaer (2017) on legal utterance interpretation and inferences). Guentherodt (1984: 254) gives the example of the term "*der Ehegatte*" which can mean both "*spouse*" and "*husband*". In the case of joint property, "*der Ehegatte*" is supposed to "contain" (Cicourel 1991: 42) the subordinate concept of "*wife*". However, non-legal experts might infer that the husband is the only rightful administrator of the joint property (Guentherodt 1984: 254). With this in mind, masculine forms used as generics can be discussed as a case of linguistic indeterminacy in the law (Endicott 2001; Witczak-Plisiecka 2009; Marmor 2016). As Williams (2005: 70) suggests, there is a strong tradition among philosophers of law which justifies the role of indeterminacy in law; drawing upon Hart (1961), who propounded the limited explicitness of the law, Endicott (2000, 2002) claims that indeterminacy is an inseparable part of legal language, even though such language is generally believed to be characterised by clarity, consistency and monoreferentiality. In this respect, Witczak-Plisiecka (2009: 205-6) makes clear reference to indeterminacy in relation to contextual meaning when she argues that, besides specialised languages or "technolects" (Mattila 2006: 3), linguistic forms are always underdetermined and need to be disambiguated against the pragmatic context in which they appear via complex processes of inferencing and decoding, what de Beaugrande and Dressler refer to as "processing operations" in textual analysis (1981: 35, 94).

The issue of the indeterminacy and supposed neutrality of masculine generics has also been addressed in psycholinguistics (see Sczesny *et al.* 2016 for an overview). These studies seek to investigate which meaning attached to masculine forms is more likely to be inferred, whether the specific or the generic one. They have established that masculine forms are generally not interpreted as generic but as masculine specific. Given the proven challenges that masculine generics and their indeterminacy cause to interpretation, their use should be discouraged, as clearly suggested by the most recent guidelines on gender-fairness mentioned in the Introduction. In the analytical part of this paper (Section 4), the use of masculine generics will be scrutinised, with a view to understanding whether the intertextual relations connecting the genres in our corpus favour (or not) a more widespread use of gender-fair alternatives in the law.

The methodology section (§3 below) gives a detailed description of our corpus of French legal varieties, which has been searched using qualitative and corpus-based methods. It is then followed by the selection and categorisation of the lexical items used to analyse the representation of gender in our focus corpus.

### **3. Methodological framework**

#### ***3.1 Corpus selection and description***

This study is based on the *Eurolect Observatory Multilingual Corpus* (henceforth EOMC), which includes two French corpora: Corpus A, consisting of EU directives (660) in the French language, and Corpus B, consisting of their national implementing measures (129). Since this study looks at gender representation in legal texts, we selected provisions that might be prone to display a higher degree of gender-fairness, such as texts on gender equality and family<sup>5</sup>.

To observe whether a potential dialogue exists between French supranational and national legal varieties, and whether this moves in the direction of a (more) gender-fair representation, corpus A and corpus B were used to select French subcorpora of gender-related laws, which we will refer to as subcorpus a and subcorpus b respectively (see Index I). While the advantage of working with the EOMC is that it is an already set-up corpus (which has already inspired a number of insightful studies on Eurolects), this resource also imposed a constraint on our study in the form of its ‘sealed’ timespan (1999-2008). In addition to the above corpora, subcorpus c was built, consisting of a collection of French national laws that have no connection to EU law. Unlike the texts constituting corpus B, the French national laws used to build subcorpus c originated from provisions drafted at the national level, and not implementing EU directives. For the sake of thematic and temporal consistency, subcorpus c contains French national laws based on similar topics to the texts in subcorpora a and b (gender equality and family) and has the same timespan as corpora A and B (1999-2008). Building this subcorpus contributed to the new phase of the EOP, one of the aims being to include national laws in the EOMC corpus.

The above subcorpora and the EOMC are represented in Tables 1 and 2 respectively, followed by an account of our methodological approach.

	<b>Type of texts</b>	<b>Number (Tokens)</b>
<b>Subcorpus a</b>	Directives	5 (35,213)
<b>Subcorpus b</b>	National implementing laws	3 (10,674)
<b>Subcorpus c</b>	National laws	4 (7,287)

Table 1: Gender-related subcorpus a, b, and c

	<b>Type of texts</b>	<b>Number (Tokens)</b>
<b>Corpus A</b>	Directives	660 (4,710,895)
<b>Corpus B</b>	National implementing laws	129 (2,163,591)

Table 2: Corpus A and B from the EOMC

First, we used subcorpus a to observe the linguistic representation of gender in EU texts on gender equality and family in French. More specifically, we looked at the use of: masculine generics, such as “*travailleur*” (m.sg; *worker*) to refer to both men and women; binary forms, such as “*les hommes et les femmes*” (*men and women*); and neutral forms, such as “*droits humains*” (*human rights* as opposed to *men’s or women’s rights*). We used the *AntConc* (Anthony 2019) concordancer to check whether each occurrence of these forms was intended to have a generic, specific or neutral meaning by checking the context of use. Looking at the frequency of occurrence of these forms gave us an overview of gender representation in these

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<sup>5</sup> We decided to observe the representation of gender in family-related provisions too, because the notion of family also relates to gender issues, given the recent controversies on what constitutes a family and what does not, and the ongoing discussions around linguistic referents such as “*parent*”. Although these provisions do not directly address the notion of gender *per se*, texts on family can be revealing of its representation, for example in terms of whether they only refer to “*mère et père*” (*mother and father*; thus addressing heterosexual families only), or whether they are more inclusive by referring to, for instance, a more generic “*parent*” or “*couple*”.



genres. A second step was a contrastive investigation between subcorpus a and its reference corpus A. With this analysis, we wanted to find out whether the representation of gender we had observed in subcorpus a was specific to that specialised gender-related subcorpus or if similar results could also be found in the reference corpus from which it was drawn. More specifically, we used the Log-likelihood (LL) ratio<sup>6</sup> to indicate the degree of statistical significance of over- or under-representation of the category of gender-related terms in the subcorpus and reference corpus.

Since our research question was to observe a potential dialogue between supranational and national legal varieties, our next step was to search corpus B, consisting of national French laws implementing EU directives. Following the same corpus selection criteria used to build subcorpus a, subcorpus b was extracted from corpus B of the EOMC, consisting of legislative texts on gender equality and family. This gave us two comparable corpora: subcorpus a and subcorpus b. As with the contrastive analysis of subcorpus a and reference corpus A, subcorpus b was also compared to reference corpus B (using the LL ratio) to see whether the representation of gender we had observed in the specialised gender-related subcorpus was specific to it or if similar trends could be observed in its reference corpus.

In order to compare the frequency of gender-related terms across subcorpora a, b, and c, and then check the results of subcorpora a and b against corpora A and B, the values presented below have been normalised to per ten thousand words (pttw).

### 3.2 Selection and categorisation of terms denoting gender

To investigate a potential dialogue between supranational and national legal varieties as regards the linguistic representation of gender, specific terms (Table 3 below) were selected and analysed from the specialised subcorpus of gender-related legislation (presented in Table 1, Section 3.1 above). More specifically, a manual and qualitative analysis was carried out to identify the gender-related terms denoting individuals or properties of individuals, for instance nouns referring to individual or collective human entities, e.g. “*citoyen*” (*citizen*) or “*groupe de personnes*” (*group of people*), or nouns modified to specify gender, e.g. “*droits des femmes*” (*women’s rights*). These were then classified into three<sup>7</sup> distinct categories:

- i. masculine generics, i.e. masculine forms such as “*travailleurs*” (m.pl; *workers*) used to refer to both women and men even when the feminine form exists;
- ii. binary oppositions, which are (a) the combination of masculine and feminine forms, e.g. “*travailleurs et travailleuses*”; or (b) one element of the binomial pair or opposition, such as “*femmes*” (*women*) in the binomial “*hommes et femmes*” (*men and women*); or (c) terms that refer to the two sexes without making them explicit, e.g. “*deux sexes*” (*two sexes*) and “*des personnes d’un sexe par rapport à des personnes de l’autre sexe*” (*people of one sex in relation to people of the other sex*);
- iii. neutral forms, which are forms that neutralise the referent in terms of gender to avoid a binary opposition, for example the term “*partie patronale*”

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<sup>6</sup> We used the online LL wizard developed at Lancaster University to calculate the LL values <http://ucrel.lancs.ac.uk/llwizard.html> (Last accessed: March 4, 2022).

<sup>7</sup> As pointed out by the reviewer, a fourth category could have been observed: feminine generics, which are feminine forms used to refer to both women and men, especially for professions associated with women, e.g. “*infirmières*” (f.pl; *nurses*) or “*secrétaire*” (f.sg; *secretary*). However, these forms were not found in the corpora.

(*management party*) used in contrast to the binary form “*les patrons et les patronnes*” (m.pl; *managers and*, f.pl; *managers*).

Overall, 64 terms were identified and selected, of which 29 were masculine generics, 17 binary forms and 18 neutral forms. Table 3 below illustrates the selected terms (in alphabetical order) and the categories to which they correspond (i, ii, or iii above). Forms followed by an asterisk in Table 3 are lemmas, e.g. “*demandeur\**” (*claimant*) for “*demandeur*” and “*demandeurs*”. The forms not followed by an asterisk only occur in the singular or the plural, as listed in Table 3. Forms in bold are *epicene* forms: their morphology does not change according to gender, but as a category they can refer to both female and male subjects. These were categorised as masculine or neutral depending on their actual use in context (they were never used in the subcorpora to refer to feminine subjects only). We used the *AntConc* (Anthony 2019) concordancer to check determiners, adjectives and past participles with a view to better disambiguating terms that could belong to either category. By way of example, “*bénéficiaire*” (*beneficiary*) was categorised under masculine generics because it is used in the corpus to refer to female and male subjects in its masculine form: the concordance tool showed that the term was preceded by the masculine article “*le*” (the feminine form being “*la bénéficiaire*”). The term “*enfant*” (*child*) is also *epicene*, being defined as “*être humain, sans différenciation de sexe, dans les premières années de sa vie avant l’adolescence*” (TLFi; *human being, without distinction of sex, in the first years of life before adolescence*). Here, the term is listed in two categories, masculine generics and neutral, because it is used as the masculine “*un enfant*”, but also as the neutral “*l’enfant*”. The concordancer was used to help identify past particles to fine-tune the categorisation of terms; for example when “*l’enfant*” was followed by a past participle in the masculine form, it was then categorised under masculine generics, as in (1) below:

1. [...] le conjoint ou le partenaire non marié et *l’enfant devenu majeur* ont droit, au besoin sur demande, à un titre de séjour autonome, indépendant de celui du regroupant. (FR\_2003\_086) [emphasis added]

A possible alternative in (1) above would be “*l’enfant devenu majeur ou devenue majeure*” (*the child who has come of age*).

Masculine generics	agents, assurés, <b>bénéficiaire</b> , chacun, citoyen*, conjoint*, demandeur*, droits de l’homme, employeur*, <b>enfant*</b> , époux, étranger*, étudiants, intéressé, maire, <b>membres</b> , occupant, <b>partenaire</b> , plaignants, préfet, <b>propriétaire</b> , réfugiés, résident, ressortissant, salarié*, souscripteurs, <b>titulaire</b> , travailleur*, vendeur
Binary oppositions	deux sexes, droits des femmes et des enfants, épouse, femme*, femmes et * hommes, homme* et * femme*, l’appartenance à l’un ou l’autre sexe, des personnes d’un sexe par rapport à des personnes de l’autre sexe, l’intéressé(e), les travailleurs masculins et les travailleurs féminins, masculins et féminins, membres d’un sexe, personne d’un sexe donné, personnes de l’autre sexe, personnes de sexe masculin ou de sexe féminin, travailleurs et travailleuses, travailleuses

Neutral forms	cong� parental (vs. <i>cong� maternit� ou cong� paternit�</i> ), couple (vs. <i>homme et femme</i> ), droits des personnes (vs. <i>droits des femmes et des hommes</i> ), droits humains (vs. <i>droits des femmes et des hommes</i> ), <b>enfant*</b> (vs. <i>un ou une enfant</i> ), <b>fonctionnaires</b> , groupe de personnes (vs. <i>groupe de femmes et d'hommes</i> ), m�nage (vs. <i>homme et femme</i> ), parents (vs. <i>m�re et p�re</i> ), partie d�fenderesse (vs. <i>d�fendeur ou d�fendeuse</i> ), partie demanderesse (vs. <i>demandeur ou demandeuse</i> ), partie patronale (vs. <i>les patrons or les patronnes</i> ), parties prenantes concern�es (vs. <i>acteurs et actrices ou intervenants et intervenantes</i> ), personne*, personnels (vs. <i>travailleurs et travailleuses</i> ), personnes d'un m�me sexe (vs. <i>les femmes ou les hommes</i> ), personnes int�ress�es (vs. <i>les femmes et les hommes int�ress�s</i> ), victime*
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Table 3: List of selected terms and their category distribution

Looking at the list and categorisation of gender-related terms in Table 3 above already reveals a form of gender asymmetry present in French legislation. As propounded by Pober (2007) this asymmetry is expressed by masculine forms used to embody the entire species of human beings, while feminine forms are only used to refer to female subjects. Masculine forms are used both in their generic (e.g. “*travailleur*”) and in their specific (e.g. “*travailleurs masculins*”) meanings in our subcorpus, signalling the issue of the indeterminacy of masculine forms in French legislation. The consequences of such indeterminacy have been tackled in previously mentioned studies on the use of masculine forms in the law (Martyna 1980; Guentherodt 1984), which point to the challenges posed by their supposed neutrality, also confirmed by psycholinguistics studies (Sczesny *et al.* 2016).

The next section presents the analysis of gender representation in each subcorpus, looking at occurrences of the selected terms from the masculine generic, binary, and neutral categories.

#### 4. Analysis of gender representation

Since our study seeks to observe whether a potential dialogue can be said to exist between French supranational and national legal varieties in relation to gender-fair language, we looked at the occurrences of the selected terms from the three categories in each subcorpus. This provided an overview of the linguistic representation of gender across the focus subcorpora, as illustrated by Table 4 presenting the average normalised frequency of occurrence for the three different forms in each subcorpus.

	Subcorpus a	Subcorpus b	Subcorpus c	Total
<b>Masculine generic forms</b>	3.9	1.9	7.4	<b>4.4</b>
<b>Binary forms</b>	1.3	3.3	9.2	<b>4.6</b>
<b>Neutral forms</b>	0.9	4.2	3.4	<b>2.8</b>

Table 4: Average normalised frequency (pttw) of occurrence of masculine generic, binary and neutral forms in subcorpus a, b and c in each category

##### 4.1 Masculine generics

Overall, the results in Table 4 reveal that masculine generics occur less frequently in subcorpus b (implementing measures: 1.9 pttw) and in subcorpus a (EU directives: 3.9 pttw) than in subcorpus c (French national laws with no connection to EU directives: 7.4 pttw). The stark difference between b and c highlights a more limited use of masculine generics in measures implementing EU directives at national level as opposed to laws conceived and drafted in France (with no influence from the EU). This is evidenced in (2) below, an example of a masculine generic in a text from subcorpus c on equal pay for men and women:

2. Cette négociation porte notamment sur les conditions d'accès à l'emploi, à la formation professionnelle et à la promotion professionnelle, les conditions de travail et d'emploi et en particulier celles des *salariés* à temps partiel, et l'articulation entre la vie professionnelle et les responsabilités familiales. (Loi\_n°2006-340\_du\_23\_mars\_2006; subcorpus c) [emphasis added]

Although these texts are provisions related to gender, the masculine form “*salariés*” (*employees*) is used, whereas an alternative could have been proposed, as shown in example (3) from subcorpus a, where a binary form is used to denote both male and female employees:

3. La Cour de justice a confirmé que, si les cotisations des *travailleurs salariés masculins et féminins* à un régime de retraite qui consiste à garantir une prestation finale définie sont couvertes par l'article 141 du traité, toute inégalité au niveau des cotisations patronales versées dans le cadre des régimes à prestations définies financées par capitalisation, en raison de l'utilisation des facteurs actuariels différents selon le sexe, ne saurait être appréciée au regard de cette même disposition. (FR\_2006\_054; subcorpus a) [emphasis added]

The choice to use masculine generics, as shown in example (2) above, might come across as rather surprising in a text on equal pay. However, its use can be explained by the fact that in France masculine generics are conceived as neutral. This is shown in the following excerpt drawn from an article for the French Official Journal (published as recently as 2017), clearly stating that the masculine form is the neutral form in legislative texts:

“Dans les textes réglementaires, *le masculin est une forme neutre* qu'il convient d'utiliser pour les termes susceptibles de s'appliquer aussi bien aux femmes qu'aux hommes.”

(Journal Officiel de la République Française n°0272 du 22 novembre 2017, texte n° 4 relative aux règles de féminisation et de rédaction des textes publiés) [emphasis added]

In the extract above it is stated that masculine forms can be used for terms that may apply to women and men. However, as discussed in 2.2 above, studies in the field of legal linguistics (Martyna 1980; Guentherodt 1984) and psycholinguistics (see Sczesny *et al.* 2016 for an overview) have shown that masculine forms do not include women. Masculine forms are not neutral, but the fact that they are used as such results in linguistic indeterminacy.

The idea of male-as-neutral is not limited to the linguistic representation of the legal person. Research on gender in the legal field has shown how the supposedly ‘universal’ nature of legal personhood is in fact male biased. As argued by Naffine (2011: 23), the idea

of the legal person was originally restricted to men, but as women gained more rights “[the] potential re-conceptualisation of the legal person did not occur, even though the concept now notionally embraced women”.

As illustrated in the following section, masculine generics are not the only form used to represent gender, and female subjects are also made visible in the French legal varieties under scrutiny by means of binary forms.

#### 4.2 Binary forms

The average normalised frequency of binary forms in Table 4 above reveals that this is the preferred form of representation in subcorpus c (French national laws with no connection with EU directives: 9.2 pttw), while the low frequency of these forms in subcorpus a (EU directives: 1.3 pttw) may explain why they occur to a lesser degree in subcorpus b (implementing measures: 3.3 pttw) than in subcorpus c. These results suggest that the possible impact of French Eurolect might translate into a more limited use of binary forms in French implementing measures compared with non-EU-related legislation in the same language. Despite the fact that these forms are still grounded in binary opposition, they remain a first step in the direction of linguistic gender-fairness, since both women and men are represented, in contrast with masculine generics that represent men only. Binary forms are a case of lexical broadening (Carston 2002) where the communicated concept explicitly includes women, as opposed to the concept encoded by masculine generics that leads to pragmatic indeterminacy, as discussed in Section 2.2 above.

However, when looking in more detail at a specific type of binary forms, that of gender opposition binomials, it can occur that men and women are still not represented equally, even within the framework of a binary form.

	<b>Gender opposition binomials</b>
<b>FEM-MASC</b>	* femmes et * hommes
<b>MASC-FEM</b>	* hommes et * femmes
	l’homme * la femme
	les travailleurs masculins et les travailleurs féminins
	* masculins et féminins
	personnes de sexe masculin et de sexe féminin
	travailleurs et travailleuses

Table 5: Gender opposition binomials in the subcorpora

Table 5 above lists the gender opposition binomials in the subcorpora that encompass both masculine and feminine terms. Looking at the collocations, it seems that despite an attempt to be inclusive of both women and men, they are all masculine-first forms, apart from just one feminine-first binomial (“\* femmes et \* hommes”). However, the fact that there are more types of masculine-first binomials does not necessarily mean that there are more instances of these than feminine-first binomials, as shown in Figure 1 below.

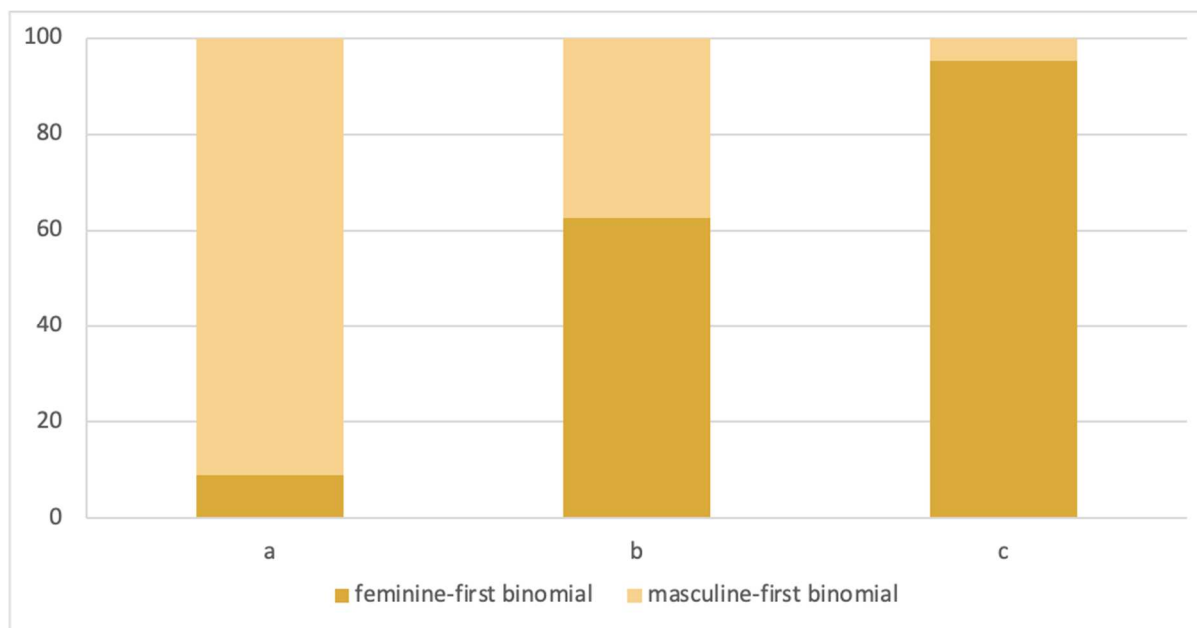


Figure 1: Distribution of gender opposition binomials across subcorpora a, b and c

The distribution of gender opposition binomials across our subcorpora reveals a clear contrast between EU directives and national laws as they show a strong preference for masculine-first and feminine-first binomials respectively. The equal use of gender opposition binomials in French national implementing measures might be revealing of a dialogue between supranational and national legislation. This rather even distribution between feminine-first and masculine-first binomials in national implementing measures can be said to be an indicator of intertextuality favouring a somewhat more fair representation of gender in this specific genre.

### 4.3 Neutral forms

The total average frequency of neutral forms shows that this is a minor strategy used to represent gender. Looking at the subcorpora, it is surprising to find that these forms are less frequently used in subcorpus a (EU directives: 0.9 pttw) than in subcorpus c (French national laws with no connection with EU directives: 3.4 pttw) and in subcorpus b (implementing measures: 4.2 pttw). Subcorpus b is the only corpus in which neutral forms are the most frequent ones out of the three categories observed.

Examples of neutral forms in subcorpora a, b and c are, respectively, found in (4)–(6) below:

4. La présente directive respecte les droits fondamentaux et observe les principes qui sont reconnus notamment par l'article 8 de la convention européenne pour la protection des *droits humains* et des libertés fondamentales et par la charte des droits fondamentaux de l'Union européenne. (FR\_2003\_086; subcorpus a) [emphasis added]
5. La haute autorité assiste *la victime* de discrimination dans la constitution de son dossier. Elle aide la victime à identifier les procédures adaptées à son cas. (EU\_2000\_043; subcorpus b) [emphasis added]

6. Les pièces justificatives de l'état civil des membres de la famille : l'acte de mariage ainsi que les actes de naissance du *demandeur*, de son *conjoint* et des enfants du *couple* comportant l'établissement du lien de filiation. (Décret\_n°2005-253; subcorpus c) [emphasis added]

Example (6) above clearly illustrates that, despite efforts to neutralise language, for instance using “*couple*” instead of “*homme et femme*” (*man and woman*), the use of masculine generics remains widespread in French national texts and are still intended as a neutral form, as shown by the terms “*demandeur*” (m.sg; *claimant*) and “*conjoint*” (m.sg; *partner*).

Our findings suggest that French national implementing measures may be moving in the direction of a more fair representation of gender by means of a higher use of neutral forms, a category that seems rather neglected in the formulations of EU directives instead.

In the next section, the data from subcorpora a and b will be checked against corpora A and B to see whether the strategies adopted to represent gender in the legal varieties under scrutiny can also be attributed to their non-gender-related counterparts.

#### 4.4 Representativeness of subcorpora

In order to see whether the subcorpora could be representative of their genre, we carried out a corpus-based analysis on the reference corpora based on results extracted from the subcorpora. More specifically, we compared the average frequency of occurrences of all the selected terms (Table 3) in the subcorpora and in the reference corpora. Tables 6 and 7 show the average frequency of occurrences for each category and in each corpus, based on the frequency of occurrences of each term in these categories.

	subcorpus a	corpus A
<b>Masculine generics</b>	3.9	0.4
<b>Binary</b>	1.3	0.02
<b>Neutral</b>	0.9	0.02

Table 6: Average normalised frequency (pttw) of occurrence for each category in subcorpus a and reference corpus A

	subcorpus b	corpus B
<b>Masculine generics</b>	1.9	0.5
<b>Binary</b>	3.4	0.05
<b>Neutral</b>	4.2	0.07

Table 7: Average normalised frequency (pttw) of occurrence for each category in subcorpus b and reference corpus B

As illustrated in Table 6 and 7, the comparison of the representation of gender between the reference corpora A and B reveals that they are aligned as far as the use of masculine generic forms are concerned (corpus A: 0.4 pttw, and corpus B: 0.5 pttw), which are the most frequent forms out of the three categories. When comparing the subcorpora to their reference corpora, thus looking at the representation of gender within each legal variety, we find that the selected forms are more frequent in subcorpora a and b than in their reference corpora A and B, regardless of the category they belong to. This is rather predictable in view of the fact that subcorpora represent our focus corpus, and also consist of gender-related texts. Table 8 below shows the Log-likelihood (LL) ratio which presents the degree of statistical

significance<sup>8</sup> of the over-representation of selected terms in the subcorpora as opposed to reference corpora.

	<b>Subcorpus a vs Corpus A</b>	<b>Subcorpus b vs Corpus B</b>
<b>Masculine generics</b>	+761.11	+11.55
<b>Binary</b>	+497.00	+83.49
<b>Neutral</b>	+223.80	+105.09

Table 8: Degree of statistical significance of over-representation (LL ratio) of selected terms for each category in subcorpora as opposed to reference corpora

The degree of statistical significance of the over-representation of gender-related terms in the subcorpora is always higher in EU directives (subcorpus a) than in implementing measures (subcorpus b). However, within EU directives, masculine generics display the highest degree of over-representation (followed by binary forms and neutral forms) in subcorpus a despite its gender-related nature. National implementing measures present the reverse situation: neutral forms are the most over-represented in subcorpus b, followed by binary forms and masculine generics. This lack of convergence in the use of categories to represent gender might emanate from the intertextual dialogue between the supranational and national legal varieties involved, and does not necessarily exclude a possible change in the direction of an overall more fair representation of gender in the future.

This analysis could unfortunately not include subcorpus c, as the latter is still being built, but looking at French national texts proves that they are even more heterogeneous than French implementing measures in their use of gender-related terms, as shown in the following example:

7. A la rubrique “justice” de l’annexe au décret du 15 octobre 1982 susvisé, les mots : “corps des *gradés et surveillants*” sont remplacés par les mots : “corps d’encadrement et d’application du *personnel de surveillance de l’administration pénitentiaire*” (Décret n° 2007-1233; subcorpus c) [emphasis added]

Example (7) above from subcorpus c is a very clear example of correction, as it shows gendered terms in former national laws being neutralised by replacing the masculine form of “*surveillants*” (*supervisors*) with the phrase “*personnel de surveillance*” (*the supervising staff*). Yet, at the same time, the article from the Official Journal (n°0272 dated 22.11.17), quoted in section 4.1 explicitly states that the masculine form *is* the neutral form. The heterogeneity we have observed in the representation of gender is therefore shaped by two contrasting forces at play in the intertextual dialogue between the legal varieties observed: a correcting force and a conservative one. These are the natural consequences of an ongoing process of change in the French language, which is also solicited by the contact between EU law and its immediately related national legislation.

## 5. Conclusion

Our contrastive analysis of European directives in French, their national transpositions and French national texts was aimed at exploring the extent to which a potential dialogue between these genres could be said to affect the linguistic forms that they use for gender

<sup>8</sup> When the LL ratio is higher than 6.63, the statistical significance is at  $p < 0.01$ .



representation. The general research questions that have informed our study are: Can a potential dialogue be observed between supranational and national varieties in French legal discourse? If so, can such a dialogue be said to be moving towards (more) gender-fair representation?

Our study has attempted to make an original contribution to the EOP research framework it belongs to by taking on a pragmatic perspective, and by focusing on a subcorpus of provisions specifically related to the topic of gender, which would be more likely to prioritise a more fair representation of gender. However, the results have shown that the strategies for the representation of gender across the legal varieties observed can greatly vary, together with their degree of gender fairness. As discussed in the analytical parts of this work, national implementing measures (subcorpus b) and EU directives (subcorpus a) have displayed a more limited use of masculine generics when compared to French national laws (subcorpus c). At the same time, the data emerging from the subcorpus of French national laws and of implementing measures have evidenced a higher use of binary and neutral forms than EU directives. The analysis of our datasets has revealed an open dialogue between the three legal varieties under scrutiny, as in the end no converging strategy seems to prevail. The lack of a consistent use of gender-related terms across the subcorpora, revealed by the co-existence of masculine generics and more gender-fair linguistic forms, could be interpreted as the result of intertextuality on the one hand, and, on the other, of a disconnection between more recent gender-fair reforms (mentioned in Section 1) and more conservative views in legal language. As Fairclough (1995: 2) aptly points out, “The heterogeneities of texts are a sensitive indicator of sociocultural contradictions, and a sensitive barometer of their evolution.”

It could be argued that despite this lack of consistency, a first step has been taken towards a more fair representation of gender, although there is still a long (and bumpy) way to go. Psycholinguistic studies have indeed found that the presence of binary forms alongside masculine generics might lead to more male bias. By way of example, Gygax and Gabriel (2008) investigated the interpretation of masculine forms of role nouns in French and they found that when masculine forms intended as generic were presented alongside feminine forms, the generic meaning was even less likely to be inferred. Gygax *et al.* (2009: 242) argued that “As no true regulations regarding the use of the masculine-only form in gender-marked languages are implemented in a consistent manner, we are faced with a mixture of masculine-only and parallel alternatives. This mixture increases the likelihood that the masculine form will be interpreted as a specific form, even when not intended as such”. Although indeterminacy is inherent to masculine generics, it is also exacerbated by the lack of lexical coherence due to intertextuality in our corpus. This results in a paradox between a potentially more fair representation of gender at the level of the different linguistic strategies used and more male bias at the inferential one.

Undeniably, the fact that this study was conducted within an already established research project, the EOP, was a significant asset: access to a number of specialised pre-existing corpora could be guaranteed swiftly and freely as part of a collaborative enterprise with EOP project members. However, although this set of corpora had already inspired previous insightful studies on Eurolects, the corpus was circumscribed to a timeframe (1999-2008) that did not necessarily reflect the most recent developments on the issue of gender representation in legal discourse. As a future avenue for research, we seek to replicate this study and compare our initial findings with results drawn from more recent samples of the same legal genres. The timespan of the corpus under scrutiny will consequently be expanded in order to observe whether or not the representation of gender in French legal discourse has evolved over time since 2008, when numerous institutional guidelines at national and supranational

level<sup>9</sup> were published to encourage a gender-fair representation in discourse. As Witczak-Plisiecka (2009: 219) argues:

Due to the very nature of the law there are constant attempts to secure and stabilise the meaning of legal formulae. However, not only is the reception of legal language varied, but also drafting techniques are in a state of flux and constitute a source of disagreement, even among drafters. These disagreements may be related to implicit differences in the recognition of the linguistic code, but also to differences in the drafters' perception of the semantics (or rather pragmatics?) of the expressions caused by the discrepancies in their inferences, based on different experiences.

Replicating this study is expected to yield key insights on the longitudinal observation of gender representation in legal discourse by looking at the evolution (or lack thereof) over time of the linguistic practices under scrutiny. This study is to be complemented by the results of an (already carried out) ethnographic investigation<sup>10</sup> based on interviews with EU officials and lawyer-linguists (from the European Parliament, Council of the European Union, and European Commission) on the drafting of institutional guidelines encouraging an improved discursive articulation of gender in the future.

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<sup>9</sup> By way of example: Parlement européen, 2008, *Usage d'un langage neutre du point de vue du genre au Parlement européen* ([https://www.europarl.europa.eu/cmsdata/187098/GNL\\_Guidelines\\_FR-original.pdf](https://www.europarl.europa.eu/cmsdata/187098/GNL_Guidelines_FR-original.pdf)) (Last accessed: March 4, 2022); Parlement européen, 2018, *Usage d'un langage neutre du point de vue du genre au Parlement européen* ([https://www.europarl.europa.eu/cmsdata/187098/GNL\\_Guidelines\\_FR-original.pdf](https://www.europarl.europa.eu/cmsdata/187098/GNL_Guidelines_FR-original.pdf)) (Last accessed: March 4, 2022); Haut Conseil à l'Égalité, 2016, *Pour une communication publique sans stéréotypes de sexe* ([http://www.haut-conseil-egalite.gouv.fr/IMG/pdf/guide\\_pour\\_une\\_communication\\_publicque\\_sans\\_stereotype\\_de\\_sexe\\_vf\\_2016\\_11\\_02\\_compressed.pdf](http://www.haut-conseil-egalite.gouv.fr/IMG/pdf/guide_pour_une_communication_publicque_sans_stereotype_de_sexe_vf_2016_11_02_compressed.pdf)) (Last accessed: March 4, 2022); Secrétariat Général du Conseil de l'Union européenne, 2018, *La communication inclusive au SGC* ([https://www.consilium.europa.eu/media/35450/fr\\_brochure-inclusive-communication-in-the-gsc.pdf](https://www.consilium.europa.eu/media/35450/fr_brochure-inclusive-communication-in-the-gsc.pdf)) (Last accessed: March 4, 2022).

<sup>10</sup> Paper presented at an international workshop: Foubert, Océane, Caliendo, Giuditta. (2020) Gender-fair language in French legal discourse. *International Legal Linguistics Workshop (ILLWS20)*. Austrian Association for Legal Linguistics.

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**Competing interests**

The authors declare no competing interests.



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